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(CIVIL AND CRIMINAL)

3rd Edition

BY
D. V. CHITALEY, B.A., LL.B., *Advocate*
AND
S. APPU RAO, B.A., B.L.
Advocate, High Court, Madras
Chief Editor, "The All India Reporter"

VOLUME 7

COURT-FEES ACT (1870), S. 8
TO
CRIMINAL PROCEDURE CODE, S. 205

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AUTHORS

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D. V. CHITALEY, B.A., LL.B.
Senior Advocate, Supreme Court, Bombay
AND
S. APPU RAO, B.A., B.L.
Advocate, High Court, Madras
Chief Editor, "The All India Reporter"

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D. V. CHITALEY, B.A., LL.B., *Advocate*
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PREFACE

(Reprinted from Vol. 1)

When the A.I.R. entered the field with the first edition of its "Manual" in the year 1947, it at once leapt to the first rank and carved for itself an unrivalled position in the field of such publications, although it was a newcomer in that particular field. This was due to certain settled principles of the A.I.R. to which it has been adhering steadfastly since its foundation more than 50 years ago. These principles may be summed up in three rules, which the A.I.R. has been having as its watchwords since the beginning: (1) thoroughness, (2) exhaustiveness, and (3) meticulous study of all possible ways by which the usefulness of a publication to the legal profession can be enhanced. All these three principles were given full effect to in the A.I.R. Manual.

2. The publication proved to be the most exhaustive and reliable collection of central statute-law together with all the relevant case-law bearing on it, summarised, arranged and presented in a most conscientious manner with a view to affording the maximum facilities to the legal profession, both on the Bench and at the Bar. These qualities meant very hard work both for the editorial staff engaged by the A.I.R. as well as for the management. But they have built up the reputation of the A.I.R. Manual on a most solid and enduring foundation. This reputation brought correspondingly good results as regards the actual sales of the publication and in a little over 20 years after the A.I.R. entered the field, a third edition of the Manual has become necessary to meet the insistent demand of the legal profession.

3. It is needless to dilate, at length, on the special features of the publication. It gives, as in the previous editions, both civil and criminal Acts, and the inconvenient and illogical division into civil and criminal portions has been rejected as in the previous editions. The post-Independence period has been extraordinarily prolific in the matter of legislative output, both at the Centre and in the States. The A.I.R. Manual aims at placing within the reach of the profession, at a reasonable cost, the entire body of central statute-law together with the relevant case-law arranged in a convenient form which has been developed, after patient thought and experimentation, as being the most suitable from the point of view of quick and efficient service to the profession, whenever its members may have to look up a point of law in the statutes of India. Needless to say that our statutes, unlike under the English system, constitute the staple of our law and, therefore, provide the most important and the bulkiest part of our law.

4. In the interval of about 8 years since the completion of the second edition, more than 100 new Acts have been added to the statute book and there have been also a very vast number of amendments and additions to the old Acts. This edition includes all the new Acts and all the up-to-date amendments, besides giving the State amendments also wherever it was possible to trace them.

5. Among the new Acts, special mention may be made of some which are of outstanding importance. Perhaps, the first place in this category will have to be

given to the Limitation Act of 1963 which has taken the place of the Act of 1908 and not only overhauled the entire Law of Limitation but has revolutionised and simplified the law in many respects as, for instance, in regard to suits for possession of immovable property and applications for execution, which were two of the toughest and most confusing topics under the previous Limitation Act. The Advocates Act, 1961, has repealed the Bar Councils Act, 1926, and the Legal Practitioners Act, 1879 and has brought into existence a single unified Bar for the whole of India—which is itself a revolutionary change in the constitution of the Indian Bar and has been looked forward to, for a very long period by the whole Bar as an ideal to be realised.

6. The Arms Act, 1959, is another important Act which, by liberalising the provisions of the Arms Act of 1878 in a marked way, has shown itself to be a product of the post-Independence period. The Income-tax Act of 1961 has overhauled the whole structure of the Income-tax Act, 1922, and made a real attempt at simplification of the provisions of the law. Other Acts of the period also reflect the spirit of the times, each in its own way.

7. Above everything, however, this edition of A.I.R. Manual will be of special value to the Bench and the Bar as perhaps the most exhaustive and up-to-date reference book on the Constitution of India. The period, after the last edition, has witnessed an enormous growth and development of the Constitutional Law of India. Not only have there been a very large number of important amendments of the Constitution during this period but a phenomenally voluminous body of case-law which has accumulated on the Constitution.

8. This edition will not only contain the most authoritative version of the Constitution but also the most exhaustive collection of the case-law bearing on it. The subject is so voluminous that no ordinary text-book can be expected to cope with it and do full justice to it. This edition will be found to be practically unequalled as a book of reference on the Constitution of India.

9. All the special features of the previous editions, such as synopsis, "at-paging" of the Reports, etc., are continued in this edition and have also been considerably improved. These special features have been enumerated elsewhere at the beginning of this volume.

10. Before concluding, it is our pleasant duty to place on record our sense of gratitude to all our colleagues without whose unstinted labour and co-operation it would have been impossible to bring out such a vast publication. The editorial work, as can be seen, consists mainly of two branches: (i) that relating to preparing and editing the text of the various Acts, and (ii) the collection and editing of the notes of case-law bearing on the different Acts.

11. The responsibility for preparing and editing the text of the various Acts has been ably shouldered and executed by Sarvashri D. R. Rajandekar, B.A., LL.B., and A. G. Tambe, B.A., LL.B., assisted by Sarvashri P. A. Bakre, B.A., LL.B., H. G. Pathak, B.A., LL.B., and S. G. Kulkarni, B.A., LL.B.

12. The entire credit for organising and managing the editorial work in connection with the case-law must go to Shri V. B. Bakhale, M.A., LL.B., who has been assisted by a band of devoted workers, among whom may be chiefly mentioned

Sarvashri R. G. Dhobley, B.A., LL.B., D. H. Zadgaonkar, B.A., LL.B., K. S. Bakre, B.Sc., LL.B., M. Kuppuswami, B.A., B.L., G. M. Jatar, B.A., LL.B., S. S. Guru, B.A., LL.B., M. V. Joshi, B.A., LL.B., L. G. Chavhan, B.A., LL.B., B. N. Pradhan, B.Sc., LL.B., C. W. Moharir, B.Com., LL.B., D. V. Thakre, B.Sc., LL.B., G. D. Ruikar, B.A., LL.B., Y. P. Baxi, B.A., LL.B., M. N. Thomare, B.A., LL.B., B. D. Bhave, B.Sc., LL.B., D. G. Bhagwat, B.Sc. LL.B., N. N. Harshe, M.A., LL.B. F.I.A., V. R. Buche, B.A., LL.B., G. G. Modak, B.Sc., LL.B., V. S. Sarma, B.A., LL.B. and S. V. Golwalkar, B.A., LL.B.

13. Shri Gopalrao Udar and his team including among others Sarvashri P. K. Thosar, H. W. Mendhi, Govindrao Udar, D. R. Landge, Ku. S. Naidu, Ku. K. G. Deshpande and Ku. S. Deshpande have done the very arduous and responsible work of correcting and passing the proofs and our thanks are due to them for this.

14. Scarcely less important than the work of the editors has been the work of Shri B. R. Abhyankar, who, with his devoted band of workers including Sarvashri M. S. Savarkar, B. R. Katankar, D. P. Alshi, W. J. Joshi, P. N. Deo, G. D. Deshpande, S. M. Lambe, L. S. Wavde and D. T. Joshi and others has manned the responsibility of preparing the manuscript for the press.

15. Thanks must also be given to Sarvashri M. W. Chitaley, C. R. Banerjee, and G. G. Padhye, M. M. Kanitkar and others of the A.I.R. Rotary Printing Press, who, under the leadership and guidance of Shri J. W. Chitaley, finished the printing of the work in record time.

16. Last, but by no means least, our thanks are due to Shri W. W. Chitaley, B.A., LL.B., who has been in overall charge of the whole undertaking and whose exceptional talents, in organising and managing the business side of the undertaking are of inestimable value for the success of the gigantic undertaking that this publication obviously is.

13th June, 1969.

D.V.C.
S.A.R.

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ADDENDA AND CORRIGENDA

VOLUME 1

Advocates Act, 1961

Section 1

On page 114, in the foot-note (b) *add* the following as the last entry in the table—

Ss. 29, 31, 33 and 34 of Chap. IV	1-6-1969	Gaz. of India, 19-4-1969, Pt. II-S. 3 (ii) Extra p. 569.

Section 29

On p. 132, add the following note under the section.

"Note—Sections 29, 31, 33 and 34 of Chapter IV were brought into force on 1st June 1969—Gaz. of India, 19-4-1969, Pt. II-S. 3 (ii) Extra, p. 569.

VOLUME 2

Citizenship Act, 1955

On page 529, in the short title of the Act, *for* '1925' *read* '1955'.

VOLUME 3

Civil Procedure Code, 1908.

Order 39, Rule 2.

In Note 5 (on p. 1129)—

(i) in Pt. (7) add the following citation after A. I. R. 1923 Mad. 92 (94):

"* * A. I. R. 1941 All. 140 (143) (DB)."

(ii) Substitute the following for the existing pt. (24):

"(24) The Court has jurisdiction to commit for contempt a person not included in an injunction and/or not a party to the action who, knowing of the injunction, aids and abets a defendant in committing a breach of it. — A I R 1967 Andh. Pra. 219 (225) (DB). (A I R 1938 P C 295 (299), (1882) 51 L J Ch 414 and (1897) 1 Ch 545, Relied on.)"

(iii) *Add* after Pt. (24) as substituted above,

"(24A) Injunction against lessor or lessee—Disobedience by lessee or sub-lessee—A lessee is not agent of the lessor, nor sub-lessee agent of the lessee — Hence, the lessor or lessee respectively could not be held liable for disobedience of the injunction obtained against the lessor or lessee, by the lessee or sub-lessee. A I R 1962 Pat 443 (445) (DB)."

VOLUME 4

Constitution of India

Article 14

In Note 67, on page 1243 in pt. (14), *for* the word 'constitutional' *read* 'unconstitutional'.

A. I. R. MANUAL

UNREPEALED CENTRAL ACTS

(CIVIL & CRIMINAL)

VOLUME VII

[THE] COURT-FEES ACT, 1870 — (contd.)

CHAPTER III — (contd.)

FEES IN OTHER COURTS AND PUBLIC OFFICES — (contd.)

8. Fee on memorandum of appeal against order relating to compensation.— The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the *acquisition of land for public purposes, shall be computed according to the

---

SECTION 8 — SYNOPSIS

1. **State Amendment (U. P.)**
2. **Scope.**
3. **"Order".**
4. **Appeal against order relating to compensation — Schedule II, Article 17 (iv), whether applies.**
5. **Appeals arising under Land Acquisition Act — Section 8 whether restricted to appeals from awards only.**
6. **Appeal by one of the claimants who is awarded nothing.**
7. **Court-fee in appeals relating to apportionment of compensation.**
8. **Court-fee, whether payable on additional payment under Section 23 (2) of the Land Acquisition Act.**
9. **Appeal by Government.**
10. **Orders relating to compensation — Illustrative cases.**
11. **Amount that can be awarded by the Appellate Court.**

1. State Amendment (U. P.)— (1) The section applies to an appeal against the decision of the Improvement Trust Tribunal. AIR 1939 All 127 (130) = ILR (1939) All 142.

(2) The section does not apply to an appeal under the Workmen's Compensation Act, VIII of 1923. AIR 1944 Oudh 83 (83) = 19 Luck 460. (Schedule II, Article 11 applies to such an appeal.)

(13) The U. P. Requisitioning and Acquisition of Immovable Property Act 1952 makes no difference whether the property acquired is bare land or some construction like a well. In either case Section 8, Court-fees Act is applicable. 1965 All LJ 909 (914) = ILR (1965) 2 All 907.

(4) U. P. Nagar Mahapalika Act (2 of 1959) comes within the expression 'any other similar statute' in Section 8 Court Fees Act — Decision of the Tribunal is award — Appeal against award — Section 8 of Court-fees Act applies. AIR 1966 All 227 (229, 230).

2. Scope.— (1) The section is not itself a charging section. It merely provides a rule for computing ad valorem fee payable under the Act in certain classes of cases on the assumption that under some other provision of the Act an ad valorem fee and not a fixed fee is chargeable. AIR 1945 Bom 348 (350) ** AIR 1932 Cal 346 (348) = 59 Cal 528. (The purpose of the section is that the litigant should be charged in the most favourable way.)

[See also AIR 1957 Punj 32 (34) = ILR (1957) Punj 142 (DB). (The charging provisions are Sches. 1 and II. If there were no Schedule, Section 8 itself would be of no assistance to the State. It is under the provisions of the various Articles of the Schedule that the amount is to be determined.)]

difference between the amount awarded and the amount claimed by the appellant.

[Cf: A. P. Act 7 of 1956, S. 48: Bom. Act 36 of 1959, S. 7 (1): H. P. Act 8 of 1968, S. 8: J. and K. Act 7 of 1977 Svt., S. 8: Ker. Act 10 of 1960, S. 51: Mad. Act 14 of 1955, S. 51: Mys. Act 16 of 1958, S. 48: Raj. Act 23 of 1961, S. 46.]

[°] See now the Land Acquisition Act, 1894 (1 of 1894).

STATE AMENDMENT

Uttar Pradesh:

The following words were inserted between the words "public purposes" and "shall be computed," viz.,

"or against an award made by a tribunal constituted under the United Provinces Town Improvement Act° or any other similar statute." — U. P. Act 19 of 1938 (9-1-1939).

[°] The U. P. Town Improvement Act (U. P. Act VIII of 1919) is repealed by S. 581 of U. P. Nagar Mahapalika Adhiniyam (U. P. Act II of 1959) in so far as it may be applicable to any area included in the City.

Section 8, Note 2 (contd.)

(2) The rule of computation of court-fee prescribed in the section is applicable to a memorandum of appeal filed in a Charatered High Court. AIR 1932 Cal 346 (348) = 59 Cal 528.

[See also AIR 1925 Pat 392 (399) = 4 Pat 336 (FB).]

(3) The section applies to appeal against all orders relating to compensation whether such an order amounts to a decree or not. AIR 1932 Cal 346 (348, 349) = 59 Cal 528. (Schedule II, Article 11 does not apply to such an appeal.)

(4) Any Act which authorises the acquisition of land for public purposes and provides the machinery for assessment and payment of compensation, is an Act for the acquisition of land for public purposes within the meaning of Section 8, even if greater part of its provision deals with other objects. AIR 1946 Cal 524 (525) = ILR (1946) 2 Cal 547. (Section 8 applies to Defence of India Act, 1939.)

(5) The term "acquisition" in Sec. 8 includes temporary acquisitions such as requisitions under Section 19, Defence of India Act, and a memorandum of appeal from award by arbitrator is governed by this section. AIR 1946 Cal 524 (526) = ILR (1946) 2 Cal 547.

(6) Section 8, Court Fees Act is applicable to appeals before High Courts although the section appears in Chapter III. 1965 All LJ 909 (912) = ILR (1965) 2 All 907.

3. "Order". — (1) The word "Order" in the Section means an order as defined in Section 2 (14), Civil P. C. AIR 1945 Bom 348 (349) = ILR (1946) Bom 707 ** AIR 1968 Andh Pra 348 (353) = (1968) 1 Andh WR 218 (DB). (AIR 1945 Bom 348; AIR 1957 Punj 32; AIR 1939 All 127, **Dissented from.**) ** AIR 1967 Cal 617 (619) = 71 Cal WN 673. (AIR 1945 Bom 348. **Dissented from.**) ** AIR 1959 Cal 609 (613) = 63 Cal WN 325. (AIR 1945 Bom 348, **Dissented from.**)

(2) The arbitrator under Section 19, Defence of India Act, is not a Court and therefore an award by him is not an order within this section. AIR 1945 Bom 348 (350) = ILR (1946) Bom 707. (Sch. II, Article 11, applies.) ** AIR 1957 Nag 8 (10) = ILR (1956) Nag 471 (DB).

(3) Section 8 does not apply to an appeal against an award of compensation made by an arbitrator acting under the Punjab Requisitioning and Acquisition of Immovable Property Act (11 of 1953) because the award is not an order. AIR 1957 Punj 32 (34) = ILR (1957) Punj 142 (DB).

(4) An award given by an Arbitrator under Requisitioning and Acquisition of Immovable Property Act, 1952, is order relating to compensation — Section 8 is attracted, although it is not an order as defined by the Code of Civil Procedure. 1965 All LJ 909 (913) = ILR (1965) 2 All 907.

4. Appeal against order relating to compensation — Schedule II, Article 17 (iv), whether applies. — (1) Appeal against an order relating to compensation under the Land Acquisition Act — Sch. II, Article 17 (iv) does not apply. AIR 1939 All 127 (129, 130) = ILR (1939) All 142 ** AIR 1950 Cal 434 (Prs 2, 4) ** AIR 1932 Oudh 224 (224) = 8 Luck 85 (DB) ** AIR 1924 Mad 489 (490) ** AIR 1928 Rang 197 (198) = 6 Rang 281 (DB) ** AIR 1968 Cal 365 (371) = 71 Cal WN 662. (AIR 1957 Raj 275. **Diss. from.**)

[But see 1912 Pun LR (Supp) No. 17 p. 54 (57) = 1913 Pun Re No. 57 (DB). (Appeal by Secretary of State — Article 17 (iv) of Sch. II, **Held, applicable.**)]

(2) Section 8 overrides Article 17 (iv) of Sch. II. AIR 1926 Lah 343 (343, 344) ** (1898) 21 Mad 269 (270) (DB).

Section 8 — Note 4 (contd.)

(3) A Stamp Reporter or a Taxing Officer, whose duty is to determine propert Court-fees payable on the Memorandum of Appeal, against an award of the arbitrator under the Act 1952 challenging the compensation awarded need not go into the question whether the acquisition itself was for a public purpose and that the only question involved in such an appeal was assessment of just compensation for the property validly acquired. AIR 1959 Cal 609 (611) = 63 Cal WN 325.

(4) An award made under Section 7 of the Requisitioning and Acquisition of Immovable Property Act, 1952 is an order within the meaning of Section 8 of the Court-fees Act and in an appeal against such an award. Court-fees under Sch. I, Article 1 of the Court-fees Act is payable on the difference of the amount awarded by the Arbitrator and that claimed by the appellant. AIR 1959 Cal 609 (613) = 63 Cal WN 325. (AIR 1945 Bom 348, **Dissented from.**) ** AIR 1968 Andh Pra 348 (350) = (1968) 1 Andh WR 218 (DB).

(5) Section 8, Court-fees Act being a special provision regarding orders relating to compensation will prevail against a general provision under Article 11 of Sch. II. 1965 All LJ 909 (914) = ILR (1965) 2 All 907.

(6) An order refusing compensation is as much an order relating to compensation as an order allowing compensation is. So whenever the Arbitrator refuses to allow any compensation to a party on the ground that it has no title to the property acquired, that is an order relating to compensation and Section 8, Court Fees Act is attracted. 1966 All LJ 909 (913) = ILR (1965) 2 All 907.

5. Appeals arising under Land Acquisition Act — Section 8, whether restricted to appeals from awards only. — (1) An order passed by a Civil Court on a reference to it under Section 30 of the Land Acquisition Act does not amount to an award. **AIR 1922 PC 80 (83) = 45 Mad 320 = 49 Ind App 129.**

(2) For the applicability of this section what is essential is that the order appealed against must relate to compensation and it is immaterial whether the order amounts to an award or not. AIR 1935 Lah 448 (449) = 17 Lah 122 (DB) ** AIR 1957 Punj 222 (223) = ILR (1956) Punj 420 ** AIR 1926 Lah 343 (344).

[But see AIR 1929 Mad 223 (226) (DB).]

(3) The words "acquisition of land" in Section 8, Court Fees Act are wide enough to include requisition of premises. (1965) 69 Cal WN 513 (515) (DB).

(4) "Order relating to compensation . . . . for acquisition of land for public purpose" — Award of compensation by arbitrator under provisions of Central Act 60 of 1948 — Award is not an 'Order' having the force of a decree — Appeal against 'award' attracts fixed court-fee under Article 11 of Sch. II of the Court-fees Act — Ad valorem court-fee on basis of Section 8 not payable. AIR 1970 Delhi 44 (49, 50) (DB).

6. Appeal by one of the claimants who is awarded nothing. — (1) Appeal by one of several claimants who claimed a share in the compensation but was awarded nothing at all in the lower Court — **Held,** this section applies to such appeal. AIR 1931 Lah 343 (343) ** AIR 1951 Pat 608 (Pr 5) ** AIR 1926 Lah 343 (343, 344) ** AIR 1932 Cal 346 (347) = 59 Cal 528 ** AIR 1968 Madh Pra 228 (229) = 1968 MPLJ 461 (DB) ** (1963) 5 OJD 264 = ILR (1963) Cut 426.

[But see AIR 1929 Mad 223 (226) (DB). (The court-fee must be paid under Article 1 of Sch. 1.)]

7. Court-fee in appeals relating to apportionment of compensation. — (1) Appeal from an order apportioning compensation among several claimants by a claimant claiming more compensation — The proper court-fee is that payable under this section. AIR 1935 Lah 448 (449) = 17 Lah 122 (DB) ** ILR (1966) 2 Punj 481 (486, 494) = (1966) 68 Pun LR 299 (D) (FB). (AIR 1932 Cal 346, Foll.; AIR 1957 Raj 275, **Dissented from.**) ** AIR 1967 Cal 617 (619) = 71 Cal WN 673. (AIR 1945 Bom 348. **Diss. from.**) ** AIR 1961 Him Pra 30 (32) = 1962 Cur LJ 60. (AIR 1957 Raj 275, Not foll.)

(2) Compensation divided between claimant and Government — Appellant claimant appealing from order praying for more amount than was awarded to him paying only two rupees as court-fee under Sch. II, Article 11 — Appellant alleging that the appeal was one relating to apportionment — **Held,** that the appeal did not relate to apportionment and the proper court-fee was an ad valorem one under this section. AIR 1921 Bom 325 (325) = 45 Bom 277 (DB).

(3) On a reference under Section 30, Jaipur Land Acquisition Act, the District Judge passed an order apportioning compensation among several claimants. One of the claimants, who had claimed that he alone was the owner of the property acquired, filed an appeal under Sec. 54, Rajasthan Land Acquisition Act, against the decision of the District Judge claiming the entire amount for himself. It was held that what was in dispute in the appeal was the relative shares of the parties in the property in dispute and the apportionment would follow the declaration as a matter of course. Section 8 was not at all applicable to a case of this nature. For a relief of declaration of that nature Sch. II. Article 17, Clause (iii), would be applicable.

Sections 8-A to 8-F

Andaman and Nicobar (U. T.):

Sections 8-A to 8-F inserted after Section 8 are the same as those of West Bengal. — Reg. II of 1957, S. 8 (1-8-1957).

Orissa:

After Section 8 the following section was inserted as Section 8-A:

"8-A. **Statement of particulars of subject-matters of suit and plaintiff's valuation thereof.**—In every suit in which an ad valorem court-fee is payable, under this Act on the plaint, the plaintiff shall file with the plaint a statement of particulars of the subject-matter of the suit and his own valuation thereof unless such particulars and the valuation are contained in the plaint. The statement shall be in such form and shall contain such particulars as may be prescribed by the State Government by notification in the Gazette. In every such suit the plaintiff shall also, if the Court so directs, file a duplicate copy of the plaint and of the said statement." — Orissa Act 5 of 1939 (31-10-1939).

Section 8 — Note 7 (contd.)
AIR 1957 Raj 275 (276) = ILR (1956) 6 Raj 230 (DB).

8. Court-fee, whether payable on additional payment under Section 23 (2) of the Land Acquisition Act. — (1) Where a person being dissatisfied with the amount of compensation awarded to him under Section 18, Land Acquisition Act, wants to appeal, insisting in case of his success that not only the excess market value but also 15 per cent on such market-value should be decreed in his favour, he must pay court-fees not only on the excess market value but also on 15 per cent thereon. AIR 1930 Mad 45 (47) = 53 Mad 48 ** AIR 1955 Trav-Co 110 (Pr 5) = ILR (1954) Trav-Co 1275 (DB).

[But see AIR 1926 Lah 509 (510) (DB).]

9. Appeal by Government. — (1) The section applies to an appeal by Government seeking a reduction of the amount of compensation awarded. AIR 1939 All 127 (130) = ILR (1939) All 142 ** AIR 1927 Cal 45 (45) (DB) ** AIR 1924 Mad 489 (490).

[But see AIR 1932 Oudh 224 (224) = 8 Luck 85 (DB) ** 1912 Pun LR (Supp) No. 17 p. 54 (57) = 1913 Pun Re No. 57 (DB).]

(2) Appeal by Government seeking a reduction of the amount of compensation awarded — Government appellant must pay ad valorem court-fee on the amount of compensation in dispute. AIR 1939 All 127 (130) = ILR (1939) All 142 ** AIR 1932 Oudh 224 (224) = 8 Luck 85 (DB). (Sch. I, Article 1, applies.) ** AIR 1928 Rang 197 (198) = 6 Rang 281 (DB). (If Section 8 is not applicable, provision of Sch. I, Article 1 must be applied.) ** AIR 1927 Cal 45 (45, 46) (DB) ** AIR 1924 Mad 489 (490). (Sch. I, Artice 1 applies.)

10. Orders relating to compensation — Illustrative cases. — (1) On acquisition of property District Judge ordering compensation to be invested in Government Promissory Notes and allowing only interest to claimant — Claimant filing appeal against order paying Court-fee under Sch. II, Article 17 (vi) — **Held,** that court-fee must be paid under this section. (1912) 39 Cal 906 (913, 914) (DB).

(2) Land acquisition proceedings — Claim by reversioner that compensation money should not be paid to alienee from Hindu widow as the alienation was not binding upon him — Prayer for investment of money under S. 32, Land Acquisition Act — Claim disallowed — Appeal by reversioner — **Held,** that it was not governed by this section. AIR 1935 Cal 243 (244) = 62 Cal 331.

[See also AIR 1932 Mad 438 (439) = 55 Mad 641 (DB).]

(3) Land acquisition proceedings — Certain reversioners objecting that whole compensation money should not be paid over to Hindu widow — District Judge disallowing objection — Appeal by reversioners — **Held,** that appeal should have been stamped with ad valorem court-fee. (1899) 21 All 354 (355) (DB).

(4) Compensation was awarded in respect of debutter land to one K as representing the Deity in his capacity as executor of the person who created the debutter. In apportionment proceedings the whole amount was awarded to L who was the shebait. It was held that court-fee payable on the appeal against that decision was ad valorem on the amount determined under this section and not a fixed fee. AIR 1950 Cal 434 (Prs. 2, 4).

11. Amount that can be awarded by the Appellate Court. — (1) The Court of appeal cannot pass a decree for a sum in excess of the amount claimed and on which no court-fee has been paid even if it finds that the appellant is entitled to a higher amount. (1903) 30 Cal 501 (502) (DB) ** (1903) 30 Cal 516 (520) (DB). (Unless before the judgment is pronounced, an amendment of the memorandum of appeal is allowed and the additional court-fee is paid.)

Pondicherry:

Same as that of Andaman and Nicobar — See Act 26 of 1968, S. 3 and Schedule, Pt. II (18-12-1968).

West Bengal:

After Section 8 the following sections were inserted, viz. :—

"8-A. In every suit in which an ad valorem court-fee is payable, under this Act on the plaint, the plaintiff shall file with the plaint a statement of particulars of the subject-matter of the suit and his own valuation thereof unless such particulars and the valuation are contained in the plaint. The statement shall be in such form and shall contain such particulars as may be prescribed by the State Government by notification in the Official Gazette. In every such suit the plaintiff shall also, if the Court so directs, file a duplicate copy of the plaint and of the said statement.

8-B. (1) In every suit in which a court-fee is payable under this Act on the plaint or memorandum of appeal the Court shall, *[on the date fixed for the appearance of the opposite party or as soon as may be thereafter] and in every case before proceeding to deliver judgment, record a finding whether a sufficient court-fee has been paid.

[*] These words were substituted by Beng. Act I of 1936.

Sections 8-A-8-F (West Bengal) — Note 1

(1) The object in inserting these sections is to supply the omission in the Act of the provision for Court's power to reject plaint in case of undervaluation. ILR (1937) 2 Cal 501 (507) (DB).

(2) The powers of a Court under these sections are much wider and more specific than those under Sections 9 and 10. ILR (1937) 2 Cal 501 (507) (DB).

(3) Section 8-B casts a duty upon the Court to record a finding whether a sufficient court-fee has been paid and, in case of insufficiency, to dismiss the suit on failure of the party to make up the deficiency. AIR 1940 Cal 451 (454) = ILR (1940) 2 Cal 166 (DB).

[See also ILR (1953) 1 Cal 277 (278). (The court-fee is payable on a set-off under Section 8-B read with Section 12 of the Court-fees Act and before a claim can be rejected on the ground of non-payment of court-fee, time must be allowed under the Code of Civil Procedure, and if the court-fee is not still paid then the Court can reject the claim.)]

(4) The Court-fees Act as amended by Bengal Act 1 of 1936 contemplates two stages so far as payment of court-fee is concerned. In the first stage, under Section 6 (2), failure to pay the reasonable court-fee entails the rejection of the plaint or memorandum of appeal and, at a later stage, under Section 8-B, failure as aforesaid entails a dismissal of the suit or appeal. AIR 1953 Cal 42 (Pr 8) = ILR (1954) 2 Cal 176 (DB) ** ILR (1948) 2 Cal 149 (156) **, AIR 1961 Cal 491 (493, 495) (FB). (Per Lahiri C. J.)

(5) Per Full Bench — An order dismissing the suit under Sec. 8-B (3), Court-fees Act (Bengal Amendment), is appealable as a decree within the meaning of Section 2 (2), C. P. Code as the order of dismissal amounts in law to an order rejecting the plaint under Order 7, Rule 11 (c), C. P. Code. AIR 1961 Cal 491 (493, 494, 495) (FB). (AIR 1953 Cal 42, **Overruled.**)

(6) A revision lies against an order dismissing a suit under Section 8-B (3). AIR 1953 Cal 42 (Pr 6) = ILR (1954) 2 Cal 176 (DB). (The revision does not become incompetent by reason of the dismissal of an appeal against decree, embodying the order for non-payment of printing costs.)

(7) The principle underlying under Section 8-B of the Court-fees Act, is to see that Government revenue does not suffer, and the provisions are made stringent, so that, even at a very late stage, the Court is enjoined to see that proper court-fee has been paid. This principle is irreconcilable with the principle underlying Section 11, Suits Valuation Act. ILR (1951) 1 Cal 535 (536). (Necessity to amend Section 8 of the Suits Valuation Act in view of Section 8-B of the Court-fees Act, suggested.)

(8) Under Section 8-C, it is the duty of Court, even in cases falling under Section 7 (iv), to revise plaintiff's valuation where there is a reason to suppose that the relief sought has been wrongly valued. AIR 1941 Cal 509 (511) (DB) ** AIR 1940 Cal 482 (483) = ILR (1940) 1 Cal 409 ** AIR 1940 Cal 451 (452) = ILR (1940) 2 Cal 166 (DB) ** (1949) 53 Cal WN 340 (343) ** ILR (1966) 1 Cal 427 (431) = (1966) 70 Cal WN 857 (DB).

(9) The basis of the action by Court under Section 8-C of the Court Fees Act is wrong valuation. The modus operandi of correcting that wrong valuation is the Court's power to hold such an enquiry as it thinks fit. ILR (1966) 1 Cal 427 (430) = (1966) 70 Cal WN 857 (DB).

(10) Even without Section 8-C the Court has always the power to revise the

(2) If the Court records a finding that an insufficient court-fee has been paid on the plaint or memorandum of appeal the Court shall,

(a) stay all further proceedings in the suit until it has determined the proper amount of such court-fee payable and the plaintiff or the appellant, as the case may be, has paid such amount or until the date referred to in clause (b), as the case may be :

Provided that if the plaintiff or appellant gives, within such time as the Court may allow, security to the satisfaction of the Court, for the payment of any additional amount for which he may be found liable, the Court may proceed with the suit,

(b) fix a date before which the plaintiff or appellant shall pay the amount of court-fee due from him, as determined by the Court under clause (a).

(3) If the plaintiff or appellant fails to give the security referred to in clause (a) of sub-section (2) or to pay the amount referred to in clause (b) of that sub-section within the time allowed, or before the date fixed, by the Court, as the case may be, the suit shall be dismissed.

8-C. If the Court is of opinion that the subject-matter of any suit has been wrongly valued it may revise the valuation and determine the correct valuation and may hold such inquiry as it thinks fit for such purpose.

8-D. (1) For the purpose of an inquiry under Section 8-C the Court may depute, or issue a commission to any suitable person to make such local or other investigation as may be necessary and to report thereon to the Court. Such report and any evidence recorded by such person shall be evidence in the inquiry.

(2) The Court may, from time to time, direct such party to the suit, as it thinks fit, to deposit such sum as the Court thinks reasonable as the costs of the inquiry, and if the costs are not deposited within such time as the Court shall fix, may, notwithstanding anything contained in any other Act, dismiss the suit if such party is the plaintiff or the appellant and, in any other case, may recover the costs as a public demand.

8-E. (1) The Court, when making an inquiry under Section 8-C and any person making an investigation under Section 8-D shall have, respectively, for the purposes of such inquiry or investigation, the powers vested in a Court under the Code of Civil Procedure, 1908, in respect of the following matters, namely :—

(a) enforcing the attendance of any person and examining him on oath or affirmation;

(b) compelling the production of documents or material objects; and

(c) issuing commissions for the examination of witnesses.

(2) An inquiry or investigation referred to in sub-section (1) shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code.

Section 8A-8F (WB) — Note 1 (contd.)
valuation put by the suing party. (1966) 70 Cal WN 1137 (1138).

(11) Suit under Section 7 (iv) (c) — Court can raise valuation — But this power cannot be exercised unless reasonable standards for such valuation are laid down by rules framed under Section 9, Suits Valuation Act. AIR 1939 Cal 627 (627) (DB).

(12) Where some objective standard of valuation is possible, the Court should act under Section 8-C. AIR 1938 Cal 161 (162) ** AIR 1937 Cal 748 (749) = ILR (1938) 1 Cal 196 ** (1949) 53 Cal WN 340 (343).

(13) The objective standard of valuation should ordinarily be regarded as the value of the benefit which the plaintiff seeks to obtain if he succeeds in his suit. AIR 1940 Cal 560 (560) = ILR (1940) 2 Cal 33 ** AIR 1939 Cal 743 (744) = ILR (1939) 2 Cal 20.

(14) Where there does not exist an objective standard of valuation the Court should accept plaintiff's valuation as correct. AIR 1939 Cal 278 (279) (DB) ** AIR 1939 Cal 265 (266) (DB) ** AIR 1954 Cal 26 (Pr 6) (DB) ** AIR 1953 Cal 34 (Prs 4, 5) (DB). (Suit for declaration of right to pala of worship and injunction.) ** (1954) 58 Cal WN 922 (924). (Though Section 8-C authorises the Court to hold an enquiry as to the proper valuation, where the valuation must necessarily be vague in absence of specific Rules, it would be useless to remand the suit for holding an enquiry in each case under Section 8-C).

8-F. If in the result of an inquiry under Section 8-C the Court finds that the subject-matter of the suit has been undervalued the Court may order the party responsible for the under-valuation to pay all or any part of the costs of the inquiry.

If in the result of such inquiry the Court finds that the subject-matter of the suit has not been undervalued the Court may, in its discretion, order that all or any part of such costs shall be paid by the Provincial Government or by any party to the suit at whose instance the inquiry has been undertaken, and if any amount exceeding the proper amount of fee has been paid shall refund the excess amount so paid." — Bengal Act 7 of 1935 (2-5-1935).

9. Power to ascertain nett profits or market value.—If the Court sees reason to think that the annual nett profits or the market-value of any such land, house or garden as is mentioned in Section 7, paragraphs (v) and (vi), have or has been wrongly estimated, the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

[Cf: A. P. Act 7 of 1956, S. 17: Bom. Act 36 of 1959, Ss. 8, 9: H. P. Act 8 of 1968, S. 9: J. and K. Act 7 of 1977 Svt., S. 9: Ker. Act 10 of 1960, S. 192: Mad. Act 14 of 1955, S. 19: Mys. Act 16 of 1958, S. 18: Raj. Act 23 of 1961, S. 18.]

STATE AMENDMENTS

Andaman and Nicobar (U. T.):

Omit Section 9. — Reg. II of 1957, S. 9 (1-8-1957).

Pondicherry:

Same as that of Andaman and Nicobar — See Act 26 of 1968, S. 3 and Schedule, Pt. II (18-12-1968).

Sections 8A-8F (WB) — Note 1 (contd.)

(15) In a case in which it is essential to have a local inspection for the purpose of assessing the value of the property to determine the court-fee and the plaintiff makes a prayer for the local inspection the Court acts with material irregularity in not granting his application. AIR 1949 Cal 659 (Pr 5) = ILR (1950) 1 Cal 506 (DB).

(16) The Court has jurisdiction under Section 8-D (2) to ask the plaintiff to deposit a certain sum as the costs of the local investigation even when the enquiry has been held at the instance of the defendant. If the result of the investigation is in favour of the plaintiff the Court can make the defendant liable for the costs. ('43) 47 Cal WN 373 (374).

(17) Section 8-F as regards refund of Court-fees cannot be invoked where a suit is transferred to the High Court under Clause 13 of the Letters Patent (Cal). AIR 1955 Cal 52 (Pr 17).

Section 9 — Note 1

(1) Court should hold inquiry itself but where this cannot be conveniently done, it may issue commission. ('07) 29 All 749 (756) (FB) ** ('71) 6 Beng LR (App) 12 (13) (DB).

(2) Court may issue commission where it is alleged that plaintiff has over-valued property. ('70) 5 Beng LR (App) 6 (7) (DB).

(3) Objection by defendant as to improper valuation of plaint and non-payment of proper court-fee — Court deciding to issue commission can direct plaintiff to deposit costs of such commission — In case defendant's objection is ill-founded Court will direct reimbursement by defendant. AIR 1961 Ker 129 (129, 130) = 1960 Ker LT 703. (AIR 1930 Cal 65, **Dissented from.**)

(4) Section applies only to suits and not to appeals. ('90) 12 All 129 (147) (FB) ** AIR 1929 Cal 717 (719) = 57 Cal 360 (DB).

[But see AIR 1930 Cal 65 (67) = 57 Cal 587 (DB).]

(5) Inquiry under this section may be held at any stage of suit. ('08) 1908 Pun Re No. 19, p. 124 (126) (FB) ** ('93) 1893 Pun Re No. 3, p. 30 (36) (DB) ** ('80) 2 Mad 308 (309) (DB).

(6) Court is not bound to accept Commissioner's report. ('71) 7 Beng LR 664n (665n) (DB).

(7) Court must come to judicial decision on basis of report. AIR 1930 Cal 65 (67) = 57 Cal 587 (DB).

(8) Commission not ordered at instance of plaintiff — Plaintiff cannot be made to deposit costs of commission. AIR 1930 Cal 65 (68) = 57 Cal 587 (DB).

[But see AIR 1948 Mad 345 (345).]

Uttar Pradesh:

In the beginning of the section the following sentence was added, viz.,

"In every suit the plaintiff shall file with the plaint a statement in such form as may be prescribed for the purpose, of particulars and valuation of the subject-matter of the suit, unless such particulars and valuation are contained in the plaint itself." — U. P. Act 19 of 1938 (9-1-1939).

West Bengal:

Section 9 was repealed so far as the Province of Bengal is concerned by Bengal Act 7 of 1935 (2-5-1935).

10. Procedure where nett profits or market-value wrongly estimated.—(i) If in the result of any such investigation the Court finds that the nett profits or market-value have or has been wrongly estimated, the Court, if the estimation has been excessive, may in its discretion refund the excess paid as such fee: but, if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market-value or nett profits been rightly estimated.

SECTION 10 — SYNOPSIS

1-2. "Such investigation".
3. This section and Order 7, Rule 11, Civil Procedure Code.
4. Valuation exceeding pecuniary jurisdiction.
5. Time fixed for payment of deficit fee — Computation of time.
6. Extension of time fixed.
7. Order calling for deficit court-fee incorporated in decree.
8. Non-payment of additional court-fee.
9. Effect of dismissal of suit.
10. Appeal against dismissal of suit.
11. Refund of court-fee.

1-2. "Such investigation". — Words "such investigation" in sub-section (i) mean investigation held by Court or Commissioner appointed by Court under preceding section and do not restrict operation of this section to those cases where investigation is held by Commissioner. ('07) 29 All 749 (756) (FB).

3. This section and Order 7, Rule 11, Civil Procedure Code. — (1) Order under sub-section (ii) of this section will amount to decree and not to res judicata and fresh suit on same cause of action will not be barred. ('90) 12 All 129 (148) (FB).

(2) Order 7, Rule 11, Civil P. C., and Section 10, Court-fees Act, apply to different stages of suit: former applying before registration of plaint and latter applying after registration of plaint. AIR 1920 Pat 656 (660) = 4 Pat L Jour 703 (DB) ** ('05) 27 All 197 (199) (DB) ** ('80) 2 Mad 308 (309) (DB).

4. Valuation exceeding pecuniary jurisdiction. — (1) If valuation determined by Court after investigation exceeds pecuniary jurisdiction of Court, Court must return plaint for presentation to proper Court. AIR 1933 Nag 312 (313) = 29 Nag LR 367 ** AIR 1931 Mad 69 (70). (**Held,** decision in AIR 1924 Mad 646 was not correct.) ** ('29) 57 Mad L Jour (N. R. C.) 33 (33) ** AIR 1927 Bom 257 (258) = 51 Bom 236 (DB) ** ('85) 8 Mad 62 (63) (DB).

[But see AIR 1924 Mad 646 (647, 648).]

5. Time fixed for payment of deficit fee — Computation of time. — (1) Plaintiff ordered to pay deficit court-fee within a week — Plaintiff held entitled to full seven days. ('12) 13 Ind Cas 900 (901) (DB) (Call).

(2) Claim under-estimated — Adequate court-fee not paid — Court must stay suit and fix time within which deficit court-fee is to be paid. ('07) 20 All 749 (764, 765) (FB). (Without any regard to fact whether that be time within or beyond period of limitation prescribed for suit.)

6. Extension of time fixed. — (1) Extension of time for payment of deficit court-fee may be granted before or after expiration of time fixed. ('97) 19 All 240 (243) (DB).

7. Order calling for deficit court-fee incorporated in decree. — (1) Question of court-fee raised by defendant at a later stage — Same may be tried as preliminary issue or along with other issues and it does not affect the jurisdiction of the Court in the matter — Order for payment of additional court-fee not to be incorporated in decree. AIR 1960 Pat 527 (529) = 1960 BLJR 505 (DB).

(2) To hold up decision on question of court-fee till end of suit and incorporate order in decree passed in suit is improper. AIR 1938 Lah 311 (312).

(3) Deficiency in Court-fee on plaint — Court has to decide the question in the beginning and call upon the plaintiff to make good the deficiency — Court dismissing the suit on merits and directing the office not to draft the decree unless the deficiency in Court fee is paid — Order practically puts a bar to his pre-

(ii) In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

[* * * * *]

[*] Clause (iii) was repealed by the Amending Act, 1891 (12 of 1891).

[Cf: Bom. Act 36 of 1959, Ss. 8, 9: H. P. Act 8 of 1968, S. 10: J. and K. Act 7 of 1977 Svt., S. 10.]

STATE AMENDMENTS

Andaman and Nicobar:

Omit Section 10 — Reg. II of 1957, S. 9 (1-8-1957).

Assam and Nagaland:

For clause (ii) the following clause was substituted, viz.,

"ii. In such case—

(a) the suit shall be stayed until the additional fee is paid and if the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed; and whether the additional fee is or is not paid,

(b) the Court may, if it is of opinion that the estimation has been grossly insufficient, further order that the expenses of the commission, or such portion thereof as the Court may think reasonable, be paid by the party in fault to the Government, and the order so made shall have the force and effect of a decree passed by the Court." — Assam Act 3 of 1932 (27-4-1932): Act 27 of 1962, S. 26 (w. e. f. 1-12-1963).

Manipur and Tripura:

Same as that of Assam — See G. S. Rs. 1119-1120, Gaz. of Ind., 1-7-63, Pt. II, S. 3 (i), Ext., pp. 501 and 531 (w.e.f. 15-7-1963).

Pondicherry:

Same as that of Andaman and Nicobar—See Act 26 of 1968, S. 3 and Schedule Pt. II (18-12-1968).

West Bengal:

Section 10 was repealed so far as the State of Bengal is concerned by Bengal Act 7 of 1935 (2-5-1935).

Section 10 — Note 7 (contd.)

ferring an appeal — Order improper and not justified. 70 Punj LR 530 (531).

8. Non-payment of additional court-fee. — (1) No Court can compel any party to pay the additional court-fee, even if rightly levied, when he does not want to pay it, for whatever reason, and is willing to have the suit dismissed for such default. The penalty for not paying the additional court-fee due is the dismissal of the suit, even with the costs of the other side if it is on record and presses for it. After the dismissal of the suit for such default (and not on merits) there is no jurisdiction in the Court to levy the court-fee from him by coercive process or to proceed against him for contempt for not paying the balance of court-fee due. AIR 1957 Mad 667 (668).

(2) In view of the Orissa amendment of Section 12 (2) of the Act, a suit cannot be dismissed in appeal for non-payment of the excess court-fee, but the said fee is recoverable as an arrear of land revenue. AIR 1958 Orissa 81 (83) = ILR (1958) Cut 51 (DB).

(3) Court passing decree in plaintiff's favour conditional on his paying court-fee within certain time — Suit to stand dismissed if court-fee was not paid within that time — Plaintiff failing to pay court-fee within time — Order about making good deficiency in court-fee held though not correct was not illegal — Order being good and operative suit held stood dismissed. AIR 1952 Raj 181 (Pr 14) = ILR (1952) 2 Raj 447 (DB).

9. Effect of dismissal of suit. — (1) Suit dismissed under sub-section (ii) of this section — Dismissal does not operate as res judicata, to bar subsequent suit by plaintiff on same cause of action. ('11) 35 Bom 38 (41) (DB) ** ('86) 8 All 282 (287) (DB).

10. Appeal against dismissal of suit. — (1) Valuation of appeal on dismissal of suit under this section would be valuation determined by Court and not plaint valuation. AIR 1938 Lah 311 (312).

[But see AIR 1926 Cal 427 (427) (DB).]

11. Refund of court-fee. — (1) Court has discretion to refund excess fee paid by plaintiff. See AIR 1937 Lah 239 (240, 241). (Court-fee should be paid on value of site plus costs of improvements made thereon.)

(2) Section 10 makes provision for refund where there has been an error in computation owing to a miscalculation of the nett profits or market value. It can have no application where an appeal properly valued is automatically dismissed as a result of statutory provision. AIR 1953 All 184 (Prs 3, 5) (DB).

11. **Procedure in suits for mesne profits or account when amount decreed exceeds amount claimed.**—In suits for mesne profits or for immovable property and mesne profits or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer.

Where the amount of mesne profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

[Cf: A. P. Act 7 of 1956, S. 32: Bom. Act 36 of 1959, S. 13: H. P. Act 8 of 1968, S. 11: J. and K. Act 7 of 1977 Svt. S. 11: Ker. Act 10 of 1960, S. 35 (2) (3): Mad. Act 14 of 1955, S. 35 (2) (3): Mys Act 16 of 1958, S 33: Raj. Act 23 of 1961, S. 33.]

STATE AMENDMENTS

Andaman and Nicobar (U. T.):

Same as that of West Bengal. — Reg. II of 1957, S. 10 (1-8-1957).

SECTION 11 — SYNOPSIS

1. **Scope and applicability.**
2. **Points of difference between para 1 and para 2.**
3. **Mode of enforcing payment of additional court-fee under the section.**
4. **Giving of time for payment of court-fee under this section.**
5. **Amount of court-fee payable under this section.**
6. **Court-fees in suits for mesne profits — General.**
7. **Court-fee on future mesne profits.**
8. **Suit for administration —** See Notes on Section 7 (iv) (f).
9. **Suits on mortgage.**
10. **Madras Amendment.**
11. **Orissa Amendment.**

1. Scope and applicability. — (1) This section furnishes exceptions to the rule that the plaintiff is only entitled to amount claimed by him in plaint. AIR 1921 Oudh 108 (109) = 24 Oudh Cas 209.

(2) This section provides for making up of deficiency of court-fees in case tentative valuation is eventually found to fall short of real amount for which decree is passed. AIR 1934 Lah 545 (548) = 15 Lah 512 (FB) ** AIR 1957 Mad 297 (298) ** AIR 1949 Mad 750 (Pr 3). (The plaintiff and the defendants in a suit for dissolution of partnership and for accounts who ultimately obtain a decree cannot make it operative unless they pay suitable ad valorem court-fee on the amounts decreed to them.) ** AIR 1934 Lah 488 (491, 492) = 15 Lah 151 (FB) ** AIR 1918 Cal 895 (896) = 45 Cal 634 (DB) ** AIR 1918 Cal 159 (159) (DB) ** AIR 1915 Bom 59 (60) = 39 Bom 545 (DB) ** ('02) 25 Mad 543 (544) (DB) ** ('85) 9 Bom 22 (24) (DB).

[See AIR 1929 Pat 626 (630) (DB) ** ('94) 16 All 286 (288, 289) (DB).]

(3) Cases under this section would be cases in which insufficiently stamped plaint is received or filed or used owing to mistake or inadvertence of Court. ('90) 12 All 129 (147) (FB). (Obiter.)

(4) Suit for accounts of mesne profits dismissed — Plaintiff appealing — This section will apply to appeal. **AIR 1929 PC 147 (148) = 10 Lah 737 = 56 Ind App 232.**

[See also AIR 1934 Lah 545 (548) = 15 Lah 512 (FB). (Amount determined as due by appellate Court becomes value of suit for jurisdiction as well as court-fee.)]

[But see ('90) 12 All 129 (147) (FB). (Obiter.) ** ('36-43) Tax Dec (Nag) 75 (76) (DB).]

(5) Section does not apply to appeal by defendant against preliminary decree in suit for accounts. AIR 1937 Lah 694 (696) = ILR (1937) Lah 196 (DB).

(6) The section does not apply to any suit not specified therein. AIR 1938 Cal 785 (787, 788) (DB) ** AIR 1922 Pat 59 (60) (DB) ** ('07) 17 Mad L Jour 625 (626) (DB).

(7) Section 11 does not apply to suit for damages — Plaintiff can enter in his plaint approximate estimate of damages and offer to pay additional court-fee, if larger sum is found to be due, before decree is passed. AIR 1957 Mad 297 (298).

(8) Recovery of additional court-fee under this section does not depend on existence of any direction in decree in that behalf. AIR 1938 Mad 787 (788) = 57 Mad 303 (DB).

(9) Section 17 of Arbitration Act 1940 does not override provisions of Section 11 of Court-fees Act — Suit for dissolution

Delhi:

Same as that of Punjab — See S. R. O. 422, Gaz of Ind., 1950, Pt. II, Section 3, p. 458.

Orissa

For the second paragraph of the section the following paragraph was substituted, viz.,

"Where a decree directs an inquiry as to mesne profits which have accrued on the property during a period prior to the institution of the suit, if the profits ascertained on such inquiry exceed the profits claimed, no final decree shall be passed till the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the claim for the excess shall be dismissed, unless the Court, for sufficient cause, extends the time for payment.

Where a decree directs an inquiry as to mesne profits from the institution of the suit and a final decree is passed in accordance with the result of such inquiry, the decree shall not be executed until such fee is paid as would have been payable on the

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Section 11 — Note 1 (contd.)

of partnership and rendition of accounts — Dispute by agreement of parties referred to arbitration — Award made rule of Court by decree under Section 17 — **Held,** decree that followed was a decree in a suit, that put an end to suit, and, therefore, provisions of Section 11 of Court-fees Act, applied. AIR 1969 Punj 159 (161) = 1968 Cur LJ 907 (DB).

(10) Executing Court can determine whether additional court-fee should be borne by decree-holder or can be recovered by him from judgment-debtor as costs of execution. AIR 1943 Mad 145 (146) (DB). (Plaintiff entitled to recover extra court-fee as costs by further execution.) ** AIR 1933 Mad 787 (788) = 57 Mad 303 (DB) ** 1951-1 Mad L Jour 524 (525, 526).

(11) Proceedings under Order 20, R. 12, Civil P. C. — Section 11, part 2 has no application. AIR 1946 Sind 58 (60) = ILR (1945) Kar 313.

(12) The procedure provided for in the two paragraphs is different. Under the second paragraph the suit itself is to be dismissed if the additional court-fee is not paid within the time allowed by the Court. But under the first paragraph, the suit is not to be dismissed. It is only the execution of the decree that will remain in abeyance till the extra court-fee is paid. AIR 1933 Nag 307 (Pr 9).

2. Points of difference between para 1 and para. 2. — (1) Para. 2 of this section has no application unless amount of mesne profits has been left to be ascertained in execution proceedings, while para. 1 will not apply in respect of mesne profits left to be ascertained in execution proceedings. AIR 1920 Mad 970 (972) (DB) ** AIR 1946 Sind 58 (60) = ILR (1945) Kar 313 ** AIR 1953 Nag 307 (Prs 9, 10). (Where the profits in a suit for mesne profits have been ascertained in the suit itself, or where a sum is decreed in a suit for accounts para. 1 applies.)

(2) It is manifest from the first paragraph of Section 11 of Court-fees Act, 1870 that till the court-fee is actually paid, the decree should not be executed. The second paragraph is inapplicable to a case of this nature because the ascertainment of mesne profits is not done in execution proceedings but under Order 20, Rule 12 of Civil P. C. pursuant to a direction in the preliminary decree. The second paragraph governs only a case where the profits are left to be ascertained in the course of execution of a decree. ILR 1963 Andh Pra 560 (564).

(3) Under para 1, Court cannot fix time for payment of additional court-fee and if any time is fixed and plaintiff does not pay it within such time but pays afterwards, Court cannot refuse to execute decree. AIR 1920 Mad 970 (972) (DB) ** ('07) 30 Mad 32 (34) (DB) ** AIR 1953 Nag 307 (Pr 10). (Suit for accounts decreed — Court cannot direct payment of court-fee within certain time and dismiss suit for non-payment.)

(4) Under para 2, Court must fix reasonable time for payment of extra court-fee and if it is not paid within such time Court is to dismiss suit. **AIR 1937 PC 163 (165) = 64 Ind App 191 = ILR (1937) Lah 502 = 31 Sind LR 367.**

(5) No time, fixed for payment of court-fee — Application for execution made on payment of additional court-fee will not be barred though previous application was dismissed on ground of non-payment of additional fee. ('04) 1 All L Jour 350 (352) (DB).

3. Mode of enforcing payment of additional court-fee under the section. — (1) Decree for possession and mesne profits — Bar of execution will apply only in respect of mesne profits and not in respect of recovery of possession. AIR 1931 Mad 717 (720) = 54 Mad 980 (DB) ** ('88) 12 Bom 98 (100) (DB).

(2) Mesne profits ascertained in suit — Court can only refuse to execute decree

amount claimed in execution if a separate suit had been instituted therefor." — **Orissa** Act 5 of 1939 (31-10-1939).

Pondicherry

Same as that of Andaman and Nicobar—See Act 26 of 1968, S. 3 and Sch., Pt. II (18-12-1968).

Punjab, Haryana and Chandigarh:

In S. 11, for the word 'executed' substitute the words "drawn up." — E. P. Act 26 of 1949, S. 4 (1-4-1950): Act 31 of 1966, S. 89 (1-11-1966).

Uttar Pradesh:

Same as that of Orissa. — U. P. Act 19 of 1938 (9-1-1939).

West Bengal:

For the original section the following section was substituted, viz.:

"11. Where, in any suit for mesne profits or for land and mesne profits or for an account, the fee which would have been payable, if the suit had comprised the whole of the relief to which the Court finds the plaintiff to be entitled exceeds the fee actually paid, the Court shall require the plaintiff to pay an additional fee equal to the amount of the excess, and if such additional fee is not paid within such time as the Court may fix, the suit, or if a decree has previously been passed therein, so much of the claim as has not been so decreed shall be dismissed:

Provided that, where the additional fee is payable in respect of a portion of the claim which can be relinquished, that portion only shall be dismissed." — Bengal Act 7 of 1935 (2-5-1935).

Section 11 — Note 3 (contd.)
till additional court-fee is paid and not dismiss suit. AIR 1920 Mad 970 (972) (DB). (Under Section 11, Court-fees Act, in case of suit for partition and mesne profits, term "decree" should be taken to refer to final, and not interim decree in suit.) ** AIR 1954 Mad 170 (Pr 4) (DB).

(3) Procedure of dismissing suit for non-payment of court-fees is not applicable to suits for accounts even where amount due has been left to be determined in execution proceedings. **AIR 1937 PC 163 (165) = ILR (1937) Lah 502 = 64 Ind App 191 = 31 Sind LR 367.**

(4) In a suit, a decree was passed not only for mesne profits which accrued prior to the institution of the suit but it also directed enquiry into mesne profits since the filing of the suit. Pending such enquiry and ultimate passing of final decree, the defendant deposited certain amounts to the credit of the suit. Plaintiff applied for payment-out of the sum under Rr. 162 and 163 of Civil Rules of Practice.

Held, countering a plea that in view of Section 11, Para. 3 of the Court-Fees Act, the decree ought not be executed without the plaintiff paying the Court-fee on the amount in accordance with the above provision, that the payment-out application under Rr. 162 and 163 was not a proceeding in execution so as to bring the case within the purview of the above provision of the Court-Fees Act. (1968) 2 An LT 236 = (1969) 1 Andh WR 448.

(5) No special procedure is necessary for dismissal for default of payment of additional court-fee if parties have notice of such claim. AIR 1916 Mad 224 (226) (DB).

(6) Suit dismissed under provisions of para 2 — Subsequent application for recovery of mesne profits will be barred. (1897) 24 Cal 173 (176) (DB).

(7) Several reliefs including that of mesne profits granted in suit — Word "suit in second paragraph of this section means only that part of suit which relates to mesne profits. ('97) 24 Cal 173 (176) (DB) ** ('88) 12 Bom 98 (100) (DB).

(8) Court is not required to postpone passing or drawing up of decree till court-fee is paid. AIR 1942 Pat 410 (412) = 21 Pat 366 (DB) ** AIR 1953 Nag 307 (Prs 9, 10).

[But see AIR 1933 Mad 330 (331) = 56 Mad 705 (DB) ** 1949 All L Jour 511 (514) (DB).]

(9) Where in a suit for accounts, the plaintiff pays court-fees on the basis of tentative valuation of his relief but the Court on finding that a higher amount is due to the plaintiff gives a direction in the judgment for payment of the additional court-fee by the plaintiff within a fixed time and in case of default to draw a decree only for the amount on which court-fee was originally paid, the direction contravenes this section and the Court acts erroneously in drawing up a decree for part of the claim allowed in case of plaintiff's failure to pay the

Section 11 — Note 3 (contd.)

court-fee within the prescribed time. AIR 1953 Nag 307 (Prs 9, 10).

(10) Final adjudication with regard to mesne profits — Direction not to prepare decree until deficit court-fee is paid only amounts to postponement of drawing up formal decree till payment — Order determining mesne profits amounts to final decree and no fresh final decree for mesne profits need be prepared on payment of court-fee — Starting point of limitation for execution is date of order determining amount of mesne profits. AIR 1950 Pat 524 (Prs 5, 16) = 29 Pat 600 (DB).

(11) Where a compromise decree passed in a suit for accounts allows execution only if payment is not made as agreed and the plaintiff is liable to pay the additional court-fee before executing the decree, the Government has no right to execute the decree for recovering the additional court-fees, if the plaintiff does not want to execute the decree, or before he tries to execute. The Government can be considered to be a party to the decree only when the decree-holder executes it without paying the additional court-fee and can execute it on paying the deficit court-fee. AIR 1954 Mad 409 (Prs 5, 8).

(12) It has been held that a party, who obtains a decree for future mesne profits in the first instance, or in whose favour a decree for future mesne profits is made on enquiry, can evade payment of court-fee if he chooses not to execute the decree or if the decree is satisfied outside the Court. AIR 1957 Andh Pra 6 (7) = ILR (1956) Andh 610, (DB).

4. Giving of time for payment of court-fee under this section.— (1) Under paragraph 1 of Section 11 the only penalty for non-payment of court-fees is that the decree could not be executed until they are paid. This paragraph does not contemplate the Court fixing any time within which the court-fee has to be paid. AIR 1954 Mad 170 (Pr 4) (DB).

(2) Decree directing payment of court-fee within a week — Decree goes beyond what is permitted under Section 11, Para. 1 — Condition as to time cannot be construed as involving a decision that the suit should stand dismissed if the court-fee was not paid. AIR 1954 Mad 170 (Pr 4) (DB) ** ILR (1960) 10 Raj 60.

(3) Suit for accounts — Direction in judgment for payment of additional court-fee within certain time and in case of failure to pay to draw up decree only for the amount on which court-fee has been paid — Decree drawn up for part of claim in accordance with such direction contravenes Section 11 and is without jurisdiction. AIR 1953 Nag 307 (Prs 9, 10).

(4) Court can enlarge time fixed under para 2. ('07) 30 Mad 32 (34) (DB).

(5) Time can be enlarged even after time originally fixed under para 2 has expired. ('11) 10 Ind Cas 268 (269) (DB) (Cal).

(6) Power to enlarge time exists under this section itself apart from Section 148, Civil P. C. ('11) 10 Ind Cas 268 (269) (DB) (Cal).

(7) Time for payment of court-fee contained in decree — Court can extend such time without any amendment of decree. ('07) 30 Mad 32 (34) (DB).

(8) A Court neither can nor should deprive itself of its discretion under the section to extend time in anticipation by stipulating that in any circumstance the suit will be dismissed if the additional court-fee is not paid within the time prescribed. AIR 1949 Mad 855 (856).

(9) Appellate Court cannot extend time fixed by lower Court. AIR 1916 Mad 224 (227) (DB).

(10) Non-payment of court-fee — Limitation not arrested — Decree could not be said to be incapable of execution — Execution petition filed after three years from date of final decree but within three years from payment of court-fee — Barred. AIR 1962 Andh Pra 385 (388) = 1962 Andh LT 76 (DB).

5. Amount of court-fee payable under this section. — (1) Court-fee to be paid under this section is difference between the fee paid and the fee payable on amount decreed in his favour. AIR 1935 Lah 40 (41) ** AIR 1929 Lah 753 (756) = 11 Lah 325 (DB). (Determination of amount of court-fee cannot be left at the option of plaintiff.) ** AIR 1920 Low Bur 94 (95) = 10 Low Bur Rul 276 ** ('98) 8 CPLR 86 (88).

(2) Plaintiff is entitled to credit for court-fee already paid by him. ('98) 1 Oudh Cas 8 (9) (DB).

(3) Section 11 shows that the claim in a suit for mense profits is only a rough estimate even if a precise amount is stated and it is for the Court to ascertain the true amount. AIR 1966 Ker 286 (292) = 1966 Ker LT 333.

6. Court-fees in suits for mesne profits — General. —. (1) Plaintiff should not be required to pay additional court-fee before Court passes decree for higher amount in his favour than that claimed by him in plaint. AIR 1921 Oudh 108 (109) = 24 Oudh Cas 209.

[See also AIR 1931 All 538 (539) (DB).]

(2) Decree directing ascertainment of amount of mesne profits in subsequent proceedings— Plaintiff can claim in such proceedings higher amount than that claimed by him in plaint. AIR 1921 Oudh 108 (109) = 24 Oudh Cas 209 ** ('83) 9 Cal 112 (115, 116) (DB). (Plaintiff not estopped by his previous statements.)

Section 11 — Note 6 (contd.)

(3) In cases where an enquiry is directed as to mesne profits accrued prior to the institution of the suit there is a provision in Section 11 for demanding court-fee before the passing of the final decree — But no jurisdiction is given to the Court to call for Court-fee on future mense profits before passing the final decree, nor is the Court empowered to dismiss an application for ascertainment of future mesne profits and for a decree thereon for non-payment of Court-fee within the time fixed. (1968) 81 Mad LW 64 (67) = (1968) 2 Mad LJ 164.

(4) Plaintiff having means of knowing exact amount due to him but deliberately putting low figure in plaint — He cannot claim full amount ascertained to be due notwithstanding his willingness to pay extra court-fee under this section. ('81) 6 Cal 472 (475) (DB).

(5) Extra court-fee cannot be claimed until amount of mesne profits has been actually ascertained. AIR 1930 Rang 246 (246) (DB) ** ('28) 108 Ind Cas 801 (801) (Pat).

(6) Extra court-fee cannot be claimed at time when plaintiff makes application for ascertainment of mesne profits claiming higher amount than that stated in plaint. AIR 1935 All 206 (206) (DB) ** AIR 1926 Pat 218 (224) = 5 Pat 361 (FB) ** ('54) Madh BLJ (1954) HCR 1516 (1518).

(7) Court-fee becomes payable after final decree and before execution. AIR 1926 Pat 218 (224) = 5 Pat 361 (FB).

(8) In suit for partition plaintiff does not pray for mesne profits — Court awards mesne profits to each sharer in proportion to his share — Defendant who is given share applies for execution of decree — He is not bound to pay any court-fee under this section. ('05) 29 Bom 79 (81) (DB).

(9) Where a plaintiff is allowed to sue as a pauper and the Court passing a preliminary decree orders the plaintiff to pay Court-fee on the amount found due from his co-sharer such an order being in contravention of Order 33, Rule 8, Civil P. C., is an error apparent on the face of the record and can be reviewed by the Court passing the order. AIR 1964 Orissa 94 (97) = 30 Cut LT 386.

7. Court-fee on future mesne profits.— (1) No court-fee need be paid at the outset in respect of mesne profits expected to accrue after institution of suit till delivery of possession though suit may include claim for such mesne profits. AIR 1930 Rang 246 (246) (DB) ** AIR 1955 Trav-Co 167 (Prs 3, 4) ** AIR 1954 Trav-Co 174 (Pr 4) = ILR (1952) Trav-Co 750 (DB). (The principle applies to mesne profits or interest subsequent to date of decree appealed from.) ** AIR 1953 Pat 289 (Pr 2) ** AIR 1926 Pat 218 (223, 225, 226, 228) = 5 Pat 361 (FB) ** AIR 1946 Oudh 59 (60) (DB) ** AIR 1920 Low Bur 94 (95) = 10 Low Bur Rul 276 ** AIR 1915 Cal 352 (354) = 43 Cal 650 (DB).

[See AIR 1914 Cal 858 (860) (DB). (Plaint regarding future mesne profits returned for presentation to proper Court, after delivery of possession — Plaint presented in latter Court — Claim no longer regarding future profits — Court-fee payable.)]

[But see AIR 1941 Cal 1 (12, 13) (DB).]

(2) While in respect of the profits that accrued prior to the suit no final decree itself would be passed without the payment of additional Court-fee in respect of mesne profits from the institution of the suit a final decree can be passed even without paying any additional Court-fee. But, its execution cannot be levied excepting on payment of additional Court-fee payable on the amount claimed in execution. (1968) 2 An LT 236 = (1969) 1 Andh WR 448.

(3) Court can levy extra court-fee under this section in respect of future mesne profits decreed under Order 20, R. 12. AIR 1938 Mad 727 (730) = ILR (1938) Mad 1050 (DB). (Claim for mesne profits, in suit, past or future — Section 11 (1) would apply to the same if decree is passed in respect of future mesne profits.) ** AIR 1930 Rang 246 (246) (DB) ** AIR 1946 Sind 19 (20) = ILR (1945) Kar 310.

(4) Suit for account of rents — Relief not valued should be deemed to be valued at zero and court-fees would be payable under this section, on amount found due from date of suit. AIR 1946 Sind 58 (61, 62) = ILR (1945) Kar 313 ** AIR 1926 Pat 218 (224) = 5 Pat 361 (FB) ** ('07) 34 Cal 954 (968) (FB) ** AIR 1920 Low Bur 94 (95) = 10 Low Bur Rul 276.

(5) The claim for mesne profits from the date of the suit to the date of the institution of the second appeal has to be treated as a claim for past mesne profits, and ad valorem court-fee is payable on the additional amount claimed as mesne profits from the date of the suit to the date of the institution of the second appeal. For the mesne profits after the date of the second appeal no court-fee is payable. AIR 1955 Trav-Co 167 (Pr 6).

8. Suit for administration.— See Notes on S. 7 (iv) (f).

9. Suits on mortgage. — (1) In suit for sale in enforcement of mortgage Court decrees larger sum than that claimed by plaintiff — Latter is not bound to pay any additional court-fee before enforcing decree. AIR 1934 Pat 571 (573) = 14 Pat 4 (SB). **(Overruling** AIR 1922 Pat 387 = 1 Pat 19 (DB).) ** AIR 1922 Pat 59 (60) (DB).

(2) In suit for redemption of mortgage plaintiff is not bound to pay any court-

12. Decision of questions as to valuation.—(i) Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this Chapter on a plaint or memorandum of appeal, shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.

(ii) But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had

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Section 11 — Note 9 (contd.)

fee in respect of surplus profits decreed to him. AIR 1929 Nag 1 (2) = 24 Nag LR 197 (DB).

10. Madras Amendment. — (1) In case of past as well as future mesne profits if final decree is straightway passed, para 1 of this section will apply and final decree shall not be executed until excess court-fee is paid. AIR 1938 Mad 727 (729, 730) = ILR (1938) Mad 1050 (DB).

(2) Decree awards future mesne profits — No court-fee is payable before final decree is passed after enquiry into such profits. AIR 1937 Mad 46 (48) = ILR (1937) Mad 284 (DB).

11. Orissa Amendment. — (1) The Orissa amendment is not applicable to a claim for accounts made against a co-sharer in a suit for partition. Such a case directly comes within the first part of Section 11. An order, therefore, asking plaintiff in a suit for partition to pay court-fee on an amount found due from his co-sharer and the order refusing to incorporate the amount in the final decree on account of non-payment of the court-fee, are illegal. AIR 1964 Orissa 94 (96) = 30 Cut LT 386.

SECTION 12 — SYNOPSIS

1. **Scope and object.**
2. **Applicability to Chartered High Court.**
3. **"Every question relating to valuation."**
4. **Bengal Amendment.**
5. **"Fees chargeable under this chapter."**
6. **"Plaint or memorandum of appeal."**
7. **Power of Court in which suit or appeal is filed, with regard to court-fee.**
8. **Court not having jurisdiction — Effect as to court-fee.**
9. **"Decision", what constitutes.**
10. **Finality of decision under sub-section (1).**
11. **Order as to court-fee — Appealability of.**
12. **Revision against orders as to court-fee.**
13. **Reference to High Court.**
14. **Deficiency of court-fee in lower Court — Power of Court of appeal or revision.**
15. **Order as to court-fees — Alteration by same Court.**
16. **Finality of order under sub-section (ii).**
17. **Objection as to court-fee when to be taken.**
18. **Estoppel on question of court-fees.**
19. **Admission regarding court-fees.**
20. **Compromise on question of court-fee.**
21. **Government's right to be heard as regards court-fees payable.**

1. Scope and object. — (1) The section has no application where the valuation is for jurisdiction. AIR 1919 Mad 93 (94) ** AIR 1918 Lah 116 (117) ** ('12) 16 Cal LJ 371 (373) (DB) ** ('74) 12 Beng LR 115n (115n) (DB). (Decision as to valuation of subject-matter in suit for purposes of jurisdiction is not final under this section.)

[See also ('54) 20 Cut LT 556 (557).]

(2) The appellate Court is not bound by the trial Court's valuation of the suit. ('82) 6 Bom 302 (303).

(3) The section is clearly designed in the interest of revenue as is evident from the fact that while it makes a decision as to valuation final if it is adverse to the litigant, it allows the decision to be interfered with if it is against the Crown. **AIR 1918 PC 188 (191) = 43 Bom 507 = 46 Ind App 24.**

2. Applicability to Chartered High Court. — (1) The section does not apply to court-fees chargeable in Chartered High Court — But such High Court can interfere with decision of lower Court as regards court-fees payable in lower Court — Authority to interfere is with the Bench of the High Court and not with the Taxing Officer therein. ('36-43) Tax Dec (Nag) 61 (64) ** ('36-43) Tax Dec (Nag) 35 (36) ** AIR 1935 All 817 (818) = 58 All 146 (FB). (Per Bennet J., in order of reference.) ** AIR 1934 Rang 268 (269) = 12 Rang 335 ** AIR 1925 Pat 392 (396, 397) = 4 Pat 336 (FB).

[But see AIR 1925 All 184 (184). (Taxing Officer has authority with regard to fees payable in the lower Court.)]

(2) The Madras High Court-fees Rules make the provision of Section 12 (2) applicable also to a case of an appeal presented from a decree of the High Court passed in the exercise of its original jurisdiction. AIR 1955 Mad 682 (Pr 19) = ILR (1956) Mad 341.

the question been rightly decided, and the provisions of Section 10, paragraph (ii), shall apply.

[Cf: Bom. Act 36 of 1959, S. 14: A. P. Act 7 of 1956, S. 11: Ker Act 10 of 1960, S. 12: Mad. Act 14 of 1955, S. 12: Mys. Act 16 of 1958, S. 11: Raj. Act 23 of 1961, S. 11: J. and K. Act 7 of 1977 Svt., S. 12 and H. P. Act 8 of 1968, S. 12.]

STATE AMENDMENTS

Andaman and Nicobar:

Same as that of West Bengal. — Reg. II of 1957, S. 11 (1-8-1957).

Orissa:

For paragraph (ii) the following paragraph was substituted, viz. :

"(ii) But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided, it shall—

(a) in any case in which the decision is to the detriment of revenue, require the party by whom such fee has been paid, to pay so much additional fee as would have been payable had the question been rightly decided and thereafter—

(i) if the party required to pay is the appellant or petitioner, the appeal or petition shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the appeal or petition shall be dismissed;

Section 12 — Note 2 (contd.)

(3) The words "in every other respect" in Order 2, Rule 1 of the Madras High Court Fees Rules in the context clearly indicate that this section which confers on the appellate Court authority or jurisdiction to examine the question about the sufficiency or otherwise of the court-fees paid not only on the memorandum of appeal but also on the plaint in the suit which comes before the Court of appeal is obviously intended to apply to suits filed on the original side of the High Court. **AIR 1958 SC 245 (249, 250) = 1958 SCR 1021.**

3. "Every question relating to valuation." — (1) The words "every question relating to valuation" refer only to the actual assessment or appraisement of the value of a suit or appeal apart from any question as to whether the court-fee is to depend on the value of the suit or appeal or as to the principle according to which such value is to be assessed. AIR 1931 Bom 234 (235) (DB) ** AIR 1919 Lah 323 (331, 332) = 1919 Pun Re No. 16 (FB) ** AIR 1925 Nag 435 (435) ** AIR 1924 Cal 731 (733) = 51 Cal 216 (DB). (Dispute involving root questions of principle as to nature of suit and retrospective operation of statutes — Appeal is competent.) ** AIR 1957 All 63 (64) (DB). (Section 12 applies to a case in which the question relates to "valuation" for the purpose of determining the amount of court-fee. If the only question that has been raised is whether on the valuation put upon the relief claimed in the written statement, the correct amount of court-fee has been paid, Section 12 has no application.) ** AIR 1954 Trav-Co 29 (Pr 3) = ILR (1953) Trav-Co 1006 ** AIR 1953 Sau 65 (Pr 5) ** AIR 1952 Madh B 196 (Pr 9) = ILR (1952) Madh B 136 (DB) ** AIR 1952 Pepsu 168 (Pr 2) = ILR (1952) Patiala 345 ** AIR 1951 J and K 10 (Pr 6) = 9 J and K LR 162. (Section 12 relates to cases where the valuation is in dispute and not to those in which the liability to pay the court-fee on a certain relief is the principal question involved.) ** AIR 1919 Oudh 98 (101) = 22 Oudh Cas 289. (There is a distinction between a case where the valuation depends merely on a question of fact and one where it depends on a question of law — Section 12 does not bar an appeal in the latter case.) ** ('12) 6 Sind LR 72 (75) (DB).

(2) The question under what category a suit or appeal falls for purposes of court-fees is not within the purview of the section. AIR 1942 Mad 502 (503) ** AIR 1925 Pat 392 (398) = 4 Pat 336 (FB) ** AIR 1919 Lah 323 (331, 332) = 1919 Pun Re No. 16 (FB) ** AIR 1954 Pat 406 (Pr 4) (DB) ** **AIR 1953 SC 28 (Pr 9) = 1953 SCR 197.** (The finality declared by Section 12 is limited only to the question of valuation pure and simple and does not relate to the category under which a certain suit falls.) ** AIR 1954 Cal 101 (Pr 8) (DB) ** AIR 1954 Trav-Co 178 (Pr 32) = ILR (1953) Trav-Co 1170 (FB). **(AIR 1953 SC 28 = 1953 SCR 197, Foll.)** ** AIR 1954 Trav-Co 29 (Pr 3) = ILR (1953) Trav-Co 1006 ** AIR 1953 Sau 65 (Pr 5) ** AIR 1952 Madh B 196 (Pr 9) = ILR (1952) Madh B 136 (DB) ** AIR 1952 Pepsu 168 (Pr 2) = ILR (1952) Patiala 345 ** AIR 1949 Assam 64 (Pr 13) ** AIR 1941 Cal

(ii) if the party required to pay is the respondent or the opposite party, the Court shall fix a date before which such party shall pay the amount of court-fee due from him and if such party fails to pay the fee required before the date fixed by the Court the Court shall recover the amount of such fee from him as if it were an arrear of land revenue. Where the Court considers that the amount of such fee should be paid to the respondent or the opposite party by the appellant or the petitioner, as the case may be, the Court may provide for such payment in the order as to cost in the said appeal or petition; and

(b) in any case in which the decision is that any excess fee has been levied, direct the refund of so much excess fee to the party who paid it as would not have been payable had the question been rightly decided.

Explanation.—For the purposes of this section a question relating to the classification of any suit in regard to Section 7 shall not be deemed to be a question relating to valuation." — Orissa Act V of 1939 (31-10-1939).

Pondicherry:

Same as that of Andaman and Nicobar — See Act 26 of 1968, S. 3 and Schedule, Pt. II (18-12-1968).

Section 12 — Note 3 (contd.)

518 (519, 520) (DB) ** AIR 1938 Nag 481 (482, 483) ** AIR 1936 Bom 166 (166) ** AIR 1931 Bom 234 (235) (DB) ** AIR 1925 Nag 435 (435) ** ('12) 6 Sind LR 72 (75) (DB) ** ('12) 16 Cal LJ 371 (374) (DB) ** (1900) 1900 All WN 90 (92) (DB) ** ('94) 4 Mad LJ 183 (188) (FB).

[But see AIR 1937 Mad 81 (83, 84) = ILR (1937) Mad 275 (FB) ** ('89) 11 All 91 (93) (FB). (Obiter.) ** ('86) 10 Bom 610 (616) (FB).]

(3) The section does not cover questions as to the applicability of a particular provision of the Court-fees Act to a suit or appeal. AIR 1924 Pat 673 (677) = 3 Pat 930 (DB) ** AIR 1953 Sau 65 (Pr 5) ** ('03) 27 Bom 140 (143) (DB) ** ('73) 19 Suth WR 214 (214) (DB).

(4) Questions as to the construction of a particular provision with reference to a suit or appeal are not within the section. ('06) 28 All 411 (413) ** ('95) 1895 Pun Re No. 56, p. 283 (288) (DB) ** AIR 1953 Sau 65 (Pr 5).

(5) The question whether a suit is chargeable with a fixed court-fee or with an ad valorem court-fee is not within the purview of the section. ('94) 18 Bom 209 (211) (DB).

[See ('75) 23 Suth WR 296 (297).]

(6) The question under what paragraph of Section 7-A suit will fall is not within the section. AIR 1925 Nag 435 (435) ** ('12) 16 Cal LJ 375 (377) (DB) ** ('12) 6 Sind LR 72 (75) (DB) ** ('99) 23 Bom 486 (488) (DB) ** ('78) 1878 Pun Re No. 67, p. 226 (227).

(7) The question whether Section 17 of the Act applies to a suit is not one within the section. ('91) 15 Bom 82 (83) (DB).

[See ('96) 23 Cal 723 (729) (FB).]

(8) Where a suit is chargeable with court-fees computed according to the market-value of the property or to the annual income from the property, the question as to what is the market-value of the property or the annual income from the property is one relating to valuation within the meaning of the section. AIR 1940 Cal 438 (441) = ILR (1940) 2 Cal 450 (DB).

(9) In cases under Section 7 (iv) where court-fee is payable according to the amount at which the relief sought is valued in the plaint, it is the duty of the Court to decide if the valuation is correct. AIR 1935 All 849 (849) (DB) ** ('13) 40 Cal 615 (618) (DB).

(10) The Court should record evidence and decide the matter of valuation on sufficient and proper material. AIR 1920 Sind 92 (94) = 14 Sind LR 137 (DB).

(11) Enquiry made and decision arrived at by trial Court — Decision based on evidence and good reasons — Finding of trial Court cannot be disturbed. AIR 1935 All 849 (849, 850) (DB).

4. Bengal amendment. — (1) The explanation gives statutory recognition to the view that the words "every question relating to valuation" refer only to the actual assessment or appraisement of the value of a suit or appeal and the section has no application when the question for decision is as to under what category a suit or appeal falls for purposes of court-fees. AIR 1941 Cal 518 (520) (DB) ** AIR 1940 Cal 451 (453) = ILR (1940) 2 Cal 166 (DB).

5. "Fees chargeable under this Chapter." — (1) The section does not apply to court-fees payable in a Chartered High Court. AIR 1935 Pat 396 (397) = 14 Pat 658 (SB) ** AIR 1925 Pat 392 (396, 397) = 4 Pat 336 (FB). (High Court cannot interfere under S. 12 (ii) with decision of Taxing Officer as to court-fee on appeal filed in High Court.)

Uttar Pradesh:

For sub-section (ii) the following sub-section was substituted, viz. :—

"(ii) But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay, within such time as may be fixed by it, so much additional fee as would have been payable had the question been rightly decided. If such additional fee is not paid within the time fixed and the defaulter is the appellant, the appeal shall be dismissed, but if the defaulter is the respondent, the Court shall inform the Collector who shall recover the deficiency as if it were an arrear of land revenue." — U. P. Act 19 of 1938, S. 18 (9-1-1939).

West Bengal:

In paragraph (ii) for the words and figures "and the provisions of Section 10, paragraph (ii), shall apply" the following shall be substituted, viz. :

"and thereafter—

(a) if the party required to pay is the appellant or petitioner, the provisions of sub-sections (2) and (3) of Section 8-B shall, so far as may be, apply;

Section 12 (contd.)

6. "Plaint or memorandum of appeal." — (1) The section applies to a written statement claiming a set off AIR 1936 Cal 277 (278) (DB) ** AIR 1926 Bom 343 (344) (DB).

7. Power of Court in which suit or appeal is filed, with regard to court-fee. — (1) The question of valuation is a preliminary one and must be decided by the Court before proceeding with the trial. AIR 1926 Cal 427 (427) (DB) ** AIR 1960 Pat 527 (529) = 1960 BLJR 505. (Order for payment of additional court-fee not to be incorporated in decree.)

(2) The question of valuation can be decided at any stage of the suit. AIR 1935 Mad 569 (571) = 58 Mad 1051 ** AIR 1946 Mad 483 (483, 484)

(3) The power can be exercised even after remand by the appellate Court. AIR 1935 Mad 569 (571) = 58 Mad 1051.

(4) Where the question of valuation cannot be decided without further inquiry, the proper procedure is to register the plaint, hold an enquiry and determine the fee payable. AIR 1930 Cal 65 (66) = 57 Cal 587 (DB).

(5) Though the new sub-sections (2) and (3) of Section 12 (Madras Amendment, 1955) give a statutory right to the defendant to raise objections to the adequacy of court-fee paid by the plaintiff, in practice, so far as mofussil Courts are concerned, the field of inquiry in regard to court-fees is confined practically to the determination of two points, viz., under-estimation of the subject of the suit and the category under which it should fall and cannot be larger than that which it was before. Under pretext of proper computation of court-fee there cannot be a trial of a suit within a suit. AIR 1958 Mad 573 (Pr 14).

(6) Suit for possession of restaurant with all its fittings, furniture etc. mentioned in plaint — Enquiry into value of subject-matter of suit should be limited to those articles claimed in plaint — Valuation Officer cannot include in his report valuation of articles not claimed in plaint. AIR 1969 Bom 370 (372).

8. Court not having jurisdiction — Effect as to court-fee. — (1) The Court having no jurisdiction over the suit cannot ask the plaintiff to pay deficit court-fee before returning the plaint. AIR 1933 Nag 312 (313) = 29 Nag LR 367 ** AIR 1931 Mad 69 (70) ** AIR 1931 Mad 67 (69) (DB).

(2) The Court having no jurisdiction over suit cannot dismiss the suit for non-payment of deficit court-fee. AIR 1933 Nag 312 (313) = 29 Nag LR 367 ** AIR 1927 Bom 257 (258, 259) = 51 Bom 236 (DB).

(3) It is also not ordinarily open to a Court to allow an amendment of any plaint which may help to bring a doubtful plaint really within the jurisdiction of a higher Court within its own jurisdiction AIR 1949 Mad 719 (Pr 4).

(4) Where the plaint is returned for presentation to the proper Court, the plaintiff can take advantage of the court-fee paid on the previously filed plaint and can pay the deficit court-fee in the Court to which the plaint is re-presented. AIR 1927 Bom 257 (258, 259) = 51 Bom 236 (DB) ** AIR 1924 Pat 694 (695) = 3 Pat 815 (DB) ** ('70) 5 Beng LR (App) 5 (16) (DB).

9. "Decision", what constitutes. — (1) No formal or express decision is necessary for the purpose of constituting a 'decision' under sub-section (i). AIR 1927 Cal 775 (775) (DB) ** AIR 1951 Orissa 8 (Pr 4) = ILR (1950) Cut 368 (DB).

(2) The decision may be implied in the circumstances of a case. 1895 Punj Re No. 96, page 455 (DB).

(3) The question of valuation need not be distinctly raised and decided by the

(b) if the party required to pay is the respondent or the opposite party, the provisions of sub-section (2) of Section 8-B shall, so far as may be, apply, and, if such party fails to pay the fee required before the date fixed by the Court, the Court shall recover the amount of such fee from him as a public demand :

Explanation.—For the purposes of this section a question relating to the classification of any suit for the purpose of Section 7 shall not be deemed to be a question relating to valuation." — Bengal Act VII of 1935, S. 11 (2-5-1935).

STATE AMENDMENT

Section 12-A

West Bengal:

After Section 12, insert the following :—

"**12A. Recovery of deficit court-fee in certain cases.**—(1) The High Court shall, when dealing with an application for leave to appeal to the Supreme Court, make an order for the payment of any deficit court-fee with such interest not exceeding six per centum per annum as the High Court may direct, in all cases where the High Court finds that the subject-matter of the suit or appeal had been under-valued either in the Court of first instance or in the Court of appeal, or both, irrespective of whether the certificate of fitness for appeal to the Supreme Court is or is not granted.

(2) The fee together with interest thereon found to be payable under sub-section (1) shall be paid by the party ordered to do so and if such party fails to pay the amount required before the date fixed by the High Court, it shall be recoverable from him as a public demand. — W. B. Act 23 of 1959, S. 4.

Section 12 — Note 9 (contd.)

Court in order that there may be said to be a "decision" on valuation. AIR 1935 Lah 698 (700) (DB) ** AIR 1926 Mad 96 (97) (DB) ** (1881) 7 Cal 348 (350, 351) (DB).

[But see AIR 1917 Low Bur 179 (180) (DB) ** (1874) 22 Suth WR 433 (434) (DB).]

(4) The very fact that the Court has accepted a plaint or memorandum of appeal and disposed of it will amount to a decision that the court-fee paid is sufficient. AIR 1940 Mad 383 (384) = ILR (1940) Mad 646 (DB) ** AIR 1946 Mad 483 (483, 484) ** AIR 1939 Sind 279 (280, 281) = ILR (1939) Kar 469 (DB). (In revision, High Court can levy additional fee in such a case.) ** ('13) 21 Ind Cas 943 (944) (DB) (Cal) ** ('12) 1912 Pun WR No. 136, p. 361 (364) = 1912 Pun Re No. 109 (FB). (('01) 1901 Pun Re No. 13 and 1884 Pun Re No. 115, **Overruled.**)

(5) Different views are held as to whether a mere ex parte decision by the Court, at the time of admitting a plaint or memorandum of appeal, that the court-fee paid is sufficient is a "decision" entitled to finality under sub-section (i) :—

(a) Such ex parte decision is not a decision as contemplated by sub-section (i). AIR 1942 Oudh 385 (386) ** AIR 1957 Andh Pra 516 (518) ** AIR 1954 Pat 406 (Pr 4) (DB) ** AIR 1941 Nag 217 (219) = ILR (1942) Nag 588. (20 All 11 and AIR 1933 Pat 234 = 12 Pat 694, Followed.) ** ('98) 20 All 11 (16) (FB).

(b) Decision given only on hearing the plaintiff's or appellant's advocate and without hearing the other side would be entitled to finality. AIR 1941 Mad 626 (627, 628). (The only essential thing is that the Court should apply its mind to the questions at issue in arriving at the true calculation of the court-fee.) ** AIR 1935 Mad 927 (928) ** AIR 1951 Mad 698 (Prs 4, 10, 12, 13) = ILR (1951) Mad 867 (DB).

[See however AIR 1949 Mad 750 (Pr 2). (Decision contemplated by S. 12 (1) is a considered decision given after hearing parties.)]

(c) While a case is still pending the acceptance by a ministerial officer of the court-fee paid or the registration of the case without objection cannot be deemed to be a final decision of the question of court-fee. AIR 1926 Mad 96 (99) (DB) ** AIR 1951 Mad 698 (Pr 4) = ILR (1951) Mad 867 (DB).

[But see AIR 1946 Mad 483 (484).]

(6) A decision in order to come under sub-section (i) must have been arrived at for the purpose of court-fees and not incidentally while deciding the question of jurisdiction. AIR 1918 Lah 116 (117).

(7) Court ordering plaintiff to pay proper court-fee by making up the deficit — Suit tried on plaintiff's undertaking to pay — Suit decided in favour of plaintiff—Plaintiff appealing only on point of

Section 12 — Note 9 (contd.) costs without making up deficit — Appellate Court cannot ask the plaintiff under Section 12 (ii) to make up the deficit. In such cases plaintiff's appeal should not be heard unless he makes up the deficit by complying with the order of the Court. AIR 1924 Cal 953 (955) (DB).

(8) Suit resisted on grounds of sufficiency of court-fee and bar of limitation — Trial Court without adjudicating first the question of court-fee deciding that suit was time-barred — Appeal dismissed — In second appeal objection raised that court-fee paid in second appeal was insufficient — **Held** that in view of the basis of valuation put by plaintiff which question was left unadjudicated by trial Court, no objection could be taken to the court-fee paid in second appeal. Madh BLJ 1955 HCR 267 (268).

(9) Trial Court through mistake or inadvertence accepting written statement pleading set-off though not stamped — Subsequently directing payment of court-fee — Court-fees not paid — Appellate Court can direct payment of court-fees under Section 12 (ii). AIR 1936 Cal 277 (278) (DB).

10. Finality of decision under sub-section (1).— (1) The term "final" in this section has the same meaning as in Section 5. (1890) 12 All 129 (152) (FB).

(2) 'Final' means conclusive. AIR 1937 Mad 46 (51) = ILR (1937) Mad 284 (DB).

(3) The finality is limited only to the question of valuation pure and simple and does not relate to the category under which a suit falls. **AIR 1953 SC 28 (Pr 9) = 1953 SCR 197** ** AIR 1954 Cal 101 (Pr 8) (DB) ** AIR 1954 Trav-Co 178 (Pr 22) = ILR (1953) Trav-Co 1170 (FB) ** AIR 1968 All 216 (221) = 1967 All LJ 612 (FB) ** AIR 1966 Goa 1 (3) (FB) ** 1964 All LJ 944.

(4) Reading sections 6A (U. P.) and 12 together the law seems to be that in an appeal filed under Section 6A the valuation of the subject-matter of the suit fixed by the Court below cannot be challenged as the finding is final between the parties to the suit and that, therefore, the appeal under Section 6A must be heard on other points namely that a wrong provision of the Court-fees Act has been made applicable or that the court-fee has been wrongly calculated. 1957 All LJ 53 (54).

(5) There is an exception to the finality conferred by sub-section (i) provided for by sub-section (ii). AIR 1935 Cal 338 (339) (DB) ** AIR 1951 Pat 183 (Pr 8) = 30 Pat 859 ** AIR 1949 All 324 (325) = ILR (1949) All 710 (DB) ** AIR 1927 Bom 643 (646) = 52 Bom 61 (DB) ** AIR 1915 Mad 271 (272) (DB)

[See AIR 1954 Trav-Co 178 (Pr 33) = ILR (1953) Trav-Co 1170 (FB). (The force of finality declared by the earlier part of the section has been considerably diluted by the second part of the section.)]

(6) Section 12 when it says that such a decision shall be final between the parties only makes the decision of the Court on a question of court-fee non-appealable and places it on the same footing as other interlocutory non-appealable orders under the Code and it does no more than that. If a decision under Section 12 is reached by assuming jurisdiction which the Court does not possess or without observing the formalities which are prescribed for reaching such decision, the order would be revisable by the High Court in the exercise of its revisional powers. Similarly, when a party thinking that a decision under Section 12 is palpably wrong takes the risk of his plaint being rejected or suit dismissed and then appeals from the order rejecting the plaint or from the decree dismissing the suit but not from the decision on the question of court-fee, then it is open to him to challenge the interlocutory order even on the question of court-fee made in the suit or appeal. The word 'finality' construed in the limited sense in which it is often used in statutes means that no appeal lies from an order of this character as such and it means no more than that. **AIR 1953 SC 28 (Pr 11) = 1953 SCR 197.**

(7) Suit for recovery of possession from licensee on valuation given by plaintiff — Decree — Appellate Court requiring trial Court to determine question of valuation on basis of market value — Plaintiff adducing no evidence about market value — Trial Court fixing value of property on basis of unexplained admission in plaint about monthly rent of property prior to granting of license — Decision on question of valuation held not erroneous and could not be challenged even on merits. ILR (1966) 1 Cal 441 (DB).

(8) For the purposes of Section 12 Court Fees Act there need not be a formal or express decision. The very fact that court accepted a plaint or memo of appeal and disposed of it on merits amounts to a decision that the Court-fee paid is sufficient. On the principle of 'res judicata' it is not therefore open to a party to raise the question of Court-fee in the original court after the remand of the case to it by the appellate Court. AIR 1959 Madh Pra 181 = 1958 MPLJ 704.

11. Order as to court-fee — Appealability of.— (1) An order assessing the court-fee on a plaint or memorandum of appeal or assessing the value of a suit or appeal for purposes of court-fee is not appealable. AIR 1943 Nag 315 (317) =

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Section 12 — Note 11 (contd.)
ILR (1943) Nag 802 ** AIR 1936 Cal 784 (785) (DB) ** AIR 1927 Lah 775 (776) (DB) ** AIR 1914 Lah 153 (153) = 1914 Pun Re No. 80 (DB) ** ILR (1966) 1 Cal 441 (DB).

(2) Order as to court-fee falling under sub-section (i) — Order is not open to challenge in appeal from decree unless decision of Court is detrimental to public revenue. AIR 1935 Cal 338 (339) (DB) ** ('94) 18 Bom 209 (211) (DB) ** ('55) Madh BLJ (1955) HCR 71 (73). (Court holding that court-fee paid is proper — It is open to Court of appeal to review the decision under Section 12 (2).) ** AIR 1949 East Punj 336 (336) (DB).

(3) Where order does not fall under sub-section (i) it can always be challenged in appeal. ('87) 1887 Bom PJ 36 (DB). (Question whether suit admits of valuation — Appeal lies against an order of dismissal.)

(4) Court-fee on letters of administration — District Court granting refund holding that Section 19-D applied — Collector appealing on the ground that Section 19-D did not apply — **Held** that appeal would have lain if Collector had been party to order but that in this case he was not a party and so the appeal did not lie — But the High Court in the exercise of its extraordinary jurisdiction interfered with the order as the District Judge had acted without jurisdiction. ('03) 27 Bom 140 (143) (DB).

(5) On the question of appealability of the order rejecting plaint for insufficiency of court-fee, the following different views are held:

(a) Order will not be open to challenge by the appellate Court if the decision merely relates to the assessment of the value of the suit. AIR 1919 Pat 270 (275) = 4 Pat LJ 57 (DB).

(b) Where the decision of the Court is not concerned merely with the appraisement of value of the suit but relates to its classification for purposes of court-fees, the decision will be open to attack in appeal. AIR 1919 Pat 270 (275) = 4 Pat LJ 57 (DB) ** AIR 1949 East Punj 107 (108) ** ('94) 4 Mad LJ 183 (188) (FB) ** ('93) 17 Bom 56 (60) (DB).

[See also AIR 1919 Pat 527 (527) (DB).]

(c) Notwithstanding the provision as to finality in the section the decision of the trial Court as to valuation can be challenged in appeal. ('10) 5 Ind Cas 18 (19) (DB) (Cal).
[See ('81) 6 Cal 249 (250) (DB).]
[See also AIR 1937 Mad 81 (84) = ILR (1937) Mad 275 (FB).]

(d) The decision of the trial Court as to the sufficiency of court-fee is not open to challenge at all. ('85) 9 Bom 355 (357) (DB) ** ('78) 2 Bom 219 (224) (DB).

(6) The fact that the decision of trial Court regarding court-fee is not open to attack in appeal will not make the case one in which no appeal lies. AIR 1914 Lah 153 (153, 155) = 1914 Pun Re No. 80 (DB) ** ('89) 11 All 91 (93) (FB).

(7) Order rejecting plaint for failure to pay additional court-fee is such a complete and final determination of the rights of the parties that there is no room in any appeal from such order for the proposition that the subject-matter in appeal is not the same as the subject-matter in the original suit and same court-fee is payable on the appeal as on plaint. AIR 1935 Nag 83 (86) (FB).

(8) Plaint rejected for undervaluation — Plaintiff appealing and putting same value on appeal as on plaint — Appeal cannot be rejected as insufficiently stamped without investigating true value of suit property. AIR 1926 Cal 427 (427) (DB).

(9) Order rejecting the plaint amounts to a decree and the memorandum of appeal from that decree must bear ad valorem court-fee. AIR 1921 Lah 43 (43) (DB).

12. Revision against orders as to court-fee. — (1) The duty of fixing the court-fee is cast by law on the trial Court and the trial Court's decision is ordinarily final. AIR 1942 Mad 445 (446).

(2) In a revision against an order on an application for attachment before judgment or temporary injunction, the subject-matter of the suit is not before the High Court and the High Court cannot interfere with the decision of the lower Court in regard to the court-fee in the suit. AIR 1937 Mad 325 (326).
[See also ('37) 172 Ind Cas 212 (213) (Pat).]

(3) Where the decision of the lower Court relates to the classification of the suit for purposes of court-fee and not merely to the actual assessment of the value of the suit for purposes of court-fees, the decision can be questioned by the High Court when the suit goes before it in revision. AIR 1941 Cal 518 (519, 520) ** AIR 1925 Mad 713 (714) ** AIR 1924 Pat 673 (677) = 3 Pat 930 (DB) ** ('10) 5 Ind Cas 141 (142) (DB) (Cal).

[See AIR 1933 Mad 367 (367).]

(4) Where the decision relates only to the assessment of the value of the suit, it is not liable to be questioned in revision before the High Court, unless the decision is detrimental to the public revenue. AIR 1940 Mad 821 (821) ** AIR 1939 Sind 279 (280) = ILR (1939) Kar 469 (DB) ** AIR 1946 Nag 160 (161) ** AIR 1924 Pat 673 (675) = 3 Pat 930 (DB).

Section 12 — Note 12 (contd.)

[But see AIR 1947 Bom 259 (260) (FB) ** AIR 1949 Cal 659 (Pr 7) = ILR (1950) 1 Cal 506 (DB). (In coming to conclusion on question of valuation for the purpose of determining the amount of court-fee payable, lower Court acting illegally or with material irregularity in the exercise of its jurisdiction.) ** AIR 1941 Cal 509 (511, 512) (DB). (Where the only question is one of valuation, an appeal being excluded under Section 12 (i), the remedy of revision is open, though the revisional power should be exercised only in a proper case.) ** ('86) 10 Bom 610 (616) (FB).]

(5) An order as to court-fee which is unfavourable to the plaintiff is open to revision. AIR 1934 Oudh 212 (213) (DB) ** AIR 1944 Mad 315 (317) = ILR (1944) Mad 626 (FB). (AIR 1939 Mad 380, **Overruled.**) ** AIR 1957 Pat 450 (451) (DB) ** AIR 1953 Orissa 89 (Prs 4, 5). (The order of the Court directing the plaintiff to pay deficit court-fee before she can apply for a final decree does not amount to a 'decree', but can at best be regarded only as an interlocutory order attracting the revisional jurisdiction of the High Court: AIR 1924 Pat 673, **Rel. on.**) ** ('55) Madh BLJ (1955) HCR 71 (73) ** AIR 1950 Nag 249 (Pr 11) = ILR (1950) Nag 748 (DB) ** AIR 1950 Pat 470 (Pr 4) (DB) ** AIR 1949 Nag 211 (Pr 4) = ILR (1949) Nag 66 ** AIR 1949 Nag 97 (Pr 6) = ILR (1948) Nag 117 ** AIR 1949 East Punj 372 (Prs 3, 5). (Suit for accounts — Plaintiff is entitled to put tentative value for purpopeses of court-fee — Court ordering plaintiff to pay court-fee on certain amount — Court acts with material irregularity.) ** AIR 1949 Nag 37 (37) = ILR (1948) Nag 210 ** AIR 1949 Nag 4 (5) = ILR (1948) Nag 913 ** AIR 1945 Bom 336 (337) = ILR (1945) Bom 729 (DB) ** AIR 1942 Mad 585 (585) ** AIR 1942 Pat 60 (62) = 20 Pat 780 (DB) ** AIR 1938 Nag 122 (126) = ILR (1938) Nag 106 (FB) ** AIR 1938 Pat 22 (25) 18 Pat 766 (FB) ** AIR 1935 Cal 279 (280) = 62 Cal 417 (DB) ** AIR 1933 All 350 (351, 352) = 55 All 274 (DB) ** AIR 1929 Mad 396 (397) (DB) ** AIR 1960 J and K 34 (34). (An order directing payment of additional court-fee — There is a question of jurisdiction involved in the matter and the revision against such an order is maintainable. AIR 1954 Punj 205, Diss. from.)

[See 1957 All L Jour 53 (55) ** AIR 1943 Nag 315 (317) = ILR (1943) Nag 802.]

[But see AIR 1957 All 339 (340) ** AIR 1954 Punj 205 (Pr 3) ** AIR 1947 All 404 (405) = ILR (1947) All 640 (DB) ** AIR 1942 Pesh 23 (24). (Order requiring payment of more court-fee is merely an interlocutory order and does not amount to the decision of a case.) ** ILR (1937) Lah 480 (482) ** AIR 1934 All 620 (622) = 57 All 17 (FB) ** 1913 Pun LR No. 115, p. 416 (417) ** AIR 1938 Lah 80 (81) = ILR (1938) Lah 377. (The plaintiff having another remedy open to him that of appeal—The remedy by way of revision is not open to him.) ** AIR 1919 Cal 840 (841) (DB) ** 1912 Pun LR No. 212, p. 675 (676) = 1912 Pun Re No. 69 (DB) ** ('02) 5 Oudh Cas 319 (320).]

(6) Where an order directing payment of additional court-fee is not complied with and it is followed by an order rejecting the plaintiff it has been held by a Full Bench of the Madras High Court that a revision petition is not maintainable against the latter. The proper remedy is only by way of an appeal against the order rejecting plaint. Further in such a case a revision petition cannot also be filed against the earlier order demanding additional court-fee. AIR 1952 Mad 86 (Pr 2) = ILR (1952) Mad 77 (FB) ** 1963 BLJR 123 ** AIR 1960 All 372 (373). (AIR 1949 Mad 349, **Diss. from.**)

(7) (a). Where the order as to court-fee is favourable to the plaintiff, it has been held that an application for revision will not lie. AIR 1943 Nag 315 (317) = ILR (1943) Nag 802 ** AIR 1938 Nag 122 (126) = ILR (1938) Nag 106 (FB) ** AIR 1938 Pat 22 (25) = 16 Pat 766 (FB) ** AIR 1957 Pat 450 (451) (DB) ** AIR 1957 All 339 (340). (Court-fee paid held to be sufficient — No case is decided — No revision lies.) ** AIR 1956 Sau 93 (94) (DB) ** ('55) Madh BLJ 1955 HCR 71 (73) ** AIR 1952 Madh B 147 (Prs 5, 6). (The finding on the question does not constitute a case decided within Section 115, Civil P. C., and further no question as to exercise of jurisdiction not vested in the Court arises.) ** AIR 1952 Pat 141 (Pr 5) (DB) ** AIR 1951 Ajmer 102 (Pr 2) ** AIR 1949 Assam 64 (Pr 12) ** AIR 1948 Nag 219 (220) = ILR (1947) Nag 902 ** AIR 1941 Cal 518 (520) (DB) ** AIR 1933 Mad 506 (508) = 56 Mad 744 (DB) ** AIR 1925 Cal 814 (816) (DB).

[but see AIR 1946 Nag 160 (161). (Observations in AIR 1938 Nag 122 = ILR (1938) Nag 106 (FB), **Held,** obiter and not followed.)]

(b) In the undermentioned case, a Full Bench of the Travancore and Cochin High Court has held that where a Court of unlimited jurisdiction, such as a District Court, after due consideration of the nature of the suit and the provisions of the Court-fees Act gives a finding that the fixed court-fee paid on the plaint is sufficient.

Section 12 — Note 12 (contd.)

the order even if wrong is not subject to interference by the High Court in revision. AIR 1954 Trav-Co 178 (Prs 23, 35) = ILR (1953) Trav-Co 1170 (FB). (Per Subramania Iyer and Sankaran JJ.: Govinda Pillai J., **Dissenting.**)

[See AIR 1947 All 340 (341, 342) = ILR (1947) All 433. (Revision against order as to court-fee — Order under Section 6-B (U. P) partly allowing revision is "case decided" and revisable.)]

An order as to court-fee, though favourable to the plaintiff, will be open to revision if the order involves a decision as to valuation for jurisdiction also and results in the case being held to be triable by a Court which, if the decision had been otherwise, would not have jurisdiction to try the suit. AIR 1940 Mad 821 (822) ** AIR 1944 Mad 315 (317) = ILR (1944) Mad 626 (FB) ** 1953 BLJR 100 (102). (It is true that on question of court-fee it is not the practice of the High Court to interfere with the order of the Court below at the instance of a defendant, but where the question of valuation involves the jurisdiction of the trial Court, the High Court can interfere.) ** AIR 1953 Madh B 40 (Pr 8) ** AIR 1952 Pepsu 158 (Pr 2) = ILR (1952) Patiala 319 ** AIR 1949 Mad 415 (Pr 3) ** AIR 1948 Nag 219 (220) = ILR (1947) Nag 902 ** AIR 1938 Cal 161 (161) ** AIR 1936 Mad 411 (411, 412).

[See however AIR 1935 Pat 191 (192). (Erroneous decision as to valuation and incidentally raising the question of court-fee is not revisable.)]

(8) Appeal dismissed for failure to pay additional court-fees called for — Revision lies. AIR 1936 Pesh 140 (141).

(9) Application to sue as pauper being refused, date was fixed before which plaintiff was directed to pay court-fee — Court-fee not paid but request to extend time was made — Request not granted and plaint rejected — Appeal from this order dismissed on ground that appeal was from order refusing to extend time — **Held,** the appeal was from order rejecting plaint and the order dismissing appeal was revisable. AIR 1929 Lah 125 (125).

(10) Suit being under-valued plaintiff asked to amend valuation and pay additional court-fees — Application by plaintiff to sue in forma pauperis disallowed and plaint rejected — Plaintiff filed revision against order refusing to allow him to continue suit in forma pauperis — **Held,** the order disallowing the plaintiff's application to continue suit in forma pauperis had become merged in the order rejecting plaint and that the latter order was appealable as a decree, and the application for revision was not maintainable. AIR 1925 Lah 191 (192).

(11) Two of three plaintiffs permitted to sue in forma pauperis — Third plaintiff allowed to pay court-fee on his one third share of property in suit — Revision against such order filed by defendant — No revision against an order in which matter involved is purely of court-fee is maintainable — But civil revision at the instance of defendants against order permitting plaintiff to sue in forma pauperis can be entertained — The matter involved being not purely of Court-fee but closely connected with pauperism. The petition is maintainable. AIR 1967 Pat 310 (310).

(12) Order of a Court refusing to adjourn a case in order to enable a party to pay court-fee — No revision lies against it. AIR 1923 All 118 (119) = 45 All 218 (DB).

(13) Where at the stage of presentation of the plaint an objection as regards the court-fee is taken by the Court suo motu, the matter relates only to one which concerns the plaintiff and the Government, the defendants at that stage, cannot have their say in the matter of court-fee and if a revision petitior is to be filed against the order concerning the determination of the court-fee at such a stage, it is only the plaintiff that can do so. The defendants not having been served with notice of the suit have no right to prefer a revision nor could it be said that they are necessary parties in the revision petition. AIR 1960 Andh Pra 339 (340).

(14) Question of court-fee on plaint decided against defendant's contention — Defendant has no grievance and has no right of revision against the decision of the Court of first instance on a matter of court-fee payable in a plaint — Madras Court-fees and Suits Valuation Act (14 of 1955), Section 12 (2). **AIR 1961 SC 1299 (1300) = (1961) 3 SCR 1015.**

[But see AIR 1961 Ker 146 (147) = 1960 Ker LT 1322. **(Held, impliedly overruled** by **AIR 1961 SC 1299** as interpreted in AIR 1962 Ker 84.)]

(15) Erroneous decision on question of court-fee not affecting jurisdiction of Court to try suit, does not affect the defendant and the distinction between an error regarding category and an error regarding valuation pure and simple is of no relevance in a revision by the defendant — No revision at instance of defendant. AIR 1962 Ker 84 (85) = 1961 Ker LT 825. (AIR 1961 Ker 142, Explained.)

[But see AIR 1961 Ker 142 (144) = 1960 Ker LT 1297 (Explained in AIR 1962 Ker 84, that the decision in 1961 Ker 142 also involved the question of jurisdiction.)]

Section 12 (contd.)

13. Reference to High Court. - (1) Court in which an appeal is filed cannot refer the question as to the proper court-fee payable on such appeal to the High Court. Order 46, Rule 1 of the Civil Procedure Code does not contemplate a reference on such a point. 1906 All WN 180 (180) (DB).

(2) A Subordinate Judge has no jurisdiction to refer a doubtful question of court-fees payable on a copy of a receipt, to the High Court similar to the power under Section 60 of the Indian Stamp Act. ('03) 27 Bom 150 (154) (SB).

14. Deficiency of court-fee in lower Court — Power of Court of appeal or revision. — (1) The appellate Court has a general power to call upon a party to make good the deficient court-fee chargeable in the lower Court. AIR 1922 Pat 284 (286) = 1 Pat 471 (DB) ** ('80) 2 All 682 (684) (FB). (Power of High Court to require parties to pay additional court-fees in respect of documents presented to lower Courts is not limited to Section 12 (ii) and the High Court has full power of interference under Section 28 quite outside chapters II and III.) [See **AIR 1929 PC 147 (148) = 10 Lah 737 = 56 Ind App 232.**]

(2) Section 12 (ii) applies to the deficit in the lower Courts payable not only by the appellant in the appellate Court but also by the respondent in that Court who was the plaintiff or the appellant in the lower Court. AIR 1951 Orissa 8 (Pr 4) = ILR (1950) Cut 368.

(3) Whether the question involved is one of valuation on which the lower Court has pronounced a particular decision or on the category of the suit for purposes of court-fees, if the full court-fee has not been paid in the lower Court, the appellate Court has clear authority to interfere and require the deficit to be made up. ('41) 16 Luck 526 (528) (DB) ** AIR 1937 Mad 81 (84) = ILR (1937) Mad 275 (FB) ** AIR 1936 Cal 277 (278) (DB) ** AIR 1926 Bom 343 (344) (DB)

(4) It is the duty of the appellate Court to see that proper court-fees are paid not only in regard to the proceeding before itself but also with regard to the proceeding in the lower Court. AIR 1942 Bom 151 (151) (DB) ** AIR 1930 Cal 686 (689, 690) = 58 Cal 281 ** AIR 1918 Pat 623 (624) = 3 Pat L Jour 101 (DB) ** AIR 1968 All 216 (221) = 1967 All LJ 612 (FB).

(5) Appeal by defendant -- Sufficient court-fee not paid on appeal — Court finding during argument that sufficient Court-fee not paid on plaint also — **Held.** — The Court in the first instance should have asked the defendant appellants to pay deficit Court Fees on appeal and after such payment should have asked plaintiff respondent to pay deficit Court-fee on plaint and only on plaintiff's failure to do so should have rejected the plaint — **Held,** further that order of the Court rejecting the plaint at the outset is revisable. AIR 1968 Manipur 1 (3).

(6) Unless the appeal has been admitted or registered by the Court the case or matter cannot be said to be before the Court in such a shape as to give it jurisdiction to pass any order under the section. AIR 1930 Cal 65 (68) = 57 Cal 587 (DB) ** AIR 1927 Cal 775 (775) (DB) ** AIR 1921 Pat 88 (89) = 6 Pat L Jour 293 (FB) ** AIR 1920 Pat 827 (828) = 5 Pat L Jour 508 (DB) ** ('92) 15 Mad 181 (182) (DB) ** ('91) 1 Mad L Jour 528 (529) (DB).

(7) Sub-section (ii) cannot be held to empower a Court of appeal to which an appeal has been wrongly presented to pass orders for the payment of the additional fees therein alluded to. 1892 Pun Re No. 86, p. 299 (300) (DB).

(8) Appeal relating only to a part of the subject-matter of the suit — **Held,** that the appellate Court has power to levy additional court-fee in respect of the suit in the lower Court. ('36) 63 Cal 720 (725).

[But see AIR 1938 Mad 278 (279) = ILR (1938) Mad 309 (DB). (Appellate Court acting under Section 12 (ii) can realise the deficit court-fee only in respect of that part which is under appeal.)]

(9) Where a plaintiff files cross-objections but fails to pay the proper court-fees thereon and subsequently appeals to the High Court from the decree allowing the defendant's appeal but does not file any appeal against the dismissal of the cross-objections, the High Court held, has inherent power to refuse to entertain the second appeal till the proper court-fees on the cross-objections have been paid. AIR 1922 Pat 284 (286) = 1 Pat 471 (DB). (15 Mad 181, **Distinguished.**)

(10) Once an appeal has been disposed of, the appellate Court is functus officio and cannot call for the payment of any deficiency in court-fees payable in the lower Court. AIR 1939 Sind 279 (280) = ILR (1939) Kar 469 (DB) ** AIR 1957 Pat 533 (534) (DB) ** AIR 1946 Sind 58 (60) = ILR (1945) Kar 313 ** ('36-43) Tax Dec (Nag) 124 (125) ** AIR 1933 Lah 208 (208) ** AIR 1932 All 316 (317) ** AIR 1929 Oudh 483 (483) = 5 Luck 229 ** AIR 1925 Lah 131 (131) ** AIR 1919 Pat 9 (10) = 4 Pat L Jour 472 (FB) ** AIR 1916 Low Bur 58 (59) (DB).

(11) Provisions regarding the levy of additional court-fees apply only to pending cases. AIR 1916 Low Bur 58 (59) (DB) ** AIR 1935 Lah 75 (76) ** AIR 1933

Section 12 — Note 14 (contd.)
Mad 321 (321) ** AIR 1929 Oudh 483 (483) = 5 Luck 229 (DB) ** AIR 1919 Cal 194 (194) = 46 Cal 520 (DB) ** AIR 1919 Pat 9 (10) = 4 Pat L Jour 472 (FB) ** (1885) 7 All 528 (532) (DB).

(12) **Suit for possession of property by plaintiffs as stridhan heirs — Validity of will leaving property to defendants challenged — Court-fees paid on valuation of property in accordance with S. 7 (v) (U. P.) — Proper court-fees — Court-fees required to be paid in accordance with S. 7 (iv-A) also — Question of insufficiency rejected by trial Court — The property having been correctly valued and the question raised does not relate to valuation at all — Sec. 12 does not apply.** AIR 1962 All 268 (271) = 1961 All LJ 884. (**Overruled** on another point in AIR 1968 All 216.)

(13) **Suit calling upon defendant to admit execution of sale deed and register same before proper authority — Suit being for specific performance, ad valorem court-fee is payable on amount of consideration on plaint and memorandum of appeal — Appellate Court not to ask payment of deficit court-fee on plaint until and unless deficit court-fee is paid on memorandum of appeal.** AIR 1964 Pat 534 (537) = 1964 BLJR 893.

(14) If at any stage of the appeal a demand is made upon the appellant to pay the deficit amount of court-fee on memorandum of appeal and if he does not pay it, the appeal will be deemed to have been not registered or the memorandum of appeal will be rejected for non-payment of the deficit court-fee. AIR 1964 Pat 534 (538) = 1964 BLJR 893.

(15) Where the appellate Court considers that plaintiff has not paid proper fee in the trial Court, the hearing of the appeal must be stayed and if the deficit is not made up within the time allowed, the appeal and suit must both be dismissed. AIR 1918 Pat 210 (211) = 3 Pat LJ 443 ** AIR 1950 Pat 358 (Pr 4) ** ('98) 20 All 362 (364) ** ('95) 18 Mad 115 (117) (DB).

[See AIR 1937 All 280 (281, 282) = ILR (1937) All 484. (The appellate Court had no power to reject the memorandum of appeal properly stamped under O. 7, R. 11 (c) and Rule 12 on the ground that the court-fee (included in the costs) on the plaint was not paid by the pauper.)]

(16) Where a plaint as well as the memorandum of appeal filed by a plaintiff are found insufficiently stamped, the proper course to be followed by the appellate Court is to direct that the appeal be registered on the appellant supplying the deficit court-fees as regards his memorandum of appeal and after the appeal has been registered and before it has been dealt with under Order 41, Rule 11, Civil P. C., to place the case for orders under Section 12, sub-section (ii) of Court-fees Act as regards the deficit court-fees on the plaint in the lower Court and to dismiss the appeal if the deficit is not paid within the time fixed. AIR 1950 Pat 239 (Pr 11) = 29 Pat 14 (DB) ** AIR 1967 Punj 188 (190) = ILR (1966) 1 Punj 602. (In such a case it cannot take any further action such as dismissing the suit.)

(17) Where the defaulting plaintiff is the respondent in the appeal the appellate Court can refuse to hear his counsel till the deficit is made up. AIR 1929 All 577 (577) = 51 All 886 (DB).

(18) Different views are held as to whether the appellate Court should dismiss the suit of the plaintiff-respondent in the lower Court on the ground of his failure to make up the deficit:

(a) Where deficit is not made up within time allowed, defaulting plaintiff-respondents' suit in the lower Court may be dismissed. AIR 1940 Mad 674 (675) ** AIR 1920 Pat 656 (659) = 4 Pat LJ 703 (DB) ** AIR 1920 Oudh 167 (169) = 22 Oudh Cas 388 ** ('13) 1913 Pun LR No. 235 p. 784 (788) (DB).

[But see ('92) 15 Mad 288 (289) (DB). (The order of the appellate Court dismissing plaintiff's suit while the defendant's appeal was pending was irregular.)]

(b) Failure to pay the proper court-fee in the lower Court is only an irregularity not affecting the merits of the case or the jurisdiction of the Court and cannot be made a ground for reversing the decree passed by the lower Court in favour of the defaulter. AIR 1925 Rang 65 (67) = 2 Rang 462 ** ('03) 6 Oudh Cas 135 (139) ** ('02) 29 Cal 651 (654) (DB) ** ('80) 2 All 889 (890, 891) (DB).

(c) The provisions of Section 10 (ii) are incapable of application. The proper procedure in such cases is not to dismiss the respondent's suit or appeal in the lower Court but to stay the issuing of the decree of the appellate Court, if any, in the plaintiff-respondents' favour. ('06) 28 All 270 (272) (FB). (1905 All WN 277. **Overruled.**) ** AIR 1918 Pat 210 (211) = 3 Pat LJ 443.

[But see AIR 1942 Bom 151 (152) (DB). (Sub-section (ii) is not confined to appeals by the plaintiffs but applies even if the defendant is the appellant.)]

(19) Where the failure to make good the deficit is not wilful, the Court may accept the deficit court-fee even after the expiry of the time given. ('76) 1876 Pun Re No. 84, p 169 (170) (DB).

Section 12 — Note 14 (contd.)

(20) In view of the provisions of Section 12 (2) (Orissa Amendment) the suit cannot be dismissed for non-payment of the excess court-fee but the same is recoverable as an arrear of land revenue. AIR 1958 Orissa 81 (83) = ILR (1958) Cut 51 (DB).

(21) The appellate Court cannot order the attachment of property for recovery of deficit court-fee. AIR 1932 All 316 (317).

(22) Joint Hindu family — Partition suit by member A against other members with whom A was in joint possession — A transferring his interest to B — Joining of B as additional plaintiff does not entail additional court-fee — Subsequent transposition of A as defendant renders suit as one by alienee B for partition — B must pay ad valorem court-fee on share claimed immediately on transposition of A — Wrong procedure by trial Court held could be corrected in appeal under Section 12 (ii). AIR 1947 Mad 285 (286) = ILR (1947) Mad 763 (DB).

(23) The power of interference under sub-sec. (ii) in cases of insufficiency of court-fee is conferred on a Court of revision. AIR 1915 Cal 622 (623) (DB).

(24) Where the order of the lower Court demanding deficit court-fee is set aside in revision the High Court ought of necessity as a consequence, to set aside the order of the lower Court rejecting plaint for non-payment of deficit court-fee. AIR 1950 Pat 470 (Pr 7) (DB).

15. Order as to court-fees — Alteration by same Court. — (1) Where a Court has passed a judicial order fixing the valuation of a suit or appeal for purposes of court-fees, it is not open to the same Court to vary or re-open it afterwards. AIR 1941 Mad 626 (627, 628) ** 1938-2 Mad LJ 647 (647, 648) ** AIR 1949 Mad 395 (Pr 3). (AIR 1935 Mad 927, Rel. on.)

(2) Where the suit was filed about 12 years back and the plaintiff had ample opportunity to make up the deficiency in the court-fee but did not do so and, where, in fact, prior to rejection of the plaint, a stand is taken that it was not intended to make up the deficiency, it is not a fit case in which further indulgence can be shown to the plaintiff in the matter of making up the deficiency. 1962 Raj LW 357 = ILR (1962) 12 Raj 766.

(3) An order under sub-section (i) can be altered on an application for review. AIR 1936 Pesh 213 (214) ** AIR 1950 All 237 (Prs 9, 11, 15) = ILR (1951) 1 All 186 (DB) ** AIR 1925 Pat 47 (47, 48) = 3 Pat 654 (DB) ** AIR 1924 Pat 673 (678) = 3 Pat 930 (DB).

(4) A finding as to the value of the property in suit for purposes of court-fees does not preclude the same Court from afterwards coming to the conclusion that it has no jurisdiction to try the suit on the ground that on a proper valuation of the property the suit would go beyond its pecuniary jurisdiction. AIR 1942 Mad 502 (503).

(5) Where without deciding any issue as to the sufficiency or otherwise of the court-fees paid, or any issue as to the proper valuation of the suit for purposes of jurisdiction, the Court called upon the plaintiff to pay the amount stated by the court-fee examiner to be due on the declaratory relief, the decision does not come within the purview of the expression "judgment". Therefore the successor of the Judge would not be barred by the order from considering the question of valuation in order to decide the issue whether the suit was beyond the pecuniary jurisdiction of the Court. AIR 1958 Pat 549 (Pr 3).

16. Finality of order under sub-section (ii). — (1) An order passed under sub-section (ii) can be reconsidered by the Court of appeal, reference or revision by which it was passed. AIR 1941 Mad 626 (627).

[See also AIR 1951 Pat 183 (Pr 8) = 30 Pat 859. (Decision of District Judge regarding court-fee is not binding for purposes of valuing appeal in High Court and Taxing Officer is empowered to assess the value.)]

17. Objection as to court-fee when to be taken. — (1) An objection as to insufficiency of court-fee paid or the plaint or memorandum of appeal can be raised at any time before the case is finally disposed of by the Court. AIR 1933 Pat 234 (235) = 12 Pat 694.

(2) An objection as to under-valuation will not be precluded under sub-s. (ii) from being raised before the appellate Court. AIR 1933 Pat 234 (235) = 12 Pat 694.

[See also AIR 1926 Bom 343 (344) (DB).]

(3) Where the question requires further inquiry for its decision it will not be allowed to be raised for the first time in appeal or second appeal. AIR 1925 Lah 241 (241) (DB). (Second appeal.)

[See also ('91) 13 All 580 (580) (DB).]

(4) Though in practice a party is permitted to raise an objection that proper court-fee has not been paid by his opponent, he has no legal right to raise such a plea, his function being merely to assist the Court in coming to a proper decision. AIR 1935 Mad 927 (928) ** AIR 1965 Orissa 108 (110, 111) = 31 Cut LT 61.

[See also AIR 1947 Nag 188 (191) = ILR (1946) Nag 991.]

(5) Where the question of deficiency in court-fee is raised by the Chief Inspector of Stamps in the trial Court but the Court holds that the court-fee paid is sufficient and the Chief Inspector of Stamps does not file a revision against the decision under Section 6-B (U. P.

Section 12 — Note 17 (contd.)

Amendment) he would be debarred from raising the question again in the Court of appeal, reference or revision. But if that Court suo motu or otherwise, finds that question of court-fee has been wrongly decided to the detriment of revenue it can consider the question afresh. AIR 1949 All 324 (Pr 3) = ILR (1949) All 710 (DB).

(6) Where an appeal is against a decree which does not contain direction ordering plaintiff to make good deficiency in court-fee, omission to include in memorandum of appeal ground expressly challenging finding on question of court-fee is immaterial. AIR 1930 All 443 (444) = 52 All 56.

(7) Suit for possession — Through his mistake in calculation 'plaintiff paying less court-fee 'but making good deficiency as soon as mistake was discovered, though after limitation— Suit decreed — In appeal defendant contending that suit was barred by limitation as deficit court-fee was paid after limitation — **Held,** plea should have been raised in the Court of first instance and Court must be deemed to have decided question adversely to defendant. ('97) 19 All 165 (168) (DB).

(8) Plaintiff decree-holder (a deity) allowed to sue as pauper — Maintainability of execution questioned on ground of non-payment of Court-fee — Question of payment of Court-fee is primarily between Government and person concerned — Such a question is not open to judgment-debtor. 1968 All LJ 17 (DB).

(9) Suit treated as for injunction — Question of court-fee decided on its basis — No objection taken in lower Court — Objection cannot be taken in revision. AIR 1959 Mys 167 (167) = 36 Mys LJ 422.

18. Estoppel on question of court-fees. — (1) A party who acquiesces in an erroneous decision of the Court on the question of court-fees is not precluded by his conduct from contesting that decision subsequently if, on reflection, he finds that he has acted in injudicious manner in acquiescing in that erroneous decision. AIR 1924 Nag 105 (107). (Suit for partition brought on a stamp of Rs. 10 — Acting on allegations in defence Court holding it to be a suit for ejectment and calling upon plaintiff to pay ad valorem court-fee — Plaintiff thereupon applying for permission to sue in forma pauperis — Permission refused — In appeal by plaintiff appellate Court holding that suit was for partition and court-fee of Rs. 10 was sufficient.) ** ('11) 38 Cal 681 (686) (DB).

(2) The mere fact that defendant does not raise objection in the trial Court does not create any estoppel against him and preclude him from contending in appeal that the court-fee paid by the plaintiff was unnecessarily high. AIR 1927 All 308 (308) = 49 All 398.

(3) Where the court-fee on the plaint is raised on the contention of the defendant himself in the trial Court, the defendant in appeal by him cannot be allowed to reduce the court-fee on the memorandum of appeal because it suits his own purpose to do so. AIR 1933 Nag 362 (364).

(4) Where on the objection of the defendant as to insufficiency of court-fee on the plaint an issue is framed by the trial Court and is decided in plaintiff's favour and the defendant, accepting the decision of the trial Court, pays the same court-fee on his memorandum of appeal in the lower appellate Court without impeaching the correctness of the finding of the trial Court, he cannot raise the objection again in the second appeal by the plaintiff. AIR 1917 Lah 386 (387) (DB).

(5) Where objection as to insufficiency of court-fee on plaint is raised by the defendant in his written statement but no issue is directed to the question and the defendant in his appeal pays the same court-fee on the memorandum of appeal without raising any objection in the appeal, he cannot raise the question again in the lower Court after the appellate Court remands the case for re-trial ('07) 6 Cal LJ 651 (658) (DB).

(6) Where objection was raised for the first time in second appeal, that in suit for ejectment of tenant stamped under Section 7 (xi) (cc), plaintiff should not have been granted a decree on basis of title it was held that in the circumstances of the case the question could not be reopened. AIR 1927 Nag 321 (322).

19. Admission regarding court-fees. — (1) An admission by a party on a question of computation of court-fee is not conclusive against him. AIR 1928 Cal 55 (56) (DB).

(2) An erroneous admission by the counsel of an appellant that the appeal was understamped does not bind him. AIR 1929 Lah 879 (880) (DB).

20. Compromise on question of court-fee. — (1) There cannot be any question of compromise between the parties and the Court on the subject of court-fee. AIR 1933 Lah 905 (908) = 14 Lah 558 (DB). (Obiter.)

21. Government's right to be heard as regards court-fees payable. — (1) The question of court-fee is important from the point of view of Government as it concerns the revenue. AIR 1931 All 659 (659) (DB).

(2) Government has no right to be heard before an order is made as regards the proper court-fee payable. AIR 1935 Mad 927 (928) ** AIR 1956 Sau 93 (94) (DB).

13. **Refund of fee paid on memorandum of appeal.**—If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the *Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in †Section 351 of the same Code, for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal.

Provided that if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as

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Section 12 — Note 21 (contd.)

(3) Court, if it thinks proper, may give the Government pleader an opportunity to be heard in a particular case. See ('10) 12 Cal LJ 211 (213) (DB).

[See also AIR 1956 Sau 93 (94) (DB). (The fact that the trial Court had issued a notice to the Government pleader and heard him before making the order does not alter the position.)]

SECTION 13 — SYNOPSIS

1. **Scope.**
2. **Inherent power to refund court-fees.**
3. **Remand under inherent power — Refund of court-fees.**
4. **Remand under O. 41, R. 23, Civil Procedure Code — Refund of court-fees.**
5. **Partial remand — Proportionate refund of court-fee.**
6. **Return of plaint for presentation to proper Court.**
7. **Rejection of plaint or appeal for deficiency of court-fee — Power to refund court-fee already paid.**
8. **Withdrawal of suit or appeal.**
9. **Refund of court-fees in High Court.**
10. **Excess court-fees paid in lower Court — Credit in appellate Court**
11. **U. P. Amendment.**
12. **Setting aside of execution sale — Refund of poundage-fee.**
13. **Court-fee on application for refund.**
14. **Loss of certificate under section.**
15. **Use of wrong stamps.**

1. Scope. — (1) Appellate Court under this section is required to issue certificate authorising appellant to receive back from revenue authorities court-fee paid on memorandum of appeal. AIR 1935 Bom 69 (70) (DB) ** AIR 1934 Lah 941 (942) ** AIR 1929 Lah 145 (146) ** ('13) 21 Ind Cas 866 (867) (DB) (Cal).

(2) High Court cannot order refund of court-fees paid in lower appellate Court. AIR 1938 Mad 479 (482) (DB). (Remand in Letters Patent Appeal — No certificate for refund of court-fee paid on memorandum of appeal in second appeal or first appeal can be granted.) ** AIR 1934 All 106 (107) = 56 All 526 (SB).

(3) Section does not authorise refunding of court-fees paid on memorandum of cross-objections. ('98) 1898 Bom PJ 72 (DB).

(4) An appellant does not become entitled to refund of excess court-fee amount paid by him merely because the High Court out of indulgence allows him to convert the second appeal into revision application in a case where the second appeal did not lie. When after an objection as to the maintainability of the second appeal is allowed to be raised and to be argued and it is finally held that it did not lie, the court-fee paid on it serves its purpose and cannot be refunded. AIR 1957 All 734 (737).

(5) In execution, decree-holder praying for attachment of movables and paying custody fees — Decree-holder not proceeding with execution case and praying for refund of amount — Fee could be refunded. AIR 1937 Cal 86 (88) = ILR (1937) 1 Cal 624 (DB).

(6) Order for adding court-fees on appeal to costs payable by respondent is not contemplated by this section. ('12) 15 Cal LJ 658 (660) (DB).

2. Inherent power to refund court-fees. — (1) Excess court-fee paid by mistake or otherwise — Courts have inherent power, ex debito justitiae, to order refund of such court-fees. AIR 1943 Bom 50 (52) = ILR (1943) Bom 25 (DB) ** AIR 1958 Punj 38 (42) = ILR (1958) Punj 104 (FB). (Power does not extend to fees which have been paid or collected in accordance with Court-fees Act.) ** AIR 1957 Madh B 160 (160, 161) ** AIR 1957 Madh B 136 (137) ** 1957-1 Andh WR 167 (168). (Where a writ petition is filed on insufficient court-fee, the court-fee cannot be refunded under the inherent powers when it is not a case of payment of court-fee under mistake or by a wrong order of the Court. But a certificate can be granted to the petitioner that the petition was not numbered or heard and the court-fee stamps had been defaced by the office in the usual routine so that the petitioner may apply to Collector for refund of the same.) ** AIR 1956 Nag 281 (285) = ILR (1956) Nag 296 (DB) ** ('53) 6 Sau LR 170 (172). (Where the order has not been impugned nor had it been set aside by higher authorities, it is not open to consider the correctness or otherwise of that order.) ** AIR 1951 Cal 256 (Pr 4) =

would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

[Cf. Bom. Act 36 of 1959, Section 15; Jammu and Kashmir Act 7 of 1977, S. 13; Andh. Pra. Act 7 of 1956, Ss. 63, 64; Hima. Pra. Act 8 of 1968, Section 13; Ker. Act 10 of 1967, Section 66; Mad. Act 14 of 1955, Section 67; Mys. Act 16 of 1958, Sections 63, 64; Rajasthan Act 23 of 1961, Ss. 63, 64.]

[°] See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

[†] This reference should now be read as applying to the corresponding provision of Act 5 of 1908, i.e. Order 41, Rule 23 of the First Schedule—See Section 8 of the General Clauses Act, 1897

STATE AMENDMENTS

Goa, Daman and Diu:

For Section 13, substitute the following, namely:—

"13. **Refund in cases of remand.**—(1) Where a plaint or memorandum of appeal which has been rejected by the lower Court is ordered to be received, or where a suit is remanded in appeal for a fresh decision by the lower Court, the Court making the order or remanding the appeal shall, where the whole decree is reversed and the suit is remanded, and may in other cases direct the refund to the appellant of the full amount of fee paid on the memorandum of appeal, and, if on second appeal the case is remanded to the trial Court, also on the memorandum of appeal in the first appellate Court.

Section 13 — Note 2 (contd.)
ILR (1955) 2 Cal 158 (DB) ** AIR 1954 Pepsu 49 (Pr 6) = ILR (1953) Patiala 343 (DB). (Section 151 of the Code of Civil Procedure enables a High Court to order refund of the court-fees paid in excess erroneously under its own order or under the orders of Courts subordinate to it.) ** AIR 1953 Bom 436 (Pr 4) = ILR (1954) Bom 165 (DB) ** AIR 1951 All 205 (Pr 33) = ILR (1952) 2 All 467 (DB). (No refund if payment is made voluntarily under no mistake or compulsion.) ** AIR 1950 Bom 4 (Pr 5) (DB). (Excess court-fee paid by appellant due to wrong and mistaken view prevalent in Court.) ** AIR 1942 Cal 539 (542) = ILR (1942) 2 Cal 253 ** AIR 1940 Mad 208 (209) ** AIR 1936 Cal 347 (348) (DB) ** AIR 1936 Rang 208 (210) = 14 Rang 173 (FB) ** AIR 1935 All 455 (456) ** AIR 1933 Lah 351 (351) (DB) ** AIR 1932 Mad 438 (439) = 55 Mad 641 (DB) ** AIR 1930 All 471 (471) = 52 All 546 (DB) ** AIR 1928 Pat 35 (36) = 6 Pat 599 (DB) ** (1928) 107 Ind Cas 825 (825) (DB) (Pat) ** AIR 1927 Sind 192 (192) ** AIR 1925 Oudh 39 (42) (DB) ** AIR 1968 Delhi 249 (251) (DB). **(Where a counse erroneously thought that a remand order was equivalent to a decree and on this impression paid Court-fee very much in excess of the amount prescribed treating the appeal to be from a decree, the impression was due to a bona fide mistake, and refund of the excess of Court-fee paid was ordered.) ** 1959 Raj LW 217.**

[See AIR 1937 Cal 86 (88) = ILR (1937) 1 Cal 624 (DB).]

[See also ILR (1954) Cut 450 (459). (**Held** that as both the parties were misled by the language of certain Press Note they were directed to bear their own costs and further the court-fee paid by the defendant-appellant on his memorandum of appeal was directed to be refunded to him.)]

[But see AIR 1920 All 54 (55) (DB).]

(2) No question of excess court-fee having been paid — Court has inherent power to order refund if necessary for ends of justice. AIR 1936 Lah 301 (304) ** AIR 1954 Cal 256 (Pr 8) = ILR (1955) 2 Cal 158 (DB). (Refund of court-fees may in a proper case be ordered under Section 151 of the Code of Civil Procedure also in other cases, for instance, where the party failed for some justifiable cause to pay deficit court-fees. But where there is no such justifiable cause and the Court is not satisfied that the circumstances justly call for the exercise of the inherent powers in the petitioners' favour, the Court may refuse the prayer for refund of court-fees on a memorandum of appeal on the ground that the appellants could not secure adequate funds to pay the deficit court-fee.) ** AIR 1951 Bom 130 (Pr 5) = ILR (1951) Bom 648. (Return of plaint under Order 7, Rule 10 — Court has inherent power to order refund.) ** AIR 1949 Mad 895 (Pr 2). (Court can order refund of court-fee only (1) where the Court-fees Act applies; (2) where there is an excess payment by mistake or (3) where on account of the mistake of a Court a party has been compelled to pay court-fees either wholly or in part.) ** AIR 1934 Cal 615 (616) (DB) ** AIR 1933 Oudh 170 (170) = 7 Luck 588 (DB) ** AIR 1946 Oudh 9 (10) (DB) ** AIR 1961 Guj 31 (32) = (1960) 1 Guj LR 193. (Appeal numbered and registered but ultimately turned to

(2) Where an appeal is remanded in second appeal for a fresh decision by the lower appellate Court, the Judicial Commissioner's Court constituted under the Goa, Daman and Diu (Judicial Commissioner's Court) Regulation, 1963, when remanding the appeal may direct the refund to the appellant of the full amount of fee paid on the memorandum of second appeal.

(3) Notwithstanding anything contained in sub-sections (1) and (2), if the order of remand does not cover the whole of the subject-matter of the suit, the refund shall not extend to more than so much of the fee as would have been originally payable on that part of the subject-matter in respect of which the suit has been remanded:

Provided that no refund shall be ordered if the remand was occasioned by the fault of the person who would otherwise be entitled to a refund."—Goa Act 5 of 1966, Section 2 (15-6-1966).

Manipur and Tripura:

In application to the Union Territories of Manipur and Tripura, in Sec. 13, for the words and figures "on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal on any of the grounds mentioned in Section 351 of the same Code", substitute the words "on any of the grounds mentioned in the Code of Civil Procedure, 1908, is ordered to be received, or if a suit is remanded in appeal under Order 41, Rule 23 of the First Schedule to that Code."—See G.S.Rs. 1119, 1120, Gaz. of Ind., 1-7-1963, Pt. II, Sec. 3(i), pp. 501 and 531 (w.e.f. 15-7-1963).

Section 13 — Note 2 (contd.)

be unnecessary — Appeal withdrawn before admission — Refund of Court-fee cannot be ordered under Section 151, C. P. C. as the Court has no power under S. 151 C. P. C. to circumvent the provisions of the Court-fees Act.)

[See also Note 3.]

[But see AIR 1958 Punj 38 (42) = ILR (1958) Punj 104 (FB) ** AIR 1951 All 205 (Pr 33) = ILR (1952) 2 All 467 (DB). (Where the court-fee is paid voluntarily, without any compulsion and there is no mistake in computation or any overpayment, the party who has asked for a relief which he was not bound under the law to ask and has paid court-fee thereon, cannot invoke the inherent power of the Court to refund the court-fee when he later on gets that relief deleted.) ** ('51) 55 Cal WN 417 (421) (DB). (The real test is whether payment of court-fees was necessary for the initiation of the proceedings irrespective of the fact whether the said proceedings succeeded or not — Application under Section 5, Limitation Act, dismissed — Court-fee paid on memo. of appeal cannot be refunded.) ** AIR 1940 Mad 451 (452) (DB) ** AIR 1937 All 505 (506) (DB) ** AIR 1936 Rang 208 (210) = 14 Rang 173 (FB) ** AIR 1935 Cal 707 (709) (DB) ** AIR 1935 Pesh 8 (10) (DB) ** AIR 1934 Mad 566 (566) = 57 Mad 1028 (DB) ** AIR 1928 Pat 35 (36) = 6 Pat 599 (DB) ** ('14) 7 Low Bur Rul 90 (92) (DB).]

(3) Where the applicant for refund has not been acting in good faith he will not be entitled to refund under the Court's inherent power. AIR 1946 Oudh 9 (10) (DB) ** ('51) 55 Cal WN 417 (421) (DB).

(4) Where the application for refund is made beyond the time fixed by standing orders, refund of court-fees will not be ordered under inherent powers. AIR 1949 Mad 895 (Pr 3).

(5) Inherent powers cannot be invoked to circumvent the law. If the Legislature has cast a particular obligation upon a party, the Court cannot exonerate him under its inherent powers. Thus, it is a legal obligation upon a party to pay court-fees upon the memorandum of appeal. The fact that the appeal was subsequently compromised outside Court and was withdrawn before it was heard by the Court, cannot excuse the appellant from paying the court-fee. Court cannot in such a case order refund of court-fees under its inherent powers. AIR 1953 Bom 73 (Pr 2) = ILR (1953) Bom 170 (DB). (In order to encourage the litigants to reduce litigation by not indulging in unnecessary litigation, desirability of amending the law by making provision for the return of the court-fees, as an inducement for withdrawing cases and compromising them outside Court, pointed out.) ** AIR 1950 Mad 629 (Prs 3, 4). (No refund certificate where appeal was withdrawn before being numbered will be granted — But certificate that appeal was withdrawn before being numbered for being presented to Government for refund will be granted.) ** AIR 1960 Raj 170 (170, 171) = ILR (1959) 9, Raj 1210. (AIR 1917 All 314, Followed.)

(6) Where a memorandum of appeal was not properly stamped and was returned for payment of deficit court-fee

Section 13 — Note 2 (contd.)

but the appellant did not re-present it as he found no necessity for it and the appeal was not registered or taken on file it was held that refund could not be ordered but certificate might be granted that the appeal was not numbered or heard and that the memorandum of appeal which was directed to be returned to the party was stamped with court-fee, leaving it to the appellant to apply to the revenue authorities for an ex gratia refund as in the case of spoilt stamp papers. 1958-1 Mad LJ 183 (183, 184).

(7) Where a litigant has paid the court-fees for which, in law, he was liable, but because of certain circumstances feels that equitable considerations require that he should not be asked to pay the court-fees, he cannot be granted refund. Thus, where the appeal is registered and is admitted for hearing of parties and after hearing the parties appeal is dismissed on the question of limitation, the application for refund of court-fees paid on the memorandum of appeal is not tenable. AIR 1953 Nag 330 (Prs 5, 6) = ILR (1953) Nag 859.

(8) The Court-fee paid on the counter-claim can be said to have been used up and exhausted only if there has been an adjudication as to the truth or maintainability of the counter-claim.

Where all that the Court held in its judgment while dismissing the suit, was that the counter-claim could not be agitated in the suit but that it must be done by a separate suit, there is no disposal of the counter-claim on the merits. The Court-fee paid on the counter-claim has not been exhausted and can be validly used in the second suit instituted on the counter-claim in the proper Court. AIR 1961 Tripura 22 (22, 23).

(9) In the undermentioned case when a pre-emption appeal was filed it was competent. But when the appeal was taken up for hearing on 16th October 1952 the U. P. Zamindari Abolition and Land Reforms Act came into force and by virtue of Section 338 (2) of the Act the appeal stood dismissed. It was held that the consequence which flowed from the dismissal of the appeal was not the result of any act of the Court or the appellants. Hence the prayer of the appellants for the refund of the court-fees could not be granted under any of the provisions of the Court-fees Act, nor could it be granted ex debito justitiae. AIR 1953 All 184 (Prs 13, 14) (DB).

(10) The plaintiff asked for a declaration that the order of dismissal from service was wrongful, illegal, void and inoperative and that he still continued to be a member of the Civil Service entitled to full pay with all increments as they fell due. In the alternative he prayed for a declaration that the order of dismissal was wrongful and that a decree to the extent of Rs. 1,20,000 with interest by way of damages may be passed in his favour. He paid the requisite court-fee on the valuation of Rs. 1,20,000. This alternative claim was deleted from the plaint as a result of an amendment, having regard to a subsequent decision of the Privy Council which held that a person illegally dismissed from Government service could only get a declaration that the order was inoperative and that he still continued to be a member of the service. It was held by their Lordships of the Supreme Court that the decision of the Privy Council clarifying the position could not be a ground for refund of court-fee when at the time it was paid it was in accordance with the law as then understood. **AIR 1955 SC 600 (Prs 3, 8) = 1955-2 SCR 391 = ILR (1956) 1 All 131.**

(11) In the case of a suit transferred to the High Court under Cl. (13) of the Letters Patent (Cal) the court-fee paid in the original Court at the time of the institution of the suit is the fee properly payable under the Court-fees Act. The case is not one of excess payment, either at the time of the original institution or at any subsequent stage of the suit and consequently there can be no question of exercising the Court's inherent power in order to relieve the plaintiff from any overpayment. AIR 1955 Cal 258 (Prs 8, 9) (DB) ** AIR 1955 Cal 52 (Prs 12, 13).

(12) Although in a fit case the High Court can order refund of court-fee under Section 151, the fact that an applicant for a succession certificate had included an item unnecessarily and paid court-fee thereon because of a bona fide error cannot warrant the exercise of the inherent powers because it was clearly his duty to have made proper enquiries before putting in the application. AIR 1955 Mad 681 (Prs 3, 5, 6) = ILR (1955) Mad 325. (But a certificate can be issued, if one is necessary, as to the exact circumstances under which the relief asked for originally, has turned out to be unnecessary, so that the petitioner may apply to the Government for a refund ex gratia.)

(13) Where the plaintiff pays court-fee on a higher valuation, not on account of any mistakes on his part or on the part of the Court, but deliberately for the sole purpose of inflating the valuation of the suit so that final decree proceedings should be before the District Judge, the refund cannot be granted. AIR 1957 Madh B 136 (137).

(14) Where the appellate Court remands a case for fresh trial and the order of remand does not fall under Order 41, Rule 23, the Court has inherent power for the ends of justice to order a refund of court-fee, although this section does not apply to such a case. AIR 1952 Kutch 80 (Prs 5 to 8).

Section 13 — Note 2 (contd.)

(Preliminary decree set aside as being unnecessary and appeal against it thus becoming infructuous — Remand of case for fresh trial — Refund of court-fee paid on memorandum of appeal can be ordered.) ** AIR 1954 Kutch 9 (Pr 5). (Where a Court by passing a preliminary decree, which is either infructuous or unwarranted by the provisions of law, compels a litigant to prefer an appeal the apparent consequence of which is setting aside of the preliminary decree, it is evident that the litigant is compelled to appeal and to pay court-fees on its memo due to mistake of the Court. In such a case, the fact that the appellant was liable under law to pay the court-fees he paid, cannot be allowed to stand in the way of exercise of inherent powers on the ground that inherent power, though exercised to see that ends of justice are not defeated, all the same resulted in circumvention of the provisions of law.) ** ('49) 1 Madh BLR 461 (464, 465) (DB).

(15) In the absence of express statutory provisions, certificate issued under this section is only of recommendatory force and revenue authorities are not bound to grant refund. AIR 1936 Rang 352 (353) ** AIR 1934 Mad 84 (84) = 57 Mad 542 ** AIR 1933 Lah 351 (351) (DB) ** AIR 1932 Mad 438 (439) = 55 Mad 641 (DB).

[But see AIR 1955 Cal 258 (Pr 14) (DB) ** AIR 1936 Rang 208 (211) = 14 Rang 173 (FB) ** AIR 1935 Cal 707 (709) (DB).]

(16) Certificate for refund of court-fee can be granted (1) where the refund is by virtue of an application under the Court-fees Act; (2) where Court-fee has been paid by mistake by the party; and (3) where the Court has compelled the party to pay in excess of the Court-fee already paid. If the case does not fall in any of the above categories the Court cannot issue certificate of refund even in exercise of powers under S. 151, C. P. C. AIR 1960 Andh Pra 34 (35) = (1959) 1 Andh WR 389 (DB).

(17) The Allahabad High Court has held that in Uttar Pradesh a Court has no inherent power to grant a certificate for refund of court-fees and if a Court grants a certificate under Section 151, Civil P C. the Collector before whom it is produced is not bound to honour it. AIR 1957 All 734 (736) (DB).

(17-A) Pauper suit — Defendant ordered by trial Court to pay court-fees — On appeal order reversed and plaintiff ordered to pay court-fee — Defendant claiming interest from plaintiff — Court has discretion under Civil P C., S. 151 to award interest. AIR 1937 Mad 178 (179) (DB).

(18) Refund of Court-fee — Inherent power — Appeal filed with insufficient Court-fee taken on file — Deficit Court-fee not paid as directed — Subsequent application for leave to appeal in forma pauperis rejected — Appellant intimating his unwillingness to prosecute appeal on applying for refund of Court-fee — **Held** under the circumstances the application for refund was not maintainable. AIR 1961 Orissa 89 (90, 91) = 26 Cut LT 274 (DB).

(19) Where an application for refund of court-fees having been rejected by the Court, the plaintiff takes no steps to challenge the order by appeal or revision, he is not entitled to make another application for the same purpose. AIR 1957 Madh B 136 (138).

(20) Refund of Court-fee — Inherent power — Extent of — Apart from provisions of Court-fees Act — Court has limited inherent power of refund — Case not falling under Act or where Court cannot exercise powers under Section 151, C. P. C. — Party can apply for refund to Government. AIR 1966 Mad 423 (424) = (1966) 1 Mad LJ 432. (Suit abating on account of amendment of Madras Act 11 of 1964 — Party can apply to Government for refund.)

(21) Where Court-fee has been paid for entertaining in Court the document filed the Court can order refund only with reference to the provisions of Sections 13, 14 and 15 of the Court-fees Act and its jurisdiction under Section 151, C. P. C. cannot be invoked. AIR 1961 Pat 390 (393) = ILR 39 Pat 550 (FB).

3. Remand under inherent power — Refund of court-fees. — (1) Court has no inherent power to order refund of court-fees paid on memorandum of appeal where remand order is not based on any of the grounds mentioned under Order 41, Rule 23. AIR 1937 Nag 268 (269) = ILR (1937) Nag 519 ** AIR 1936 Rang 208 (210) = 14 Rang 173 (FB). (**Overruling** AIR 1926 Rang 129 = 4 Rang 66.) ** ILR (1954) 4 Raj 727 (729) ** AIR 1953 Bom 436 (Pr 4) = ILR (1954) Bom 165 (DB) ** AIR 1951 Him Pra 73 (Pr 7) ** AIR 1935 Pesh 8 (10) ** AIR 1933 Pesh 101 (104) (DB) ** AIR 1927 Lah 886 (886) ** AIR 1916 Nag 17 (18) = 12 Nag LR 126.

[But see AIR 1956 Punj 215 (217) (DB) ** AIR 1954 Kutch 9 (Pr 5) ** AIR 1952 Kutch 80 (Prs 5 to 8) ** ('49) 1 Madh BLR 461 (464, 465) (DB) ** AIR 1939 Lah 257 (258) ** AIR 1933 Lah 135 (135) ** AIR 1937 All 284 (285).]

(2) If remand can be deemed to have been made under Order 41, Rule 23, appellant would be entitled to refund of court-fees even though Court erroneously purports to act under Section 151. AIR 1934 Mad 643 (643, 644).

4. Remand under O. 41, Rule 23, Civil Procedure Code — Refund of court-fees. —(1) Suit remanded for fresh trial under

Section 13 — Note 4 (contd.)
Order 41, Rule 23 — Appellate Court must order refund of court-fees paid on memorandum of appeal. AIR 1937 All 465 (466) ** AIR 1956 Punj 215 (217) (DB) ** ILR (1954) 4 Raj 727 (728) ** AIR 1933 Lah 47 (48) ** AIR 1915 Low Bur 70 (71) = 8 Low Bur Rul 155 ** AIR 1945 Mad 351 (352) ** AIR 1969 All 142 = 1968 All LJ 243 (FB) ** (1964) All LJ 868 ** AIR 1959 Raj 105 (105, 106) = 1959 Raj LW 32 (DB).

[See also AIR 1955 Cal 52 (Pr 16). (Transfer of suit to High Court under Clause 13 of the Letters Patent (Cal) — Suit cannot come under Section 13.)]

(2) Provision for refund of court-fees under this section is mandatory. AIR 1933 Lah 135 (135) ** AIR 1930 Lah 441 (442) ** AIR 1926 Nag 265 (267) ** AIR 1918 Bom 157 (157, 158) = 42 Bom 363 (DB). (Refusal to grant such a certificate is a material irregularity within the meaning of Section 115, Civil P. Code.)

[See also AIR 1951 Him Pra 73 (Pr 4). (From the mere fact of the absence of any order on the point, it cannot be concluded that the Court of Appeal disallowed refund of court-fee. When its mind was not directed towards this question the order of remand is no bar to the disposal of the subsequent application under Section 13 on merits.)]

(3) Order of remand not under O. 41, Rule 23 — Section will not apply. 1927 Mad WN 761 (763, 764) (DB) ** AIR 1918 Pat 260 (261) = 3 Pat L Jour 116 (DB) ** AIR 1954 Tripura 13 (Prs 8, 18, 19) ** AIR 1952 Kutch 80 (Prs 5 to 8).

(4) As to whether Court can order refund of court-fees in above cases, See Note 3.

(5) Refusal to order refund under this section indicates that remand is not under Order 41, Rule 23. AIR 1932 Lah 311 (311).

(6) This section applies to remand under Order 41, Rule 23 by High Court in second appeal. AIR 1932 All 641 (642) = 54 All 1081 ** AIR 1932 All 550 (551) = 54 All 523 (DB).

(7) Words "memorandum of appeal" in this section refer to memorandum of appeal to Court which orders remand. AIR 1934 All 106 (107) = 56 All 526 (FB).

(8) Where, upon remand under O. 41, Rule 23, no certificate for refund of court-fee paid on appeal is obtained, the appellant is not entitled to the use of the Court-fee stamp affixed on appeal, when filing the subsequent appeal. AIR 1950 Raj 2 (Pr 3).

5. Partial remand — Proportionate refund of court-fee. — (1) Order of remand covers part of subject-matter of suit — Appellant can have refund in respect of only proportionate part of court-fee. AIR 1940 Nag 349 (351) = ILR (1940) Nag 538 (DB).

(2) Decision of lower Court set aside by appellate Court regarding some of respondents and suit remanded to that extent while decision affirmed regarding others — Appellant cannot have refund of any court-fees. AIR 1917 All 314 (314, 315).

(3) Appeal directed against some of defendants in first Court allowed against all of them — Whole case remanded — Appellant can have refund of court-fees originally payable on part of subject-matter. AIR 1932 All 550 (551) = 54 All 523 (DB).

(4) Appeal directed against set of defendants exonerated by decree — Remaining defendants joined as pro forma defendants — Appeal allowed and case remanded against exonerated defendants — Appellant can have refund of court-fee paid on memorandum of appeal. AIR 1934 All 106 (107) = 56 All 526 (SB).

6. Return of plaint for presentation to proper Court. — (1) Plaint returned under Order 7, Rule 10 of Civil P. C. for presentation to proper Court — Plaintiff is not bound to pay fresh court-fee in latter Court if he has paid full court-fee on plaint at the time of its original presentation. AIR 1926 Cal 355 (356) (DB). (Plaint returned for presentation to proper Court — After return but before representation amendment in Court-fees Act increasing court-fee — Plaintiff will be credited with amount already paid as court-fee and will have to pay only deficit.) ** ('12) 35 Mad 567 (572, 573) (FB) ** ('84) 8 Bom 313 (317) (FB) ** AIR 1955 Mad 241 (Prs 4, 5, 7) ** AIR 1951 Bom 130 (Pr 5) = ILR (1951) Bom 692. (In the interest of justice an order for refund of court-fee should be made by the Court which returns the plaint under Order 7, Rule 10.) ** AIR 1959 Punj 629 (630, 631, 632) = ILR (1959) Punj 1770.

(2) Plaintiff is not bound to pay fresh court-fee if some of the reliefs originally sought are abandoned and thereby the suit is brought within the jurisdiction of the original Court and the plaint is represented to the same Court. And it makes no difference, if before the plaint is returned under Order 7, Rule 10, a petition compromising the claim in respect of some items which are subsequently struck off is filed in that Court. AIR 1955 Mad 241 (Prs 4, 5, 7).

(3) Return of plaint on ground of under-valuation of claim — Appeal — Plaintiff directed to delete prayer for recovery of building for purpose of bringing suit within jurisdiction of Munsiff Court — Presentation of plaint after deletion of prayer — Plaintiff entitled in the interest of justice to get the credit for the Court-fee already paid on former occasion where substantially the same plaint is represented — The refund of Court-fee is provided in the Court Fees Act only in cases of compromise or

Section 13 — Note 6 (contd.)
remand of the suit for fresh disposal. AIR 1969 Ker 203 (204) = 1968 Ker LT 705.

(4) Return of plaint for proper presentation to competent Court of another State — Court-fee purchased in former State can lawfully be received in Court in latter State. AIR 1969 Delhi 130 (132).

(5) Plaint represented in another Court — Such Court can take objection to insufficiency of Court-fee though former Court did not take any such objection. AIR 1931 Pat 39 (40).

7. Rejection of plaint or appeal for deficiency of court-fee— Power to refund **Court-fee already paid.** — (1) Court cannot while dismissing suit or appeal for insufficiency of court-fee or when rejecting plaint or appeal for insufficiency of court-fee, order refund of court-fee already paid. AIR 1937 All 505 (506) (DB) ** AIR 1928 Pat 29 (30) = 6 Pat 602 (DB).

[But see AIR 1923 Pat 600 (600) (DB).]

(2) Plaint rejected for non-payment of deficit court-fee — Plaintiff filing review application and tendering deficit court-fee along with it — Review application rejected — Plaintiff held entitled to refund of deficit court-fee and Court could grant certificate for refund under inherent powers though Sections 13, 14 and 15 did not apply. AIR 1942 Mad 316 (317).

(3) Plaint with insufficient court-fee returned with order to re-present it with sufficient court-fee — Plaint re-presented with sufficient court-fee, but after limitation — Delay not condoned and plaint rejected — Plaintiff held entitled to refund of court-fee under inherent powers of Court. AIR 1951 Mad 801 (Pr 3).

8. Withdrawal of suit or appeal. — (1) Court cannot order refund of court-fees in cases of withdrawal of suit or appeal. AIR 1938 Mad 67 (67) (DB) ** AIR 1958 All 766 (Pr 28) (FB). (Withdrawal of appeal before admission on account of having become infructuous — No refund can be ordered — AIR 1933 Oudh 170 (1); AIR 1925 Oudh 39 and AIR 1936 Lah 301, **Dissented from;** AIR 1937 All 284, **Overruled.)** ** AIR 1955 Punj 165 (Pr 4) (DB) ** AIR 1934 Mad 566 (567) = 57 Mad 1028 (DB).

[See also AIR 1934 All 989 (990).]

[But see AIR 1934 Cal 615 (616) (DB) ** AIR 1933 Oudh 170 (170) = 7 Luck 588 (DB).]

(2) In order to encourage the litigants to reduce litigation by not indulging in unnecessary litigation, desirability of amending the law by making provision for the return of the court-fees, as an inducement for withdrawing cases and compromising them outside Court, was pointed out in the undermentioned case. AIR 1953 Bom 73 (Pr 6) = ILR (1953) Bom 170 (DB).

9. Refund of court-fees in High Court. — (1) Court cannot direct refund of additional court-fee paid on demand by taxing officer of Court. AIR 1926 Pat 147 (148) (DB) ** 1907 Pun Re No. 39 p. 168 (170) ** AIR 1924 Pat 310 (311) = 2 Pat 919 (DB).

[See however AIR 1930 Pat 495 (496) (DB).]

(2) In the following case, it has been held that the High Court can order refund of the court-fees paid in excess erroneously under its own order under Section 151, Civil P. C. It appears there was no decision of the Taxing Officer in that case. AIR 1954 Pepsu 49 (Pr 6) = ILR (1953) Patiala 343 (DB).

(3) The refund contemplated by Section 13 is of Court fee paid on the memo of appeal in the higher Court and not what had been paid by the client in the trial Court. AIR 1966 Goa 1 (7) (FB).

10. Excess court-fees paid in lower Court — Credit in appellate Court. — (1) Excess court-fee paid in suit in lower Court — Credit for such excess may be allowed in appeal to plaintiff-appellant by Appellate Court. 1886 All WN 228 (228).

(2) The undermentioned case has also held that under Section 151, Civil P. C., the High Court can order refund of the court-fees paid in excess erroneously under the orders of the Courts subordinate to it. AIR 1954 Pepsu 49 (Pr 6) = ILR (1953) Patiala 343 (DB).

11. U. P. Amendment. — (1) Suit for declaration of ownership to property not in possession of defendant — Ad valorem Court-fee ordered to be paid and made good by plaintiff — In appeal excess Court-fee ordered to be refunded. AIR 1942 Oudh 58 (60) = 17 Luck 145 (DB).

12. Setting aside of execution sale — Refund of poundage-fee. — (1) Execution sale set aside by Court — Decree-holder cannot obtain order for refund of poundage-fee paid by him — Court may give him certificate for refund and leave it to Revenue Authorities to comply with it. AIR 1934 Mad 409 (410).

13. Court-fee on application for refund. — (1) Application for refund of court-fee under this section falls under Section 19 and no court-fee is chargeable on it. AIR 1932 All 590 (591) = 54 All 790.

14. Loss of certificate under section. — (1) Original certificate for refund lost — Duplicate should be given under inherent power. AIR 1944 Mad 56 (56) (DB).

14. Refund of fee on application for review of judgment.—Where an *application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before †such day.

[*] As to application for review of judgment, see the Code of Civil Procedure, 1908 (Act 5 of 1908), S. 114 and Order 47 of the First Schedule.

[†] See Schedule I, Arts. 4 and 5.

15. Refund where Court reverses or modifies its former decision on ground of mistake.—Where an application for a review of judgment is admitted, and where, on the rehearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorizing him to receive back from the Collector so much of the fee paid on the *[application] as exceeds the fee payable on any other application to such Court under the Second Schedule to this Act, No. 1, clause (b) or clause (d).

Section 13 (contd.)

15. Use of wrong stamps. — (1) Plaint sufficiently but incorrectly stamped — Proper stamp affixed within time allowed — Application to Court for return of stamps — Trial Court held could not return stamps but should give certificate for presenting to Collector. AIR 1934 Nag 263 (264) = 31 Nag LR 82.

(2) Decree drawn up by mistake on court-fee stamp — Non-judicial stamp can be directed to be filed under inherent power but application for refund should be made to Collector. ('10) 12 Cal L Jour 324 (327) (DB).

Section 14 — Note 1

(1) Applicability of Article 4 is not affected by the fact that delay in filing application for review of judgment on or after the 90th day is not due to laches of applicant. AIR 1935 Nag 164 (165) = 31 Nag LR 260 ** ('12) 15 Cal L Jour 505 (506) (DB) ** AIR 1951 Mad 262 (Pr 2) = ILR (1951) Mad 709 (DB).

(2) If application is presented on or after 90th day full court-fee must be paid in first instance and then only Court can consider whether refund should be ordered. ('86) 9 Mad 134 (137) (DB) ** ('82) 9 Cal LR 479 (480) (DB).

[But see AIR 1924 Cal 994 (995) (DB).]

(3) The question of refund under Section 14 can arise properly only where the full court-fee has been paid. Before that it is premature. ('55) ILR (1955) 5 Raj 765 (768).

(4) Transfer of suit to High Court under Clause 13 of the Letters Patent (Cal) — Section 14 has no application. AIR 1955 Cal 52 (Pr 16).

Section 15 — Note 1

(1) Grant of refund of court-fees under this section is obligatory on Court. See AIR 1916 Lah 350 (351) (DB) ** AIR 1958 Punj 38 (43) = ILR (1958) Punj 104 (FB).

(2) Section 15, Court-fees Act provides for grant of certificate of refund with reference to some limited grounds alone on which review application is allowed. AIR 1961 Pat 390 (392) = ILR 39 Pat 550 (FB).

(3) Where a review is allowed on grounds other than those of mistake of law and fact, refund of Court-fee paid on the review application cannot be granted by the Court either under Section 15 of Court-fees Act or Section 151, C. P. C. AIR 1961 Pat 390 (393) = ILR 39 Pat 550 (FB).

(4) The mistake of fact or law must be anterior to the date where the judgment or order sought to be reviewed is passed. AIR 1961 Pat 390 (392) = ILR 39 Pat 550 (FB).

(5) Where the petitioners, whose appeal stood dismissed for default as the deficit court-fee was not paid within the time allowed, filed an application under O. 47, Rule 1 for review and the application was ultimately allowed on the ground that there was no want of due diligence, the ground is clearly outside the purview of mistake of law or fact as contemplated by Sec. 15 of the Court-fees Act. AIR 1961 Pat 390 (392) = ILR 39 Pat 550 (FB).

(6) Where Court-fee is paid in excess by mistake and the Court is satisfied about it the excess amount is obviously not paid under any provisions of Court-fees Act the Court should, pass a formal order of refund in exercise of powers under Section 151, C. P. C. AIR 1961 Pat 390 (393) = ILR 39 Pat 550 (FB).

(7) The mere fact that an application for review is allowed is no ground for refund of the court-fee paid on the application. AIR 1961 Pat 390 (392) — ILR 39 Pat 550 (FB).

(8) Apart from provision of Act Court has limited power of refund in exercise of power under Section 151, C. P. C. — Case not falling under Act or not having circumstances entitling invocation of Section 151, C. P. C., a party can apply for refund to Government. AIR 1966 Mad

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

[°] Substituted for "plaint or memorandum of appeal" by the Court-fees Act (1870) Amendment Act (20 of 1870), S. 1.

[Cf. Bom. Act 36 of 1959, Section 17; Andh. Pra. Act 7 of 1956, Section 65; Jammu and Kashmir Act, 1977 Svt., Section 15; Ker. Act 10 of 1960, Section 68; Mys. Act 16 of 1958, Section 65; Mad. Act 14 of 1955, Section 68; Raj. Act 23 of 1961, Section 63; Hima. Pra. Act 8 of 1968, Section 15.]

16. Additional fee where respondent takes objection to unappealed part of decree. [Repealed by the Code of Civil Procedure, 1908 (5 of 1908).]

STATE AMENDMENT

Sections 16, 16-A, 16-B, 16-C.

Goa, Daman and Diu:

After Section 15 of the principal Act, insert the following sections, namely:—

"**16. Refund in cases of delay in presentation of plaint, etc.**—(1) Where a plaint or memorandum of appeal is rejected on the ground of delay in its presentation, or where the fee paid on a plaint or memorandum of appeal is deficient, and the deficiency is not made good within the time allowed by law or granted by the Court, or the delay in payment of the deficit fee is not condoned and the plaint or memorandum of appeal is consequently rejected, the Court shall direct the refund to the plaintiff or the appellant, of the fee paid on the plaint or memorandum of appeal which has been rejected.

(2) Where a memorandum of appeal is rejected on the ground that it was not presented within the time allowed by the law of limitation, one-half of the fee shall be refunded.

16-A. Refund on settlement before hearing.—Wherever by agreement of parties—

(i) any suit is dismissed as settled out of Court before any evidence has been recorded on the merits of the claim; or

(ii) any suit is compromised ending in a compromise decree before any evidence has been recorded on the merits of the claim; or

(iii) any appeal is disposed of before the commencement of hearing of such appeal,

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Section 15 — Note 1 (contd.)
423 (425) = (1966) 1 Mad LJ 432. (Suit abating on account of amendment of Madras Act 11 of 1964 — Party can apply to Government for refund.)

(9) Court-fees on petition are leviable on value of entire claim in suits and not on value of relief sought for in review proceedings. But this hardship is mitigated by the provisions of Section 15. AIR 1930 Cal 631 (632) = 57 Cal 679 (DB). (Policy of Legislature is to put clog on possible mala fide application for review.) ** ('09) 31 All 294 (300) ** ('98) 1898 All WN 212 (212).

(10) Mere fact that application for review is treated as one falling under Section 151, Civil P. C. instead of under Order 47, Rule 1 of that Code will not make this section inapplicable. AIR 1924 Cal 1054 (1055). (The powers exercisable under these provisions are not mutually exclusive.)

(11) The phrase "Error apparent on the face of record" is not limited to errors of fact but extends to errors of law as well and this finds recognition in Section 15 of the Court-fees Act. AIR 1969 Ker 186 (187) = 1969 Ker LT 15.

(12) Names of some of defendants exonerated from liability included in decree — Court can amend decree and under its inherent power can order refund of court-fees on application for review although this section does not apply. AIR 1929 Rang 158 (160) = 7 Rang 88 (DB).

(13) This section applies to applications for review in Chartered High Court. AIR 1925 Pat 392 (396) = 4 Pat 336 (FB).

(14) Delay of six months in making application for refund of court-fees does not bar grant of such refund. AIR 1932 Pat 86 (88) =10 Pat 649 (DB).

(15) See also the undermentioned case. AIR 1955 Cal 52 (Pr 16). (Transfer of

half the amount of all fees paid in respect of the claim or claims in the suit or appeal shall be ordered by the Court to be refunded to the parties by whom the same have been respectively paid.

Explanation (1).—The expression "merits of the claim" refers to all matters which arise for determination in the suit not being matters relating to the frame of the suit, misjoinder of parties and cause of action the jurisdiction of the Court to entertain or try the suit or the fee payable, but includes matters arising on pleas of res judicata, limitation and the like.

Explanation (2).—The expression "hearing of the appeal" includes the "vista" of a case filed in the appellate Court.

16-B. Refund of fee paid by mistake or inadvertence.—Any fee paid by mistake or inadvertence shall be ordered to be refunded.

16-C. Procedure for obtaining refund when a person becomes entitled to a refund of court-fees.—The Court shall grant a certificate authorising him to receive back from the Collector the amount specified therein, calculated according to the provisions of this Act."—Goa Act 5 of 1966, Section 3 (15-6-1966).

17. Multifarious suits.—Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.

Nothing in the former part of this section shall be deemed to affect the power conferred by the *Code of Civil Procedure, Section 9.

[Cf. Andh. Pra. Act 7 of 1956; Bom. Act 36 of 1959, S. 18; Him. Pra. Act 8 of 1968, S. 16; Jammu and Kashmir Act 7 of 1977 Svt., S. 17; Ker. Act 10 of 1960, S. 6; Mad. Act 14 of 1955, S. 6; Mys. Act 16 of 1958, S. 6; Raj. Act 23 of 1961, S. 6.]

[*] See now the Code of Civil Procedure, 1908 (Act 5 of 1908), O. 2, R. 6.

STATE AMENDMENTS

Andaman and Nicobar:

Same as that of West Bengal.—Reg. II of 1957, Section 12 (1-8-1957).

Bihar:

After the words "of appeal" in both places where they occur, the words "or of cross-objection" were inserted.—Bihar and Orissa Act 2 of 1922 (21-8-1922).

Madhya Pradesh:

For Section 17 the following section was substituted, viz.:—

"17. **Multifarious suits.**—(1) In any suit in which two or more separate and distinct causes of action are joined and separate and distinct reliefs are sought in respect of each, the plaint shall be chargeable with the aggregate amount of the fees with which the plaints would be chargeable under this Act if separate suits were instituted in respect of each such cause of action:

Section 15 — Note 1 (contd.)
suit to High Court under Clause 13 of the Letters Patent (Cal.) — Section 15 does not apply.)

SECTION 17 — SYNOPSIS

1. **Scope and applicability.**
2. **"Distinct subjects", meaning of.**
3. **Suit for alternative reliefs.**
4. **Suit seeking more than one relief — Court-fee.**
5. **Court-fee on appeals.**
6. **Maximum fee payable.**
7. **Suits for declaration.**
8. **Suits relating to mortgage.**
9. **Suits on several promissory notes, bonds, etc.**
10. **Suit for possession and mesne profits.**
11. **Balance due on khata, suit for.**
12. **Suit for specific performance and possession.**
13. **Suit for partition.**
14. **Value for jurisdiction.**
15. **"Distinct subjects" — Illustrative cases.**
16. **Paragraph 2.**

1. Scope and applicability.— (1) Suit comprising distinct subjects and coming under this section. — Each relief should

Provided that nothing in this sub-section shall be deemed to affect any power conferred by or under the Code of Civil Procedure, 1908, or the same Code as applied to Berar, to order separate trials.

(2) Where more reliefs than one based on the same cause of action are sought jointly in any suit, the plaint shall be chargeable with the aggregate amount of the fees with which the plaints would be chargeable under this Act if separate suits were instituted in respect of each such relief:

Provided that if a relief is sought only as ancillary to the main relief, the plaint shall be chargeable only in respect of the main relief.

(3) Where more reliefs than one based on the same cause of action are sought in the alternative in any suit, the plaint shall be chargeable with the largest of the fees with which the plaints would be chargeable under this Act if separate suits were instituted in respect of each such relief:

(4) The provisions of this section shall apply mutatis mutandis to appeals and cross-objections."—Central Provinces and Berar Act 9 of 1941 (30-4-1941).

Manipur and Tripura:

In Section 17, paragraph 2, for the words and figures "by the Code of Civil Procedure, Section 9", substitute the words "by Order II, Rule 6, of the First Schedule to the Code of Civil Procedure, 1908".—See G.S.Rs. 1119 and 1120, Gaz. of Ind., 1-7-1963, Pt. II, Sec. 3(i). Ext., pp. 501 and 531 (w.e.f. 15-7-1963).

Section 17 — Note 1 (contd.)

be valued and court-fee on each relief should be calculated separately as if suit was collection of so many different suits. AIR 1933 Mad 178 (178) (DB). (Test is what is the amount that would be payable had separate plaints been filed.) ** ('88) 12 Bom 98 (100) (DB).

(2) Provisions of this section are not controlled by those of Section 7. AIR 1922 Pat 359 (360) = 4 Pat L Jour 195 (DB). (Suit for possession and mesne profits — Section 17 does not apply.) ** ('10) 5 Low Bur Rul 94 (100) (FB).

(3) Section 6 is controlled by this section. AIR 1933 Mad 178 (179) (DB).

(4) Object of section is to prevent loss to revenue owing to separate causes of action being combined in one suit. ('10) 1910 Pun LR No. 56, p. 142 (144) = 1910 Pun Re No. 41 (DB) ** ('95) 1895 Pun Re No. 96, p. 455 (460) (DB).

(5) Section only applies to suits though it applies to plaints and memoranda of appeals in suits. AIR 1940 Oudh 243 (244) = 15 Luck 395 (DB) ** AIR 1933 Sind 343 (344) = 27 Sind LR 312. (Section 17 does not apply to applications and appeals from orders passed on applications.) ** ('96) 23 Cal 723 (729, 730) (FB).

2. "Distinct subjects", meaning of. — (1) Expression "subject" in this section has been defined in several different ways:

(a) Matter dealt with in suit. See AIR 1928 Pat 274 (276) = 7 Pat 402 ** AIR 1924 Pat 77 (80) = 2 Pat 874 (DB) ** ('77) 1 All 552 (554) (FB) ** AIR 1953 Mad 888 (Pr 7) = ILR (1953) Mad 655. (The words "distinct subjects" used in Section 17, though not defined should be interpreted to mean distinct subject-matters only.)

(b) Matter involving controversy in suit. AIR 1942 Oudh 412 (413) (DB) ** AIR 1928 Pat 274 (276) = 7 Pat 402 ** ('81) 3 All 131 (133) (DB) ** ('77) 1 All 552 (553) (FB). (Suit brought for recovery of inheritance is not one embracing distinct subjects although inheritance may consist of distinct properties.)

(c) Cause of action. AIR 1943 Pat 356 (357) = 22 Pat 275 ** ('10) 5 Low Bur Rul 94 (98, 100) (FB) ** ('80) 2 All 682 (685, 686) (FB) ** ('80) 2 All 676 (679, 680) (FB) ** AIR 1957 Andh Pra 1019 (1020) ** AIR 1944 Pat 387 (388) = 23 Pat 675 ** AIR 1945 Pat 421 (424) = 24 Pat 334 (DB). (Suit for possession of some properties sold by private sale and some in execution of mortgage decree — Section 17 does not apply — "Subject" means cause of action.)** AIR 1941 Rang 95 (96) = 1940 Rang LR 767 ** AIR 1940 Oudh 243 (244) = 15 Luck 395 (DB). (Section applies where several causes of action are joined against same defendant or defendants jointly.) ** ('36) 63 Cal 720 (722) (DB) ** AIR 1933 Lah 382 (383) ** 1930 Mad WN 758 (758). (If for purposes of C. P. C. a suit comprises one cause of action it cannot be deemed to embrace two distinct causes of action for purposes of court-fee.) ** ('04) 7 Oudh Cas 152 (157) (DB) ** ('95) 1895 Pun Re No. 96, p. 455 (458) (DB).

(d) One cause of action may embrace two or more distinct subjects. AIR

Pondicherry:

Same as that of Andaman and Nicobar—See Act 26 of 1968, S. 3 and Sch. Pt. II, (18-12-1968).

Uttar Pradesh:

For Section 17 the following section was substituted, viz.:—

"17. (1) In any suit in which two or more separate and distinct causes of action are joined, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees with which the plaints or memoranda of appeal would be chargeable under this Act if separate suits were instituted in respect of each such cause of action:

Provided that nothing in this sub-section shall be deemed to affect any power conferred by or under the Code of Civil Procedure to order separate trials.

(2) When more reliefs than one based on the same cause of action are sought in the alternative, the fee shall be paid according to the value of the relief in respect of which the largest fee is payable."—United Provinces Act 19 of 1938 (9-1-1939).

West Bengal:

For Section 17 the following section was substituted, viz.:—

"17. (1) In any suit in which two or more separate and distinct causes of action are joined and separate and distinct reliefs are sought in respect of each, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of fees with which the plaints or memoranda of appeal would be chargeable under this Act in separate suits instituted in respect of each such cause of action:

Provided that nothing in this sub-section shall be deemed to affect any power conferred by or under the Code of Civil Procedure, 1908, to order separate trials.

(2) Where more reliefs than one based on the same cause of action are sought either jointly or in the alternative, the fee shall be paid according to the value of the relief in respect of which the largest fee is payable."—Bengal Act 7 of 1935, (2-5-1935).

Section 17 — Note 2 (contd.)

1935 Cal 573 (576) = 63 Cal 163 (DB). (27 All 186 and 16 All 401, dissented; AIR 1922 Pat 359 partly dissented from.) ** AIR 1943 Pat 355 (356) ** AIR 1953 Mad 888 (Pr 7) = ILR (1953) Mad 655. ("Distinct subjects" mean distinct subject-matters which are not only distinct but can be clubbed together in a single suit.) ** AIR 1949 Pat 425 (Pr 3) = 28 Pat 299 (DB) ** AIR 1946 Mad 162 (163).

(e) Suit including more than one cause of action does not necessarily embrace two or more distinct subjects. AIR 1930 Mad 833 (834) = 54 Mad 1 (FB).

[See also AIR 1951 Mad 288 (Pr 2). (AIR 1930 Mad 833 Foll.) ** AIR 1950 Mad 155 (Pr 2). (The test whether a suit embraces distinct subjects does not depend upon the cause of action on which plaint is based, but depends upon the basis of the claim and the right under which the plaintiff claims.)]

[But see AIR 1915 Mad 912 (913, 914) = 38 Mad 829 (FB).]

(2) Words 'two or more distinct subjects' do not admit of precise definition applicable to all cases. AIR 1951 Mad 288 (Pr 2).

(3) Separate causes of action will not be test for treating claims based on them as distinct subjects. ('82) 8 Cal 593 (595) (FB).

(4) The "distinct subjects" in Sec. 17 mean distinct causes of action in respect of which separate suits should be filed but for the enabling provisions allowing them to be clubbed up in one suit and the distinctness or identity of the cause of action is the only criterion for the applicability of the section. AIR 1954 Mad 594 (Pr 36) = ILR (1954) Mad 289 (FB). (AIR 1950 Mad 155; AIR 1952 Mad 53, Not approved.)

(5) Test as to whether different suits could have been brought in respect of reliefs sought is not decisive and in spite of the fact that different suits could have been brought, subjects might not be distinct. AIR 1938 Mad 241 (242) (DB) ** AIR 1953 Hyd 156 (Pr 5) = ILR (1953) Hyd 117 (DB) ** AIR 1951 Mad 288 (Pr 2).

[See also AIR 1949 Mad 125 (127).]

(6) Suit comprising several "subjects" — Mere fact that reliefs claimed in respect of each are of same kind will not take case out of purview of this section. AIR 1935 Cal 573 (573) = 63 Cal 163 (DB) ** AIR 1946 Mad 162 (163).

Section 17 — Note 2 (contd.)

[See also AIR 1953 Mad 592 (Pr 1). (Where the guardian of the plaintiff, when he was a minor, alienated minor's properties in favour of various defendants at various times and places the cause of action as against all the defendants is not the same.)]

(7) Mere fact that several persons are and can be joined as co-plaintiffs in same suit under Order 1, R. 1 of Code does not show that suit embraces only one subject. AIR 1935 Cal 573 (574) = 63 Cal 163 (DB).

(8) Bengal Amendment:— The relief contemplated by Section 17 (2) (Bengal) must be one in respect of which court-fees are independently payable under the Act. It cannot mean consequential relief which is not per se chargeable with court-fees. Hence the clause does not apply to cases arising under Section 7 (4) (c) where a single valuation is to be put and ad valorem court-fees are to be paid on that valuation. AIR 1950 Cal 85 (Pr 15) = ILR (1950) 2 Cal 530. (('49) 53 Cal WN 340, Dissented from.)

(9) C. P. and Berar amendment. — This section is applicable mutatis mutandis to appeals and cross objections under the amendment in the Central Provinces and Berar. ('36-43) Tax Dec, (Nag) 110 (112).

(10) U. P. Amendment. — This section is inapplicable to a suit for possession and mesne profits and separate court-fee is not chargeable. AIR 1942 Oudh 412 (413) (DB).

(11) Where distinct reliefs arise out of same cause of action court-fee is payable on consolidated amount as Section 17 does not provide for such a case. AIR 1949 All 170 (172) = ILR (1949) All 852.

(12) Suit for possession— Plaint stating that compromise under which defendant had taken possession was not binding on plaintiff — No relief as to cancellation of compromise asked — Suit involved such relief and court-fee was payable also under Section 7 (iv-A) (U. P.) — S. 17 did not apply — Adjudging of the compromise as void and giving plaintiff decree for possession were not based on two causes of action nor did they amount to alternative reliefs — Plaintiff not bound to pay separate court-fees under Section 7 (iv-A) and (v) — Plaintiff asked to pay court-fee on aggregate amount of two reliefs. AIR 1949 All 641 (Prs 3 to 5) = ILR (1949) All 896.

3. Suit for alternative reliefs. — (1) Cause of action same — Fact that several reliefs are sought, cumulatively or in alternative, will not attract application of this section. AIR 1942 Mad 744 (744) ** ILR (1949) All 79 (82) (DB). (Where a suit for possession by Hindu female involves a prayer for declaration that an adoption made by her husband is invalid it is only a suit for possession and does not involve two causes of action to be separately valued for purposes of court-fees under Ss. 7 (iv) (b) (d) and 7 (v) (ii) (U. P.).) ** 1942 Nag LJ 352 (352). (Suit for specific performance of agreement to sell consideration being discharge of mortgage debt — Alternative prayer for decree on mortgage. Case is governed by proviso to Section 17 (2) as amended in C. P.) ** AIR 1938 Lah 566 (567) ** AIR 1938 Mad 241 (242) (DB) ** ('38) 40 Pun LR 33 (34) ** AIR 1930 Nag 55 (56) ** AIR 1924 Lah 494 (495) = 5 Lah 114 (DB).

[See ('91) 15 Bom 82 (83) (DB).]

[But see ('77) 1 All 552 (553, 554) (FB).]

(2) Suit including two or more distinct causes of action — Fact that reliefs in respect of different causes of action are sought not cumulatively but in alternative will not prevent applicability of section. AIR 1924 Nag 169 (171) ** AIR 1918 Nag 264 (267) ** ('08) 11 Oudh Cas 173 (174) (DB) ** ('07) 30 Mad 61 (64) (DB) ** ('07) 29 All 155 (158) (DB) ** ('95) 1895 Pun Re No. 96 p. 455 (460) (DB) ** 1960 Andh LT 192.

[But see AIR 1917 Pat 150 (150) ** ('91) 15 Bom 82 (83) (DB) ** AIR 1951 Mad 288 (Pr 2). (Where reliefs are claimed in the alternative with reference to the same sum of money against two defendants, the suit cannot be said to embrace two or more distinct subjects, even if the causes of action against the two defendants are not the same.)]

(3) Cause of action same — Reliefs claimed in alternative —, Court-fee payable in respect of relief carrying highest court-fee will be court-fee for suit. AIR 1939 Mad 586 (589) (DB) ** AIR 1955 Punj 22 (Pr 26) = ILR (1955) Punj 122 (DB) ** AIR 1953 Orissa 89 (90) (Prs 7, 8) ** AIR 1949 Mad 448 (449). (Suit for specific performance of contract with alternative prayer for refund of advance and for damages — Court-fee payable on highest relief.) ** ('38) 40 Pun LR 33 (34) ** AIR 1932 Mad 158 (160) = 55 Mad 336 ** AIR 1926 Lah 467 (468) (DB) ** AIR 1925 Pat 193 (194) (DB) ** AIR 1922 Oudh 82 (84) = 25 Oudh Cas 30 (DB) ** AIR 1917 Pat 150 (150) ** ('13) 16 Oudh Cas 354 (357) ** ('91) 15 Bom 82 (83) (DB) ** ('82) 6 Bom 302 (303) ** AIR 1965 Orissa 108 (110, 111) = ('65) 31 Cut LT 61. (AIR 1925 Pat 193, Rel. on.) ** 1961 Jab LJ 1106 (1108) ** 1960 Andh LT 192.

4. Suit seeking more than one relief — Court-fee. — (1) Under this section and in other cases court-fee for suit is to be calculated according to reliefs sought therein. AIR 1936 All 874 (875) (DB) ** AIR 1958 Bom 307 (309) = ILR (1958) Bom 198. (Suit for dissolution of partnership and accounts, declaration that certain transactions were not binding on

Section 17 — Note 4 (contd.)

plaintiff's share and for partition and possession of his share — Suit falls under Section 17 as it claims distinct reliefs.) ** AIR 1953 Cal 583 (Pr 5) (DB) ** AIR 1949 All 641 (Pr 5) = ILR (1949) All 896 (DB) ** AIR 1945 All 290 (290) = ILR (1945) All 516 ** AIR 1935 Mad 346 (347) ** AIR 1935 Mad 313 (314).

(2) Court-fee for substantive relief would cover for ancillary relief. AIR 1936 All 874 (875) (DB) ** AIR 1948 Nag 219 (222) = ILR (1947) Nag 902. (This view accords with proviso to Section 17 (2) as amended by C. P. and Berar Act 1 of 1941.) ** AIR 1936 Bom 353 (356) (DB) ** AIR 1933 Mad 93 (93, 94) ** AIR 1931 Mad 479 (479) ** AIR 1929 Nag 1 (2) = 24 Nag LR 197 (DB). (Suit for redemption — Surplus profits claimed — Court-fee is only payable under Section 7 (ix).) ** AIR 1920 Lah 72 (72) ** ('08) 35 Cal 202 (208) = 35 Ind App 22 (PC) ** ('85) 9 Bom 20 (22) (DB).

[See however AIR 1956 Nag 175 (Pr 17).]

(3) The word 'relief' in this section should not be construed to mean 'kind of relief' and therefore when the plaint claims the same kind of relief e.g., money claim for breaches of different terms in the same contract they are separate reliefs founded on different causes of action and have to be valued separately for purposes of court-fees. AIR 1950 Nag 189 (Pr 11) = ILR (1951) Nag 463.

5. Court-fee on appeals. — (1) Court-fee payable in appeal embracing two or more distinct subjects would be total of fees calculated with respect to each 'subjects' separately. AIR 1935 Lah 605 (606) (DB) ** AIR 1918 All 232 (233) = 40 All 353 ** AIR 1944 Pat 387 (388) = 23 Pat 675 (DB).

[See AIR 1935 Pesh 8 (10) (DB).]

[See also ('90) 12 All 129 (163) (FB).]

(2) Separate appeals filed by different parties against same decree — Separate court-fees are payable on each appeal. AIR 1919 Lah 450 (454) = 1918 Pun Re No. 91 (DB).

[See also AIR 1921 All 395 (396) = 43 All 56.]

(3) No court-fee is ordinarily payable in respect of costs awarded by lower Court when appeal is filed against decree. AIR 1927 Sind 251 (252) = 23 Sind LR 277 (DB) ** AIR 1921 Cal 55 (57) ** AIR 1944 Pat 387 (387) = 23 Pat 675 (DB).

(4) Appeal making award of costs distinct matter of contest and specifically directed against order as to costs — Court-fee must be paid in respect of such costs. AIR 1940 Oudh 182 (183). = 15 Luck. 392 (DB). (Amount of costs must be included in amount on which court-fee is to be calculated.) ** 1957-1 Andh WR 257 (258) ** AIR 1934 Lah 739 (739) ** AIR 1918 Pat 210 (211) = 3 Pat LJ 443 ** ('03) 6 Oudh Cas 135 (139) ** ('96) 19 Mad 350 (354) (DB) ** ('92) 1892 Bom PJ 52 (52, 53).

(5) Court has inherent power to consolidate appeals in proper cases. AIR 1918 Mad 368 (369) ** ('13) 40 Cal 955 (959, 960) (DB) ** ('06) 33 Cal 927 (932) (DB).

(6) Appeals consolidated — Each appeal must be assessed with separate court-fee. AIR 1930 Mad 376 (379) = 53 Mad 248 (FB). (**Overruling** AIR 1928 Mad 463.) ** AIR 1929 Cal 135 (136) (DB) ** ('02) 29 Cal 140 (147) (DB).

(7) The objection that a relief is not valued in the appeal and therefore cannot be allowed is one more of form than of substance when the court-fee paid is sufficient to cover the other relief which would have been claimed as the alternative relief carrying higher court-fee. 1950 Ker LT 19 (21) (DB).

(8) In the absence of any reference to a memorandum of appeal in Article 2 (Madras) of Sch. I, Article 1 of that schedule is to be applied in the case of an appeal arising out of a suit wherein the plaintiff has claimed in respect of each of the four promissory notes less than Rs. 500, even when he has paid at the time of filing his suit court-fee on the amount of each of the promissory notes under Article 2 (Madras) of Sch. I of the Court-fees Act read with this section. AIR 1956 Andhra 112 (Pr 4) = ILR (1955) Andhra 630.

(9) Where a single suit is brought in respect of two mortgages and a single consolidated amount is mentioned in the decree as payable by the defendant mortgagor, the appeal by the mortgagor should be charged with court-fee under this section as the decree is passed in respect of two amounts due under the two mortgages. AIR 1957 Andh Pra 1019 (1021).

6. Maximum fee payable. — (1) Rule in this section must be held subject to proviso at the end of Article 1, Sch. I of the Act. ('81) 3 All 108 (109, 110, 111, 112) (FB) ** ('01) 29 Cal 140 (147, 148) (DB) ** AIR 1950 Nag 189 (Prs 11, 19) = ILR (1951) Nag 463.

7. Suits for declaration. — (1) Several declarations sought in suit each on basis of distinct cause of action — Separate court-fee must be paid in respect of each declaration sought. AIR 1942 Oudh 58 (60) = 17 Luck 145 (DB) ** AIR 1940 Pat 158 (159) = 18 Pat 756 (DB) ** ('95) 18 Mad 459 (460) (DB) ** AIR 1935 Mad 419 (420) = 58 Mad 821 ** AIR 1935 Sind 129 (131) ** AIR 1923 All 306 (307) ** AIR 1919 Pat 479 (480) = 4 Pat LJ 297 ** AIR 1916 Lah 21 (21) = 1916 Pun Re No. 87 (DB).

Section 17 — Note 7 (contd.)

(2) Declarations based on same cause of action — This section will not apply. AIR 1933 Lah 382 (383) ** AIR 1930 Cal 686 (687) = 58 Cal 281.

(3) A suit for declaration that the defendant is the benamidar and that the plaintiff is the real owner of several properties even though based on different documents of title is a suit for one declaration only and therefore this section cannot apply. AIR 1951 Cal 509 (Pr 3) (DB).

8. Suits relating to mortgage. — (1) Suit brought to recover money due on different mortgages executed by same mortgagor in plaintiff's favour is one which embraces distinct subjects and court-fee must be calculated separately in respect of each mortgage under this section. AIR 1941 Rang 95 (96) = 1940 Rang LR 767 ** AIR 1957 Andh Pra 1019 (1020, 1021) ** ('36) 63 Cal 720 (722) (DB) ** AIR 1935 Mad 262 (262) ** AIR 1924 Pat 77 (80) = 2 Pat 874 (DB) ** AIR 1920 Pat 105 (105) ** ('04) 31 Cal 75 (77) (DB) ** ('04) 7 Oudh Cas 152 (154) (DB).

[See however AIR 1943 Lah 275 (277) ILR (1944) Lah 24 (FB).]

(2) Section 67-A of Transfer of Property Act does not control or affect operation of this section. AIR 1941 Rang 95 (96) = 1940 Rang LR 767 ** AIR 1957 Andh Pra 1019 (1021) ** ('36) 63 Cal 720 (722) (DB) ** AIR 1935 Mad 262 (262).

(3) Two mortgages executed in favour of person in lieu of five promissory notes — Suit on mortgages embraces two subjects and not five for purpose of this section. AIR 1935 Mad 262 (262).

(4) Single mortgage executed by debtor in favour of several creditors, specifying amount due to each — Suit to enforce mortgage does not embrace distinct subjects. AIR 1932 Mad 737 (738).

(5) Suit for redemption of mortgage and surplus profits embraces one subject and one court-fee is payable on such suit. AIR 1941 Mad 115 (116) ** AIR 1937 Nag 295 (298) = ILR (1937) Nag 49 (FB) ** AIR 1952 Pat 141 (Pr 5) (DB) ** AIR 1931 Mad 479 (479) ** AIR 1923 All 261 (262) = 45 All 154 (DB) ** ('07) 29 All 471 (475) (DB) ** ('10) 13 Oudh Cas 32 (33) ** AIR 1933 Pat 625 (625).

(6) Suit for redemption of mortgage furnishes one cause of action though suit includes original mortgage as well as deeds of further charge. ('04) 7 Oudh Cas 152 (156) (DB).

(7) A suit for redemption of a Malabar kanom, like any other suit for redemption of a possessory mortgage, can be valued under Section 7 (ix), Court-fees Act even though the plaintiff incorporates in his plaint a prayer for the taking of accounts and the payment of arrears of rent due from the Kanomdar and therefore such a suit does not embrace two distinct subjects. AIR 1951 Mad 187 (Pr 10) = ILR (1952) Mad 92 (FB).

(8) A suit for redemption of four usufructuary mortgages executed by the same set of mortgagors in favour of the same mortgagee on the same day in respect of the same property does not involve four distinct subjects but only one subject within the meaning of this section where the transaction is intended and is really a single transaction. AIR 1952 Mad 53 (Pr 2).

(9) Suit for redemption of usufructuary mortgage — Claim for damages for delay in payment of mortgagor's other creditors out of the consideration retained in the hands of defendant mortgagee to be set off against redemption amount determined — Such claim is a separate relief on which court-fee is payable. AIR 1947 Mad 435 (436).

9. Suits on several promissory notes, bonds, etc. — (1) Suit for recovery of money due on different promissory notes executed by defendant embraces distinct subjects within meaning of this section. AIR 1933 Mad 178 (178) (DB) ** ('10) 5 Low Bur Rul 94 (98, 100) (FB). (Expression 'distinct subjects' is equivalent to 'distinct causes of action.')

(2) Suit on different hundis is governed by this section and separate court-fee is payable in respect of each hundi. ('87) 9 All 252 (253) (DB). (Each hundi affords a separate cause of action.)

(3) Plaintiff sues for three separate deposits — Suit embraces three distinct subjects, although suit is preceded by single demand for all deposits. AIR 1931 Mad 712 (712, 713).

(4) In suit on promissory note claim based on original obligation sought to be added — Plaintiff must pay fresh court-fee. AIR 1931 Mad 533 (534).

10. Suit for possession and mesne profits. — (1) Suit for possession and mesne profits does not embrace distinct subjects within meaning of this section. AIR 1942 Oudh 412 (413) (DB). (Vide U. P. Amendment.) ** AIR 1951 Trav-Co 142 (Pr 13) = 1950 Trav-Co LR 581 (DB) ** AIR 1930 Mad 833 (834) = 54 Mad 7 (FB) ** AIR 1922 Pat 359 (361) = 4 Pat LJ 195 (DB) ** ('94) 16 All 401 (408, 409) ** ('82) 8 Cal 593 (596, 597) (FB).

[But see AIR 1942 Cal 40 (41).]

(2) Suit for ejectment of monthly tenant and for arrears of rent — Claim for ejectment arising on denial of plaintiff's title and upon service of notice — Section 17 applies. AIR 1949 All 348 (Pr 5) = ILR (1948) All 27.

[See also AIR 1957 Andh Pra 1004 (1005).]

(3) In a case arising under Section 13 of the Hyderabad Court-fees Act, where

Section 17 — Note 10 (contd.)

the words used are 'cause of action' and not 'subject', it was held that the two expressions are not synonymous and the court-fee payable in such a suit would be on total value of the two reliefs for possession and mesne profits which flow from the same cause of action. AIR 1953 Hyd 156 (Pr 6) = ILR (1953) Hyd 117 (DB).

(4) Where in a suit for possession and mesne profits filed by a widow against the adopted son an alternative prayer for possession by partition of half share in property in case defendant's adoption by her husband is held to be valid, is also claimed, no separate or additional court-fee is payable on the alternative relief either under Section 7 (iv-B) (d) or Section 7 (v), Court-fees Act, as amended in U. P. ILR (1949) All 79 (82) (DB).

11. Balance due on khata, suit for. — (1) Suit for balance due on Khata — Court-fee is not payable on each item in khata but only on total amount due. AIR 1922 Bom 376 (377) = 46 Bom 142 (FB).

12. Suit for specific performance and possession. — (1) Suit for specific performance of contract of sale and possession does not embrace distinct subjects within meaning of this section. AIR 1924 Mad 360 (362) = 47 Mad 150 (DB) ** AIR 1950 Nag 226 (Pr 12) = ILR (1950) Nag 336. (Court-fee is payable on consideration for contract— AIR 1920 Oudh 167 = 23 Oudh Cas 388, Dissented.)

[See also AIR 1928 Lah 635 (635). (AIR 1920 Lah 72 and AIR 1918 Lah 323, Dissented from.)]

[But see AIR 1920 Oudh 167 (168) = 23 Oudh Cas 388. (14 Cal LJ 159, Dissented from.)]

13. Suit for partition. — (1) A suit for partition is by its very nature not a composite suit and it cannot be treated as such for purposes of Section 17 merely because it comprises movable and immovable properties. There is a single cause of action and such a suit should be referable to a single provision of the Court-fees Act. AIR 1947 Bom 259 (261) (FB).

(2) Suit for joint possession and partition embraces two distinct subjects for purpose of this section. AIR 1924 Pat 558 (559) = 3 Pat 618 (DB).

[But see ILR (1949) All 79 (82) (DB).]

14. Value for jurisdiction. — (1) Value for purposes of jurisdiction is quite irrespective of value for purposes of court-fees under Section 17. ('10) 1910 Pun LR No. 56, p. 142 (144) = 1910 Pun Re No. 41 (DB).

15. "Distinct subjects" — Illustrative cases. — (1). Distinct subjects — Co-sharer landlord sued for his share of rent making other co-sharer pro forma defendant — Defendant co-sharer prayed that he be added as plaintiff and decree for his share be also granted — Claims of both co-sharers held distinct subjects within Section 17. AIR 1943 Pat 356 (357) = 22 Pat 275.

(2) Suit by reversioner for declaration that settlement deed executed by last male holder was not binding on him and also for specific performance of agreement executed by last male holder — **Held,** separate court-fees were payable. AIR 1938 Mad 241 (242) (DB).

(3) Suit by 73 persons for declaration that each plaintiff has raiyati-jote interest in one out of 73 plots of land and for declaration that compromise decree is not binding on them, held to be suit embracing 73 distinct subjects. AIR 1935 Cal 573 (575) = 63 Cal 163 (DB).

(4) Suit by creditor against principal debtor and several persons who guaranteed amount, by separate pronotes or mortgages is suit embracing distinct subjects. AIR 1915 Low Bur 97 (99) = 8 Low Bur Rul 219 (FB).

(5) Plaintiff's father executed two gift deeds in favour of their mother. The mother sold them under sale-deeds on various dates to defendants 1, 2, 3, 4, 5th defendant's husband and 35th defendant. Defendants 6 to 32 were alienees from the 5th defendant's husband. The plaintiffs brought a suit for declaration that the alienation in favour of the different defendants were not binding on them — **Held,** that the plaintiffs had a separate cause of action against each of the alienees in respect of the property alienated in his favour; that each declaration related to a 'distinct subject' within the meaning of Section 17 of the Court-fees Act; and that the plaintiffs should therefore, pay court-fee in respect of each declaration. AIR 1954 Mad 594 (Pr 50) = ILR (1954) Mad 289 (FB).

(6) Where four separate orders were placed by the Collector with the petitioner for supply of wheat to four districts, each of them would be a distinct subject, being a distinct transaction with a distinct cause of action, though the contracting parties are the same. AIR 1957 Mad 163 (163).

(7) In the absence of anything in the Rules under Section 16 of the Bar Councils Act (1926) to show a different intention, the proper course to adopt is to follow the principle underlying Section 11 of the Trav-Co. Court-fees Act and to calculate advocate's fee on each claim separately and not on the aggregate value of all the claims in the suit. AIR 1957 Trav-Co 170 (171) = ILR (1956) Trav-Co 808 (DB).

(8) Several inams under separate inam deeds resumed by single order — Single suit brought by the several persons affected for setting aside order of resumption

18. Written examinations of complainants.—When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which police officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of the *Code of Criminal Procedure, the complainant shall pay a fee of eight annas, unless the Court thinks fit to remit such payment.

[Cf. Bom. Act 36 of 1959, Section 19; Him. Pra. Act 8 of 1968, Section 17; Jammu and Kashmir Act 7 of 1977 Svt., Section 18; Ker. Act 10 of 1960, Sch. II, Art. 11 (f);

Section 17 — Note 15 (contd.)

and declaring it illegal and a nullity — All persons not interested in each of the inams and all the inams not the joint or common property of all of them — There is no single cause of action for suit and decree is passed in a suit brought by only one of them or a few of them could not enure to the benefit of all. AIR 1953 Mad 888 (Prs 8, 10) = ILR (1953) Mad 655.

(9) Suit by quondam minor to set aside various alienations made at different times by the guardian — Court-fee is payable separately on the several alienations. AIR 1953 Mad 592 (Pr 1).

(10) Application by T and B for leave to sue in forma pauperis — Death of B before disposal of application — Application rejected — T allowed to pay court-fee on moiety of his share — Later B's widow applying for being added as plaintiff — Her prayer allowed — She ought to pay court-fee separately on value of her moiety share because though plaint was written on one paper they were really two plaints constituting distinct subjects — Order demanding payment of difference between court-fee payable on value of entire property and court-fee already paid by T held wrong. AIR 1949 Pat 425 (Pr 3) = 28 Pat 299 (DB).

(11) **Subjects not distinct** — Administration suit — Prayer for declaring will void and for order that property be handed over to executors — Suit does not embrace distinct subjects. AIR 1936 Bom 353 (356) (DB).

(12) In mortgage suit minor defendants — Guardian entered into compromise and preliminary and final decree passed — Minors filed suit to set aside compromise, preliminary and final decrees — **Held,** suit did not embrace distinct subjects. AIR 1932 All 485 (487) = 54 All 812 (FB).

(13) Suit by land-holder against ryots under Section 193, Madras Estates Land Act, for enhancement of rent — Ground for enhancement same for all — Suit does not comprise "distinct subjects". AIR 1932 Mad 667 (668, 669).

(14) Suit for possession against different persons in possession of different parcels of land on allegation that land belonged to plaintiff and defendants in conspiracy with each other have dispossessed plaintiff is suit on single cause of action. AIR 1928 Pat 274 (276) = 7 Pat 402 (DB).

(15) Suit by reversioner against several trespassers occupying different portions of property. Since each trespass gives rise to a different cause of action, the plaintiff has to pay court-fee on the aggregate value of the properties. AIR 1966 All 522 (525) = 1966 All LJ 64 (DB).

(16) Suit to recover losses in respect of several consignments against Railway Company — One notice given — **Held,** suit does not embrace distinct subjects. AIR 1924 Pat 596 (597) (DB).

(17) Suit for pre-emption of two village shares sold under one sale — There is only one cause of action. ('04) 27 All 186 (189) (DB).

(18) Suit for profits for several years — Court-fee is payable on aggregate amount and not separately on profits of each year. ('85) 7 All 761 (763) (DB).

(19) A executing will and creating trust and during minority of his brother's son B appointing C as testamentary guardian — In execution of money decree against C, property sold and purchased by D — D later selling to E and F separately and E and F put in possession of their separate portions — Suit by B for recovery of possession, alleging that C had no saleable interest in the property, that the sale was void and would not confer title on D to be validly conveyed to others — Suit valued under Section 7 (v) and court-fee paid on consolidated market value of property — Suit held did not embrace distinct subjects but only one subject — Allegation in plaint that E and F were not bona fide transferees for value from ostensible owner did not alter basis of suit. AIR 1950 Mad 155 (Pr 2).

(20) It is well settled that the heirs of a deceased partner have a single cause of action against the surviving partners for account. AIR 1959 Mad 387 (388) = (1958) 2 Mad LJ 442. (ILR 25 Mad 26, Rel. on.)

16. Paragraph 2. — (1) Second paragraph of this section seeks to safeguard power conferred on Court by Order 2, Rule 6 and to prevent first paragraph from being construed as intended to restrict this power. ('10) 5 Low Bur Rul 94 (97, 100) (FB) ** ('07) 30 Mad 61 (64) (DB).

Andh. Pra. Act 7 of 1956, Sch. II, Art. 11 (f); Mad. Act 14 of 1955, Sch. II, Art. 11 (f); Raj. Act 23 of 1961, Sch. II, Art. 11 (f); Mys. Act 16 of 1958, Sch. II, Art. 11 (f).]

[*] This reference should now be read as referring to the Code of Criminal Procedure, 1898 (Act 5 of 1898)—See Section 3 of that Act.

STATE AMENDMENTS

Andaman and Nicobar:

Same as that of Assam—Reg. II of 1957, Section 13 (1-8-1957).

Assam: Nagaland:

For the words "a fee of eight annas", the words "a fee of one rupee" were substituted—Assam Act 8 of 1950, Section 2 (1-4-1950); Act 27 of 1962, Section 26 (w.e.f. 1-12-1963).

Bihar:

For the words "a fee of eight annas", the words "a fee of twelve annas" were substituted.—Bihar and Orissa Act 2 of 1922 (21-8-1922).

Delhi:

Same as that of Punjab—See G.S.R. 842 dated 21-7-1959, Gaz. of Ind., 1959, Pt. II, Sec. 3 (i), p. 1039.

Manipur and Tripura:

Same as that of Assam—See G.S.Rs. 1119-1120, Gaz. of Ind., dated 1-7-1963, Pt. II, Sec. 3(i), Ext., pp. 501 and 531 (w.e.f. 15-7-1963).

Orissa:

Same as that of Assam.—Orissa Act 5 of 1939 (31-10-1939).

Pondicherry:

Same as that of Andaman and Nicobar—See Act 26 of 1968, S. 3 and Sch. Pt. II, (18-12-1968).

Punjab, Haryana and Chandigarh:

For the words "eight annas", substitute the words "one rupee and twenty-five Naye Paise".—Punjab Acts 7 of 1922; 19 of 1957, S. 4 (13-7-1957) and 14 of 1958, S. 3 (25-4-1958); Act 31 of 1966, S. 88 (1-11-1966).

Uttar Pradesh:

For the words "eight annas", substitute the words "one rupee".—United Provinces Acts 2 of 1936 (2-4-1936) and 25 of 1952, Section 5 (1-11-1952).

West Bengal:

Same as that of Assam.—Beng. Act 4 of 1922 (29-3-1922).

19. Exemption of certain documents.—Nothing contained in this Act shall render the following documents chargeable with any fee :—

(i) Power-of-attorney to institute or defend a suit when executed *[by a member of any of the Armed Forces of the Union] not in civil employment.

†[* * * * * * *]

SECTION 19 — SYNOPSIS

1. **Government, whether exempt from liability to pay court-fee.**
2. **Clause (i).**
3. **Clause (iii).**
4. **Clause (viii).**
5. **Clause (xvii).**
6. **Clause (xviii).**
7. **Clause (xx).**
8. **Applications not falling under any clause.**

1. Government, whether exempt from liability to pay court-fee.— (1) The Government when a party to a litigation has to pay court-fees in the same way as any other party. ('02) 25 Mad 457 (467) (DB).

(2) Where a political suit properly instituted in a Special Court and governed by the provisions of Saurashtra Ordinance 72

(iii) Written statements called for by the Court after the first hearing of a suit.

‡[* * * * * * *.]

(v) Plaints in suits tried by §Village Munsifs in the Presidency of Fort St. George.

(vi) Plaints and processes in suits before District Panchayats in the same Presidency.

(vii) Plaints in suits before Collectors under Madras Regulation 12 of 1816.

(viii) Probate of a will, letters of administration, *†[and, save as regards debts and securities, a certificate under Bombay Regulation 8 of 1827], where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed one thousand rupees.

(ix) Application or petition to a Collector or other officer making a settlement of land-revenue, or to a Board of Revenue, or a Commissioner of Revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such settlement.

Section 19 — Note 1 (contd.)

of 1949 was transferred to the Court of the Civil Judge, after the Special Court had already examined certain witnesses, the Civil Court could not ask the plaintiff to value his plaint for purposes of jurisdiction and pay court-fees thereon. AIR 1952 Sau 102 (Pr 5) (DB). (Plaint in political suit — Exemption under Rule 17 of the Western India States Agency Political Rules.)

2. Clause (i). — (1) A vakalatnama or mukhtarnama is a kind of power-of-attorney and hence the exemption under this clause will apply to a vakalatnama or mukhtarnama executed by any person mentioned in the clause for the purpose of instituting or defending a suit. AIR 1937 Nag 65 (66) = ILR (1937) Nag 494 ** AIR 1926 Pat 246 (247) = 5 Pat 255.

3. Clause (iii). — (1) The clause applies to written statements filed in miscellaneous cases. AIR 1934 All 332 (333) = 56 All 747. (Written statements filed in answer to an application by Official Liquidator of a company to set aside transfers as fraudulent.)

(2) A written objection to an award made in a pending suit does not come under this clause and requires court-fee under Article 1 (b), Sch. II. Such a document is an "application" within Sch. II, Article 1. AIR 1928 Sind 87 (88) = 23 Sind LR 91 (DB).

(3) Award filed in Court — Objection denying reference and award — Nature of — Exemption from court-fee under Section 19 (iii) — Sch. II, Article 18 (1) does not apply.

Held, on facts that the objection was in the nature of a written statement falling within the exemption under Sec. 19 (iii) and was not an application to set aside the award within Sch. II, Article 18 (1), Court-fees Act, and therefore, no court-fee was payable on such objection. AIR 1962 All 75 (77) = 1961 All LJ 559.

(4) As there is no express provision for the levy of court-fee on written statements filed at or before the first hearing of the suit after the repeal of Section 120, Civil P. C., 1859, no court-fee is now chargeable on them and it cannot be inferred that because Section 19 (iii) exempts written statements filed after the first hearing, written statements filed at or before the first hearing require court-fee. ('83) 12 Cal LR 366 (369, 370) (DB) ** ('81) 5 Bom 400 (402, 403) (DB).

(5) A written statement pleading a set-off or counter-claim is chargeable with ad valorem court-fee under Article 1 of Sch. I (as amended in 1908). If a claim made in the written statement does not amount to a set-off or counter claim it will not be chargeable with any court-fee. AIR 1941 Nag 138 (140) = ILR (1941) Nag 194 (DB). (Suit on mortgage — Subsequent mortgagee claiming to be allowed to pay off prior mortgage and to have decree in his favour for combined amounts of two mortgages — No court-fee is payable on the claim under the subsequent mortgage inasmuch as claim is neither set-off nor counter-claim.) ** ILR (1948) 1 Cal 321 (325, 326) (DB). (Suit by prior mortgagee — Puisne mortgagee impleaded in suit — Setting up his mortgage in written statement is not setting up a counter claim — Court-fee is chargeable.) ** AIR 1937 Lah 62 (62). (Plea in written statement that mutual claims of plaintiff and defendant had been adjusted is not plea of set-off and no court-fee is payable on written statement.) ** AIR 1933 Sind 247 (249) (DB). (Suit for accounts — It is not incumbent on defendant to pay court-fee on written statement filed by him claiming decree for such sum as may be found due to him on settlement of accounts.)

(x) Application relating to a supply for irrigation of water belonging to Government.

(xi) Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land-revenue by a person holding, under direct engagement with Government, land of which the revenue is settled, but not permanently.

(xii) Application for service of notice of relinquishment of land or of enhancement of rent.

(xiii) Written authority to an agent to distrain.

(xiv) First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.

(xv) Bail bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.

(xvi) Petition, application, charge or information respecting any offence when presented, made or laid to or before a police officer, or to or before the *‡Heads of Villages or the *§Village Police in the territories respectively subject to the Governors in Council of Madras and Bombay.

(xvii) Petition by a prisoner, or other person in duress or under restraint of any Court or its officers.

(xviii) Complaint of a public servant (as defined in the Indian Penal Code), a municipal officer, or an officer or servant of a Railway Company.

(xix) Application for permission to cut timber in Government forests, or otherwise relating to such forests.

(xx) Application for the payment of money due by Government to the applicant.

(xxi) Petition of appeal against the chaukidari assessment under ††Act No. 20 of 1856, or against any municipal tax.

Section 19 — Note 3 (contd.)

(6) A defendant in a partition suit asking for separation of his share in his written statement is not required to pay any court-fee. AIR 1941 Sind 50 (67) = ILR (1940) Kar 534 ** AIR 1936 Lah 1 (4) = 16 Lah 901 (DB) ** AIR 1932 Mad 722 (723) = 55 Mad 975 (DB) ** AIR 1926 Pat 154 (156) (DB). (23 Bom 188 and 23 Bom 184, **Distinguished.**) ** ('05) 29 Bom 79 (81) (DB).

[But see ('99) 23 Bom 184 (186) (DB).]

(7) Partition suit by co-tenant — Defendant in his written statement pleading that plaintiff should give account of rents which he recovered in capacity as manager of property — Defendant held must value relief and pay necessary court-fee on it. AIR 1933 Sind 304 (304, 305).

(8) Where in a suit to recover price of a thing supplied the defendant in his written statement alleges non-supply and claims certain sum as loss, it is a clear case of set-off and he must pay ad valorem court-fee on amount claimed. AIR 1958 All 574 (574).

4. Clause (viii). — (1) The amount or value of the property contemplated by this clause is the net value obtained by deducting the value of the debts and expenses referred to in annexure B of Sch. III from the gross value of the assets to be disclosed in annexure A of the same schedule. Consequently, no court-fee will be chargeable when such net value of the property does not exceed one thousand rupees. AIR 1918 All 306 (307) = 40 All 279 (DB) ** AIR 1916 Cal 543 (545). (18 Suth WR 153, **Distinguished.**; 17 Cal WN 21, **Dissented from.**) ** AIR 1914 Low Bur 247 (248) = 7 Low Bur Rul 359 (DB). (Gross value exceeding Rs. 10,000 — Net value only Rs. 540 — No court-fee.)

[See AIR 1914 Cal 40 (45) ** AIR 1914 Low Bur 245 (246) = 7 Low Bur Rul 356 (DB). (Word 'value' in Article 11, Sch. I means net value; and net value of estate should alone be taxed.)]

[But see ('12) 17 Cal WN 21 (24, 25) (DB). (Exemption from liability to pay court-fees contemplated by this clause as well as Sch. I, Article 11 applies only when gross value does not exceed Rs. 1,000 though court-fee is payable on net value in cases where gross value exceeds Rs. 1,000.)]

(2) Sole executor under will applying for probate in respect of house devised

(xxii) Applications for compensation under any law for the time being in force relating to the †§acquisition of property for public purposes.

(xxiii) Petitions presented to the Special Commissioner appointed under ‡§Bengal Act No. 2 of 1869 (to ascertain, regulate and record certain tenures in Chota Nagpur).

(xxiv) ‡‡[Petitions under the Indian Christian Marriage Act, 1872, Sections 45 and 48.]

[Cf. Andh. Pra. Act 7 of 1956, Section 67; Bom. Act 36 of 1959, Section 20; Him. Pra. Act 8 of 1968, Section 18; Jammu and Kashmir Act 7 of 1977 Svt., Section 19; Ker. Act 10 of 1960, Section 72; Mad. Act 14 of 1955, Section 72; Mys. Act 16 of 1958, Section 69; Raj. Act 23 of 1961, S. 64.]

[°] Substituted for "by an officer, warrant officer, non-commissioned officer or private of Her Majesty's Army", by A. L. O., 1950.

[†] Clause (ii) was repealed by the Amending Act, 1891 (12 of 1891).

[‡] Clause (iv) was repealed by the Cantonments Act, 1889 (13 of 1889).

[§] See the Madras Village Courts Act, 1889 (Madras Act 1 of 1889).

[°†] Substituted for "and certificate mentioned in the first schedule to this Act annexed, No. 12", by the Succession Certificate Act, 1889 (7 of 1889), S. 13 (2).

[°‡] See Madras Regulations XI of 1816 and IV of 1821, S. 6.

[°§] See Bombay Village Police Act, 1867 (Bom. Act 8 of 1867), Ss. 14, 15 and 16.

[†‡] The Bengal Chaukidari Act, 1856.

[†§] See now the Land Acquisition Act, 1894 (1 of 1894).

[‡§] The Chota Nagpur Tenures Act, 1869.

[‡‡] Substituted for the Original clause by the Indian Christian Marriage Act, 1872 (15 of 1872), Section 2.

STATE AMENDMENTS

Andaman and Nicobar:

Same as that of West Bengal.—Reg. II of 1957, S. 14 (1-8-1957).

Section 19 — Note 4 (contd.)

to him by the testator and in respect of which a suit for possession by testator was pending — Mere right of action, in respect of house held was devised by testator — Such right could not be valued in money — Case held was not provided for by Act and value of property for purpose of application might fairly be taken not to exceed Rs. 1,000. ('96) 23 Cal 577 (579) (DB).

[See ('01) 24 Mad 241 (242) (DB). (Petitioner was directed on termination of suits referred to in petition to file in Court statement showing result of the suit.)]

5. Clause (xvii). — (1) Petition mentioned in the clause must be one in respect of, or connected with, or arising out of the matter in connexion with which petitioner is in prison, duress or under restraint. Prisoner or person in duress or under restraint wishing to file civil suit or appeal against decree passed in such suit is not exempt under this clause and cannot file the suit or appeal without paying necessary court-fee required under the Act. AIR 1942 All 45 (46) = ILR (1941) All 793.

(2) An application by a prisoner for setting aside the order of acquittal of the opposite parties and for their being convicted and sentenced according to law does not fall within the clause as it does not ask for any relief affecting him in his capacity as a prisoner. AIR 1936 All 318 (318) = 58 All 871 = 37 Cri L Jour 566.

(3) Section 19 (xvii) cannot be interpreted as applying to criminal matters alone. Where a judgment-debtor, while in custody applied, under Chap. XX, Civil P. C. to be declared insolvent and on the application being refused by lower Court appealed against the order, it was held that the case was governed by this clause and the memorandum of appeal was exempt from court-fee. ('84) 10 Cal 61 (62).

(4) The petition, in order to be exempt from court-fee under this clause, must have been filed when the petitioner is actually in prison, duress or under restraint. A petition written when the petitioner is in prison, duress or under restraint but filed when he is not in prison, duress or under restraint will not be exempt under this clause. AIR 1942 All 45 (46) = ILR (1941) All 793.

(5) The person released on probation, by an appellate Court after maintaining his conviction, on terms contained in condition 4 of Form C of the Probation Rules, is under restraint of Court and can move the High Court in revision without payment of Court-fee thereon. AIR 1967 All 81 (82) = 1964 All LJ 665

Assam: Nagaland:

(1) In item (viii) of the section, for the words "one thousand rupees", the words "two thousand rupees" were substituted.—Assam Act XIV of 1936 (2-12-1936), Act 27 of 1962, S. 26 (w.e.f. 1-12-1963).

(2) Omit item (ix).—Assam Act VIII of 1950, S. 3 (1-4-1950), Act 27 of 1962, S. 26, (w.e.f. 1-12-1963).

Bihar:

In item (viii) for the words "one thousand rupees", the words "two thousand rupees" were substituted.—Bihar and Orissa Act II of 1922 (21-8-1922).

Manipur and Tripura:

In Section 19,—

(i) Clauses (v), (vi) and (vii) shall be omitted;

(ii) in clause (viii), for the words beginning with "Probate of a will" and ending with "Regulation VIII of 1827", the words "Probate of a will and letters of administration" shall be substituted and omit the words "or certificate";

(iii) in clause (xvi), the words beginning from "or to or before the Heads of villages" and ending with "Madras and Bombay", shall be omitted;

(iv) in clause (xxi), omit the words "the chaukidari assessment under Act 20 of 1856, or under"; and

(v) omit clauses (xxiii) and (xxiv).—See G.S.Rs. 1119, 1120, Gaz. of Ind., d. 1-7-1963, Pt. II, Sec. 3 (i), Ext., pp. 501 and 531 (w.e.f. 15-7-1963).

Orissa:

In Section 19, in clause (viii), for the words "one thousand rupees", substitute the words "two thousand rupees".—Orissa Act 11 of 1967, S. 3 (20-7-1967).

Note.—Bihar and Orissa Act II of 1922, T. N. Act V of 1922 and C. P. and Berar Act 16 of 1935 have been repealed in their application to Orissa by Orissa Act 11 of 1967, S. 2 and Sch.

Section 19 — Note 5 (contd.)

(6) A petition filed by an advocate or counsel on behalf of a prisoner is a petition "by a prisoner" within the meaning of this clause. AIR 1942 Pesh 50 (50). (Revision application by prisoner presented through counsel.) ** AIR 1930 All 261 (262) = 52 All 542. (The fact that it was an adjournment application made by the counsel for his personal convenience is immaterial.) ** AIR 1924 Rang 160 (160) = 1 Rang 510. (Petition of appeal or revision.) ** AIR 1922 Upp Bur 14 (15) = 4 Upp Bur Rul 72. (Application for bail.) ** AIR 1918 Nag 125 (126) = 14 Nag LR 77. (Petition of appeal.) ** ('84) 10 Cal 61 (62). (Appeal.)

6. Clause (xviii). — (1) A complaint by an official in an official capacity does not require court-fee stamp. AIR 1930 All 820 (821) = 53 All 208 = 32 Cri L Jour 306.

(2) A complaint brought by a Municipal Officer is also exempted. It has been held that no process fee is leviable on a complaint made by the Municipal Officer ('93) 16 Mad 423 (424) (DB).

7. Clause (xx). — (1) An application for refund of court-fees under Section 13 of the Act is covered by this clause and no court-fee is chargeable on such application. AIR 1932 All 590 (591) = 54 All 790.

(2) An application to the High Court for refund on money deposited in the Court towards costs of preparation of paper book of a Privy Council appeal is not an application for payment of money due by Government to the applicant within the meaning of this clause and hence is not exempt from payment of court-fee. AIR 1923 Cal 599 (600) (DB).

8. Application not falling under any clause. — (1) Where a certain sum is payable to a party under the order of the Court, and the Court has already pronounced as to the right of the party concerned to receive that sum, the application for refund thereafter is in pursuance of such an order and cannot come under the category of a petition under Sch. II, Article 1 (d). The reason why no provision has been made under Section 19 is that the documents covered therein are those which but for the exemption would come under one or other provisions of the Court-fees Act, and would thus be chargeable with the proper court-fee required. AIR 1961 Pat 245 (246) = ILR 38 Pat 1230 (DB).

Pondicherry:

Same as that of Andaman and Nicobar—See Act 26 of 1968, S. 3 and Schedule, Pt. II (18-12-1968).

Uttar Pradesh:

For clause (iii) the following clause was substituted, viz.:—

> "(iii) Written statement not being one mentioned in Art. 2-A, Sch. I, nor one containing a counter-claim, set-off or a prayer other than a prayer for instalments or relating to costs of the suit."—U. P. Act XIX of 1938 (9-1-1939).

West Bengal:

In item (viii), for the words "one thousand rupees", the words "two thousand rupees" were substituted.—Bengal Act IV of 1922 (29-3-1922).

In item (i), after the words "power-of-attorney", the words "or other written authority" were inserted; and after item (xxiv), the following paragraph was added, viz.:—

> "(xxv) Petitions of appeal by servants of the Government or a Court of Wards against orders of dismissal, reduction or suspension; copies of such orders filed with such appeals and applications for obtaining such copies."—Bengal Act VII of 1935, (2-5-1935).

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*CHAPTER III-A

PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION

19-A. Relief where too high a court-fee has been paid.—Where any person on applying for the probate of a will or letters of administration has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a court-fee thereon, if within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Chief Controlling Revenue Authority †[for the local area] in which the probate or letters has or have been granted,

and delivers to such Authority a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation,

and if such Authority is satisfied that a greater fee was paid on the probate or letters than the law required,

the said Authority may—

(a) cancel the stamp on the probate or letters if such stamp has not been already cancelled;

Section 19-A — Note 1

(1) Where the property to be valued is a debt the applicant is not bound to value it at its face value but is entitled to state what he considers to be the fair value of it (according to the chances of its recovery, etc.), and to apply on that basis. If the Revenue authority is not satisfied with the estimate he can deal with the matter under Section 19-H. If too low a value is placed on the debt, further duty must be paid under Section 19-E and if too high a value is placed on it part of the duty must be refunded under Section 19-A — This applies to a judgment-debt also. AIR 1931 Bom 419 (420) = 55 Bom 844.

(2) The court-fee is chargeable on the value of the estate as at the date of application. Subsequent changes in value do not alter the amount of fee payable. ('12) 14 Ind Cas 804 (806) (Burma).

(3) Transfer of suit to High Court under Clause 13 of the Letters Patent (Cal.) — Section 19-A does not apply. AIR 1955 Cal 52 (Pr 17).

(4) The inherent power of a Court to remit or refund Court-fees is confined only to fees which have been illegally or erroneously assessed or collected and does not extend to fees which have been paid or collected in accordance with the provisions of the Court-fees Act. AIR 1958 Punj 38 (42) = ILR (1958) Punj 104 (FB).

(5) Application for probate or Letters of Adiministration — Excess valuation of property by an applicant — Correct valuation made after grant of probate or Letters of Administration as per the practice followed in Calcutta — Refund of excess Court-fee — Chief Controlling Revenue Authority need not insist for amendment of valuation by the High Court. (1967) 71 Cal WN 239.

(b) substitute another stamp for denoting the court-fee which should have been paid thereon; and

(c) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

[Cf. Andh. Pra. Act 7 of 1956, S. 52; Bom. Act 36 of 1959, S. 21; Him. Pra. Act 8 of 1968, S.19; Jammu and Kashmir Act 7 of 1977 Svt., S. 19-A; Ker. Act 10 of 1960, S. 55; T. N. Act 14 of 1955, S. 55; Mys. Act 16 of 1958, S. 52; Raj. Act 23 of 1961, Section 50.]

[*] Chapter III-A was inserted by the Probate and Administration Act, 1875 (13 of 1875), Section 6.

[†] Substituted for the words "of the Province" by the Court-fees (Amendment) Act, 1901 (10 of 1901), Section 3 (1).

STATE AMENDMENT

Uttar Pradesh:

At the end of clause (c), the following matter was inserted after substituting a comma for the fullstop:—

"after deducting ten naye paise for each rupee or fraction thereof."—U. P. Acts 19 of 1938 (9-1-1939) and 20 of 1958, Section 3.

19-B. Relief where debts due from a deceased person have been paid out of his estate.—Whenever it is proved to the satisfaction of such Authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act,

such Authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority may allow such further time for making the claim as may appear to be reasonable under the circumstances.

[Cf. Bom. Act 36 of 1959, S. 22; Him. Pra. Act 8 of 1968, S. 20; Jammu and Kashmir Act 7 of 1977 Svt., S. 19-B; Andh. Pra. Act 7 of 1956, S. 53; Ker. Act 10 of 1960, S. 56 (2) (a); T. N. Act 14 of 1955, S. 56 (2) (a); Mys. Act 16 of 1958, S. 53; Raj. Act 23 of 1961, S. 51 and Sch. III, Pt. I, Annexure B, Item I.]

19-C. Relief in case of several grants.—Whenever *[* * *] a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

SECTION 19-C — SYNOPSIS

1. **Scope.**
2. **Increase in value of property or scale of fees — Applicability of this section.**
3. **Illustrative cases.**
4. **"Full fee chargeable under this Act has been paid".**
5. **"Same property belonging to the same estate".**
6. **Power of appointment.**

1. Scope.— (1) The section was enacted to provide for avoidance of payment of court-fees over again in cases, in which after a grant of probate or letters of administration on payment of the full fee prescribed, a fresh grant of probate or letters of administration becomes necessary, e. g., where probate is revoked. AIR 1920 Pat 273 (274) = 5 Pat L Jour 36 (DB).

(2) The principle on which the is granted under the section is that

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

[Cf. Andh. Pra. Act 7 of 1956, S. 55; Bom. Act 36 of 1959, S. 23; Him. Pra. Act 8 of 1968, S. 21; Jammu and Kashmir Act 7 of 1977 Svt., S. 19-C; Ker. Act 10 of 1960, S. 58; Mad. Act 14 of 1955, S. 58; Mys. Act 16 of 1958, S. 58; Raj. Act 23 of 1961 Section 53.]

[°] The word "such" was repealed by the Amending Act, 1891 (12 of 1891).

19-D. Probates declared valid as to trust-property though not covered by court-fee.—The probate of the will or the letters of administration of the effects of any person deceased heretofore or hereafter granted shall be deemed valid and

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Section 19-C — Note 1 (contd.)

the time of the fresh grant there is no new succession or devolution of the estate. AIR 1916 Cal 290 (292) = 43 Cal 625 (DB).

(3) The law in England is also the same and no stamp duty is payable on subsequent grants. See AIR 1916 Cal 290 (292) = 43 Cal 625 (DB).

2. Increase in value of property or scale of fees — Applicability of this section. — (1) Where proper court-fee has been once paid, no additional fee is payable at the time of the subsequent grant, even though the value of the property has increased or the scale of fees payable has been enhanced during the interval. ('08) 4 Low Bur Rul 255 (255) ** AIR 1916 Cal 290 (291) = 43 Cal 625 (DB).

3. Illustrative cases. — (1) The section is wide in terms and applies to all cases where a subsequent grant has to be made after full court-fee has been paid at the time of a previous grant. AIR 1925 Rang 217 (217, 218) = 3 Rang 90 (DB) ** AIR 1920 Pat 273 (274) = 5 Pat L Jour 36 (DB).

(2) When there are several executors and probate is granted first to one on payment of full fee and then to another, no fresh court-fee is payable at the time of the second grant. ('71) 15 Suth WR 496 (496).

(3) No fresh fee is payable on a subsequent application for letters of administration de bonis non. AIR 1925 Rang 217 (217, 218) = 3 Rang 90 (DB) ** AIR 1920 Pat 273 (274) = 5 Pat L Jour 36 (DB).

(4) No fresh court-fee is payable when the first grant is annulled or revoked and a fresh grant is made. ('07) 1 Sind LR 177 (178) ** ('02) 1902 Pun Re No. 1, p. 1 (2) (DB) ** ('71) 6 Beng LR (App) 139 (140).

(5) When first application for letters of administration in respect of part of property is made by a creditor and then a subsequent application in respect of the whole of the property is made by the Administrator-General, in computing the fee payable on the second application, fee paid on the first application by the creditor is to be deducted. ('71) 8 Beng LR (App) 43 (44).

4. "Full fee chargeable under this Act has been paid". — (1) This section applies only when the first and the subsequent grants have been made after the Court-fees Act has come into force and ad valorem fee has been paid at the time of the previous grant under the Court-fees Act. AIR 1925 Rang 217 (218) = 3 Rang 90 (DB) ** AIR 1916 Cal 290 (291) = 43 Cal 625 (DB).

(2) Where the fee paid on the previous application was not ad valorem but a fixed fee, under the law then in force and the second application is made after the Court-fees Act came into force, no relief against payment of ad valorem court-fee under the Act can be granted under this section. AIR 1925 Rang 217 (218) = 3 Rang 90 (DB) ** ('78) 3 Cal 733 (735) ** ('71) 6 Beng LR (App) 137 (138).

(3) The fact that duty has been paid in England cannot be a ground for claiming exemption under the section as the fee paid in England is not a "fee chargeable under this Act". ('76) 1 Cal 168 (174) (DB) ** ('79) 4 Cal 725 (726).

5. "Same property belonging to the same estate". — (1) When the first and subsequent grants are in respect of succession to different deceased persons, full court-fee is payable on both the grants though the grants may relate to the same property. AIR 1920 Pat 273 (274) = 5 Pat L Jour 36 (DB).

6. Power of appointment. — (1) A by will giving general power of appointment to B over Rs. 7,000 — On A's death, his will proved and probate fee paid on Rs. 7,000 — B executed will in which she exercised power of appointment and died — B's executor applying for probate of her will — Power of appointment created by A's will is "property" within Sch. I, Article 11 — Section 19-C does not apply. ('02) 25 Mad 515 (516, 517).

Section 19-D — Note 1

(1) Retrospective effect was given to the Financial Resolution No. 2004 of 1871 remitting court-fees in respect of probates or letters of administration from 1st

available by his executors or administrators for recovering, transferring or assigning any movable or immovable property whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court-fee was paid on such probate or letters of administration.

[Cf: A. P. Act 7 of 1956, S. 53: Bom. Act 36 of 1959, S. 24: H. P. Act 8 of 1968, S. 22: J. and K. Act 7 of 1977 Svt., S. 19D: Ker. Act 10 of 1960, S. 56, proviso to sub-section (1); T. N. Act 14 of 1955, S. 56 (1), proviso: Mys. Act 16 of 1958, S. 53: Raj. Act 23 of 1961, S. 51.]

Section 19-D — Note 1 (contd.)

April 1870 by a Government Notification of 1872. ('05) 29 Bom 161 (167) (DB).

(2) No stamp duty is payable on probates or letters of administration in respect of property to which the deceased was entitled as a trustee. ('75) 14 Beng LR 184 (186). (Hindu lady succeeding to her father's property for the estate of a Hindu daughter — On the application by her sons for letters of administration, held on her death the grand-father's estate became in the hands of her representatives trust property in respect of which no duty was payable.) ** ('73) 11 Beng LR (App) 39 (40). (One of two brothers, joint in estate, dying unmarried leaving the other brother as heir, held court-fee was payable on share of deceased brother but surviving brother's share should be treated as trust property and be exempted from duty.)

(3) The exemption does not extend to property held in trust beneficially or with general power to confer a beneficial interest. AIR 1942 Lah 173 (176) = ILR (1942) Lah 717 (FB) ** ('05) 29 Bom 161 (167) (DB).

(4) Where the probate or letters of administration concern trust property alone, there can be no exemption from court-fee. AIR 1935 All 449 (450) = 57 All 881 (DB) ** ('03) 27 Bom 140 (143, 144) (DB).

[But see AIR 1942 Lah 173 (178) = ILR (1942) Lah 717 ** ('05) 29 Bom 161 (169) (DB).]

(5) Different views are held as to whether joint family property standing in sole name of manager is trust property so as to be exempt from probate or administration duty under the section.

(a) The section applies to such a case: AIR 1924 Bom 228 (229) = 48 Bom 75 (FB). (**Overruling** AIR 1915 Bom 18 = 39 Bom 245.) ** AIR 1956 Sau 93 (95) (DB) ** ('96) 23 Cal 980 (983) (DB) ** AIR 1942 Lah 173 (178) = ILR (1942) Lah 717 (FB).

[See AIR 1925 Cal 1201 (1204, 1205) = 52 Cal 871 (DB).]

[See also AIR 1954 Cal 444 (Pr 30).]

(b) Court-fee is payable on the value of the share which the deceased would have got if the property had been divided just before his death. AIR 1927 Mad 1101 (1101) (DB) ** ('10) 33 Mad 93 (96, 100) (FB).

Full court-fee is payable in such a case. AIR 1935 All 449 (450) = 57 All 881 (DB) ** AIR 1939 Pat 126 (129) = 17 Pat 542 (DB) ** AIR 1920 Pat 153 (154) = 5 Pat L Jour 510.

(6) A bequeathed his property to his wife B and sons of his nephew C and D jointly. B was to manage the property during her lifetime and after her death C and D were to take possession. On the death of B, C and D applied for limited letters of administration and claimed exemption from court-fee. It was held that the will did not constitute B trustee for C and D and they were not entitled to exemption from payment of court-fees. AIR 1928 Bom 55 (56, 57) = 52 Bom 188 (DB).

(7) A invested money in the post-office in the name of his minor son B. On the death of the minor, A claimed that the money was held "in trust not beneficially or with general power to confer a beneficial interest" and therefore, no court-fee was payable on the letters of administration. He stated that the money was his own and was invested in the minor's name in order to escape payment of income-tax. It was held that he could not be heard to say so and was liable to pay court-fee in respect of the money. AIR 1935 Cal 509 (511) = 62 Cal 114.

(8) A, by his will appointed his senior widow as the sole executrix and it was provided that, the junior widow would get an annuity of Rs. 50 every month. The senior widow on applying for probate claimed that she was entitled to deduct from the gross value of the estate the capitalized value of the annuity, as she held it in trust for the junior widow under the will. It was held that the senior widow could not claim exemption from duty. AIR 1917 Pat 98 (99) = 2 Pat L Jour 611 (DB). (Trust created by the will of a testator is not exempted from the payment of probate duty.)

19E. Provision for case where too low a court-fee has been paid on probates, etc.—Where any person on applying for probate or letters of administration has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a court-fee thereon, the Chief Controlling Revenue-authority °[for the local area] in which the probate or letters has or have been granted may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of grant, of five times, or, if it or they is or are produced after one year from such date, of twenty times, such proper court-fee, without any deduction of the court-fee originally paid on such probate or letters:

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court-fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper court-fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

[Cf. A. P. Act 7 of 1956, S. 58; Bom. Act 36 of 1959, S. 25; H. P. Act 8 of 1968, S. 23: J. and K. Act 7 of 1977 Svt., S. 19E: Ker. Act 10 of 1960, S. 61: Mad. Act 14 of 1955, S. 61: Mys. Act 16 of 1958, S. 58: Raj. Act, 23 of 1961, S. 56.]

[°] Substituted for the words "of the Province" by the Court-fees (Amendment) Act, 1901 (10 of 1901), S. 3 (1).

19F. Administrator to give proper security before letters stamped under Section 19E.—In case of letters of administration on which too low a court-fee has been paid at first, the said Authority shall not cause the same to be duly stamped in manner aforesaid until the administrator has given such security to the Court by which the letters of administration have been granted as ought by

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Section 19-E — Note 1

(1) For this section to be applicable the estimated value of the property of the deceased given by the person applying for probate or letters should be less than what the value has afterwards been proved to be in the enquiry under Section 19-H. AIR 1916 Cal 797 (799) = 43 Cal 230 (DB).

(2) Where there is no application on the part of the person who has taken out probate or letters and produces the same to be duly stamped, the section will not apply. AIR 1916 Cal 797 (799) = 43 Cal 230 (DB) ** ('96) 1896 Bom PJ 751.

(3) The mistake may be either of fact or of law. AIR 1936 Sind 150 (153) = 30 Sind LR 201 (DB). (Case under Section 19-G, which uses identical expression.)

[But see AIR 1928 Lah 947 (949).]

(4) The duty of determining whether or not too low a court-fee has been paid and what is the penalty to be levied, is imposed by the Legislature on the Chief Revenue authority. ('96) 1896 Bom PJ 751.

(5) Civil Court has no jurisdiction to review decision of Revenue authority on the ground that the valuation had been incorrectly made or that the discretion in the imposition of the penalty had been erroneously exercised. AIR 1916 Cal 797 (799) = 43 Cal 230 (DB) ** ('96) 1896 Bom PJ 751.

(6) Where the action of the Revenue authority is ultra vires or where he has not followed the procedure prescribed by the statute, which is the source of his authority, there is no enforceable claim which a Civil Court is bound to recognise. AIR 1916 Cal 797 (799) = 43 Cal 230 (DB). (Collector calling upon petitioner to amend valuation under Section 19-H (3) — Petitioner disputing correctness of assessment by Collector — Penalty imposed by Board of Revenue purporting to act under Section 19-E, without moving probate Court for enquiry under Section 19-H (4), is ultra vires and Civil Court can interfere.)

(7) Death of zemindar — Property coming into hands of administrator — Zamindari abolished and compensation fixed — Administrator liable to pay probate duty upon entire compensation. ('62) ILR 41 Pat 617.

law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained.

[Cf: A. P. Act 7 of 1956, S. 59: Bom. Act 36 of 1959, S. 26: H. P. Act 8 of 1968, S. 24: J. and K. Act 7 of 1977 Svt. S. 19F: Ker. Act 10 of 1960, S. 62: T.N.Act 14 of 1955, S. 62; Mys. Act 16 of 1958, S. 59; Raj. Act 23 of 1961, S. 57.]

*19G. **Executors, etc., not paying full court-fee on probates, etc., within six months after discovery of under-payment.**—Where too low a court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not, within six months †[* * *] after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, apply to the said Authority and pay what is wanting to make up the court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees per cent. on the amount of the sum wanting to make up the proper court-fee.

[Cf: A. P. Act 7 of 1956, S. 58: Bom. Act 36 of 1959, S. 27: H. P. Act 8 of 1968, S. 25: J. and K. Act 7 of 1977 Svt. S. 19G: Ker. Act 10 of 1960, S. 61 (2) (3) (4); T. N. Act 14 of 1955, S. 61 (2) (3) (4); Mys. Act 16 of 1958, S. 58; Raj. Act 23 of 1961, S. 56.]

[*] As to recovery of penalties or forfeitures under S. 19G, see S. 19J.

[†] The words and figures "after the first day of April, 1875, or" were repealed by the Amending Act 1891 (12 of 1891).

STATE AMENDMENTS

Section 19-GG

Assam and Nagaland:

After S. 19G the following new section was inserted as S. 19-GG viz. :—

"19-GG. **Probate and letters of administration inoperative in certain cases.**—Notwithstanding anything contained in this or any other Act, no probate or letters of administtation heretofore or hereafter granted by any Court outside the limits of the State of Assam shall operate to confer upon the grantee any title to immovable property in Assam of which he did not obtain possession prior to the 1st January 1937, unless he holds a certificate from the Chief Controlling Revenue Authority of Assam that he has paid the court-fee due on such probate or letters of administration in respect of the full value of such property."—Assam Act 14 of 1936 (2-12-1936): Act 27 of 1963. S. 26 (w. e. f. 1-12-1963).

Manipur and Tripura:

Same as that of Assam — See G. S. Rs. 1119-1120, Gaz. of Ind., 1-7-1963, Pt. II, S. 3 (i), Ext., pp. 501 and 531 (w.e.f. 15-7-1963).

*[19H. **Notice of application for probate or letters of administration to be given to Revenue-authorities, and procedure thereon.**—(1) Where an application for probate or letters of administration is made to any Court other than a High Court, the Court shall cause notice of the application to be given to the Collector.

(2) Where such an application as aforesaid is made to a High Court, the High Court shall cause notice of the application to be given to the Chief Controlling Revenue-authority †[for the local area in which the High Court is situated].

Section 19-G — Note 1

(1) Word "mistake" used in this section has same meaning as in Section 19-E. AIR 1928 Lah 947 (949).

Section 19-H — Note 1

(1) Object of this section is to safeguard revenue and not to delay grant of probate or letters. ('28) 32 Cal WN 799 (804) ** AIR 1925 Cal 1201 (1203) =

(3) The Collector within the local limits of whose revenue-jurisdiction the property of the deceased or any part thereof is, may at any time inspect or cause to be inspected, and take or cause to be taken copies of, the record of any case in which application for probate or letters of administration has been made; and if, on such inspection or otherwise, he is of opinion that the petitioner has underestimated the value of the property of the deceased, the Collector may, if he thinks fit, require the attendance of the petitioner (either in person or by agent) and take evidence and inquire into the matter in such manner as he may think fit, and, if he is still of opinion that the value of the property has been underestimated, may require the petitioner to amend the valuation.

(4) If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court before which the application for probate or letters of administration was made, to hold an inquiry into the true value of the property:

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required by Section 277 of the ‡Indian Succession Act, 1865, or as the case may be, by Section 98 of the ‡Probate and Administration Act, 1881.

(5) The Court, when so moved as aforesaid, shall hold, or cause to be held, an inquiry accordingly, and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry.

(6) For the purposes of any such inquiry, the Court or person authorized by the Court to hold the inquiry may examine the petitioner for probate or letters of administration on oath (whether in person or by commission), and may take such further evidence as may be produced to prove the true value of the property. The person authorized as aforesaid to hold the inquiry shall return to the Court the evidence taken by him and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceeding, and the Court may record a finding in accordance with the report, unless it is satisfied that it is erroneous.

(7) The finding of the Court recorded under sub-section (5) shall be final, but shall not bar the entertainment and disposal by the Chief Controlling Revenue-authority of any application under Section 19-E.

(8) The §[State Government] may make rules for the guidance of Collectors in the exercise of the powers conferred by sub-section (3).]

[Cf: A. P. Act 7 of 1956, Ss. 52, 56: Bom. Act 36 of 1959, S. 28: H. P. Act 8 of 1968, S. 26: J. and K. Act 7 of 1977 Svt., S. 19-H; Ker. Act 10 of 1960, Ss. 55, 59; T. N. Act 14 of 1955, Ss. 55, 59; Mys. Act 16 of 1958, Ss. 52, 56; Raj. Act 23 of 1961, Ss. 50, 55.]

[°] Section 19H was inserted by S. 2 of the Court-fees Amendment Act, 1899 (11 of 1899). The original S. 19H was repealed by S. 2 and Schedule of Act 8 of 1890.

[†] Substituted for the words "of the Province" by Court-fees Amendment Act, 1901 (10 of 1901), S. 3 (2).

[‡] See now the Indian Succession Act, 1925 (39 of 1925).

[§] Substituted by A. L. O., 1950.

STATE AMENDMENTS

Manipur and Tripura:

(I) In Section 19H, in sub-section (2), for the words "the High Court," where they occur for the first time, (i) substitute the words "that Court," and (ii) omit the words "for the local area in which the High Court is situated";

(II) in sub-section (4), in the proviso, for the words and figures "required by Section 277 of the Indian Succession Act, 1865, or, as the case may be, by Section 98 of the Probate and Administration Act, 1881," substitute the words and figures "required by

Section 371 of the Indian Succession Act, 1925."—See G. S. Rs. 1119-1120, Gaz. of Ind., 1-7-1963, Pt. II, S. 3 (i), Ext., pp. 501-531 (w.e.f. 15-7-1963).

Uttar Pradesh;

(1) The following proviso was substituted for the existing proviso to sub-sec. (4) :—

"Provided that no such motion shall be made after the expiration of one year from the date of the exhibition of the inventory required by S. 317 of the Indian Succession Act."

(2) Sub-section (8) was deleted. — U. P. Act 19 of 1938 (9-1-1939).

*[**19-I. Payment of court-fees in respect of probates and letters of administration.**—(1) No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the third schedule, and the Court is satisfied that the fee mentioned in No. 11 of the first schedule has been paid on such valuation.

(2) The grant of probate or letters of administration shall not be delayed by reason of any motion made by the Collector under Section 19H, sub-sec. (4).]

[Cf: A. P. Act 7 of 1956, S. 54: Bom. Act 36 of 1959, S. 29: H. P. Act 8 of 1968, S. 27: J. and K. Act 7 of 1977, Svt., S. 19-I: Ker. Act 10 of 1960, S. 57:

Section 19-H — Note 1 (contd.)

52 Cal 871 (DB).

(2) Court is not required to undertake investigation to check valuation. ('28) 32 Cal WN 799 (802, 803).

(3) The petitioner filed an application for probate of the will and valued the assets contained in the list attached to the application at Rs. 15,000/-. A copy of the list with the valuation was sent to the Collector. The Collector without complying with the procedure prescribed by Section 19-H (3) held an ex parte enquiry and submitted his own valuation to the Court on which the petitioner took objection, whereupon the Court directed a pleader commissioner to enquire into the matter and report. When the report was submitted, all the parties including the Collector, who is to be deemed to be a party to the enquiry according to Section 19-H (5), filed objections and in their presence the Court disposed of the objections raised by each and arrived at its own finding. It was held that as the petitioner had ample opportunity to lay his grievances before the Court after a thorough enquiry had been made by the pleader commissioner authorised to hold the enquiry, there was no substantive departure from the procedure provided in this section and the jurisdiction of the Court was in no way affected. AIR 1955 Pat 362 (Pr 5) = 34 Pat 205 (DB).

(4) In moving Court for inquiry Collector should make out case upon definite facts. AIR 1916 Cal 797 (799) = 43 Cal 230 (DB) ** ('02) 6 Cal WN 898 (903).

(5) Erroneous exemption of any part of property on ground of its being trust property will be 'under-estimation' of value of property within meaning of this section. AIR 1935 Cal 509 (510) = 62 Cal 114.

(6) Subject to power of Collector to take action under this section. Taxing Officer's certificate will be conclusive on point as to whether correct duty has been paid. AIR 1935 Cal 509 (510) = 62 Cal 114.

(7) Claim made that part of property in regard to which probate or letters of administration are applied for, is trust property — Taxing Officer should refer matter to Chief Justice under Section 5. AIR 1935 Cal 509 (510) = 62 Cal 114.

(8) Starting point of limitation under proviso to sub-section (4) is lodging of inventory as required by Statute. ('14) 41 Cal 556 (566) = 40 Ind App 236 (PC).

(9) It would be duty of Court if possible and if circumstances permit, to hold inquiry itself and to save further expenses to parties. ('02) 6 Cal WN 898 (899).

(10) Act does not specify in what way or by whom expense in connexion with enquiry under sub-section (5), should be met. AIR 1923 Cal 406 (407) = 50 Cal 239 (DB) ** ('02) 6 Cal WN 898 (899).

(11) Finding of Court of enquiry recorded under sub-section (5) is not appealable though revision lies. AIR 1925 Cal 357 (359) (DB).

(12) Petition for review of finding granted — Order set aside in revision. AIR 1924 Cal 774 (775, 776) = 51 Cal 70 (DB).

SECTION 19-I — SYNOPSIS

1. **Scope.**
2. **Section is retrospective.**
3. **Applicability to High Court.**
4. **Application in forma pauperis.**
5. **Liability for court-fee, if depends on necessity of probate or letters.**
6. **Court-fee on application for probate.**
7. **Grant of letters to administrator pendente lite.**
8. **Valuation of property and payment of fees.**

T. N. Act 14 of 1955, S. 57; Mys. Act 16 of 1956, S. 54; Raj. Act 23 of 1961, S. 52.]

[°] Inserted by Court-fees Amendment Act, 1899 (11 of 1899), S. 2.

STATE AMENDMENT

Uttar Pradesh:

For sub-section (1) the following sub-section was substituted, viz. :—

"(1) No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court, in the form set forth in the third schedule, a valuation, according to the market rates current on the date of the application of all the assets and liabilities of the deceased in India at the time of the latter's death, and the Court is satisfied that the fee mentioned in Article 11 of the first schedule has been paid on such valuation.

Explanation.—If at the time of his death, the deceased was a member of a joint Hindu family governed by the Mitakshara Law, such portion of the assets and liabilities of the family as would have been allotted to the deceased in a partition made immediately before his death, shall be deemed to be the assets and liabilities of the deceased within the meaning of this sub-section." — U. P. Act 19 of 1938 (9-1-1939).

Section 19-I — Synopsis (contd.)

9. Date of valuation is date of application.

10. "The Court is satisfied . . . . valuation."

11. Affidavit (Sch. III).

12. Probate or letters in respect of portion of estate.

13. Property situate in different States of India or both in India, and abroad.

14. Non-compliance with section — Power of appellate Court.

15. Court not prevented from hearing application.

16. Conditional order for grant of probate.

17. Order requiring payment of court-fee before certain date.

18. Sub-section (2).

19. Appeal from order passed in probate or letters of administration proceedings.

1. Scope. — (1) Section is mandatory. 1937-2 Mad LJ 899 (900).

(2) Court-fees Act, does not authorise making of orders. It only prohibits the grant of letters of administration so long as the petitioner has not filed valuation and has not paid the court-fee payable on such valuation. An order requiring the petitioner to pay Court-fee is not an order contemplated by Section 19-I at all. If the petitioner does not file the valuation or does not pay court-fee, the District Judge can only refuse letters of administration to him. AIR 1965 All 211 (215) = 1964 All LJ 830 (DB).

(3) Court must be satisfied that fee mentioned in Sch. I, Article 11 has been paid on valuation of property in form set forth in Sch. III. AIR 1938 Mad 486 (488) ** AIR 1925 Cal 1201 (1203) ** 52 Cal 87 (DB) ** AIR 1924 Cal 987 (988) (DB).

(4) Valuation may be filed and fees may be paid even after application is made. AIR 1943 Cal 19 (21) = ILR (1942) 2 Cal 194 ** ('11) 14 Oudh Cas 13 (22) (DB) ** ILR (1956) Punj 1356 (1358).

(5) It is clear from Section 19-I Court Fees Act that Annexure of Schedule in petition for probate is enjoined for Court-fee purposes — In granting probate, Court commits mistake if it makes the schedule part of probate — Mistake can be amended by High Court under inherent powers. AIR 1965 Punj 138 (140) = 66 Pun LR 1220.

(6) Court-fee on probates or letters of administration is payable under this section and not under Section 6. ('13) 17 Cal WN 21 (24) (DB).

[But see AIR 1935 All 449 (450) (DB).]

(5) Section 19-I makes payment of the court-fees mentioned in Item No. 11 to the first schedule to the Court-fees Act a condition precedent to the making of an order for the grant of representation. The section, however, does not make payment of the estate duty a condition precedent to the grant of a representation. AIR 1958 Cal 403 (404).

2. Section is retrospective. — (1) This section lays down procedure only and hence operates retrospectively. (1900) 1900 Pun Re No. 26 p. 91 (91, 92) (DB).

3. Applicability to High Court. — (1) Taxing Officer's decision that no duty is payable is final under Section 5 and cannot be reviewed under Section 19-I by Judge in Chambers when application for grant is laid before him in ordinary course of non-contentious business. AIR 1925 Cal 1201 (1204) = 52 Cal 871 (DB).

4. Application in forma pauperis. — (1) Application for grant of probate or letters of administration made — Court can entertain application in forma pau-

Section 19-I — Note 4 (contd.)
peris and make further order granting probate or letters of administration to applicant without payment of any duty by him under Sch. I, Article 11. AIR 1938 Mad 486 (488).

5. Liability for court-fee, if depends on necessity of probate or letters. — (1) Liability to pay fee prescribed by Sch. 1, Article 11 does not depend upon whether obtaining of probate or letters of administration is necessary but upon fact of probate or letters of administration having been applied for in respect to property. AIR 1935 All 449 (450) = 57 All 881 (DB).

6. Court-fee on application for probate. — (1) Court-fee is charged on probate and not on application for or order granting probate. AIR 1945 Bom 1 (3) = ILR (1945) Bom 783 (DB).

7. Grant of letters to administrator pendente lite. — (1) Proceedings pending for grant of letters of administration made for appointment of administrator pendente lite — Court-fees must be paid on such appointment. AIR 1926 Rang 89 (90) (DB).

8. Valuation of property and payment of fees. — (1) Net total after deduction of total of items in Annexure B from that in Annexure A is valuation on which fee mentioned in Sch. I, Article 11 is to be paid. AIR 1942 Lah 173 (176) = ILR (1942) Lah 717 (FB).

(2) Under Section 19-I (i) the court-fee on an application for the grant of probate bears a direct relation to the valuation of the property and is levied "on such valuation". This intention of the Legislature should be steadily kept in mind in interpreting Article 11 (U. P.) of the first schedule. AIR 1957 All 207 (209) (DB).

(3) Property which deceased gifted away to petitioner is not required to be set forth in Annexure A. AIR 1934 Oudh 72 (74) = 9 Luck 370 (DB).

(4) Death of husband — Burmese Buddhist wife applying for letters of administration — She must pay duty only on other half which belonged to her husband. AIR 1919 Low Bur 118 (118).

(5) Government and Railway Provident Fund money is not liable to duty, when application for letters of administration is made in respect of estate of deceased. AIR 1928 Rang 312 (313) = 6 Rang 558.

(6) Money vested in nominee is not liable to duty. AIR 1930 Cal 252 (253) (DB). (Nominee cannot be compelled to take out letters of administration — Railway Company — Employer can only insist on proof of identity.) ** AIR 1926 Nag 306 (307) ** AIR 1925 Nag 108 (108).

(7) If Railway company refuses to pay money to nominee without production of letters of administration or probate it may be mentioned among assets of deceased but no fee will be payable thereon. AIR 1925 Nag 108 (108).

[See also AIR 1930 Cal 252 (253) (DB). (Provident fund mentioned — It cannot be held to have been included as "assets" of the deceased.)]

[But see AIR 1930 Oudh 145 (147) = 5 Luck 712 (FB) ** AIR 1939 Sind 52 (57) = ILR (1939) Kar 359. (Nominee cannot get succession certificate in respect of amount without payment of court-fee.)]

(8) Person not dependant or nominee — Provident fund money over Rs. 5,000 — He can get money only by producing probate, letters of administration or succession certificate and has to pay fee on amount of fund when applying for probate, etc. AIR 1933 Sind 101 (101) = 26 Sind LR 429.

(9) Private provident fund — Money does not vest in dependant or nominee of depositor or subscriber — Private company creating fund does not hold it as trustee for dependant or nominee — Court-fee is payable on probate or letters of administration. AIR 1928 Rang 312 (313) = 6 Rang 558.

(10) Judgment-debt need not be valued at its face value but value may be put on it according to chances of recovering it. AIR 1931 Bom 419 (420) = 55 Bom 844.

(11) Widow applied for certificate of administration — Objection raised that sum of money secured on bond in name of widow belonged to estate of deceased — Widow denied this — **Held** until contrary was proved fee should be paid on valuation of estate excluding bond-debt. ('80) 5 Cal LR 368 (369) (DB).

(12) Mere fact that property is subject of litigation will not in itself make it impossible for value of property being assessed for purpose of duty on probate or letters of administration. ('01) 24 Mad 241 (242) (DB) ** AIR 1956 Bom 404 (Pr 3) (DB).

(13) Deceased's estate worth Rs. 125 and chose in action claiming Rs. 17,000 — Petitioner assessing under Rs. 1,000 — Probate or letters of administration may be issued without payment of fee as provided by Section 19 (VIII). ('01) 24 Mad 241 (242) (DB) ** ('96) 23 Cal 577 (579) (DB).

(14) A person by will conveyed property in trust for A for life and thereafter for such person as A should appoint and A exercised such power by his will — Property in which A had only life-interest with general power of appointment is not "property" within meaning of Schedule I, Article 11 and is not liable to probate duty. AIR 1933 Cal 924 (925, 926) = 60 Cal 1016.

[But see ('02) 25 Mad 515 (518).]

Section 19-I — Note 8 (contd.)

(15) No duty is payable in respect of membership card of association. AIR 1942 Bom 33 (34).

(16) Petitioner stated amount of assets which he expected to realize. Mere fact that he is prepared to allow other persons to retain and administer amount recovered by them before grant of probate does not entitle him to evade duty in respect of latter amount and duty must be paid on entire sum. AIR 1931 Lah 310 (312) = 12 Lah 584 (DB).

(17) Petitioner can deduct amount of debts due from deceased from gross value of estate. AIR 1916 Cal 543 (545) ** AIR 1914 Cal 40 (45).

(18) It is not necessary for the purpose of deducting the amount of debts from the gross value of the estate that the debts should be capable of being enforced. It is sufficient if they are debts which in law the executor would be entitled to pay out of the estate of the deceased. AIR 1950 Bom 74 (Prs 2, 3) (DB).

(19) Court-fee mentioned in section is to be calculated according to law in force on date of grant and not that in force on the date of the application. AIR 1944 All 119 (120) = ILR (1944) All 229 (DB) ** AIR 1927 Bom 643 (643) = 52 Bom 61 (DB) ** AIR 1945 Pat 361 (362) = 24 Pat 171 ** AIR 1945 Pat 86 (86)= 23 Pat 672.

[But see AIR 1924 Cal 987 (988) (DB) ** AIR 1945 Bom 1 (5) = ILR (1945) Bom 783 (DB).]

(20) The court-fee payable under Schedule I. Article 11 on the valuation fixed by the Court is to be paid before the hearing of the proceedings (which in the very nature of things, includes the order of the Court entitling the petitioner to the grant of probate or letters of administration) and not just before the issue of a probate to the applicant. AIR 1955 Pat 362 (Prs 6, 9) = 34 Pat 205 (DB).

(21) It has been held that a nominee in respect of a policy of insurance does not become the owner of the money payable under the policy merely by reason of the nomination. The policy-holder continues to be the owner up to the end of his life and has full power of disposal over it. Hence, the money payable under the policy is to be treated as a part of the testator's assets and court-fee is to be paid on it under this section. AIR 1953 All 721 (Pr 7).

(22) A petitioner for the probate of a will is not liable under any provision of law to pay the amount of court-fee out of his own property. These sums are to be paid out of the deceased's estate. AIR 1956 All 152 (Pr 3).

(23) Dividends payable on the shares which the deceased held in certain mills would naturally form accretions to the estate unless they have been lawfully subtracted from it. The mere fact that those dividends were remitted abroad by the mills would not make any difference when the mills had no legal authority to do so. The duty must be paid on them. AIR 1956 Mad 200 (Pr 3) = ILR (1956) Mad 220.

9. Date of valuation is date of application. — (1) Value of property of deceased for purposes of calculation of court-fees under Schedule I, Article 11 is its value at date of application for probate or letters of administration and not its value at time of death of deceased. AIR 1933 Lah 936 (937, 938) = 14 Lah 526 ** AIR 1921 Pat 206 (208) = 6 Pat LJ 411 (DB) ** AIR 1956 Mad 277 (Prs 23, 24) (DB) ** AIR 1952 All 639 (Pr 1).

(2) Subsequent changes in value of property do not alter amount of fee payable. ('12) 14 Ind Cas 804 (804, 807) (Bur).

10. "The Court is satisfied ...... valuation." — (1) Court cannot check correctness of valuation. ('28) 32 Cal WN 799 (802, 803) ** AIR 1925 Cal 1201 (1203) = 52 Cal 871 (DB).

(2) Question whether property is or is not trust property and was or was not rightly included in Annexure B of valuation filed by petitioner falls under this section and must be decided by Court before granting probate or letters of administration. AIR 1939 Pat 126 (127) = 17 Pat 542 ** AIR 1928 Lah 947 (949).

11. Affidavit (Sch. III). — (1) The mere fact, that a sum has been collected by the executor before obtaining probate and this has been excluded from the affidavit of assets, will not either make the affidavit not being in proper form or affect the question of jurisdiction of the Probate Court. AIR 1956 Mad 274 (Pr 7).

(2) The mere fact that an executor has been able to obtain payment of an interest which accrued to him after the death of the testator is not enough for excluding it from the computation of the value for the purpose of probate duty. The interest received by him after the death of the testator and before the application for probate is to be included in the affidavit of assets and court-fee paid on the same. AIR 1956 Mad 277 (Prs 23, 24) (DB).

12. Probate or letters in respect of portion of estate. — (1) Application for probate or letters relates to portion of estate — Valuation and court-fee need not be in respect of whole estate. AIR 1925 Lah 493 (493).

(2) Testator appointing 20 sole executors — Widow and daughters in possession of substantial portion of property — Probate held cannot be granted to executors in respect of portion only and they are liable to pay court-fee on en-

*[19-J. **Recovery of penalties, etc.**—(1) Any excess fee found to be payable on any inquiry held under Section 19-H, sub-section (6), and any penalty or forfeiture under Section 19G, may, on the certificate of the Chief Controlling Revenue-authority, be recovered from the executor or administrator as if it were an arrear of land-revenue by any Collector †[* * *].

(2) The Chief Controlling Revenue-authority may remit the whole or any part of any such penalty or forfeiture as aforesaid, or any part of any penalty under Section 19E or of any court-fee under Section 19E in excess of the full court-fee which ought to have been paid.]

[Cf. Bom. Act 36 of 1959, S. 30: H. P. Act 8 of 1968, S. 28: J. & K. Act 7 of 1977 Svt., S. 19-J.]

[*] Inserted by Court-fees Amendment Act, 1899 (11 of 1899), S.

[†] The words "in any part of British India" were omitted by A. C. A. O., 1948.

Section 19-I — Note 12 (contd.)

tire value of estate. AIR 1943 Oudh 151 (154) (DB).

13. Property situate in different States of India or both in India, and abroad.— (1) Court-fee is to be calculated according to rates prevailing in Province in which probate or letters is or are granted. AIR 1924 Cal 115 (117) = 50 Cal 597.

(2) Testator leaves property in India and in foreign country — No court-fee is leviable in respect of property outside British India. ('97) 21 Bom 139 (149) ** ('02) 1902 Pun Re No. 51, p. 190 (191).

(3) Partner in company having head office in London and branch office in Bombay died in England — Probate of his will obtained in England — Application for letters of administration made in Bombay — **Held** no duty payable on value of his share in British India as business was carried on in London. ('97) 21 Bom 673 (680).

14. Non-compliance with section — Power of appellate Court. — (1) Application for probate not in proper form made and granted — Previous proceedings are not nullity — Judge can allow petitioner to make good defects. AIR 1936 Sind 150 (153) = 30 Sind LR 201 (DB).

15. Court not prevented from hearing application.— (1) This section does not say that Court shall not try application until conditions are fulfilled. AIR 1943 Cal 19 (21) = ILR (1942) 2 Cal 194 ** ('11) 14 Oudh Cas 14 (22) (DB) ** ILR (1956) Punj 1356 (1358).

16. Conditional order for grant of probate. — (1) The section does not authorise a court to pass a conditional order entitling the petitioner to the grant of probate and directing that probate be granted to him on payment of the requisite court-fee. AIR 1948 All 268 (272) = ILR (1948) All 598 (DB).

17. Order requiring payment of court-fee before certain date. — (1) The court can require the payment of court-fee at any stage before it passes an order entitling the petitioner to the grant of probate. Thus, an order requiring the payment of court-fee before the date of final hearing of the application would be justified under the terms of the section. AIR 1948 All 268 (273) = ILR (1948) All 598 (DB).

18. Sub-section (2). — (1) Fee chargeable under sub-section (1) of this section may subsequently be revised as result of motion made by Collector. AIR 1933 Lah 936 (938) = 14 Lah 526.

(2) Executor cannot be compelled to pay probate duty until Collector has finished his work with regard to valuation of property. AIR 1929 Cal 733 (734) (DB).

(3) Grant cannot be delayed on ground that there was no motion made by Collector. AIR 1918 Cal 510 (511) (DB).

19. Appeal from order passed in probate or letters of administration proceedings. — (1) Different views are held as to provisions applicable to appeal from order passed in probate or administration proceedings.

(a) Schedule II, Article 17 (VI) applies. ('13) 35 All 448 (450) (DB).

(b) Schedule II, Article 1 applies. ('11) 21 Mad LJ 481 (482) (DB). (16 Bom 408 and 23 Cal 723, Relied on.)

(c) Schedule II, Article 11 applies. AIR 1938 Rang 141 (145) = 1938 Rang LR 72.

Section 19-J — Note 1

(1) Sub-section (1) of this section does not refer to penalties imposed under Section 19-E of Act. AIR 1916 Cal 797 (799) = 43 Cal 230 (DB).

(2) Costs of inquiry under Section 19-H cannot be recovered from petitioner under this section. AIR 1923 Cal 406 (407) = 50 Cal 239 (DB).

*[**19-K. Sections 6 and 28 not to apply to probates or letters of administration.**—Nothing in Section 6 or Section 28 shall apply to probates or letters of administration.]

[Cf: Bom. Act 36 of 1959, S. 31: H. P. Act 8 of 1968, S. 29: J. and K. Act 7 of 1977 Svt., S. 19K.]

[°] Inserted by Court-fees Amendment Act, 1899 (11 of 1899), S. 2.

CHAPTER IV

PROCESS-FEES

20. Rules as to cost of processes.—The High Court shall, as soon as may be, make rules as to the following matters :—

(i) The fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil and Revenue Courts established within the local limits of such jurisdiction;

(ii) the fees chargeable for serving and executing processes issued by the Criminal Courts established within such limits in the case of offences other than offences for which police-officers may arrest without a warrant; and

(iii) the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may from time to time alter and add to the rules so made.

Confirmation and publication of rules.

All such rules, alterations and additions shall, after being confirmed by the *[State Government] †[* * *], be published in the ‡[Official Gazette], and shall thereupon have the force of law.

Section 20 — Note 1

(1) The Court of a Special Judge under the Bengal Tenancy Act is a Civil Court within the meaning of the section. AIR 1931 Cal 572 (573) = 58 Cal 995. (In appeals before the special Judge, process-fees for notices on respondents should be paid according to the scale laid down in the High Court Rules framed under the section. Rule 65 of the rules framed by the Government under Section 189 of the Bengal Tenancy Act is not applicable to such a case.)

(2) Custody fees in respect of movables attached in execution proceedings are covered by the section. AIR 1937 Cal 86 (87) = ILR (1937) 1 Cal 624 (DB).

(3) A commission to make a local investigation is not a process within the meaning of the section. ('90) 17 Cal 281 (284) (DB).

(4) Poundage-fees are process-fees levied under rules made under the section. AIR 1927 Bom 17 (18, 19) (DB).

(5) An order issued by the Court for the sale of property in its custody during the pendency of the suit either by the process establishment or by officer specially appointed under Rule 197 (Madras Civil Rules of Practice) is a process within this section — Sale is chargeable with poundage — Fixing of remuneration for the person conducting sale does not excuse payment of poundage-fee. AIR 1945 Mad 238 (239) = ILR (1945) Mad 816.

(6) The High Court has no power to relax or remit the process-fees prescribed under the Rules made under this section. Order 48 Rule 1 of the Civil Procedure Code gives no such power. AIR 1930 Mad 381 (382) = 53 Mad 262 (FB) ** AIR 1927 Pat 318 (318) ** ('99) 26 Cal 124 (125, 126) (DB).

(7) Offences under Sections 406 and 420, Penal Code are cognizable and so no process fee has to be paid by the complainant for serving and executing processes issued for compelling the attendance of the accused, and the order discharging the accused for non-payment of process fee is not sustainable. ILR (1954) Punj 645 (648).

(8) General Letter No. 4 (Civil) 1942 issued by the Registrar. Appellate Side High Court, under which conveyance charges can be levied in respect of processes issued on persons resident in Calcutta through the Presidency Small Cause Court is an administrative order and not a rule made by the Calcutta High Court under Section 20 of the Court-fees Act and therefore does not legalize the demand for conveyance charges for processes not in suits or proceedings under the Presidency Small Cause Courts Act. ILR (1948) 1 Cal 438 (440) (DB).

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

[Cf: A. P. Act 7 of 1956, S. 75: Bom. Act 36 of 1959, S. 32: H. P. Act 8 of 1968, S. 30: J. & K. Act 7 of 1977 Svt., S. 20: Ker. Act 10 of 1960, S. 83: T. N. Act 14 of 1955, S. 80: Mys. Act 16 of 1958, S. 77: Raj. Act 23 of 1961, S. 71.]

[*] Substituted for 'Provincial Government' by A. L. O., 1950.

[†] The words "and sanctioned by the Governor-General of India in Council" were omitted by the Devolution Act, 1920 (38 of 1920), S. 2 and Sch. I.

[‡] Substituted for 'local official Gazette' by A. O., 1937.

STATE AMENDMENTS

Punjab, Haryana, Chandigarh:

The words 'and revenue' occurring between the words 'civil' and 'Courts' in item one of the section were repealed. — Punjab Land Revenue Act 17 of 1887 (23-9-1887): Act 31 of 1966, S. 88 (1-11-1966).

Uttar Pradesh:

For the existing heading of Chapter IV the heading "Power to make Rules" was substituted. For Section 20 the following section was substituted, viz.:

"**20. Power of High Court to make rules.**—The High Court may make rules to provide for or regulate all or any of the following matters, viz.:

(a) the fees payable for serving and executing processes issued by such Court in its appellate jurisdiction and by the Civil and Criminal Courts established within the local limits of such jurisdiction;

(b) the remuneration of persons employed by the Courts mentioned in clause (a) in the service or execution of processes;

(c) the fixing by District and Sessions Judges and District Magistrates of the number of process-servers necessary to be employed for the service and execution of processes issued from their respective Courts and Courts subordinate thereto; and

(d) the display in each Court of a table in the English and Vernacular languages showing the fees payable for the service and execution of processes.

All such rules shall be subject to the confirmation of the Provincial Government and on such confirmation shall be published in the Official Gazette and shall thereupon have effect as if enacted in this Act." — U. P. Act 19 of 1938 (9-1-1939).

Section 20-A

Delhi:

Same as that of Punjab — See Notification No. 189/38, Gaz. of Ind., 1939, Pt. I page 911.

Punjab, Haryana, Chandigarh:

The following section was added as Section 20-A after Section 20:

"**20-A. Exemption for certain processes.**—(1) Notwithstanding anything contained in the preceding section or in the rules made thereunder, no fees shall be charged for serving and executing processes on behalf of—

(a) the prosecution in any criminal proceedings taken on information presented or complaint made by a public officer acting in his official capacity, and

(b) a liquidator or an arbitrator appointed under the provisions of the Co-operative Societies Act, 1912.

(2) The Provincial Government may by notification determine what persons shall be deemed to be public officers for the purpose of the preceding sub-section." — Punjab Acts 4 of 1939 (24-4-1939) and 1 of 1942 (24-2-1942): Act 31 of 1966, S. 88 (1-11-1966).

21. Tables of process-fees.—A table in the English and Vernacular languages, showing the fees chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

STATE AMENDMENT

Uttar Pradesh:

For Section 21 the following section was substituted ::

"21. (1) The Chief Controlling Revenue Authority may, with the previous sanction of the Provincial Government, make rules consistent with this Act to provide for or regulate all or any of the following matters, viz. :

(a) the fees chargeable for serving and executing processes issued by the Chief Controlling Revenue Authority and by the Revenue Courts established within the local limits of its jurisdiction;

(b) the remuneration of the persons necessary to be employed for the service and execution of such processes;

(c) the fixing by Collectors of the number of persons necessary to be employed for the service and execution of such processes;

(d) the guidance of Collectors in the exercise of the powers conferred on them by sub-section (iii) of Section 19-H;

(e) the supply of stamps to be used under this Act;

(f) the number of stamps to be used for denoting any fee chargeable under this Act;

(g) the keeping of accounts of all stamps used under this Act;

(h) the circumstances under which stamps may be held to be damaged or spoiled;

(i) the circumstances in which and the manner in which allowance for used damaged or spoiled stamps may be made; and

(j) the regulation of the sale of stamps to be used under this Act, the person by whom alone such stamps may be sold, and the duties and remuneration of such persons :

Provided that, in the case of stamps used under Section 3 in a High Court, such rules shall be made with the concurrence of Chief Justice of such Court.

(1-A) The State Government may make rules to carry out generally the purposes of this Act.

(2) All rules made under this section shall be punished in the Official Gazette and on such publication, shall have effect as if enacted in this Act." — U. P. Act 19 of 1938 (9-1-1939), sub-section (1-A) was added by — U. P. Act 9 of 1941 (19-6-1941).

22. Number of peons in district and subordinate Courts.—Subject to† rules to be made by the High Court and approved by the *[State Government] ‡[* * *],

every District Judge and every Magistrate of a district shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto,

Number of peons in Mufassal Small Cause Courts.

and for the purposes of this section, every Court of Small Causes established under §Act No. 11 of 1865 (to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction

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Section 22 — Note 1

(1) The number of peons to be employed for the service and execution of processes is fixed by the District Judge and the remuneration is settled by the High Court. ('05) 22 Cal 596 (607) (DB).

(2) The Act distinctly contemplates that the peons are to be employed not only for the service of summons, notices or orders but for the execution of the processes, such as warrants of arrest or of attendance and distress. ('05) 22 Cal 596 (607) (DB).

of the High Courts of Judicature) shall be deemed to be subordinate to the Court of the District Judge.

[*] Substituted for the words 'Provincial Government' by A. L. O., 1950.

[†] For Rules made under the powers conferred by this section, see different Local Rules and Orders.

[‡] The words "and the Governor-General of India in Council" were omitted by the Devolution Act, 1920 (38 of 1920), S. 2 and Sch. I.

[§] The reference to Act 11 of 1865 should now be read as a reference to the Provincial Small Cause Courts Act, 1887 (9 of 1887), S. 2 (2) and (3).

STATE AMENDMENTS

Manipur and Tripura:

In its application to each of the two Union territories, in Section 22, for paragraph 3, substitute the following:—

> "and for the purposes of this section, every Court of Small Causes established under Section 5 of the Provincial Small Cause Courts Act, 1887, shall be deemed to be subordinate to the Court of the District Judge."—See G.S.Rs. 1119-1120, Gaz. of Ind., 1-7-1963, Pt. II, Sec. 3 (i), Ext., pp. 501-531 (w.e.f. 15-7-1963).

Uttar Pradesh:

Section 22 was repealed.—United Provinces Act 19 of 1938 (9-1-1939).

23. Number of peons in Revenue Courts.—Subject to *rules to be framed by the Chief Controlling Revenue Authority and approved by the **[State Government] †[* * *], every officer performing the functions of a Collector of a district shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him.

[*] For Rules framed under the powers conferred by this section, see different Local Rules and Orders.

[**] Substituted for 'Provincial Government' by A. L. O., 1950.

[†] The words "and the Governor-General of India in Council" were omitted by the Devolution Act, 1920 (38 of 1920), S. 2 and Sch. I.

STATE AMENDMENTS

Punjab: Haryana: Chandigarh:

This section was repealed so far as the province of the Punjab was concerned.—Punjab Land Revenue Act 17 of 1887 (23-9-1887); Act 31 of 1966, S. 88 (1-11-1966).

Uttar Pradesh:

This section was repealed.—United Provinces Act 19 of 1938 (9-1-1939).

24. Process served under this Chapter to be held to be process within meaning of Code of Civil Procedure. [Repealed by the Repealing and Amending Act, 1891 (12 of 1891).]

CHAPTER V

OF THE MODE OF LEVYING FEES

STATE AMENDMENT

Section 24-A

Uttar Pradesh:

The following section was inserted as Section 24-A at the beginning of Chapter V, viz.:—

> "**24-A. Control of Court-fee and Inspectorate of Stamps.**—The levy of fees under this Act shall be under the general control and superintendence of the Chief Controlling Revenue Authority, who may be assisted in their supervision thereof by the Chief Inspector of Stamps and by as many Inspectors of Stamps as the State Gov-

ernment may appoint in this behalf or by any other subordinate agency appointed for the purpose.

The Chief Inspector of Stamps and Inspectors of Stamps shall have access to all records, and shall be furnished with all such information as may be required by them for the performance of their duties under this Act."—U. P. Act 19 of 1938, (9-1-1939).

25. Collection of fees by stamps.—All fees referred to in Section 3 or chargeable under this Act shall be collected by stamps.

26. Stamps to be impressed or adhesive.—The stamps used to denote any fees chargeable under this Act shall be impressed or adhesive, or partly impressed and partly adhesive, as the [°][appropriate Government] may, by notification in the [†][Official Gazette], from time to time direct.[‡]

[°] Substituted for "Local Government" by A. O., 1937.

[†] Substituted 'Local Gazette', ibid.

[‡] For Rules as to levy of court-fees by adhesive and impressed stamps, see Gaz. of Ind., 1883, Pt. I, page 189.

27. Rules for supply, number, renewal and keeping accounts of stamps.—The [°][appropriate Government] may, from time to time, make rules[†] for regulating—

(a) the supply of stamps to be used under this Act;

(b) the number of stamps to be used for denoting any fee chargeable under this Act;

(c) the renewal of damaged or spoiled stamps; and

(d) the keeping accounts of all stamps used under this Act:

Section 25 — Note 1

(1) Payment of court-fees made in the form of money — Such payment was treated as equivalent to the payment of court-fees. AIR 1928 Pat 29 (30) = 6 Pat 602 (DB) ** ('69) 3 Beng LR (App) 72 (73) (DB).

(2) Where there is a dispute as to the amount of court-fee payable on an appeal to the High Court, the Taxing Officer has no power to order the appellant to deposit in Court as a condition precedent to the hearing of the appeal, a sum equal to the amount admitted by the appellant to be payable as court-fee. AIR 1928 Pat 29 (30) = 6 Pat 602 (DB).

Section 26 — Note 1

(1) The Government has no power to require that the stamps should bear the words "court-fees". Such a requisition, if not complied with, will not invalidate the stamp. ('95) 19 Bom 145 (149) (DB).

(2) Neither Section 26 nor Section 27 (b) authorise the appropriate Government to make rules providing that a Court-fee stamp which is not overprinted with the name of certain State would not be usable in the Courts of that State. AIR 1969 Delhi 130 (132).

(3) A plaint was originally instituted in the Small Cause Court at Simla (Punjab), with court-fee stamps pertaining to the Punjab Government. The plaint was subsequently returned for presentation to a Himachal Court. It was then presented to the Subordinate Judge of Theog and decreed by him in due course. It was contended that the latter Court could not proceed with the suit, because the plaint bore Punjab stamps and not Himachal stamps. It was held that having regard to peculiar circumstances of the case and the practice which was in vogue in the Himachal State prior to July 1953, of using stamps of other States the objection as to court-fees should be overruled and credit should be given to the plaintiff for the court-fee paid in the Simla Court. AIR 1956 Him Pra 38 (Pr 3).

Section 27 — Note 1

(1) Under the section Government is given power to make rules, inter alia, as to the number of stamps to be used to denote a particular amount of court-fee. ('71) 16 Suth WR 153 (153) (DB).

(2) The use of stamps which are not of the correct denomination according to rules made by Government under the section will not be sufficient compliance with the provisions of the Act as to the payment of court-fees and the document in question must be treated as not stamped. AIR 1931 Nag 94 (95) = 26 Nag LR 263 ** AIR 1931 Pat 39 (40).

(3) The Court may give time for the rectification of the defect. AIR 1931 Nag 94 (95) = 26 Nag LR 263.

(4) Where stamps of the required denominations are not available, stamps of lower denomination may be used. AIR 1937 Mad 266 (267) ** ('71) 16 Suth WR 152 (152) (DB).

[See also AIR 1931 Pat 113 (113). (Certificate from one stamp vendor not sufficient — Plaintiff should try to get requisite stamp from other vendors in the locality.) ** AIR 1931 Pat 39 (39).

Provided that, in the case of stamps used under Section 3 in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

All such rules shall be published in the ‡[Official Gazette], and shall thereupon have the force of law.

[*] Substituted for "Local Government" by A. O., 1937. For definition of "Appropriate Government", see Section 1-A.

[†] For Rules under Section 27, see different Local Rules and Orders.

[‡] Substituted for "Local Gazette" by A. O., 1937.

STATE AMENDMENTS

Manipur and Tripura:

In Section 27,—

(i) for the words 'appropriate Government', substitute the words 'Central Government' and

(ii) in the Proviso, for the words "Chief Justice of such Court", substitute the words "Judicial Commissioner".—See G.S.Rs. 1119-1120, Gaz. of Ind., 1-7-1963, Pt. II, Sec. 3 (i), Ext., pp. 501-531 (w.e.f. 15-7-1963)

Uttar Pradesh:

This section was repealed.—U. P. Act 19 of 1938 (9-1-1939).

28. Stamping documents inadvertently received.—No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.

But, if any such document is through mistake or inadvertence received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; and, on such document being stamped accordingly, the same

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Section 27 — Note 1 (contd.)

(**Held** that in this case the proper stamp for the plaint as it was originally filed was of a value above that which licensed stamp vendors were permitted to sell at the place and that the petitioners ought to have obtained it from the treasury.)]

(5) Stamps of wrong denomination used originally — Stamps of correct denomination supplied subsequently — Original stamps cannot be returned to the party nor has the Court power to order a refund of court-fees — But Court can issue certificate in favour of the party which he may use in applying to the Revenue authorities for a refund. AIR 1934 Nag 263 (263, 264) = 31 Nag LR 82 ** AIR 1931 Pat 113 (114) ** AIR 1931 Pat 39 (40).

(6) Where a plaint which does not bear stamps of the proper denomination is returned for presentation to the proper Court under Order 7, Rule 10 of the Civil Procedure Code and is re-presented in such Court, the fact that the Court which returned the plaint did not raise any objection as regards the stamps does not preclude the Court of re-presentation from taking such objection. AIR 1931 Pat 39 (40).

(7) The words "for use in the High Court only" impressed on the back of court-fee stamps do not invalidate the stamps if used in the lower Courts. AIR 1926 Pat 408 (408).

(8) Rules under framed by Delhi Government and notified on 29-3-1954 are ultra vires its rule-making power. AIR 1969 Delhi 130 (132).

SECTION 28 — SYNOPSIS

1. **Scope.**
2. **Failure to pay proper court-fee — Effect.**
3. **"Properly stamped."**
4. **"Mistake or inadvertence."**
5. **Head of the office.**
6. **Payment of deficit court-fee under the section — Effect.**
7. **Stage at which deficit court-fee may be ordered to be paid.**
8. **Power of appellate Court to require payment of deficient court-fee in lower Court.**
9. **Court of revision — Power of.**
10. **Giving of time for paying court-fees.**
11. **Memorandum of appeal, rejection of, as insufficiently stamped.**
12. **Mode of recovery of court-fees.**

1. Scope. — (1) The section does not apply to probates or letters of administration. AIR 1925 Cal 1201 (1203) = 52 Cal 871 (DB).

and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

[Cf. Bom. Act 36 of 1959, S. 40; Him. Pra. Act 8 of 1968, S. 37; Jammu and Kashmir Act 7 of 1977 Svt., S. 28.]

STATE AMENDMENT

Manipur and Tripura:

In Section 28, in paragraph 2, for the words 'High Court' and 'any Judge of such Court', substitute the words "the Court of the Judicial Commissioner for Manipur/Tripura" and "the Judicial Commissioner".—See G.S.Rs. 1119-1120, Gaz. of Ind., 1-7-63, Pt. II, Sec. 3 (i), Ext., pp. 501 and 531 (w.e.f. 15-7-1963).

Section 28 (contd.)

2. Failure to pay proper court-fee — Effect. — (1) Where a plaint or other document requiring court-fee has not been properly stamped the Court cannot dispose of the matter on the merits. AIR 1917 Low Bur 179 (180).

[See also ('12) 15 Ind Cas 526 (528) (Oudh). (Defendant claiming set-off but no court-fee paid — Set-off cannot be allowed.)]

(2) Court-fee on some of reliefs only paid — Whole appeal should not be dismissed — Appellant must be heard in respect of relief on which Court-fee was paid. 1961 Raj LW 641 = ILR (1962) 12 Raj 159.

(3) Where a decree is passed in a suit instituted on an insufficiently stamped plaint, the decree will not be void. AIR 1928 Lah 221 (223).

(4) Where the Court finds it has no jurisdiction to entertain the suit, there is no objection to its returning the plaint under Order 7, Rule 10 of the Civil Procedure Code for presentation to the proper Court although the full court-fee has not been paid. AIR 1931 Mad 69 (70, 71) ** ('29) 57 Mad LJ (NRC) 33 (33). (It is not proper for a Court to ask the plaintiff to pay deficit court-fee and to reject the plaint on failure to pay the same.)

(5) Different views are held as to whether the failure to pay proper court-fee makes the suit one not instituted for purposes of limitation.

(a) The validity of a suit for purposes of limitation is not affected by the fact that sufficient court-fee on the plaint is not paid at the time of its presentation. AIR 1937 Pat 550 (552, 553) = 16 Pat 600 (SB) ** ('09) 32 Mad 305 (306, 307) (FB) ** ('05) 27 All 197 (199, 200) (DB).

(b) The presentation of a plaint which is not properly stamped is not a valid presentation for purposes of limitation. ('36) 9 RM 208 (208) (DB) ** ('26) 96 Ind Cas 433 (435) (DB) (Cal) ** AIR 1920 Lah 24 (24) ** ('90) 12 All 129 (142) (FB) ** AIR 1969 Punj 308 (310). (AIR 1938 Lah 361 (FB) doubted in view of **AIR 1958 SC 767.**)

[See also ('37) 39 Pun LR 502 (503).]

3. "Properly stamped." — **(1)** Unless the proper stamps are used to denote the court-fees, the document will not be properly stamped within the meaning of the section. AIR 1934 Nag 263 (264) = 31 Nag LR 82 ** AIR 1931 Pat 113 (113, 114) ** ('02) 6 Cal WN 785 (786).

4. "Mistake or inadvertence." — (1) Mistake is not mere forgetfulness. It is a slip, made not by design but by mischance. ('07) 29 All 749 (763) (FB).

(2) A mistake of law is a mistake within the meaning of the section. ('02) 25 Mad 380 (382, 383) (DB).

[See however ('54) Madh BLJ 1954 HCR 1097 (1098). (Miscellaneous appeal filed on court-fee of Rs. 2 instead of Rs. 2-8-0 — Court-fees Act in force for more than 2 years — Contention that appeal on insufficient court-fee was filed in ignorance cannot be accepted — Ignorance of law is no excuse.)]

(3) A mistake or inadvertence on the part of the Court or its officers is within the section. ('02) 1902 All WN 153 (153) (DB) ** 1931 All WN 21 (21) (DB) ** AIR 1968 All 216 (222, 223) = 1967 All LJ 612 (FB). (AIR 1962 All 268, **Overruled.**)

(4) The mistake may, in its origin be the mistake of the plaintiff, but by the time the plaint has been registered the mistake becomes that of the Court or its officers. ('07) 29 All 749 (762) (FB) ** AIR 1970 Tripura 26 (29).

[See also ('07) 29 All 382 (384, 385) (FB).]

(5) The requirement of certain court-fee on the decree and judgment accompanying a memo of appeal is primarily for fiscal purposes and a deficiency especially when due to accidental oversight is not material. The defect is more or less formal and of a most unsubstantial nature and the Court has certainly discretion under this section and S. 149, Civil P. C. to get the defect remedied by having the deficiency in the court-fee made good. AIR 1955 Ajmer 64 (Pr 5).

5. Head of the office.— (1) The Registrar as the Head of the High Court office by virtue of Section 28 has the power to collect the proper court-fee in respect of an appeal memorandum which through mistake or inadvertence has been filed already and accepted as having been sufficiently stamped. AIR 1951 Orissa 150 (Pr 4) = ILR (1950) Cut 497.

Section 28 (contd.)

6. Payment of deficit court-fee under the section — Effect. — (1) On deficit court-fee being made up under the orders of the Court, the plaint or other document in question and every proceeding relative thereto is rendered as valid as if it had been properly stamped in the first instance. AIR 1931 Rang 38 (38) = 8 Rang 538 (DB) ** ('07) 1907) Pun Re No. 123, p. 600 (607) (DB) ** ('79) 2 All 682 (685) (FB) ** AIR 1968 All 216 (224) = 1967 All LJ 612 (FB). (AIR 1962 All 268 **Overruled** on another point.) ** AIR 1967 Goa 99 (100) (FB).

(2) Where the Court once exercises its discretion and allows the deficit court-fee to be made up, it cannot go back on its own order subsequently. ('07) 1907 Pun Re No. 123, p. 600 (603, 607) (DB) ** ('02) 1902 All WN 153 (153) (DB).

(3) Where the deficit court-fee is paid within the time fixed by the Court or enlarged by it, the suit or other proceeding will not be barred by limitation although at the time when the deficit court-fee is paid the period of limitation has expired. ('07) 1907 Pun Re No. 123, p. 600 (607) (DB).

(4) Appeal from appellate decree of single Judge — Memorandum with deficit court-fee filed on 8-11-62 — Deficit made good on 20-12-62 and appeal admitted on 3-1-63 on 13-11-62 the U. P. Act 14 of 1962 coming into force taking away the jurisdiction of the court to hear such appeals — **Held,** that no appeal was pending on 12-11-62 within Section 3 (2) of the U. P. Act — The appeal held not maintainable. AIR 1964 All 552 (553) = 1964 All LJ 537 (FB). (AIR 1951 All 64 (FB), **Held,** required reconsideration.)

7. Stage at which deficit court-fee may be ordered to be paid. — (1) The appellate Court can accept deficit court-fee. ('02) 25 Mad 380 (382, 383) (DB).

(2) Opportunity to make up deficiency of court-fee can be given at any stage. ILR (1959) 9 Raj 306.

(3) Action under the section can be taken after the admission of an appeal. AIR 1943 Pat 102 (104) = 21 Pat 720.

(4) To record findings on all issues and after dismissing suit on merits, to require payment of additional court-fee is illegal and contrary to correct procedure. AIR 1938 Lah 311 (312) ** AIR 1935 Lah 75 (76).

[See also AIR 1921 Pat 88 (89) = 6 Pat L Jour 293 (FB). (Appellate Court — Question of court-fee in lower Court — Ordinarily question must be decided as a preliminary point — But Court has discretion to postpone decision.)]

(5) Once the case has been disposed of, the Court becomes functus officio and has no longer any jurisdiction to require the payment of any court-fees. AIR 1939 Sind 279 (280) = ILR (1939) Kar 469 (DB) ** AIR 1933 Lah 208 (208) ** AIR 1933 Mad 321 (321) ** AIR 1925 Lah 131 (131).

[See also AIR 1919 Cal 194 (195) = 46 Cal 520 (DB) ** AIR 1932 All 316 (317).]

[But see ('85) 7 All 528 (532, 534) (DB).]

(6) Where a Court finds after the hearing of a case that a larger amount is due to the plaintiff or appellant than what he has paid court-fee for the proper course for the Court is to post the case for orders and to require the party to pay additional court-fees and then only to pronounce judgment. AIR 1933 Mad 330 (331) = 56 Mad 705 (DB).

(7) After pronouncing judgment the Court has no power to call upon a party to pay deficit court-fees. AIR 1938 All 546 (548) ** AIR 1932 Pat 228 (231) = 11 Pat 532 (DB).

[See also ('06) 30 Cal 516 (519) (DB).]

(8) On objection by the Stamp Reporter, an appellant was ordered to pay ad valorem court-fee on his memorandum of appeal and to raise the question of sufficiency of court-fee at the hearing of the appeal. The additional court-fee was deposited. But the case was heard and disposed of and decree passed without the question of court-fee being raised. Thereafter, the appellant applied for refund of the amount deposited. It was held that the Court was bound to consider the question of sufficiency of court-fee on the appeal. ('13) 18 Cal L Jour 133 (136) (DB).

(9) The expiry of limitation for the proceeding is no bar to the acceptance of court-fee. ('02) 25 Mad 380 (382, 383) (DB).

(10) Where a plaint is rejected for non-payment of deficient court-fees within the time granted by the Court and a fresh plaint is thereon presented, the Court can treat the court-fee already paid as part of the court-fee necessary for the fresh plaint. AIR 1935 All 985 (986).

(11) Neither the Court-fees Act nor the Rules of the Original Side of the High Court state that the exhibits or the depositions or the minutes must be stamped right at the moment when they are tendered as exhibits or at the moment when the witness is giving his deposition or at the moment when the court minutes are being taken down. The rules recognise that time appointed thereunder can always be relaxed by the Judge for the purpose of realising either unpaid or insufficiently paid court-fees or stamps at any time before the order is either completed or given effect to. AIR 1956 Cal 619 (620).

(12) Where the written statement filed by the defendant is treated as the plaint in the cross-suit instituted by him, the Court may in its discretion under Section 149, Civil P. C., allow him to pay

Section 28 — Note 7 (contd.)
court-fee even after the decree in the suit. AIR 1956 J and K 38 (40).

(13) Where the plaintiff omits to amend the suit valuation and pay court-fee on the enhanced rent in spite of the defendant's contention regarding court-fee, a decree cannot be given to the plaintiff for claiming enhanced rent on payment of the necessary court-fee in the High Court. AIR 1955 Trav-Co 167 (Prs 3, 4).

8. Power of appellate Court to require payment of deficient court-fee in lower Court. — (1) Where an insufficiently stamped document has been acted upon in the lower Court and the appellate Court discovers the mistake when the appeal is filed, it cannot be said that the document is received etc., by mistake or inadvertence in the appellate Court. AIR 1927 Cal 775 (775) (DB).

(2) Under Section 149 of the Civil Procedure Code the appellate Court's power is wider and is not limited to the cases contemplated by Section 12 (ii) or by the second paragraph of this section. AIR 1930 Cal 787 (793, 794) = 58 Cal 474 (DB) ** AIR 1921 Pat 88 (89) = 6 Pat L Jour 293 (FB) ** AIR 1968 All 216 (222). (AIR 1962 All 268, **Overruled.**)

(3) The fact that the plaint was held to be a valid document by the Court receiving it neither precludes the Court of appeal from judging its validity nor absolves it from the duty of doing so. If the Court of appeal finds that the plaint is invalid by reason of not being properly stamped it has to ignore the plaint altogether unless and until it is properly stamped. It cannot be said that if the document is not to be used in appeal the Court of appeal cannot make a direction under second paragraph of Section 28. AIR 1968 All 216 (222) = 1967 All LJ 612 (FB). (AIR 1962 All 268, **Overruled.**)

(4) The power of the appellate Court to direct payment of Court-fee on a document is not dependent whether the document may be or intended to be 'used' in appeal. AIR 1968 All 216 (222) = 1967 All LJ 612 (FB). (AIR 1962 All 268, **Overruled.**)

(5) The powers under Order 7, Rule 11 of the Civil Procedure Code can be exercised by the appellate Court. AIR 1921 Pat 88 (90) = 6 Pat L Jour 293 (FB).

(6) Under Section 28 the Court in which an insufficiently stamped document has been received, filed or used by mistake or inadvertence has the power to grant time to make good the deficiency. But as a document received or filed in the Court below may be "used" in an appellate Court, the appellate Court has power under this section to direct that deficiency may be made good provided the document is used in such Court. AIR 1957 All 63 (65) (DB).

(7) After an appeal has been decided, the appellate Court becomes functus officio and has no right to direct recovery of deficit court-fee either on the plaint or on the memorandum of appeal. AIR 1957 Pat 533 (533, 534) (DB).

(8) Appeal by defendants — Sufficient Court-fee not paid on appeal — Court finding, during arguments, that sufficient Court-fee not paid on plaint also — Court rejecting the plaint — **Held,** Court in the first instance should have asked the defendants/Appellants to pay deficit Court-fees on appeal and after such payment should have asked plaintiff/Respondent to pay deficit Court-fee on plaint and only on plaintiff's failure to do so should have rejected the plaint — **Held,** further, order of the Court rejecting the plaint at the outset is revisable. AIR 1968 Manipur 1 (3).

9. Court of revision — Power of.—(1) It has been held that a Court of Revision has power to require payment of court-fees that ought to have been paid in the lower Court. AIR 1915 Cal 701 (702) (DB). (Suit under Bengal Tenancy Act, Section 106 — Settlement Officer while acting under revisional powers under Section 108, Bengal Tenancy Act, can require deficit court-fee on plaint to be made up.)

10. Giving of time for paying court-fees. — (1) Where a case falls under either Section 10 (ii) of this Act or Order 7, Rule 11, Civil P. C., the litigant will be entitled as of right to some time for making up deficiency in Court-fee, notwithstanding the fact that under this section the Court is not bound to allow such time but has a discretion in the matter. AIR 1938 Mad 542 (543) ** AIR 1917 Lah 377 (378) = 1917 Pun Re No. 27 (DB) ** ('88) 1888 Pun Re No. 156 p. 417 (418) (DB).

[See also ('07) 29 All 749 (761, 762) (FB).]

(2) Court has a discretion to allow time to an appellant to make up deficiency in court-fee on the memorandum of appeal. AIR 1941 Nag 220 (221) = ILR (1941) Nag 467 (DB) ** **AIR 1929 PC 147 (148) = 56 Ind App 232 = 10 Lah 737.**

(3) The Court has power to enlarge the time originally fixed for payment of court-fee. ('09) 2 Ind Cas 1 (2) (Cal) ** ('04) 31 Cal 75 (78) (DB).

(4) Memorandum of appeal and application for leave to appeal filed — Question of deficiency in court-fee paid on the memorandum can be considered only subsequent to the granting of leave — Reasonable time for making up deficiency may be allowed after application has been granted. AIR 1952 All 448 (Pr 4) (DB).

11. Memorandum of appeal, rejection of, as insufficiently stamped. — (1) A memorandum of appeal, insufficiently stamped, need not be dismissed in toto — But a decree cannot be passed for more than the amount for which court-fee has been

STATE AMENDMENTS

Section 28-A

Madhya Pradesh:

After Section 28, the following section was inserted as Section 28-A, viz.:—

"**28-A. Recovery of deficient or unpaid court-fees.**—(1) If, on examination of the records of a civil, criminal or revenue case which has been disposed of, a public officer finds that the fee payable under the Act or the rules made thereunder on any document filed, exhibited or recorded therein has not been paid or has been insufficiently paid, he shall report the\ fact to the presiding officer of the Court or to the revenue officer concerned.,

(2) Such presiding officer or revenue officer, after satisfying himself of the correctness of such report, shall record a provisional finding that the proper fee has not been paid and determine the amount of the fee payable and the person from whom the fee or the difference thereof, if any, shall be recoverable.

(3) After recording a finding under sub-section (2), the presiding officer or the revenue officer shall issue a notice to the person referred to in that sub-section to show cause why he should not be ordered to pay the fee determined thereunder, and, if sufficient cause is not shown, the presiding officer or revenue officer shall confirm the finding and make an order requiring such person to pay the proper fee before a date to be specified in that notice.

(4) If such person fails to pay the fee in accordance with the notice issued under sub-section (3), it shall, on the certificate of such presiding officer or revenue officer, be recoverable as an arrear of land revenue."—C. P. Act 9 of 1938 (17-4-1938).

Orissa:

Section 28-A is the same as that of Madhya Pradesh—Orissa Act 13 of 1957, S. 2, (24-7-1957).

29. Amended document.—Where any such document is amended in order merely to correct a mistake and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

[Cf. Andh. Pra. Act 7 of 1956, Section 71; Bom. Act 36 of 1959, Section 41; Him. Pra. Act 8 of 1968, Section 38; Jammu and Kashmir Act 7 of 1977 Svt., Section 29; Ker. Act 10 of 1960, Section 79; T. N. Act 14 of 1955, Section 76; Mys. Act 16 of 1958, Section 67; Raj. Act 23 of 1961, Section 67.]

30. Cancellation of stamp.—No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Section 28 — Note 1 (contd.)

paid. ('38) 40 Pun LR 123 (123) (DB) ** AIR 1931 Lah 237 (238) (DB).

(2) It is open to a single Judge to decline to receive the document which is insufficiently stamped on the ground that he cannot receive it — But where the document has been received and has been accepted as having been properly presented, a single Judge should not reject the document later on, on the ground of insufficiency of court-fees, unless the matter were within the jurisdiction of a single judge — If a Division Bench alone can reject the appeal on the ground of insufficiency of court-fees then the matter should be laid before such a Division Bench. AIR 1935 All 620 (625) = 57 All 983 (FB).

12. Mode of recovery of court-fees. — (1) Ordinarily, the Court has no power to order the recovery of court-fees by attachment of the property of the defaulter or other process in execution proceedings. AIR 1934 All 989 (990) ** AIR 1932 All 316 (317) ** AIR 1919 Cal 194 (194) = 46 Cal 520 (DB).

[But see AIR 1934 Oudh 396 (398).]

(2) This section does not empower the Court to realise the amount of deficiency. It only empowers the Court to order that the deficiency may be made good. AIR 1957 All 63 (65) (DB).

Section 28-A (Madhya Pradesh) — Note 1

(1) Where a second appeal is dismissed in default, the only Court which can act under this section is the lower appellate Court and not the High Court, ('36-43) Tax Dec (Nag) 124 (125).

Section 29 — Note 1

(1) Where the document is an entirely fresh document the section does not apply. ('92) 1892 Pun Re No. 132, p. 442 (444) (DB).

Section 30 — Note 1

(1) Where a plaint is returned for presentation to the proper Court and is

Such officer as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

[Cf. Andh. Pra. Act 7 of 1962, Section 72; Bom. Act 36 of 1959, Section 42; Him. Pra. Act 8 of 1968, Section 39; Jammu and Kashmir Act, 1977 Svt., Section 30; Ker. Act 10 of 1960, Section 80; T. N. Act 14 of 1955, Section 77; Mys. Act 16 of 1958, Section 74; Raj. Act 23 of 1961, Section 68.]

STATE AMENDMENT

Section 30-A

Uttar Pradesh:

After Section 30, the following section was inserted:—

"**30-A.** Where allowance is made in this Act for damaged or spoiled stamps or where refund is permitted on the strength of certificate granted by a Court, the Collector may, on the application of the holder of the same and after satisfying himself about the genuineness of the certificate or the stamps produced, give in lieu thereof the same amount or value in stamps of the same or any other description or if the applicant desires, the same amount or value in money, provided that in the latter case a deduction shall be made of 'ten naye paise' for each rupee or fraction thereof. No such deduction shall, however, be made where refund is claimed in respect of court-fee paid in pursuance of an order of the Court which has been varied or reversed in appeal."—U. P. Acts 19 of 1938 (9-1-1939) and 20 of 1958, Section 3.

CHAPTER VI

MISCELLANEOUS

31. Repayment of fees paid on applications to Criminal Courts. [Repealed by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), S. 163.]

32. Amendment of Act 8 of 1859 and Act 9 of 1869. [Repealed by the Repealing and Amending Act, 1891 (12 of 1891).]

Section 30 — Note 1 (contd.)

re-presented to such Court, no fresh court-fee need be paid. AIR 1927 Bom 257 (257) = 51 Bom 236 (DB) ** AIR 1926 Cal 355 (356) (DB) ** ('12) 35 Mad 567 (573) (FB) ** ('84) 8 Bom 313 (317) (FB). **(Overruling** ('83) 7 Bom 487.) ** ('84) 1884 Pun Re No. 91 p. 263 (264) (DB) ** AIR 1959 Punj 629 (630) = ILR 1959 Punj 1770.

(2) Where the plaintiff on return of plaint amends it by striking out one of the reliefs and re-presents it to the same Court the fact that the court-fee stamps had been cancelled by the Court originally does not make the plaint one on unstamped document when represented. AIR 1931 Mad 8 (10).

(3) Endorsement on Stamp of date of issue and name of purchaser is not cancellation of stamp. AIR 1945 Bom 1 (4) = ILR (1945) Bom 783 (DB).

(4) Practice in Bombay Testamentary Registry enabling petitioner for probate to recant upto actual cancellation of Stamps and ask for return of stamps — The practice of Testamentary Registry retaining petition taken on file and original will and returning stamps is supported by long usage only; unless at a subsequent date a fresh application for probate is made, the will remains unproved. AIR 1945 Bom 1 (4) = ILR (1945) Bom 783 (DB).

Section 30-A (Uttar Pradesh) — Note 1

(1) The jurisdiction or the duty of a Collector under Section 30-A to pay the money exists only where refund is permitted on the strength of a certificate granted by a Court, i. e., where there exists a statutory provision allowing refund on the strength of certificate. The only provisions which permit refund on the strength of a certificate are those contained in Sections 13, 14 and 15. In the State of Uttar Pradesh a Court has no inherent power to grant a certificate for refund of court-fee. If a Court grants a certificate under Section 151, the Collector before whom it is produced is not bound by any law to honour it and to give money to the party producing it. AIR 1957 All 734 (736, 737) (DB).

33. Admission in criminal cases of documents for which proper fee has not been paid.—Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in Section 4 or Section 6 shall be deemed to prohibit such filing or exhibition.

[Cf. Andh. Pra. Act 7 of 1956, Section 4, proviso; Bom. Act 36 of 1959, Section 44; Him. Pra. Act 8 of 1968, Section 40; Jammu and Kashmir Act, 1977 Svt., Section 33; Ker. Act 10 of 1960, Section 4, proviso; T. N. Act 14 of 1955, Section 4, proviso; Mys. Act 16 of 1958, Section 4, proviso; Raj. Act 23 of 1966, Section 4, proviso.]

*[**34. Sale of stamps.**—(1) The †[appropriate Government] may from time to time make rules‡ for regulating the sale of stamps to be used under this Act, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

(2) All such rules shall be published in the †[Official Gazette], and shall thereupon have the force of law.

(3) Any person appointed to sell stamps who disobeys any rule made under this section, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.]

[*] Substituted for the original section by the Amending Act, 1891 (12 of 1891).

[†] Substituted for "Local Government" and for "Local Gazette' by A. O., 1937. For definition of "Appropriate Government", see Section 1-A.

[‡] For rules issued under this section, see different Local Rules and Orders.

STATE AMENDMENTS

Uttar Pradesh:

For Section 34, the following section was substituted, viz.:—

> "34. Any person appointed to sell stamps who disobeys any rule made under this Act and any person not so appointed who sells or offers for sale any stamps, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees or with both."—U. P. Act 19 of 1938 (9-1-1939).

West Bengal:

In sub-section (1) of Section 34, for the words "the sale of stamps", substitute the words "the sale of, and the particulars to be entered at the time of sale on, stamps."—West Bengal Act 23 of 1959, Section 5.

STATE AMENDMENTS

Section 34-A

Andaman and Nicobar:

Same as that of West Bengal.—Reg. II of 1957, Section 15 (1-8-1957).

Section 34 — Note 1

(1) A sale of court-fee stamps by a person who has not been licensed to do so is an offence. ('01) 24 Mad 319 (321) (DB). (A thief also can be guilty of this offence.)

(2) A gift of court-fee stamps by a person who has purchased them but who has no use for them is not prohibited. ('11) 1911 Pun LR No. 253, p. 939 (944) (DB).

(3) To establish a charge of an offence under the section it is necessary for the prosecution to identify the stamps alleged to have been wrongfully sold. AIR 1938 Cal 195 (201) (DB).

(4) Where a mukhtear who had purchased a court-fee stamp for a client transferred it to another client who had agreed to return another stamp of equal value in exchange, it was held that there was no sale and so, no offence had been

Pondicherry.

Same as that of Andaman and Nicobar—See Act 26 of 1968, Section 3 and Schedule, Pt. II (18-12-1968).

West Bengal:

After Section 34 the following section was inserted:—

> "34-A. Where any period is fixed or granted by the Court, for the doing of any act prescribed or allowed by this Act, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired."—Bengal Act 7 of 1935 (2-5-1935).

35. Power to reduce or remit fees.—The °[appropriate Government] may, from time to time by †notification in the °[Official Gazette], reduce or remit, in the whole or in any part of ‡[the territories under its administration], all or any of the fees mentioned in the First and Second Schedules to this Act annexed, and may in like manner cancel or vary such order.

[Cf. Andh. Pra. Act 7 of 1956, Section 68; Bom. Act 36 of 1959, Section 46; Him. Pra. Act 8 of 1968, Section 42; Jammu and Kashmir Act 7 of 1977 Svt., Section 38; Ker. Act 10 of 1960, Section 75; T. N. Act 14 of 1955, Section 73; Mys. Act 16 of 1958, Section 70; Raj. Act 23 of 1961, Section 65.]

[°] Substituted for "Local Government" and "Local Gazette" by A. O., 1937.

[†] See General Rules and Orders, and for notification by the Chief Commissioner of Delhi, see Gazette of India, 1921, Pt. II, p. 343.

[‡] Substituted for "British India" by the Devolution Act, 1920 (38 of 1920), Section 2 and Schedule I

STATE AMENDMENTS

Manipur and Tripura:

In Section 35 in its application to the Union territory of Manipur/Tripura, for the words "the territories under its administration", substitute the words "the Union territory of Manipur/Tripura".—See G.S.Rs. 1119-1120, Gaz. of Ind., 1-7-1963, Pt. II, Sec. 3 (i), Ext., pp. 501-531 (w.e.f. 15-7-1963).

Orissa:

For Section 35, the following section was substituted, viz.:—

> "35. **Power to suspend, reduce or remit fees.**—(1) The State Government may from time to time subject to such conditions or restrictions as it may think fit to impose, by notification in the Gazette suspend the payment of or reduce or remit, in

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Section 34 — Note 1 (contd.)

committed. AIR 1931 Lah 337 (338) ** ('03) 30 Cal 921 (922) (DB).

(5) Appointment of clerk by licensed stamp-vendor is not prohibited. AIR 1964 Andh Pra 69 (71) = (1963) 1 Andh LT 490.

Section 35 — Note 1

(1) Order under Order 21, Rule 50 (2) and (3) of the Civil P. C. granting leave to execute a decree against any person on the ground that he is a partner — An appeal from such order falls under Article 1 of Sch. 1, Court-fees Act and not under Clause (5) of Bombay Government Notification No. 590, dated 16-9-1921 issued under Section 35. AIR 1939 Sind 161 (164) = ILR (1939) Kar 589 (FB).

(2) An appellant, in an appeal from an order in execution reducing the rate of interest payable under a decree, must pay ad valorem court-fee on the difference between the amount claimed by him in the appeal and that awarded to him in the executing Court. AIR 1920 Pat 376 (377) = 5 Pat L Jour 235.

(3) Madras Government Order No. 5791 dated 17th May 1943 made in exercise of powers conferred by this section, does not apply to a suit by persons who claim to be trustees of certain trust property against the defendants who put forward the same claim and the plaintiffs do not concede that the defendants have any right to be trustees. AIR 1945 Mad 102 (103) = ILR (1945) Mad 584 (DB).

(4) Hyderabad Government Notification No. 1 dated 20-1-1954 exempting displaced and destitute persons from payment of court-fees — Notification is neither hit by Article 14 of Constitution

the whole of Orissa or in any part thereof, all or any of the fees, mentioned in Schedules I and II to this Act annexed and may in like manner cancel or vary such order.

(2) The State Government may from time to time by rules prescribe the manner in which any fee the payment of which is suspended under sub-section (1) may be realized and for this purpose direct that such fee may be recovered as if it were an arrear of land revenue."—Orissa Act 5 of 1939 (31-10-1939).

West Bengal:

For Section 35, the following section was substituted, viz.:—

"35. (1) The appropriate Government may, from time to time, subject to such conditions or restrictions as it may think fit to impose, by notification in the Official Gazette, suspend the payment of or reduce or remit, in the whole of Bengal or in any part thereof, all or any of the fees mentioned in the First and Second Schedules to this Act annexed and may in like manner cancel or vary such order.

(2) The appropriate Government may, from time to time by rules, prescribe the manner in which any fee the payment of which is suspended under sub-section (1) may be realized and for this purpose direct that such fee may be recovered as a public demand."—Bengal Act 7 of 1935 (2-5-1935).

36. Saving of fees to certain officers of High Courts.—Nothing in Chapters II and V of this Act applies to the commission payable to the Accountant-General of the High Court at Fort William, or to the fees which any officer of a High Court is allowed to receive in addition to a fixed salary

STATE AMENDMENT

Manipur and Tripura:

In application to the Union territories of Manipur/Tripura, in Section 36, omit the words "to the commission payable to the Accountant-General, of the High Court at Fort William or", and for the words "a High Court", substitute the words "the Court of Judicial Commissioner for Manipur/Tripura."—See G.S.Rs. 1119-1120, Gaz. of Ind., 1-7-1963, Pt. II, Sec. 3 (i), Ext., pp. 501-531 (w.e.f. 15-7-1963).

STATE AMENDMENT

Section 37

Uttar Pradesh:

After Section 36, the following shall always be deemed to have been added as a new section, namely:—

"37. All fees shall be charged and collected under this Act at the rate indicated in the First or Second Schedule to this Act, as the case may be, on the date on which the document chargeable to the court-fee is or was presented."—U. P. Act 4 of 1961, Section 2.

Section 35 — Note 1 (contd.)

nor is it ultra vires the powers of Government. AIR 1958 Mys 132 (134) = ILR (1957) Mys 448.

(5) Order dismissing application under U. P. Debt Redemption Act, 1940, for amendment of decree — Appeal against order to Chief Court — Court-fee payable is Rs. 6-4-0 by virtue of U. P. Government Notification No. 1231/VII-353 dated 11-10-1923 as amended by Notification No. 1299/X-497 dated 22-3-1932. AIR 1947 Oudh 87 (88) = 21 Luck 552 (DB).

Section 37 — Note 1

(1) A demand of additional court-fee from the appellant after the filing of an appeal on prescribed court-fee cannot be said to place any unreasonable restriction on right of property. The Ordinance is protected by Article 19 (5) of the Constitution. 1962 All LJ 480 = 1962 All WR (HC) 337.

SCHEDULE I

AD VALOREM FEES

NOTE.—By section 14 of the Indian Coinage Act, 1906, newly *Inserted* by the Indian Coinage (Amendment) Act, 1955 (31 of 1955), decimal system of coinage is introduced in India. Section 14 of the Indian Coinage Act is as follows :

> "14. *Decimal System of coinage.*—*(1)* The rupee shall be divided into one hundred units and the new coin representing such unit may be designated by the Central Government by notification in the Official Gazette, under such name as it thinks fit, and the rupee, half rupee and quarter-rupee shall be respectively equivalent to one hundred, fifty and twenty-five such new coins and shall, subject to the provisions of sub-section *(1)* and sub-section *(2)* of section 13 and to the extent specified therein, be a legal tender in payment or on account accordingly.
>
> *(2)* All coins issued under the authority of this Act in any denominations of annas, pice and pies shall, to the extent specified in section 13, be a legal tender in payment or on account at the rate of sixteen annas, sixty-four pice or one hundred and ninety-two pies to one hundred new coins referred to sub-section *(1)*, calculated in respect of any such single coin or number of such coins, tendered at one transaction, to the nearest new coin, or where the new coin above and the new coin below are equally near, to the new coin below.
>
> *(3)* All references in any enactment or in any notification, rule or order under any enactment or in any contract, deed or other instrument to any value expressed in annas' pice and pies shall be construed as references to that value expressed in new coins referred to in sub-section *(1)* converted thereto at the rate specified in sub-section *(2)*."

In exercise of the powers conferred by sub-section *(1)* of section 14 above, the Central Government has designated the new coin representing each of the one hundred units into which a rupee is divided under that sub-section as a "NAYA PAISA."—S. R. O. 1150. The Indian Coinage (Amendment) Act, 1955, came into force on the 1st day of April 1957.—S. R. O. 1149. Published in Gaz. Ind., Extra., 14-5-1956, Pt. II-S. 3, page 883.

The direction given in sub-section *(3)* of section 14 above is generally to be followed, unless a different direction is given by any Act passed by State Legislature: for example, in the States of Madhya Pradesh; Orissa and Rajasthan, Acts have been passed by the respective Legislatures of those States wherein specific table showing how the old coins are to be converted into new coins are given. In all these cases the column of the "Proper Fee" in both the Schedules and Tables is given in the new coinage as directed by these State enactments.

Number	—	Proper Fee
1. *Plaint †[written statement pleading a set-off or counter-claim] or memorandum of appeal (not otherwise provided for	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Six annas.
	When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees.	Six annas.
	When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees.	Twelve annas.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees.	Five rupees.
	When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees.	Ten rupees.

Number	——	Proper Fees
in the Act) †[or of cross-objection] presented to any Civil or Revenue Court except those mentioned in section 8	When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees up to twenty thousand rupees.	Fifteen rupees.
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees.	Twenty rupees.
	When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees.	Twenty rupees
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fity thousand rupees.	Twenty-five rupees.
	Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees.	

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[*] To ascertain the proper fee leviable on the institution of a suit, *see* the table annexed to this Schedule.

[†] *Inserted* by the Code of Civil Procedure, 1908 (5 of 1908), S. 155 and Fourth Schedule.

SCHEDULE I, ARTICLE 1 — SYNOPSIS

1. **Scope.**
2. **Written statement pleading set-off or counter-claim.**
3. **"Not otherwise provided for in this Act."**
4. **Memorandum of cross-obections.**
5. **Cross-obection as to costs.**
6. **Cross-obections as to mesne profits.**
7. **Valuation of appeal — General.**
8. **Appeal from conditional decree — Valuation of.**
9. **Appeal from final decree in suit relating to mortgage.**
10. **Appeal against personal decree for balance against mortgagor.**
11. **Appeal by one of several plaintiffs or defendants.**
12. **Subsequent interest.**
13. **Appeal as to costs.**
14. **Appeal from order.**
15. **Order rejecting plaint or dismissing suit for insufficiency of court-fee — Appeal from.**
16. **Appeal against order under Order 21, Rule 50.**
17. **Award.**
18. **Appeal seeking to exonerate or make liable property.**
19. **Decree against several persons — Appeal by one seeking exoneration.**
20. **Lower Court exonerating a party from liability — Appeal seeking to make him liable.**
21. **Separate appeals arising from same suit.**
22. **Appeal relating to priority of claims against same-debtor.**
23. **Proviso.**

1. Scope. — (1) The article will not apply unless the fee is made leviable by some provision in the body of the Act. AIR 1941 Nag 129 (130). (Section 4, Court-fees Act does not apply to an appeal from decree passed by District Judge under Section 14, C. P. Local Fund Audit Act — No ad valorem fee leviable on such appeal.)

(2) Article 1 presupposes that the subject-matter in dispute in the appeal is capable of execution. A dispute as to whether a person was a displaced person under the Displaced Persons (Debts Adjustment) Act, 1951, is plainly incapable of money value. AIR 1958 Cal 675 (678) (DB).

(3) The difference between Section 7 (iv) (c) and Article 1, Schedule 1 of the Court-fees Act is that though under both court-fee is required to be paid on ad valorem basis yet the valuation under S. 7 (10) (c) is the valuation at which the relief sought is valued in the plaint or memo of appeal but under Article 1, Schedule 1, ad valorem fee has to be paid on the amount of value of the subject-matter in dispute. AIR 1966 Madh Pra 169 (171) = 1964 MPLJ 553 (DB).

STATE AMENDMENTS

Andaman and Nicobar

For Article 1, *substitute* the following, namely, -

Number	—	Proper fee.
"1. Plaint, written statement pleading a set off or counter claim or memorandum of appeal (not otherwise provided for in this Act) or of cross objection presented to any Civil or Revenue Court except those mentioned in section 3.	When the amount or value of the subject-matter in dispute does not exceed seventy five rupees, for every five rupees, or part thereof such amount or value, and	Thirty-seven naye paise.
	when such amount or value exceeds seventy five rupees, for every five rupees or part thereof, in excess of seventy-five rupees, up to one hundred rupees, and	Fifty naye paise.
	when such amount or value exceeds one hundred rupees, for every ten rupees or part thereof, in excess of one hundred rupees, up to one hundred and fifty rupees. and	One rupee sixty-two naye paise.
	when such amount or value exceeds one hundred and fifty rupees, for every ten rupees or part thereof, up to one thousand rupees, and	One rupee twelve naye paise.
	when such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees up to seven thousand five hundred rupees, and	Seven rupees fifty naye paise.
	when such amount or value exceeds seven thousand five hundred rupees, for every two hundred and fifty rupees, or part thereof in excess of seven thousand five hundred rupees, up to ten thousand rupees, and	Fifteen rupees.
	when such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof in excess of ten thousand rupees, up to twenty thousand rupees, and	Twenty-two rupees, fifty naye paise.
	when such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees up to fifty thousand rupees. and	Thirty ruppees.
	when such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees : Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be ten thousand rupees." —Reg. II of 1957, S. 16 (1).	Thirty-seven rupees, fifty naye paise. [1-8-1857.]

Sschedule I Article 1 — Note 1 (contd.)

(4) Provisions of Schedule 1, Article 1 to be read in conjunction with Section 7 of Act — Fixation of valuation under Sch I, Art. 1 depends not on subjective opinion of a party, but on objective standard set forth therein i. e., the amount or the value of the subject-matter in dispute. AIR 1963 All 153 (159)=1962 All LJ 1135 (FB) (ILR 35 All 448, **Overruled** on another point.)

(5) Where there are any specific rules in the body of the Act as to the mode of valuing the subect-matter of a suit, the valuation must be made according to such rules for the purpose of this article. AIR 1924 Pat 582 (585) = 3 Pat 640 ** AIR 1947 Nag 243 (245) = ILR (1947) Nag 220.

(6) Where a special mode of computing the value of the subject-matter is prescribed in the Act the value should be calculated accordingly for the levy of court-fee under this article. AIR 1937 Mad 46 (49, 50) = ILR (1937) Mad 284 (DB) °° AIR 1924 Pat 582 (585, 586) = 3 Pat 640.

(7) This article applies to an appeal from a subordinate Court to a chartered High Court even though the words "except those mentioned in Section 3" obviously seem to exclude such appeal from court-fee. AIR 1925 Pat 392 (394) = 4 Pat 336 (FB) *° AIR 1946 Lah 280 (281) = ILR (1947) Lah 47 (FB). (Obiter.) °° AIR 1951 Pat 608 (Pr. 4).

(8) The words "from a decree" do not occur in this article after the words "memorandum of appeal" and hence the application of this article cannot be restricted to an appeal from a decree. AIR 1939 All 127 (129) = ILR (1939) All 142.

Assam : Nagaland

For Article 1 the following article was *substituted*, viz., :—

Number	—	Proper fee
"1. Plaint, written statement pleading a set off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross objection presented to any Civil or Revenue Court except those mentioned in section 3.	When the amount or value of the subject-matter in dispute does not exceed one hundred rupees, for every five rupees, or, part thereof, of such amount or value, and	Fifty naye paise.
	When such amount or value exceeds one hundred rupees, for every ten rupees or part thereof in excess of one hundred rupees, up to one hundred and fifty rupees, and	One rupee and seventy-five naye paise.
	When such amount or value exceeds one hundred and fifty rupees, for every ten rupees, or part thereof, up to one thousand rupees, and	One rupee and twenty naye paise.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to seven thousand five hundred rupees, and	Seven rupees and fifty naye paise.
	When such amount or value exceeds seven thousand five hundred rupees, for every two hundred and fifty rupees or part thereof, in excess of seven thousand five hundred rupees, up to ten thousand rupees, and	Fifteen rupees.
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees, and	Twenty-two rupees and fifty naye paise.
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to fifty thousand rupees, and	Thirty rupees.
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees:	Thirty-seven rupees and fifty naye paise.
	Provided that the maximum fees leviable on a plaint or memorandum of appeal shall not exceed ten thousand rupees." —Assam Act III of 1958, S. 2. [1-4-1958]: See Act 27 of 1962 S. 26 [w. e. f. 1-12-1963].	

Schedule I Article 1 — Note 1 (contd.)

(9) Appeal filed in High Court under the Gujarat Talukdars Act (IV of 1888) — This article does not apply — Such an appeal is an application within Schedule II Article 1. (1892) 16 Bom 408 (413) (DB).

(10) Suit to surcharge and falsify accounts already furnished and to recover specific sums — Suit is not for accounts — Plaintiff must value and pay ad valorem court-fee on basis of specific sums. AIR 1946 Mad 136 (137).

(11) In the absence of any reference to a memorandum of appeal in Article 2 (Madras) of Schedule I, Article 1 of that schedule, which deals with memorandum of appeal, is to be applied in the case of an appeal arising out of a suit wherein the plaintiff has claimed, in respect of each of the four promissory notes, less than Rs. 500, even when he has paid at the time of filing his suit court-fee on the amount of each of the promissory notes under Article 2 (Madras) of Schedule I. AIR 1956 Andhra 112 (Pr. 4) = ILR (1955) Andhra 630.

(12) Where a suit of a small cause nature and of the value not exceeding Rs. 500, is filed under the Mysore Agriculturists' Relief Act the court-fee prescribed for original suits is to be paid and not the one prescribed for suits of small cause nature under Schedule I, Article 1-A. AIR 1954 Mys 121 (Pr. 3) = ILR (1953) Mys 698

Bihar

[NOTE.—In the State of Bihar the fees leviable under the Court-fees Act, 1870 have been] increased by way of SURCHARGE; *see* the Bihar Entertainments Duty Court-Fees and Stamp (Surcharge Amendment) Act, 1948 (Bih. Act XXV of 1948) as amended by Bih. Act XIV of 1958. The text of this Bihar Act is reproduced in an Appendix I given at the end of Sch. III of the Court-Fees Act 1870.]

(1) For the entry in the first column the following entry was *substituted*

"1. Plaint, written statement pleading a set-off or counter-claim or memorandum of appeal or of cross-objection, not otherwise provided for in this Act, presented to any Civil or Revenue Court except those mentioned in section 3."

(2) For the "proper fees" set out in the third column of Sch. I and shown opposite Art. 1 below, the proper fees shown against them in the second column (below) were *substituted.*

Art. 1. "Proper fees" set out in Schedule I of the Principal Act.	Proper fees to be substituted.
Six annas	40 Naye paise.
Six annas	40 Naye paise.
Twelve annas	One rupee.
Five rupees	Seven rupees and eight annas.
Ten rupees	Fifeen rupees.
Fifteen rupees	Twenty-two rupees and eight annas ;
Twenty rupees	Thirty rupees.
Twenty-five rupees	Thirty-seven rupees and eight annas.

(3) The proviso in Art. 1 was *omitted.*

— Bihar & Orissa Act II of 1922. [21-8-1922. and Bih. Act VII of 1958.

Schedule I Article 1 — Note 1 (contd.)

(DB). ((1953) 31 Mys L Jour 147, **Overruled.**)

(13) The board constituted under Sec. 18 of the Bihar Land Reforms Act, 30 of 1950, is neither a civil nor a revenue Court and, hence, an appeal to that Board is not covered by this Article. AIR 1958 Pat 235 (236) = 36 Pat 507.

(14) An application by an Advocate concerning his right to appear and plead the case of his clients who were parties to a criminal appeal, is not a criminal matter and should be treated as a civil proceeding. An appeal by the Advocate against an adverse order on such application is therefore a civil appeal on which proper court-fees must be paid. AIR 1950 FC 71 (Pr 5) = 1949 FCR 813 = 51 Cri L Jour 1035.

(15) The proceedings to be initiated by displaced persons for adjustment of their debts or by displaced creditors or displaced debtors under the Displaced Persons (Debts Adjustment) Act, 1951, are by applications. Such applications cannot be regarded as plaints in civil suits and are not required by law to bear ad valorem court-fee under Schedule I, Article 1, Court-fees Act. AIR 1956 Bom 563 (565) = ILR (1956) Bom 211.

(16) Bank in liquidation — Application by Liquidator under Section 45-B, Banking Companies Act, for recovery of amount due to Bank — Debtor filing reply claiming set-off against his fixed deposit with Bank — Held, that as the proceedings originated not in a plaint but in an application, the reply filed must be treated as an application and not a written statement. The Court-fee on the reply was payable under Sch. 2, Article 1 (5) and not under Schedule 1, Article 1. AIR 1963 All 90 (92) = 1962 All LJ 957 (DB).

(17) Decision of the first appellate Court as regards valuation has no finality and is not binding for purposes of valuing the appeal in the High Court. The taxing officer is entitled to assess the same. AIR 1951 Pat 183 (Prs. 6 to 9) = 30 Pat 859.

(18) On a petition for divorce under the Hindu Marriage Act, 1955, court-fee is not chargeable under Schedule I, Article 1. AIR 1958 Bom 425 (426) = ILR (1957) Bom 353 (DB).

(19) The memorandum of appeal arising out of an order passed under Section 13 of the Hindu Marriage Act either granting a decree for divorce or refusing the same will be treated as an appeal contemplated under Article 11 of Schedule II of the Court-fees Act. AIR 1962 Pat 489 (490. 491, 492) = ILR 41 Pat 757 (DB).

(20) Certificate issued under Rajasthan Public Demands Recovery Act—Summary decision of Revenue Court—Suit to declare void — Court-fee payable is under Schedule II, Article 17 (i) and not under Schedule I, Article 1. AIR 1960 Raj 171 (172) = 1960 Raj LW 236 (DB). (AIR 1957 Raj 277, **Overruled.**)

2. Written statement pleading set-off or counter-claim. — (1) This article applies to written statement, pleading a legal set-off as well as an equitable set-off without distinction. AIR 1943 Bom 227 (228) ** AIR 1950 East Punj 225E (Pr 11) (FB) ** ILR (1953) Madh B 339 (343) ** (1954) 7 Sau LR 79 (81) ** AIR 1954 Pat 30 (Pr 6) = 32 Pat 510 (DB) ** AIR 1953 Mad 853 (Pr 1) ** AIR 1950 All 237 (Prs. 9, 11, 15) = ILR (1951) 1 All 186 (DB) ** AIR 1943 Nag 314 (314)=ILR (1944) Nag 260 ** AIR 1940 Nag 177 (178) = ILR

(4) After the entries in the second column against Art. I the following proviso was *added* viz. :

"Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be ten thousand rupees."

– Bihar Acts XVII of 1939. [2-11-1939.] and VII of 1958, S. 2. [1-4-1958.]

Delhi

Same as that of Punjab *See* Gaz. Ind., 1939, Pt. I, p. 911; S. R. O. 422, Gaz. Ind. 1950, Pt. II, S. 3, p. 458; G. S. R. 842, Gaz. Ind., 1959, Pt. II, S. 3 (i), p. 1039.

Madhya Pradesh

Art. 1 which related to a suit between landlord and tenant for arrears of rent *omitted* – M. P. Act 12 of 1966, S. 2 (1). [1-4-1966.]

Manipur and Tripura

Same as that of Assam – *See* G. S. Rs. 1119-1120 Gaz. Ind., 1-7-1963, Pt. II, S. 3 (i), Extra, pp. 501 and 531.

Pondicherry

Same as that of Andaman and Nicobar—Act 26 of 1968, S. 3 & Sch., Pt. II. [18-12-1968.]

Orissa

NOTE.—In the State of Orissa the fees leviable under the Court-fees Act, 1870 have been increased by way of SURCHARGE; *see* the Orissa Court-fees (Surcharge Amendment) Act, 1947 (Orissa Act 20 of 1947) as amended by Orissa Act 17 of 1958. The text of this Orissa Act is reproduced in the Appendix I given after Schedule III of the Court-fees Act, 1870.

Schedule I Article 1 — Note 2 (contd.) (1941) Nag 753 °° AIR 1939 Cal 415 (416) (DB) °° AIR 1938 All 522 (523) °° AIR 1936 Nag 222 (222) = ILR (1937) Nag 99 °° AIR 1935 Mad 115 (115) = 58 Mad 338 (DB) °° AIR 1933 Mad 203 (204).

[But see AIR 1937 Lah 73 (75) (DB). (Article applies only when legal set-off is claimed — No court-fee necessary for a claim for equitable set-off.) °° AIR 1934 All 115 (117). (Do.) °° AIR 1930 All 875 (876) (DB) (Do.) °° AIR 1914 Bom 299 (299) = 38 Bom 631 (DB) (Do.)].

(2) Except where a written statement pleads a set-off or counter-claim, no court-fee is leviable under this Act in respect of a written statement. AIR 1949 Mad 471 (472) (DB).

[See also AIR 1956 J and K 38 (39). (A counter claim requires to be properly stamped.) °° ILR (1953) 1 Cal 277 (278). (The court-fee is payable on a set-off under Section 8B read with Section 12 (Bengal) of the Court-fees Act and before a claim can be rejected on the ground of non-payment of court-fee, time must be allowed under the Code of Civil Procedure.)]

(3) Court-fee is payable on the full amount sought to be set-off. AIR 1940 Nag 177 (178) = ILR (1941) Nag 273 °° AIR 1950 All 237 (Prs. 9, 11, 15) = ILR (1951) 1 All 186 (DB) °° AIR 1935 Pat 110 (111) (DB) °° AIR 1923 All 118 (119) = 45 All 218 (DB).

[But see AIR 1927 Nag 74 (75).]

(4) The Court cannot go into the question of set-off unless the proper court-fee has been paid. AIR 1917 Low Bur 179 (180) (DB) °° AIR 1943 Nag 314 (314) = ILR (1944) Nag 260.

(5) It is not permissible for the Court to first decide the question of set-off and then after the decision require court-fee to be paid on the written statement. AIR 1943 Nag 314 (314) = ILR (1944) Nag 260 °° 1949 Ker L Tim 194 (196) (DB).

(6) No claim in excess of the amount on which court-fee is paid should be decided. AIR 1943 Nag 314 (314, 315) = ILR (1944) Nag 260.

(7) In the following cases court-fee was held not necessary on the written statement

(a) Adjustment. AIR 1937 Lah 62 (62). (1908 Pun Re No. 85, relied on.) °° AIR 1957 Raj 392 (396) = ILR (1957) 7 Raj 145 °° AIR 1956 Pat 199 (Pr. 16) °° AIR 1955 Hyd 176 (Pr. 4) = ILR (1955) Hyd 313 (DB) °° 1955 Madh B LJ (HCR) 1442 (1445) °° AIR 1950 All 201 (Prs. 5, 6) = ILR (1950) All 1207 °° AIR 1951 Ajmer 78 (2) (Pr. 2) °° AIR 1964 Madh Pra 231 (232) = 1964 MPLJ 527 (DB) °° AIR 1963 Orissa 174 (178, 179) = ILR (1963) Cut 372 (DB). (Difference between pleas of adjustment and set-off in written statement stated.)

(b) Payment. AIR 1930 Oudh 140 (141) = 5 Luck 621 °° (1910) 12 Cal L Jour 351 (355) (DB). (Claim for deduction under Section 108, Cl. (f), T. P. Act, for sum spent for repairs is not set-off.) °° AIR 1956 Madh B 62 (Prs. 4, 5) °° Madh BLJ 1955 HCR 1442 (1445).

(c) Defendant pleading in a suit for accounts that money would be due to him and asking for decree for that balance. AIR 1914 Sind 137 (138) = 8 Sind LR 124 °° AIR 1955 Nag 109 (Prs. 3, 5, 7) = ILR (1955) Nag 261 (DB).

(d) Where there is no counter-claim but only claims as to items in the particular account. AIR 1933 Mad 353 (353).

(e) Written statement not asking for cross-relief. AIR 1940 Rang 300 (303) = 1940 Rang LR 529.

(8) Suit for partition — Defendant pleading that some of the properties were pur-

(1) For Article 1 the following Article was *substituted*, viz. :—

"(1) Plaint, written, statement pleading a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) presented to any Civil or Revenue Court except those mentioned in section 3.	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Thirty-five Naye Paise.
	When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees.	Thirty-five Naye Paise.
	When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to five hundred rupees.	One rupee.
	When such amount of value exceeds five hundred rupees, for every ten rupees, or part thereof, in excess of five hundred rupees up to one thousand rupees.	One rupee ten Naye paise.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to seven thousand five hundred rupees.	Seven rupees fifty Naye Paise.
	When such amount or value exceeds seven thousand five hundred rupees, for every two hundred and fifty rupees, or part thereof, in excess of seven thousand five hundred rupees, up to ten thousand rupees.	Fifteen rupees.
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees.	Twenty-two rupees fifty Naye paise.
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees.	Thirty rupees.
	When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees.	Thirty rupees.
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees.	Thirty-seven rupees fifty Naye Paise."

—Orissa Court-fees (Amendment) Acts 5 of 1939 [31-10-1939]; 16 of 1958, S. 2 and Orissa Act 16 of 1958, S. 2 [15-11-1958).

(2) For surcharge, *see* Orissa Act 20 of 1947 as amended by the Orissa Act 17 of 1958. Text is given in the Appendix 1

Schedule I Article 1 — Note 2 (contd.)

chased benami by plaintiff and claiming share, in those properties — Article is not applicable. **AIR 1949 Mad 471 (472) (DB).**

(9) Suit for partition by coparcener — Widow impleaded as defendant — In her written statement widow claiming maintenance — No court fee in respect of claim is payable as her written statement could not by any means be considered to be a plaint. **ILR (1960) 1 All 759 (832).**

(10) Where the plea of the defendant is that he took the suit amount in advance for the work that he was going to put in the press of the plaintiff and by actually doing the work he paid off the debt, the plea is not one of set-off but of satisfaction and no court-fee is necessary. **Madh BLJ 1954 HCR 806 (808).**

(11) Written statement pleading set-off or counter-claim — Mere denial of plaintiff's claim and statement that defendant was entitled to recover a certain sum from the plaintiff does not amount to set-off or counter-claim. No question of payment of separate court-fee by defendant arose, when there was no set-off by way of counter-claim — Civil P. C. (1908), Order 8, Rule 6. **1960 Jab LJ 1076 (1078) = 1960 MPLJ 1014.**

(12) Where the written statement does not claim any particular amounts either in reduction or in extinction of the suit claim on the basis of what he describes a set-off, the defendant should not be called upon to pay any court-fee merely because in the ultimate result after the items have been examined it turns out that what is asked for by the defendant is a set-off. **AIR 1953 Mad 853 (Pr. 2).**

(13) In a suit for possession of a house after cancellation of the sale-deed of the same in favour of the defendant, the claim of the defendant that a decree for possession may be passed subject to the payment of amount spent by him on repairs and improvement does not amount to a counter-claim and can be entertained without payment of court-fees. **AIR 1951 Raj 155 (Pr. 3) = ILR (1951) 1 Raj 219.**

(14) Where in a suit for the recovery of the price of goods sold to the defendant the defendant claims specific sums as damages under two heads, viz., (1) breach of warranty and (2) loss of reputation, the defendant is entitled to claim the sum mentioned under the first head without paying court-fee thereon, since the amount can be considered as one claimed in diminution of the price claimed by the plaintiff. But since the claim under the head

Punjab: Haryana: Chandigarh:

(1) For Article 1 the following Article was *substituted*, viz. :—

Number.	—	Proper fee.
"1. Plaint, written statement, pleading, a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to any Civil or Revenue Court except those mentioned in section 3.	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Fifty Naye Paise.
	When such amount or value exceeds five rupees, for every five rupees or part thereof in excess of five rupees up to one hundred rupees.	Fifty Naye Paise.
	When such amount or value exceeds one hundred rupees, but does not exceed five hundred rupees, for every ten rupees or part thereof in excess of one hundred rupees up to five hundred rupees.	One rupee.
	When such amount or value exceeds five hundred rupees, for every ten rupees or part thereof up to one thousand rupees.	One rupee Fifty Naye Paise.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees or part thereof in excess of one thousand rupees up to five thousand rupees.	Twelve rupees twenty Naye Paise.
	When such amount or value exceeds five thousand rupees for every two hundred and fifty rupees or part thereof in excess of five thousand rupees up to ten thousand rupees.	Twenty-four rupees forty Naye Paise.
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees or part thereof in excess of ten thousand rupees up to twenty thousand rupees.	Thirty-Six rupees fifty Naye Paise.
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees or part thereof in excess of twenty thousand rupees up to thirty thousand rupees.	Forty-eight rupees eighty Naye Paise.
	When such amount or value exceeds thirty thousand rupees, for every two thousand rupees or part thereof in excess of thirty thousand rupees up to fifty thousand rupees.	Forty-eight rupees eighty Naye Paise.
	When such amount or value exceeds fifty thousand rupees for every five thousand rupees, or part thereof in excess of fifty thousand rupees.	Forty-eight rupees eighty Naye Paise.

(2) The proviso as to the maximum after the ninth entry in the second column was *omitted*.

—Court-fees (Punjab Amendment) Acts 7 of 1922 [23-11-1922]
26 of 1949, S. 5: 19 of 1957 and 14 of 1958, S. 4 [25-4-1958]
Act 31 of 1966, S. 88 [1-11-1966].

Schedule I Article 1 — Note 2 (contd.)

of loss of reputation is not the direct result of the breach of warranty, the defendant must pay court-fee on it. AIR 1952 Mad 91 (Pr. 1).

(15) In a suit for profits by a co-sharer against lambardar, the defendant's claim for half share of money kept with plaintiff by a third person is a counter-claim chargeable with court-fee. AIR 1930 Oudh 140 (141) = 5 Luck 621.

(16) Award in arbitration pending suit — Defendant claiming set-off of amount due under the award should pay court-fee on the claim. AIR 1925 Sind 266 (268) = 18 Sind LR 111 (DB).

(17) Suit for redemption — Counter claim not arising out of mortgage contract — Liable to payment of Court-fee — Order demanding Court-fee revisable. AIR 1966 Madh Pra 330 (330, 331) = 1966 MPLJ 958.

(18) When a puisne mortgagee is impleaded in a prior mortgagee's suit, a written statement filed by him setting up his puisne mortgage is not chargeable with any court-fees irrespective of the fact whether the claim is contested or not or whether any specific relief is claimed by such mortgagee. ILR (1948) 1 Cal 321 (325, 326).

(19) In the case of a suit and a cross-suit where the plaintiffs in both have paid proper court-fee and the written statement in the former is in practically the same words as in the plaint in the latter, the Court cannot treat the written statement as a claim for set-off and call upon the defendant to pay court-fee upon it. AIR 1949 Mad 671 (Pr. 3) °° AIR 1956 Punj 214 (215) = ILR (1955) Punj 49 (DB).

(20) Where in a suit for rescission of a contract the allegation of the defendant in the written statement is that if the contract be vitiated by fraud or by misrepresentation the opposite party must, before rescission of the contract restore all the benefits he had obtained on the contract

Uttar Pradesh

In Schedule I, for Art. 1 *substitute* the following:

"1. Plaint, written statement, pleading a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) presented to any Civil or Revenue Court except those mentioned in section 3.	When the amount or value of the subject-matter in dispute (i) does not exceed one hundred rupees:	Fifty Naye Paise for every five rupees or part thereof.
	(ii) exceeds one hundred rupees but does not exceed three hundred rupees :	On one hundred rupees, the fee payable under cl. (i), and on the remainder, one rupee and twenty-five Naye Paise for every ten rupees or part thereof.
	(iii) exceeds three hundred rupees but does not exceeds five hundred rupees ;	On three hundred rupees, the fee payable under cl. (ii), and on the remainder, one rupee and fifty Naye Paise for every ten rupees or part thereof.
	(iv) exceeds five hundred rupees but does not exceed one thousand rupees ;	On five hundred rupees, the fee payable under cl. (iii), and on the remainder, two rupees and twenty-five Naye Paise for every ten rupees or part thereof.
	(v) exceeds one thousand rupees but does not exceed five thousand rupees ;	On one thousand rupees; the fee payable under cl. (iv), and on the remainder, twelve rupees for every one hundred rupees or part thereof.
	(vi) exceeds five thousand rupees but does not exceed ten thousand rupees ; and	On five thousand rupees the fee payable under cl. (v), and on the remainder, twenty rupees for every two hundred rupees or part thereof.
	(vii) exceeds ten thousand rupees ;	On ten thousand rupees, the fee payable under cl. (vi), and on the remainder, thirty-seven rupees and fifty Naye Paise for every five hundred rupees or part thereof.

-U. P. Act 44 of 1958, S. 3 (i). [1-4-1959].

Schedule I Article 1 — Note 2 (contd.)
his case is based upon Section 64, Contract Act. The claim of the defendant is really a claim in the nature of defence and not legal or equitable set-off and therefore, no court-fee is leviable on the value of that claim. AIR 1954 Pat 439 (Pr. 4) = 33 Pat 52 (DB).

(21) Where in a suit to recover price of a thing supplied, the defendant in his written statement alleged non-supply of the thing and claimed certain sum as a loss, it was held that the cause of action for the claim of damages being entirely different it was a clear case of set off and ad valorem court-fee was payable on the amount claimed. AIR 1958 All 574 (575).

3. "Not otherwise provided for in this Act". — (1) An appeal from an order of a lower Appellate Court on an application under Section 9, Bengal Act VI of 1862, not being otherwise provided for by the Court-fees Act, may be admitted on 6 annas stamp. (1870) 14 Suth WR 21 (22).

(2) This article will not apply to suit or appeal coming under Schedule II, Article 17. AIR 1941 Lah 123 (125) = ILR (1941) Lah 234 (FB) •• AIR 1951 Pat 608 (Prs, 2, 3 and 4).

(3) The words "not otherwise provided for" refer to provisions fixing court-fee for a particular matter. (1881) 3 All 108 (109, 110, 111, 112) (FB). (Article applies to a case coming under Section 17.) •• AIR 1953 Mad 746 (Pr. 16) = ILR (1953) Mad 572 (FB).

(4) Suits falling under one of the clauses of Section 7 — Court-fee to be computed in accordance with it. AIR 1919 Lah 363 (364) = 1919 Pun Re No. 61 (DB).

(5) The words "not otherwise provided for in this Act" should not be understood to refer to anything except a provision for the actual fee leviable. It does not refer to the provision for computation of values. If there is any other article which provides for a fee on any particular class of plaints, then that provision will govern and this article will have no application. AIR 1953 Mad 746 (749) = ILR (1953) Mad 572 (FB).

(6) In the absence of any reference to a memorandum of appeal in Article 2 (Madras) of Schedule I, this article is to be applied in the case of an appeal arising out of a suit wherein the plaintiff has claimed in respect of each of the four promissory notes less than Rs. 500, even when he has paid at the time of filing his suit court-fee on the amount of each of the promissory notes under Article 2 (Madras) of Schedule I of the Court-fees Act. AIR 1956 Andhra 112 (Pr. 4) = ILR (1955) Andhra 630.

(7) Where the plaintiff brought a suit against the State praying for a declaration

West Bengal

The following article was *substituted* for Article 1.

"1 Plaint, written statement, pleading, a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to any Civil or Revenue Court except those mentioned in section 3.	When the amount or value of the subject-matter in dispute does not exceed seventy-five rupees, for every five rupees or part thereof of such amount or value, and	Forty paise.
	When such amount or value exceeds seventy-five rupees for every five rupees or part thereof, in excess of, seventy-five rupees, up to one hundred rupees, and	Fifty paise.
	When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees up to one hundred and fifty rupees,	One rupee and sixty five paise.
	When such amount or value exceeds one hundred and fifty rupees, for every ten rupees, or part thereof, up to one thousand rupees, and	One rupee and sixty five Paise.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to seven thousand five hundred rupees, and	Seven rupees fifty paise.
	When such amount or value exceeds seven thousand five hundred rupees, for every two hundred and fifty rupees, or part thereof, in excess of seven thousand five hundred rupees up to ten thousand rupees and	Fifteen rupees.
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof in excess of ten thousand rupees, up to twenty thousand rupees, and	Twenty-two rupees and fifty paise.
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to fifty thousand rupees, and	Thirty rupees
	When such amount or value exceeds fifty thousand, rupees, for every five thousand rupees, or part thereof in excess of fifty thousand rupees : Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be ten thousand rupees."	Thirty seven rupees and fifty paise.

—Bengal Court-fee (Amendment) Act 4 of 1922. [29-3-1922]. and Court-fees (W. B. Amendment) Act (Presi. Act 7 of 1968), S. 2 (1) (b). [26-3-1968].

Schedule I Article 1 — Note 3 (contd.)

that the State was not entitled to recover any money from him in connection with a lease and also for a declaration that a certificate issued under the Rajasthan Public Demands Recovery Act, 5 of 1952, was void and of no effect, it was held that the main prayer in the suit was the cancellation of the certificate which, in view of Section 20 of the Public Demands Recovery Act was a substantive relief and not merely a consequential relief and as the Court-fees Act did not specifically provide for such a suit it was governed by this Article. AIR 1957 Raj 277 (278) = ILR (1957) 7 Raj 563.

4. Memorandum of cross-objections. — (1) Where this provision is applicable, the court-fee on the cross-objections cannot be charged under any other provision of the Act. AIR 1930 Mad 22 (24) ** AIR 1924 All 175 (175) = 45 All 537 ** AIR 1919 Cal 620 (622) (DB) ** AIR 1916 Bom 150 (151) = 40 Bom 541 (DB) ** AIR 1921 Cal 55 (56) (DB).

(2) Memorandum of objections—Court-fee is payable according to Court-fees Act in force on date of filing cross-objections. AIR 1960 Raj 85 (86) = ILR (1959) 9 Raj 1066. (On the date of filing of suit Marwar Court Fees Act was in force — On day of filing cross-objections Rajasthan Court Fees Act was in force — Court Fees on cross-objections held payable under the latter Act — AIR 1954 Vindh Pra 5 and AIR 1941 All 134, **Diss.**)

(3) Decree appealed from one in favour of respondent — Objections to the finding alone but not to the decree, are not cross-objections liable to court-fee. AIR 1937 Oudh 512 (512) (DB) ** AIR 1922 All 280 (280) = 44 All 577 (DB). (Even if the decree is sought to be supported on ground other than that taken by the trial Court.) ** AIR 1922 Pat 483 (484) = 1 Pat 258 ** AIR 1917 All 158 (158)

Schedule I Article 1 — Note 4 (contd.)

[See also (1959) 2 Andh WR 452 (453). (Case under Hyderabad Court-fees Act).]

(4) Cross-objection claiming arrears of maintenance for a period prior to suit and for enhancement of rate of maintenance after the date of decree — Court fee on cross-objection must be paid ad valorem on the amount of arrears and on the second relief on ten times the annual amount of enhancement under Section 7 (ii). ('36-43) Tax Dec (Nag) 76 (77, 78).

(5) Manager of Math filing suit — Removed after decree — Successor filing appeal — Preliminary objection to maintainability of appeal dismissed — Second respondent not preferring appeal against order raising the same objection in second appeal — **Held** ad valorem fee should be paid on the objection. ('36-43) Tax Dec (Nag) 9 (10).

(6) Suit for possession and mesne profits — Future mesne profits refused — On defendant's appeal plaintiff claiming future mesne profits in his cross-objection —**Held**, no Court-fee was payable on the claim for future mesne profits. AIR 1937 Mad 46 (49, 50) = ILR (1937) Mad 284 (DB).

(7) Cross-objections in appeals arising out of redemption suits must be stamped ad valorem on the amount by which the decretal amount is sought to be reduced. AIR 1934 Oudh 246 (251) = 9 Luck 657 (DB)

(8) Suit under Section 92, Civil P. C. — Decree against defendant trustee for refund of Rs. 6,000 — Plaintiff appealing on other grounds against decree — Defendant filing cross-objection seeking to set aside decree for Rs. 6,000 — Defendant must pay court-fee on Rs. 6,000. AIR 1916 Bom 150 (151) = 40 Bom 541 (DB).

(9) Suit for dissolution of partnership and rendition of accounts — Final decree passed — Appeal from cross-objection preferred in appeal by defendant — Defendant could specify at least approximately the amount which he claimed — Court-fee on, is to be paid ad valorem under Sch. I, Article 1 on the difference between the amount awarded to the defendant and the amount claimed by him — Section 7 (iv) (f) and Sch. II, Article 17 do not apply. AIR 1962 Punj 110 (112, 115) = ILR (1961) 1 Punj 728 (DB).

(10) Decree for foreclosure awarding future interest till payment — In plaintiff's appeal defendant filing cross-objection — **Held**, where the amount declared due at the date of decree could be ascertained from the judgment and decree, that should be the value of the cross-objection and future interest need not be taken into account. AIR 1914 All 520 (521) = 36 All 40 (FB).

(11) Contract of sale of entire property by some of joint owners — Decree for specific performance in respect of their share only — Appeal by plaintiff — Court-fee payable on memo. of appeal is fixed fee of Rs. 15 as one for a mere declaration — Court-fee on cross-objection should be paid on consideration of contract and not on moiety of share in respect of which decree is passed calculating its value on basis that consideration represents value of entire property. (1948) 27 Pat 887 (897) (DB).

(12) Where a party by his cross-objection claims reduction of certain specific amount and pays proper court-fees thereon, the party should not be allowed reduction of a greater amount even if Court decides that he is so entitled. AIR 1952 Trav-Co 507 (Pr. 3).

(13) Memorandum of cross-objections — Court-fee — Basis of computation for memorandum of appeal adopted — Court-fee not paid on ad valorem basis — Memorandum cannot be entertained Court-fee on cross-objections was payable on ad valorem basis — In matters of court-fee, Courts cannot deal with anomalies even if Court-fee of much greater value than what was fixed in the plaint has to be paid for the memorandum of cross-objections. (1961) 63 Punj LR 875 (879).

(14) Even where the subject -matter in dispute in the cross-objections is not capable of valuation and is covered by Article 17 of Sch. II or the appeal in which the objections is filed is governed by Article 17, the cross-objection must bear ad valorem fee under this article. AIR 1933 Oudh 528 (529) = 9 Luck 406 (DB) ** (1936) 11 Luck 79 (81) (DB) ** (1937) 39 Pun LR 586 (589) ** AIR 1925 All 119 (119) = 47 All 89 ** AIR 1918 All 185 (186) = 40 All 93 ** AIR 1918 Pat 145 (145) = 3 Pat L Jour 197.

[But see AIR 1934 All 728 (729) = 57 All 151 ** AIR 1930 **Lah** 579 (588) = 11 Lah 503 (DB).]

(15) Cross-objection relating to a claim to the possession of revenue-paying land must be valued according to the jurisdictional value and not under Section 7 (v) as the section does not apply to cross-objection. AIR 1925 All 119 (119) = 47 All 39. (Following AIR 1924 All 175.)

[See however ('36-43) Tax Dec (Nag) 76 (77, 78).]

5. Cross-objection as to costs. — (1) Cross-objections relating to costs are assessable with court-fee under this article. AIR 1930 All 832 (834) = 52 All 1020 ** AIR 1926 Lah 645 (649) (DB) ** AIR 1929 Pat 286 (287) = 8 Pat 543 ** AIR 1939 Rang 375 (376) = 1939 Rang LR 474 ** AIR 1925 Rang 145 (146) = 2 Rang 637 (DB).

[But see ('21) AIR 1921 Cal 55 (58) ** ('93) 1893 All WN 55 (55, 56) (FB).]

Schedule I Article 1 (contd.)

6. Cross-objections as to mesne profits.— (1) Suit for possession and for mesne profits from date of suit to date of judgment and thereafter to date of delivery of possession decreed but claim for mesne profits refused — Appeal by defendant — Plaintiff filing cross-objections — Ad valorem court-fee held was payable on amount of mesne profits claimed up to date of decree — Sch. II, Article 17 held was not applicable as claim for mesne profits was capable of valuation AIR 1948 Pat 103 (104) = 26 Pat 119.

(2) Cross-objection seeking to set aside lower Court's decree negativing claim for mesne profits subsequent to date of suit — Court-fee has to be paid on the quantum of claim for the period between date of institution of suit and date of decree appealed against — **Held**, that the subject-matter of the cross-objection must be deemed to be the difference between the mesne profits (for the higher rate of interest) claimed and the interest allowed by the decree for the period of the pendency of the suit in the lower Court.) AIR 1954 Trav-Co 174 (Prs. 4, 5, 8) = ILR (1952) Trav-Co 750 (DB).

7. Valuation of appeal — General. — (1) Where the subject-matter in appeal coincides with the subject-matter in the suit, the value of the appeal for purposes of court-fee will be the same as that of the suit. AIR 1924 Lah 530 (530) = 5 Lah 137 (DB) °° AIR 1952 Trav-Co 368 (Pr. 14) (DB). (Value of improvements claimed in the Court below and disallowed — The appellants should value the appeal as for the amount claimed and pay ad valorem court-fee thereon.)

[See ('36-43) Tax Dec (Nag) 120 (123). (Whole suit dismissed — Subject-matter in plaintiff's appeal is the same.) °° AIR 1941 All 295 (297). (Suit decreed — Subject-matter in defendant's appeal is the same.) °° AIR 1929 Sind 161 (161) (DB). (Do.) °° AIR 1914 All 273 (275) = 36 All 322 (Suit for possession — Defendant questioning title claiming retention of possession till her dower was paid — In appeal the subject-matter is the property and not the dower debt.)]

(2) The words "the amount or value of the subject-matter in dispute" in the article mean with reference to an appeal the amount or value of the subject-matter in dispute in the appeal and not the suit out of which the appeal arises. AIR 1953 SC 28 (Pr 7) = 1953 SCR 197.

(3) A defendant-appellant has to pay only the court-fee that is required to be paid according to law in respect of the subject-matter of the suit. The mere fact that the plaintiff has over-valued the property claimed or paid a higher court-fee than required by law does not bind the defendant. AIR 1957 Andh Pra 671 (671, 672).

(4) When the subject-matter in dispute in appeal is not different from the subject-matter in dispute in the suit in the Trial Court the appeal will be governed for purposes of court-fee by the some provisions as the suit though the amount of court-fee leviable in appeal may be different. AIR 1955 Punj 223 (Pr 13) = ILR (1955) Punj 896 (DB) °° AIR 1962 Pat 489 (490, 491, 492) = ILR 41 Pat 757 (DB). (Suit for damages under Hindu Marriage Act, Section 13.)

(5) Where the subject-matter is different, the value of the appeal for purposes of court-fee will be different. AIR 1938 Mad 498 (499) = ILR (1938) Mad 981 (DB) °° AIR 1951 Pat 183 (Prs. 6 to 9) = 30 Pat 859 °° AIR 1949 Ajmer 23 (28) °° AIR 1936 Lah 935 (936) °° AIR 1935 Nag 83 (86) (FB) °° AIR 1927 Pat 123 (125) = 6 Pat 17 °° AIR 1958 Mad 414 (415, 416) = (1958) 1 Mad LJ 250. (An appeal filed against an order ascertaining the quantum of mesne profits Court-fee should be paid ad valorem' on such amount in dispute.)

(6) Suit calling upon defendant to admit execution of sale deed and register same before proper authority — Suit being for specific performance, ad valorem court-fee is payable on amount of consideration on plaint and memorandum of appeal. AIR 1964 Pat 534 (536) = 1964 BLJR 893. (Appellate Court not to ask payment of deficit court-fee on plaint until and unless deficit court-fee is paid on memorandum of appeal.)

(7) Where the appellant reduces his claim or withdraws from the contest in respect of portion, the value of the appeal will be reduced to a proportionate extent. ('36-43) Tax Dec (Nag) 47 (49) °° AIR 1953 SC 28 (Pr 8) = 1953 SCR 197 °° AIR 1929 All 308 (309) (DB) °° AIR 1927 Lah 543- 543).

(8) Defendant appealing against a decree for possession of land or houses and claiming dismissal of the suit must pay court-fee on the value of the appeal as determined under Section 7 (v). AIR 1931 Cal 333 (335) °° AIR 1925 Mad 323 (324) = 48 Mad 652 °° AIR 1922 All 358 (359) = 44 All 629.

(9) Decree in suit for accounts for a definite sum of money — Defendant appealing against decree must pay ad valorem Court-fee on decretal amount — Case is governed by Sch. I, Article 1 and not by Section 7 (iv) (f) as the dispute in appeal would no longer be of taking accounts but would relate to the definite sum of money decreed against the defendant. AIR 1963 J and K 9 (9) = 1962 Kash LJ 1.

(10) In an appeal of which the subject-matter is a claim to the possession of land, the trees standing on the land need

Schedule I Article 1 — Note 7 (contd.)

not be separately valued. AIR 1927 Mad 1002 (1004) (DB).

(11) A decision of the District Judge as regards valuation is not final and binding for the purpose of valuing the appeal in the High Court. AIR 1951 Pat 183 (Prs 6 to 9) = 30 Pat 859.

(12) Suit for recovery of Rs. 6709 advanced on pledge of articles was filed by the plaintiff. The amount was decreed to be recovered by sale of articles and no personal decree was passed. There was an appeal by the plaintiff which was valued at Rs. 2250 and a personal decree was granted. There was a second appeal by defendant. It was held that value of appeal would be approximate amount which may remain unrealised after sale of articles unless the defendant could show that articles were likely to fetch higher value, value placed by plaintiff should be considered proper in second appeal and defendant would be liable to pay ad valorem court-fee thereon. 1955 Raj LW 35 (35).

(13) When a sub-tenant wants a declaration of a right of tenancy there is no objective standard of the value of the right claimed and therefore the appellant in such a case is free to value his relief claimed in the memorandum of appeal as he thinks fit. ('58) 62 Cal WN 47 (48) (DB).

(14) Where in a reference under Section 18, Land Acquisition Act, the Additional District Judge accepts as correct the amount awarded by the Collector and a claimant appeals under Section 54 of the Act, merely raising the question of title, the value of the appeal is the entire amount of the compensation awarded. AIR 1951 Pat 608 (Pr 5).

(15) The word 'judgment' used in R. 5 of (Allahabad) Rules of Court, Chap. VII includes a decree and the Rule provides for an appeal to be from a judgment and the decree based thereon. Hence, when an appeal is preferred under Rule 5, the Court-fee is exigible under Sch. I, Item 1 and not under Sch. II, Item 11 of the Court-fees Act, on the memorandum of appeal. 1961 All WR (HC) 521 = 1961 All LJ 561 (563).

(16) Where a judgment conclusively determines the rights of parties with regard to matters in controversy in the suit and also contains all the criteria of a decree, the case quite clearly falls within the purview of Art. 1, Sch. I and is subject to payment of ad valorem court-fee. AIR 1969 Delhi 89 (90) = (1969) 71 Pun LR (D) 75 (FB).

8. Appeal from conditional decree — Valuation of. — (1) Decree for relief sought conditional upon payment of money — Value of subject-matter in appeal against condition being sum of money ordered to be paid — Ad valorem court-fee payable. AIR 1940 Mad 955 (955, 956) (Suit for possession.) °* AIR 1920 Oudh 308 (308). (Do.) °° AIR 1953 Punj 298 (Pr 5) (DB) °° AIR 1952 Mad 23 (Pr 2) °° AIR 1920 Pat 222 (222) = 5 Pat L Jour 455 *° (1909) 31 All 265 (270). (Suit for foreclosure — Decree conditional on redemption of prior mortgage.) °° (1887) Bom PJ 464 (465) °* 1884 Pun Re No. 33, p. 83 (85) (FB). (Sch. II, Art. 17 (vi) does not apply.) *° AIR 1921 Lah 371 (372). (Suit for possession — Decree for redemption.) °° AIR 1945 Bom 504 (509) = ILR (1945) Bom 629 (DB) *° AIR 1946 Nag 160 (160). (Relief, reduction of amount.) °° AIR 1939 Mad 49 (50) = ILR (1939) Mad 328 (DB).

[See however AIR 1924 Lah 530 (530) = 5 Lah 137 (DB) °* (1911) 33 All 705 (707).]

(2) Decree for possession conditional upon payment of money — Value of defendant's appeal against the decree for possession is the value of the suit in the trial Court. AIR 1940 Mad 955 (955) °° AIR 1951 J & K 10 (Prs. 2, 3) = 9 J & K LR 162 °* AIR 1928 Mad 929 (929) (DB) °° AIR 1916 Lah 15 (17) = 1916 Pun Re No. 25 (DB). (Even where defendant asks for enhancement of money in the alternative.)

(3) If the dispute in the appeal against a decree for possession conditional upon payment of a sum of money is confined to the amount payable by the plaintiff, such amount will determine the value of the appeal. AIR 1925 Mad 323 (324) = 48 Mad 652.

[See however (1900) 23 Mad 84 (85) (DB).]

(4) Decree for possession conditional upon defendant's failure to pay specified amount before a date — Value of plaintiff's appeal is the same as in the suit. AIR 1920 Oudh 308 (308).

(5) In a suit for possession defendant denied plaintiff's title and claimed payment of dower debt — Suit decreed without any direction for payment — Appeal by defendant — **Held**, Court-fee payable was the same as in the suit — Additional court-fee or claim for dower was not payable. AIR 1914 All 273 (275) = 36 All 322.

9. Appeal from final decree in suit relating to mortgage. — (1) An appeal from a final decree in a mortgage suit is chargeable with an ad valorem fee under this Article. AIR 1920 Bom 101 (101) °° AIR 1947 Pat 113 (113, 114) = 25 Pat 305 °° AIR 1919 Pat 425 (425) °* (1913) 35 All 476 (478) (FB).

[See however AIR 1938 Nag 409 (411) = ILR (1938) Nag 423 (FB). (Order refusing to grant time for payment of money and final decree — Appeal against the decree on the ground that time ought

Schedule I Article 1 — Note 9 (contd.) to have been allowed — No dispute as to amount — Sch. II. Article 17 (iv) applies.) ** ('36-43) Tax Dec (Nag) 53 (54, 55).]

(2) In appeal under S. 23 of the U. P. Agriculturists' Relief Act the appellant is bound to pay court-fee on the amount or value of the subject-matter in dispute in appeal and not on the principal amount secured under the mortgage. AIR 1953 All 240 (Prs 2, 4, 5) = ILR (1954) 2 All 59 (DB).

10. Appeal against personal decree for balance against mortgagor. — (1) An appeal from a personal decree against the mortgagor under Order 34, Rule 6, Civil P. C. is chargeable with an ad valorem court-fee under this article. (1935) 62 Cal 568 (569) ** AIR 1957 Raj 165 (166) = ILR (1956) 6 Raj 413 (DB) ** AIR 1924 All 292 (293) (DB) ** AIR 1916 All 357 (358) ** AIR 1915 Oudh 122 (123) = 18 Oudh Cas 121 ** AIR 1945 Mad 425 (425, 426) = ILR (1946) Mad 299. (Merely because in one application orders were prayed for an assignment of the decree under Order 21, Rule 16 and for personal decree under Order 34, Rule 6 the defendant could not be permitted to file a civil miscellaneous appeal and pray the lesser court-fee.)

(2) The fact that an appeal by the mortgagor against the preliminary decree for sale, on which he has paid ad valorem fee is pending will not affect the question of court-fee payable on an appeal from the personal decree. ('35) 62 Cal 568 (569)

(3) Preliminary decree permitting mortgagee to apply for personal decree against mortgagor for balance due after sale — Ad valorem court-fee should be taxed — After sale balance due is the value of appeal — Otherwise value is conjectural. AIR 1934 Mad 230 (231) = 57 Mad 632 (DB)

11. Appeal by one of several plaintiffs or defendants. — (1) One of several plaintiffs or defendants appealing against the whole decree — Court-fee is payable on the whole appeal and not merely for his share of liability. (1907) 4 All L Jour 130 (131) ** (1893) 15 All 112 (115) (DB).

12. Subsequent interest. — (1) No court-fee is payable on a plaint in respect of interest accruing after the institution of the suit. AIR 1937 Nag 6 (8, 9) ** AIR 1934 Pat 571 (573) = 14 Pat 4 (SB). (Overruling on this point AIR 1922 Pat 387 = 1 Pat 19 and AIR 1920 Pat 376 = 5 Pat L Jour 235 by implication.) ** AIR 1954 Trav-Co. 174 (Pr 4) = ILR (1952) Trav-Co 750 (DB) ** AIR 1953 Kutch 46 (Pr 3).

(2) **The following are the views on the question whether court-fee is leviable in Appeal in respect of interest subsequent to institution of suit:**

(a) A plaintiff-appellant claiming future interest is bound to pay on the appeal court-fee on the amount of interest claimed up to the date of the presentation of the appeal. AIR 1937 Nag 6 (8, 9) ** Madh B LJ 1954 HCR 1699 (1701) ** ('36-43) Tax Dec (Nag) 12 (16). (But not on future interest beyond that date.) ** AIR 1919 Oudh 305 (305) = 22 Oudh Cas 1.

[See also AIR 1953 Kutch 46 (Pr. 4). (Where the question of future interest is decided it becomes a subject-matter in dispute in appeal and interest pendente lite is ascertainable.)]

(b) Plaintiff's claim as to interest from institution of suit till realization refused — Appeal claiming same—Ad valorem court-fee on the interest calculated up to the date fixed for redemption—As regards interest accruing subsequently till realization, Court-fee of Rs. 10 is payable under Schedule II, Article 17 (vi). AIR 1943 Lah 275 (280, 281) = ILR (1944) Lah 24 (FB) ** AIR 1945 Pat 145 (146) = 23 Pat 905. (Ad Valorem court-fee on pendente lite interest.)

(c) Mortgage decree allowing interest up to date fixed for redemption — Appeal claiming interest up to realization — The proper court-fee is Rs. 10 under Sch. II, Article 17 (vi). AIR 1943 Lah 275 (280) = ILR (1944) Lah 24 (FB) ** (1905) 27 All 559 (561) (DB)

(d) In an appeal by the debtor, if the amount declared by the Court to be due at the date of the decree can be ascertained by reference to the judgment, the court-fee on the appeal should be computed according to the decretal amount including the interest up to the decree, but no court-fee need be paid in regard to the interest accruing subsequently. AIR 1930 Oudh 329 (329) = 6 Luck 34 (DB).

(e) Mortgage decree passed awarding interest up to date fixed for redemption — Defendant appealing from the decree — Court-fee on the appeal must be paid in respect of it. (1913) 35 All 94 (98) (DB) ** AIR 1947 All 295 (296).

[See AIR 1937 Nag 6 (8, 9). (Mortgage decree for amount including interest from date of suit till date of payment — Defendant appealing seeking to reduce redemption amount without disputing the claim as to future interest — **Held,** court-fee was payable on difference between amount decreed and amount alleged to be due.)]

Schedule I Article 1 — Note 12 (contd.)

(f) A defendant appealing against a decree granting future interest is not bound to pay court-fee on the interest after the institution of the suit. AIR 1934 All 805 (807) = 57 All 71 (DB).

(g) A plaintiff-appellant who claims interest from the institution of the suit is not bound to pay court-fee on such interest. AIR 1927 Pat 230 (230) (DB) °° AIR 1922 Pat 386 (387) = 6 Pat L Jour 676 (DB). (17 Bom 41, Followed.) °* (1900) 10 Mad L Jour 144 (145) (DB).

(h) Where an appeal is solely directed to the obtaining of pendente lite or future interest or where the decree of the lower Court definitely contains a direction as to such interest and it is endeavoured to get rid of it in appeal, court-fee has to be paid on the amount of such interest where it can be ascertained, ad valorem and where it cannot be ascertained, under Schedule II, Article 17 (6). ILR (1954) 4 Raj 1019 (1030, 1031).

(3) When appeal is by defendant and future interest has been determined and entered in the decree, plaintiff is bound to pay additional court-fee on the sum of interest so added in the decree — Plaintiff cannot execute decree till he pays additional court-fee. AIR 1923 Pat 28 (28).

13. Appeal as to costs. — (1) Ordinarily no court-fee is payable on an appeal in respect of costs. AIR 1935 Lah 379 (381) (DB) °° AIR 1950 Ajmer 7 (Pr. 7) °° AIR 1949 Ajmer 34 (Pr. 8) °* AIR 1934 Lah 739 (739).

[See AIR 1942 Mad 535 (538) = ILR (1942) Mad 618 (DB).]

(2) Distinct relief in respect of costs sought in appeal — Value of such relief should be included in determining value of appeal. AIR 1937 Nag 95 (96). (Obiter.) °° 1957-1 Andh WR 257 (258) °° AIR 1934 Lah 739 (739) °° AIR 1918 Pat 210 (211) = 3 Pat L Jour 443 °* AIR 1934 All 805 (807) = 57 All 71. (No specific ground taken as to costs — Court-fee on costs not payable.) *° AIR 1945 Pat 318 (319) = 24 Pat 100 °° (1909) 12 Oudh Cas 171 (174, 175) *° (1903) 6 Oudh Cas 135 (139) °° (1896) 19 Mad 350 (354) (DB).

(3) It is an admitted practice of the Calcutta High Court that where a part of the main subject-matter is in dispute in appeal, even if there is a specific dispute about the costs because they have not followed the event, no fee is charged. AIR 1950 Cal 296 (Pr. 10) = ILR (1951) 1 Cal 386.

14. Appeal from order. — (1) The following have been held to be orders having the force of decree and an appeal therefrom chargeable with court-fee under this Article:

(a) Order determining liability of garnishee under Order 21, Rule 63 (Patna.) AIR 1943 Pat 280 (280) = 22 Pat 278.

(b) Order amending decree under Section 14 U. P. Encumbered Estates Act. AIR 1941 Oudh 269 (270) = 16 Luck 653 (DB).

(c) Simple money decree passed under Section 14, U. P. Encumbered Estates Act. AIR 1938 All 97 (98) = ILR (1938) All 230.

(d) Appeal under Section 23 of U. P. Agriculturists' Relief Act on an order passed to deposit larger amount in application filed under Sec. 12 of the Act. AIR 1938 All 14 (15) = ILR (1937) All 949 (DB).

(e) Order in execution against garnishee under Order 21, Rule 46, Civil P. C. AIR 1946 Sind 116 (117) = ILR (1946) Kar 122 (DB).

(f) Order under Section 9 Displaced Persons (Debts Adjustment) Act. AIR 1956 Pepsu 53 (Prs. 4, 5, 7) = ILR (1956) Patiala 200.

(g) Order dismissing application under Section 5. Displaced Persons (Debts Adjustment) Act. AIR 1955 Raj 81 (Prs. 5, 6) = ILR (1954) 4 Raj 697 (DB).

(h) Order dismissing an application under Section 13, Displaced Persons (Debts Adjustment) Act. AIR 1954 All 672 (Prs. 3, 6).

(i) Order dismissing application under Section 12, U. P. Agriculturists' Relief Act. AIR 1954 All 184 (Pr. 2).

(j) Order under Section 19-A of the U. P. Encumbered Estates Act 25 of 1934). AIR 1965 All 298 (299, 300) = 1964 All LJ 977.

(2) Appeal under Section 45, U. P. Encumbered Estates Act, from decision on two issues framed in a creditor's claim case under Section 14 of that Act — Court-fee payable is under Article 11 of Schedule II and not ad valorem. AIR 1941 Oudh 60 (61) = 16 Luck 153 (DB).

(3) Appeal from decree of Special Judge on application under Section 4, U. P. Encumbered Estates Act, 1934, praying for decree for additional amount against landlord — Ad valorem court-fees on additional amount must be paid under Sch. I, Art. 1— Article 11 or 17 of Schedule II is not applicable. AIR 1946 Oudh 60 (61) = 20 Luck 595.

(4) Ad valorem court-fee is payable on an appeal against order rejecting an application to make a final decree. AIR 1945 Nag 68 (68, 69) (DB).

(5) It was certainly never anybody's intention that displaced persons, whether debtors or creditors, should have to pay ad

Schedule I, Article 1 — Note 14 (contd.)

valorem court-fee on appeals against orders dismissing their applications. AIR 1956 Punj 153 (155).

(6) Application under Section 10, Displaced Persons (Debts Adjustment) Act rejected on ground that applicant is not displaced person — Appeal can be filed with court-fee provided in Schedule II, Art. 11. AIR 1957 Raj 146 (148) = ILR (1957) 7 Raj 168 (FB).

(7) An order under Section 18 (1) of the Displaced Persons (Debts Adjustment) Act rejecting the application on the ground that the loss did not take place in the circumstances specified in Section 18 (1) could not be said to be a decree. The party was entitled to file an appeal against such order on a Court-fee stamp of Rs. 2 and was not liable to pay ad valorem Court-fee. 1958 Raj LW 222 = ILR (1958) 8 Raj 216 (219) (DB).

(8) An appeal filed under Rule 25 of the Rules sanctioned by H. E. H. the Nizam for recovery of arrears of rent and ejectment from premises belonging to the City Improvement Board against an order directing delivery of possession is chargeable with a fixed court-fee under Schedule II, Article 11. AIR 1954 Hyd 81 (Pr. 9) = ILR (1954) Hyd 36 (FB).

(9) An award made by an arbitrator acting under the Punjab Requisitioning and Acquisition of Immoveable Property Act is neither a decree nor an order having the force of a decree. AIR 1957 Punj 32 (34) = ILR (1957) Punj 142 (DB).

(10) Sale of Property by A to B — Certain amount left with B for certain purpose — C in execution of his decree against A attaching amount in hands of B — Objection by B allowed — Appeal by C allowed and B's objection dismissed — Order being against garnishee has force of decree under Order 21, Rule 103, Civil P. C. — Ad valorem court-fee is payable on appeal from such order AIR 1948 All 307 (308) = ILR (1948) All 207 (DB).

(11) Decree under Section 14, U. P. Encumbered Estates Act in favour of daughter of original creditor on his death — Objection that decree should have been in objector's favour and not in daughter's favour — Objection dismissed — Order has the force of a decree under Section 14 of the Act and appeal therefrom is governed by this Article. AIR 1949 All 270 (271) = ILR (1949) All 885.

(12) Order under Section 235 of Companies Act (1913) read with Section 45-H of Banking Companies Act (1949) is not a decree within meaning of Schedule I, Article 1 — It is doubtful whether such an order will fall under Schedule 2, Article 11 — In absence of any definite rule Court-fee paid as on appeal from order held sufficient. ILR (1961) 11 Raj 16 (22).

(13) Schedule I, Article 1 (as amended in U. P.) — Order granting of letters of Administration is an order having the force of a decree—Court-fee on an appeal from such an order would be payable under Schedule II, Article 1 (e) (5). AIR 1963 All 153 (158, 161) = 1962 All LJ 1135 (FB). (ILR 35 All 448, **Overruled.**)

(14) Order for restitution under Section 144, Civil P. C. is not an order in the course of execution proceedings. It is an order having the force of a decree and in an appeal from such an order, the Court-fee payable is ad valorem. (1963) 1 Mys LJ 531 = ILR (1962) Mys 991 (1000) (DB). (AIR 1937 Cal 152, Foll.)

(15) Order refusing to wind up company has not the force of a decree. It is impossible to make any valuation of the right of the person making an order that the Company shall be wound up. Hence Article 1, Schedule 1 does not apply. AIR 1966 Mys 150 (151) = (1965) 1 Mys LJ 557.

15. Order rejecting plaint or dismissing suit for insufficiency of court-fee — Appeal from. — (1) An appeal from an order rejecting a plaint or dismissing a suit for insufficiency of court-fee, cannot come under Sch. II, Article 11 as an appeal from an order. AIR 1929 Pat 615 (616) (DB) °° AIR 1949 Nag 1 (2) = ILR (1948) Nag 565 (FB) °° AIR 1953 Raj 6 (Pr. 3) = ILR (1952) 2 Raj 195 (DB) °° AIR 1921 Lah 43 (43) (DB).

(2) The following views are held as to how the appeal against an order rejecting a plaint or dismissing suit for insufficiency of court fee, should be valued:—

(a) Value of the appeal is the difference between court-fee paid and demanded. AIR 1939 Pat 571 (572) = 18 Pat 323 (DB) °° AIR 1957 Punj 315 (316) = ILR (1957) Punj 814 (DB) °° AIR 1954 Ajmer 15 (Pr 2) °° 1939 Nag L Jour 32 (32) °° AIR 1938 Mad 498 (499) = ILR (1938) Mad 981 (DB) °° 1882 All WN 244 (244) (DB) °° (1966) 2 Mys LJ 205 (206) = (1966) 7 Law Rep 370 °° AIR 1961 Punj 426 (428) = 1961 Cur LJ (Part C) 16 (DB) °° AIR 1959 Punj 387 (389) = ILR (1958) Punj 1 (DB).

(b) Value of the appeal is the value in the suit. AIR 1935 Nag 83 (86, 89) (FB). (Appellate Court should hear parties before admitting appeal on the question of valuation and determine it.) °° AIR 1929 Pat 615 (616) (DB). (Court-fee paid on the plaint should be paid.) °° AIR 1927 Nag 256 (258). (Value of the suit as determined by trial Court is the value of the appeal.) °° AIR 1921 Lah 43 (43) (DB) °° AIR 1970 Madh Pra 5 (6) (DB). (AIR 1968 Andh Pra 239 (FB), **Dissented from.**)

(3) Appeal not disputing the court-fee payable but on the ground that time should

Schedule I, Article 1 — Note 15 (contd.)

have been allowed for payment thereof — Schedule II, Article 17 (vi) applies. ('36-43) Tax Dec (Nag) 42 (43) °° ('36-43) Tax Dec (Nag) 82 (83).

16. Appeal against order under Order 21, R. 50. — (1) Ad valorem court-fee under this article is payable on the subject-matter in dispute in the appeal against an order passed under Order 21, Rule 50, Civil P. C. AIR 1939 Sind 161 (163, 164) = ILR (1939) Kar 589 (FB) °° AIR 1933 Cal 546 (547) = 60 Cal 530 °° AIR 1934 Lah 958 (960) = 15 Lah 893 (DB) °° AIR 1930 Sind 255 (256) = 25 Sind LR 25 (DB) °° AIR 1917 Low Bur 179 (179) = 8 Low Bur Rul 300 (DB).

(2) The subject-matter in dispute against an order under Order 21, Rule 50, Civil P. C. on appeal is the amount for which the person proceeded against is sought to be made liable. AIR 1934 Lah 958 (960) = 15 Lah 893 (DB).

17. Award. — (1) In the absence of any other provision which is more directly applicable to an appeal from a decree on an award court-fee will be payable under this Article on the value of appeal. ('36-43) Tax Dec (Nag) 47 (48, 49) °° AIR 1951 Pat 608 (Prs. 2-5) °° AIR 1926 Lah 403 (403) °° (1907) 4 All L Jour 595 (597).

(2) The dispute as to apportionment would be a dispute relating to compensation and being a dispute under the Land Acquisition Act, the Court fee has to be computed according to the difference between the amount awarded and the amount claimed by the appellant. ILR (1966) 2 Punj 481 (486, 494)=(1966) 68 Pun LR 299 (D) (FB). (AIR 1932 Cal 346, Foll.) °° AIR 1968 Cal 365 (371) = 71 Cal WN 662. (AIR 1957 Raj 275, Diss.) °° AIR 1962 Ker 25 (26) = 1961 Ker LT 484 (DB) °° AIR 1961 Him Pra 30 (32) = 1962 Cur LJ 60. (AIR 1957 Raj 275, Not foll.)

(3) Award under Section 7 of the Requisitioning and Acquisition of Immovable Property Act — Award is an order within the meaning of Section 8, Court-fees Act and Court-fee is payable under Article 1, Schedule I on the difference between the amount awarded and the amount claimed in appeal. AIR 1959 Cal 609 (613) = 63 Cal WN 325. (AIR 1945 Bom 348, Diss.) °° AIR 1968 Andh Pra 348 (350) = (1968) 1 Andh WR 218 (DB). (AIR 1945 Bom 348; AIR 1957 Punj 32 and AIR 1939 All 127, Diss.) °° AIR 1967 Cal 617 (619) = 71 Cal WN 673. (AIR 1945 Bom 348, Diss.)

(4) Sch. I, Article 1 — Award of compensation by arbitrator under provisions of Resettlement of Displaced Persons (Land Acquisition) Act (60 of 1948) — Award is neither a decree nor an order having the force of a decree — Appeal against 'award' attracts fixed court-fee under Article 11 of Sch. II of the Court-fees Act — Ad valorem court-fee under Sch. I, Article 1 on basis of Section 8 not payable. AIR 1970 Delhi 44 (49, 50) (DB) (AIR 1946 Cal 524; AIR 1959 Cal 609 and AIR 1968 AP 348, Diss.)

18. Appeal seeking to exonerate or make liable property. — (1) Property made liable for decretal amount — Ad valorem court-fee on the value of property or amount decreed whichever is less should be paid on the appeal to get a release from the liability. AIR 1938 Pesh 38 (38, 39) (DB) °° AIR 1933 All 45 (46) = 54 All 553 °° AIR 1926 Lah 408 (408) = 7 Lah 215 (DB) °° AIR 1936 Lah 179 (180) (DB). (Mortgage decree making property in the hands of the defendant liable for the amount.) °° AIR 1928 Nag 316 (318, 319) = 24 Nag LR 142 (Do.) °° AIR 1918 Oudh 348 (348) (Do.) °° (1887) 10 Mad 187 (189) (DB) (Do).

[See AIR 1916 Lah 151 (151) = 1916 Pun Re No. 11 (DB). (Appeal seeking to remove charge — Ad valorem court-fee on the amount of the charge.)]

(2) Where the mortgage decree exonerates certain property from liability under decree and plaintiff appeals from the decree seeking to make that property liable under the decree, he should pay ad valorem fee on the value of property or the value of the liability exonerated. AIR 1942 Mad 152 (153) °° AIR 1921 Oudh 237 (237) = 24 Oudh Cas 295 °° AIR 1914 Oudh 396 (397) = 17 Oudh Cas 90 °° (1907) 30 Mad 96 (98) (FB).

[See also AIR 1932 All 406 (407) = 54 All 608. (Suit for dower debt — Suit decreed against first defendant personally only — His personal property made liable — Appeal to make assets in the hands of other defendants liable — Ad valorem fee on the dower debt to be paid as court-fee.) °° AIR 1945 Cal 354 (355) = ILR (1945) 2 Cal 509.]

(3) Value of the property on which liability for decretal amount is imposed is to be ascertained according to the market-value and not by applying the rules laid down in para (v) of Section 7. AIR 1931 Mad 710 (711).

19. Decree against several persons — Appeal by one seeking exoneration. — (1) Decree against father and sons in mortgage by the former as karta — Appeal by sons disputing their liability — Ad valorem fee on the decretal amount and not on their shares of that amount should be paid. AIR 1920 Pat 642 (643).

[See however AIR 1934 Lah 865 (866) (DB). (Sons seeking to avoid their personal liability only — Court-fee of Rs. 10 is sufficient.)]

(2) Appeal against a personal decree against co-trustees on a pro-note executed by them — A trustee should bear ad valorem court-fee on the decretal amount. AIR 1941 Mad 313 (314).

20. Lower Court exonerating a party from liability — Appeal seeking to make him liable. — (1) Decree against some of

Article 1-A

Madhya Pradesh

After Article 1 the following article was *inserted* :

"1-A. Plaint, written statement pleading a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) presented to any Civil or Revenue Court except those mentioned in S. 3.	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Fifty paise.
	When such amount or value of exceeds five rupees, for every five rupees or part thereof, in excess of five rupees, up to one hundred rupees.	Fifty paise.
	When such amount or value exceeds one hundred rupees, for every ten rupees or part thereof, in excess of one hundred rupees, up to one thousand rupees.	One rupee.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees or part thereof in excess of one thousand rupees, up to ten thousand rupees,	Ten rupees.
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees,	Thirty seven rupees and fifty paise.
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees or part thereof, in excess of twenty thousand rupees, up to one lakh of rupees.	Fifty rupees.
	When such amount or value exceeds one lakh of rupees, for every one thousand rupees, or part thereof, in excess of one lakh of rupees up to two lakhs of rupees.	Forty rupees.
	When such amount or value exceeds two lakhs of rupees for every one thousand rupees or part thereof, in excess of two lakhs of rupees:	Thirty rupees.
	Provided that the maximum fee leviable shall not exceed eighteen thousand seven hundred and fifty rupees.	
	Provided futher that the minimum fee leviable on a memorandum of appeal shall be five rupees."	

—M. P. Act 12 of 1966, S. 2 (ii) (1-4-1966).

Schedule I, Article 1 — Note 20 (contd.) several defendants — Plaintiff's appeal for getting other defendants also liable for amount decreed — Ad valorem court-fee on the amount decreed must be paid. AIR 1923 Lah 135 (136) (DB) °° AIR 1922 Bom 172 (173) = 46 Bom 840 (DB) °° (1912) 16 Ind Cas 777 (778) = 1912 Pun Re No. 86 (DB) °° (1899) 12 CPLR 43 (44).

(2) Where a decree for personal relief is not granted by the trial Court and the appellant by his appeal seeks to make the respondent liable to the extent both of his person and property, the appeal is capable of being valued in money. Money value of the detriment suffered by the appellant as a result of the adverse decision is the amount for which he claims a personal decree against the respondent. AIR 1955 Kutch 12 (Pr 7).

21. Separate appeals arising from same suit. — (1) Defendants entitled to file joint appeal filing separate appeals — Each must bear full court-fee. AIR 1919 Lah 450 (454) = 1918 Pun Re No. 91 (DB) °° (1900) 3 Oudh Cas 163 (164) (DB).

(2) Where two distinct and separate appeals arise out of the same suit, full court-fee must be paid on each appeal. AIR 1921 All 395 (396) = 43 All 56 °° AIR 1953 Mad 415 (Prs. 2, 3, 5) = ILR (1953) Mad 826 °° AIR 1951 Mys 111 (Pr 13) = ILR (1951) Mys 217 (DB).

22. Appeal relating to priority of claims against same debtor. — (1) Suit for sale on mortgage — Appeal by prior mortgagee whose claim for priority negatived — Ad valorem court-fee on the amount of his mortgage should be paid. AIR 1932 All 221 (222) = 54 All 347.

(2) Decree directing sale subject to prior charge — Appeal to get rid of the priority — Ad valorem court-fee on the amount of that charge should be paid. AIR 1919 Pat 233 (234) = 4 Pat L Jour 323.

(3) Appeal to exonerate property which was security for debentures from liability to satisfy decretal amount — Court-fee payable is on the value of debentures or decretal debt whichever is less. AIR 1933 All 45 (46) = 54 All 553 (Article 17 (iii) of Sch. II does not apply.)

23. Proviso. — (1) The proviso applies even to cases where the plaint or memorandum of appeal comprises distinct subjects within the meaning of Section 17. (1902) 29 Cal 140 (147, 148) (DB) °° (1881) 3 All 108 (110, 111, 112) (FB) °° AIR 1950 Nag 189 (Prs 11, 13) = ILR (1951) Nag 463.

(2) Though the proviso only mentions the plaint and memorandum of appeal expressly, it is also applicable to written statements pleading a set-off or counter-

2. Plaint *[***] in a suit for possession under †[the Specific Relief Act, 1877, Section 9].	......	A fee of one-half the amount prescribed in the foregoing scale.

[*] The words "or memorandum of appeal" were repealed by the Court-fees Act Amendment Act, 1870 (20 of 1870).

[†] Substituted for "Act No. 14 of 1859 to provide for the limitation of suits" by the Amending Act, 1891 (12 of 1891).

STATE AMENDMENTS

Bihar:

For surcharge, see Bihar Act 25 of 1948 as amended by Bihar Act 14 of 1958. For text of this Act, See Appendix I.

Orissa:

For surcharge, see Orissa Act 20 of 1947 as amended by Orissa Act 17 of 1958. For text of this Act, see Appendix I.

West Bengal:

Article 2 shall be omitted.

—W. B. Act 18 of 1963, S. 4 (3-5-1963)

Articles 2-A and 2-B

Uttar Pradesh

After Article 2 the following articles were *inserted*, viz. :

"2-A. Application or written statement by a defendant in a suit for partition praying for partition of his share in the property sought to be partitioned.	... ...	The same fee which would have been payable on a plaint if such defendant instituted a suit for partition." —U. P. Act 2 of 1936. [2-4-1936.]
"2-B. Memorandum of appeal filed under section 23 of the United Provinces Agriculturists' Relief Act, 1934.	... ...	The same fee as would be leviable on a memorandum of appeal under Art. 1." —U. P. Act 19 of 1938. [9-1-1939.]

Schedule I, Article 1 — Note 23 (contd.)

claim. AIR 1930 Oudh 140 (141) = 5 Luck 621.

Schedule I, Article 2 — Note 1

(1) Suit based on title and not on dispossession under Section 9, Specific Relief Act — This article will not apply and full court-fee will have to be paid. ('94) 1894 Bom PJ 346 (DB).

Schedule I, Article 1-A (U. P.) — Note 1

(1) Sch. I, Article 2-A (U. P.) — Stamp Act (1899), Article 45 and Section 2 (15) — Partition — Final decree in partition suit — Execution by defendant — Stamp Duty under Section 45 Stamp Act paid by plaintiffs — Defendant need not pay court-fee in order to have this share separately allotted to him. -- Sch. I, Art. 2-A does not apply where defendant merely seeks execution of partition decree. 1964 All LJ 1013 (1015) (DB).

(2) When in a suit for partition, the defendants apply for the preparation of final decree by separation of their share, they desire to be treated as co-plaintiffs and their share separately allotted to them. Plaintiffs and also defendants standing in the category of plaintiffs must pay Court-fee before their prayer can be granted. Similarly stamp-duty, if any, payable at the time of the passing of the final decree shall also be payable by them. AIR 1966 All 601 (602).

Schedule I, Article 2-B (U. P.) — Note 1

(1) Application for redemption under U. P. Agriculturists' Relief Act — Decree conditional on payment of amounts due under mortgage and under deeds of further charge — Appeal contesting liability under deeds of further charge — Ad valorem court-fee should be paid on difference between amounts decreed and amount which is admitted. AIR 1941 Oudh 447 (448) (DB).

(2) Appeal under Section 23, U. P. Agriculturists' Relief Act — Valuation of appeal should be based not on full amount but on subject-matter in dispute in appeal within the meaning of this Article. AIR 1946 All 304 (305) = ILR (1946) All 409 (DB).

(3) The dismissal of an application under Section 12 of the Agriculturists' Relief Act on the merits on the finding that the transaction was not a mortgage but a sale is as much a decree as the order allowing the application. Even if it is an order in form it has the force of a decree. An appeal both against the dismissal of an application under Section 12 of the Agriculturists' Relief Act as well as against the order allowing the application is maintainable under Section 23 of the Act. Under Article 2-B of Schedule I of the Court-fees Act, as amended by U. P. Act (XIX of 1938), the memorandum of appeal filed under Section 23 of the U. P. Agriculturists' Relief Act (1934) has to be stamped with the same fee as would be leviable on the memorandum of appeal as under Article 1, Sch. I, Article 11, Sch. II does not apply. AIR 1954 All 184 (Pr 2) (DB).

3. *[Repealed by the Indian Registration Act, 1871 (8 of 1871).]*

Orissa

STATE AMENDMENTS

(1) After Art. 2 *insert* the following, namely—

"3. Plaint, or written statement pleading set-off or counter-claim in any suit of the nature cognizable by a Court of Small Causes when the amount or value of the subject-matter does not exceed Rs. 500.	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Thirty-five naye paise.
	When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees.	Thirty-five naye paise.
	When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees upto five hundred rupees.	Seventy-five naye paise.
"3-A. Plaint or memorandum of appeal in each of the following suits:—	When the value for purposes of jurisdiction does not exceed three thousand rupees.	Fifteen rupees.
(1) to obtain a declaratory decree where no consequential relief is prayed :	When the value exceeds three thousand rupees but does not exceed four thousand rupees.	Fifty rupees.
(2) to set aside an award :	When such value exceeds four thousand rupees, for every two thousand rupees or part thereof, in excess of four thousand rupees, up to ten thousand rupees.	Fifty rupees.
(3) to obtain a declaration that an alleged adoption is invalid or never in fact took place or to obtain a declaration that an adoption is valid.	When such value exceeds ten thousand rupees, for every ten thousand rupees, or part thereof, in excess of ten thousand rupees up to fifty thousand rupees.	Fifty rupees.
	When such value exceeds fifty thousand rupees, for every fifty thousand rupees, or part thereof, in excess of fifty thousand rupees.	One hundred rupees.

—Orissa Court-fees (Amendment) Act 5 of 1939. [31-10-1939.]

(2) For surcharge *see* Orissa Act 20 of 1947 as amended by Act 17 of 1958. For text of this Act *see* Appendix I.

4. Application for review of judgment,* if presented on or after the ninetieth day from the date of the decree.	...	The fee leviable on the plaint or memorandum of appeal.

[*]As to application for review of judgment, *see* the Code of Civil Procedure, 1908 (Act 5 of 1908).

Bihar

STATE AMENDMENTS

For surcharge, *see* Bih. Act 25 of 1948 as amended by Act 14 of 1958; for text of this Act, *see* Appendix I.

Orissa

For surcharge, *see* Orissa Act 20 of 1947 as amended by Act 17 of 1958; for text of this, Act, *see* Appendix I.

5. Application for review of judgment.* if presented before the ninetieth day from the date of the decree.	...	One-half of the fee leviable on the plaint or memorandum of appeal.

[*]As to application for review of judgment, *see* the Code of Civil Procedure, 1908 (Act 5 of 1908).

Schedule 1, Article 2-B (U. P.) — Note 1

(4) Proceedings under Section 12, U. P. Agriculturists' Relief Act are not suit. Where appeal is from a decree in proceedings on an application and Section 12, Section 7 (ix) which fixes an artificial value for the subject-matter in dispute in "suits" against a mortgagee for the recovery of the property mortgaged cannot apply to the appeal. In the appeal under Section 23 of the Agriculturists' Relief Act the appellant is bound to pay court-fee on the amount or value of the subject-matter in dispute in appeal and not on the principal amount secured under the mortgage. The subject-matter in dispute in appeal would be the market value of the property in respect of which the right of redemption granted by the lower Court is sought to be set aside in appeal. AIR 1953 All 240 (Prs 2, 4, 5) = ILR (1954) 2 All 59 (DB).

SCHEDULE I, ARTICLES 4 & 5

SYNOPSIS

1. Scope.
2. "Fee payable on the plaint or memo-

STATE AMENDMENTS

Bihar

For surcharge, *see* Bihar Act 25 of 1948 as amended by Act 14 of 1958; for text of this Act, *see* Appendix I.

Orissa

For surcharge, *see* Orissa Act 20 of 1947 as amended by Act 17 of 1958; for text of this Act, *see* Appendix I.

Schedule I, Arts. 4 & 5 — Synopsis (contd.)
randum of appeal"

3. **Computation of time.**
4. **Application for review in forma pauperis.**
5. **Insufficiently stamped application for review.**

1. Scope. — (1) Decision attacked not a decree but only an order — These articles will not apply and application will be liable to be stamped merely as application under Sch. II, Article 1 with fixed court-fee. Thus, an application for review of an interlocutory order is only liable to court-fee as an application under Sch. II, Article 1. (1909) 31 All 262 (264) *° AIR 1957 Pat 143 (144, 145). (The order directing a compromise to be recorded under Order 23, Rule 3 being not a decree, but an order, Article 4 of Sch. I of the Court-fees Act will not apply to the application for review of the order passed under Order 23, Rule 3 of the Code of Civil Procedure. To such a case Sch. II, Article 1 (b) of the Court-fees Act will apply.)

(2) Order dismissing appeal for non-payment of court-fees or for non-compliance with order for security under Order 41, Rule 10 of Civil P. C. — Application for review is not governed by these articles but by Sch II, Article 1. AIR 1941 Mad 836 (837, 838) = ILR (1941) Mad 954 (FB)

(3) Application for restoration of appeal dismissed for default in payment of printing costs, etc., is not application for review coming under these articles. AIR 1939 Pat 678 (680, 681) = 19 Pat 159 (FB). (AIR 1926 Pat 27 = 4 Pat 704, **Overruled** and AIR 1938 Pat 111 = 17 Pat 252. **Impliedly overruled.**) °° AIR 1932 Cal 770 (771, 772) = 59 Cal 1334 (DB) *° AIR 1932 Cal 641 (641).

(4) Dismissal of appeal under Order 41, Rule 11 — Application for review comes within these articles. AIR 1926 Cal 638 (639) (See AIR Commentaries on the Civil Procedure Code, Order 41, Rule 11, N 8.)

(5) It has been held that assuming that the articles apply to applications, when the judgment is passed on the basis of an application, like an application under Order 23, Rule 3, then the fee is payable on the application and not on the plaint on the basis of which the suit was instituted, and in which the application under Order 23, Rule 3 was made. Therefore, the court-fee payable under Article 4 on the application for review of the order passed under Order 23, Rule 3 would be the fee leviable on the application under Order 23, Rule 3, and not on the plaint in the suit itself. AIR 1957 Pat 143 (144, 145).

(6) Where by mistake, one of the items was not included in the preliminary decree passed in a suit for partition of joint family properties and the plaintiff applied for amendment of the decree — **Held,** that the amendment application for inclusion of such item in the decree should have been allowed and no court-fee as for review ought to have been demanded from the plaintiff AIR 1955 Andhra 215 (Pr 2).

2. "Fee payable on the plaint or memorandum of appeal." — (1) The following views are held as to the interpretation of the above words:—

(a) The above words mean plaint or memorandum of appeal, as the case may be, in the proceeding giving rise to the review application. (1909) 31 All 294 (299) *° AIR 1958 Pat 587 (Pr 6) (FB) (The words mean the plaint or memorandum of appeal which has given rise to the judgment under review and not any other plaint or memorandum of appeal.) °° AIR 1952 All 224 (Pr 5) = ILR (1952) 2 All 193 (FB) *° AIR 1954 Raj 84 (Pr 4) = ILR (1953) 3 Raj 387 (DB) °° AIR 1930 Cal 631 (632) = 57 Cal 679 (DB) *° AIR 1929 Cal 470 (471) = 57 Cal 154 (DB) °° AIR 1937 Lah 439 (440, 441) = ILR (1937) Lah 238 (DB) °° AIR 1925 Pat 368 (368) (DB) *° AIR 1943 Oudh 225 (225) (DB) °° AIR 1924 Oudh 108 (109) = 26 Oudh Cas 33 (DB) °° AIR 1933 Nag 207 (208) (DB) *° ('36-43) Tax Dec (Nag) 81 (82).

(b) The said words mean imaginary plaint or memorandum of appeal seeking same relief as is sought in application for review. AIR 1927 Mad 360 (361) = 50 Mad 488 (DB) °° AIR 1954 Trav-Co 48 = ILR (1952) Trav-Co 557 (DB). (AIR 1927 Mad 360 = 50 Mad 488, **Foll.**) °° (1880) 4 Bom 26 (28) *° AIR 1933 Rang 203 (203) = 11 Rang 120 °° ('36-43) Tax Dec (Nag) 16 (18).

(i) Review from decision in second appeal — Court-fee payable is that on the memorandum of second appeal and not that on first appeal. (1889) 11 All 176 (179) (SB).

(ii) Application for review of decree passed in suit seeking part of relief

Schedule I, Article 5 — Note 2 (contd.)

sought in plaint and directed against portion of decree — Full Court-fee payable on such plaint must be paid if application falls under Article 4. AIR 1937 Lah 439 (441) = ILR (1937) Lah 238 (DB) *° AIR 1952 All 224 (Pr 5) = ILR (1952) 2 All 193 (FB) °° AIR 1930 Cal 631 (632) = 57 Cal 679 (DB) °° (1909) 31 All 294 (299).

(iii) Fee payable is that leviable on plaint or memorandum of appeal and not fee actually levied. AIR 1937 Lah 439 (440, 441) = ILR (1937) Lah 238 (DB) *° AIR 1924 Cal 881 (883) (DB) °° (1909) 31 All 294 (299). (Word "leviable" was used in order to provide for application for review by defendant or respondent in case of suit or appeal in forma pauperis.)

(iv) Where the petitioner is aggrieved by the acceptance of the cross-objections and variation of the lower Court's decree by the acceptance, it has been held that the fee leviable on the review petition which has been filed after 90 days would be the one which was paid on the cross-objections by the defendant respondent. AIR 1955 Raj 165 (Prs 6, 7) = 1955 Cri L Jour 1392 = ILR (1954) 4 Raj 818 (DB).

(v) Fee payable is that payable on date on which plaint or memorandum of appeal was actually presented. AIR 1933 All 20 (21) = 54 All 1092 *° AIR 1924 Cal 881 (884, 885) (DB).

(2) Application for review presented more than 90 days after dismissal by High Court of second appeal under Civil P. C., Order 41, Rule 11 (1) — Court-fee payable is according to Article 4. AIR 1926 Cal 638 (640).

(3) Review application filed before ninety days — Though review relates only to a part of the relief granted by the judgment, one half of the court-fee payable on the plaint or memorandum of appeal in the suit or the appeal in which the judgment was passed must be paid on the application. (1964) 30 Cut LT 190 (192). (AIR 1926 Mad 360, **Dissented from.**)

(4) Application for review filed on 90th day, 89th day being holiday — The Court-fee payable is according to Article 4 of Sch. I of Court-fees Act — General Clauses Act (1897), Section 10, does not apply. ILR (1960) 10 Raj 218 (220).

3. Computation of time. — (1) The period of 90 days mentioned in Articles 4 and 5 is to be counted from the date of the decree which under the law is to be the date of the judgment, and not from the date when the decree is actually prepared. AIR 1955 Raj 165 (Pr 5) = 1955 Cri L Jour 1392 = ILR (1954) 4 Raj 818 (DB).

(2) In calculating the period of 90 days for the purpose of these two articles the question whether the application is barred by limitation or not is immaterial. ILR (1955) 5 Raj 765 (768). (The question of payment of court-fees is and must be governed by the provisions of the Court-fees Act and not by the Limitation Act. Section 29 (2) of the Limitation Act must be held to make a provision for limitation only in so far as a special or local law may prescribe for any suit, appeal or application, a period of limitation different from that prescribed under the Limitation Act.)

(3) Fact that Court was closed on last day of period of 90 days is immaterial for the purpose of these two articles. AIR 1941 Nag 236 (238) = ILR (1941) Nag 392 (DB) °° AIR 1957 Pat 143 (145) °° AIR 1955 Trav-Co 185 (Prs 4, 5) = ILR (1954) Trav-Co 155 (DB). (Where an application for review is presented on the 92nd day, preceding three days being holidays, court-fee as provided by Article 4 has to be paid and Section 4, Limitation Act, will be of no avail.) *° AIR 1951 Mad 262 (Pr 2) = ILR (1951) Mad 709 (DB). (But in such a case, a certificate under Section 14 can be granted the default not being due to any laches on the part of the applicant.) °° AIR 1935 Nag 164 (165) = 31 Nag LR 260 °° ('12) 15 Cal L Jour 505 (506, 507) (DB) *° (1886) 9 Mad 134 (134) (DB) °° (1882) 9 Cal LR 479 (480) (DB) °° (1879) 1879 Pun Re No 39, p. 107 (108).

(4) Time required for obtaining copies of decree and judgment cannot be deducted in calculating period of 90 days. AIR 1941 Nag 236 (238) = ILR (1941) Nag 392 (DB) *° (1899) 2 Oudh Cas 302 (303) °° ('94) 7 CPLR 111 (112).

(5) If on date of application for review, period of 90 days has elapsed from date of judgment, application for review will come under Article 4 and not under Article 5 although ninety days have not elapsed from date on which decree was signed. AIR 1924 Cal 994 (995) (DB).

(6) Presentation to Stamp Reporter is presentation for purpose of these articles. AIR 1924 Cal 994 (995) (DB).

4. Application for review in forma pauperis. — (1) Application for review of judgment passed in suit or appeal in forma pauperis must be considered to be one in continuation of suit or appeal and is maintainable without payment of any Court-fee. AIR 1936 Cal 752 (753) (DB) °° (1898) 20 All 410 (411) (DB).

[But see AIR 1930 Rang 280 (281) = 8 Rang 428 (DB).]

6. Copy or translation of a judgment or order not being, or having the force of, a decree.	When such judgment or order is passed by any Civil Court other than a High Court, or by the presiding officer of any Revenue Court or Office, or by any other Judicial or Executive Authority –	
	(a) If the amount or value of the subject-matter is fifty or less than fifty rupees.	**Four annas.**
	(b) If such amount or value exceeds fifty rupees.	**Eight annas.**
	When such judgment or order is passed by a High Court.	**One rupee.**

STATE AMENDMENTS

Andaman and Nicobar

In the third column of Art. 6 of Sch. I, for the words "four annas", "eight annas" and "one rupee" *substitute* the words "Thirty-seven Naye Paise" "Seventy-five Naye Paise" and "One rupee fifty Naye Paise" respectively. —Reg. II of 1957, S. 16 (2). [1-8-1957].

Assam: Nagaland :

In the third column of the article for the words "fifty paise" opposite cl. (a) in the second column the words "One rupee" were *substituted* and for the words "One rupee" opposite the first item in cl. (b) in the second column the words "two rupees" were *substituted* and for the words "two rupees" opposite the second item in that clause the words "four rupees" were *substituted*.

—Assam Act VIII of 1963, S. 2 [1-4-1963]; Act 27 of 1962, S. 26 [w.e.f. 1-12-1963.]

Bihar

(1) "Forty naye paise", "twelve annas" and "one rupee and eight annas" were respectively *substituted* for "four annas", "eight annas" and "one rupee" shown as "proper fees" against Art. 6. —Bihar and Orissa Court-fees (Amendment) Act II of 1922. [21-8-1922] and Bihar Act VII of 1958, S. 2. [1-4-1958].

(2) For surcharge, *see* Bihar Act XXV of 1948 as amended by Act XIV of 1958. For text of this Act, *see* Appendix I.

Delhi

Same as that of Punjab — S.R.O. 422, Gaz. Ind. 1950, Pt. II, S. 3, p. 458 and G.S.R. 842, Gaz. Ind. 1959, Pt. II, S. 3 (i), p. 1039 [w.e.f. 1-8-59].

Schedule I, Article 5 — Note 4 (contd.)

(2) Applicant not allowed to sue or appeal as pauper — He cannot apply for review in forma pauperis. 1895 Pun Re No. 91, p. 435 (436) (DB) °° 1870 Pun Re No. 24 p. 73 (73) (DB).

5. Insufficiently stamped application for review. — (1) Court can hear application for review though insufficiently stamped. (1913) 21 Ind Cas 943 (944) (Cal) (DB).

Schedule I, Articles 6 and 7 — Note 1

(1) Notes of judgment furnished to parties under the Rules of Practice for the guidance of Small Cause Courts are copies of decrees and require a stamp under Article 7. (1871) 6 Mad HCR (App) 23 (24).

(2) Execution of Privy Council decree — Printing charges allowed as costs by Privy Council — Sub-Judge in execution refusing to include in costs printing charges — Appeal — Copy of Sub-Judge's order must be stamped under Article 7. AIR 1937 Pesh 3 (4) (DB).

(3) Where the filing of copies of any judgment, decree or order is essential for the presentation of a valid appeal, the want of proper stamps on such copies would invalidate the appeal and the subsequent payment of deficit court-fees after the expiry of limitation for the appeal will not be sufficient to avoid the bar of limitation. AIR 1935 Lah 124 (125) °° AIR 1934 Lah 272 (273).

(4) The articles apply to civil proceedings only and not to proceedings in Criminal Court. AIR 1953 Trav-Co 212 (Pr 2) = ILR (1953) Trav-Co 69 = 1953 Cri L Jour 1236 (DB) °° AIR 1958 Pat 160 (161) = 1958 Cri L Jour 404 (DB).

(5) Though the language used in column 1 does not limit the scope of Article 6 to judgments of civil or revenue courts or the High Court yet the details given in column 2 of Article 6 leave no room for doubt that Article 6 was intended to apply to cases of the judgments of the courts specified in column 2 only. 1959 Raj LW 574 (576) = ILR (1959) 9 Raj 902 (DB).

Madhya Pradesh

For Art. 6 in Sch. I *substitute* the following :

"6. Copy or translation of a judgment or order not being or having the force of a decree—

When such judgment or order is passed by any Court other than a High Court, or by any other Authority—

(a) If the amount or value of the subject-matter is fifty or less than fifty rupees—Seventy five Paise.

(b) If such amount or value exceeds fifty rupees — One rupee and fifty paise.

When such judgment or order is passed by a High Court — Two rupees.

— M. P. Act 12 of 1966, S. 2 (iii) [1-4-1966].

Orissa

(1) In the third column the words "thirty-five naye paise", "seventy-five naye paise" and "one rupee fifty naye paise" were respectively *substituted* for the words "four annas,", "eight annas" and "one rupee." - Orissa Court-fees (Amendment) Acts V of 1939, [31-10-1939] and XVI of 1958, S. 2.

(2) For surcharge, *see* Orissa Act XX of 1947 as amended by Act XVII of 1958; for text of this Act, *see* Appendix I.

Manipur and Tripura

Same as that of Assam —*See* G.S.Rs. 1119—1120, Gaz. Ind. 1-7-1963, Pt. II, S. 3 (i), Ext., pp. 501-531.

Pondicherry

Same as that of Andaman and Nicobar —Act 26 of 1968, S. 3 & Sch. Pt. II, [18-12-1968].

Punjab : Haryana : Chandigarh

"6. Copy or translation of judgment or order not being or having the force of a decree —

When such judgment or order is passed by any Civil Court other than a High Court or by the presiding officer of any Revenue Court or Office, or by any other Judicial, or Executive Authority - One rupee twenty-five Naya Paise.

When such judgment or order is passed by a High Court—Two rupees sixty-five Naye Paise".

— E. P. Act XXVI of 1949, S. 5 [1-4-1950]
and Punj. Act XIV of 1958, S. 4 [25-4-1958];
Act 31 of 1966, S. 88 [1-11-1966.]

Uttar Pradesh

For the words "four annas," "eight annas" and "one rupee" in the third column, *substitute* the words "seventy-five naye paise," "one rupee and fifty naye paise" and "three rupees" respectively.

—U. P. Acts II of 1936; XIV of 1948; XXV of 1952, S. 6; XX of 1958, S. 4 (b) (ii) and XLIV of 1958, S. 3 (ii).

West Bengal

In the third column for the words "six annas" opposite cl. (a) in the second column the words "forty paise" were *substituted*, for the words "twelve annas" opposite the first item in cl. (b) in the second column, the words "seventy-five paise" were *substituted* and for the words "one rupee and eight annas" opposite the second item in that clause, the words "one rupee and fifty paise" were *substituted*.

—Court-fees (W. B. Amendment) Act (Presi. Act 7 of 1968), S. 2.

7. Copy of a decree or order having the force of a decree.	When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court—	
	(a) If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees.	Eight annas.
	(b) If such amount or value exceeds fifty rupees.	One rupee.
	When such decree or order is made by a High Court,	Four rupees.

Schedule I, Articles 6 & 7 — Note 1 (contd.)

(6) A dealer under Assam Sales Tax Act is entitled as a matter of right to get the certified copies of his application and order passed thereon when he had in other respects satisfied the requirements of the Court-fees Act and the Stamp Act. Until an appropriate rule is framed for that purpose the officer has no jurisdiction to insist upon the demand of fees and folios

STATE AMENDMENTS

Assam : Nagaland

For Art. 7 *Substitute* the following:—

"7. Copy of a decree or order having the force of a decree.	When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court—	
	(a) If the amount or value of subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees.	Two rupees.
	(b) If the amount or value exceeds fifty rupees.	Three rupees
	When such decree or order is made by a High Court.	Seven rupees and fifty naise paise.,,

Assam Act 8 of 1963, S. 2 [w. e. f. 1-4-1963];
Act 27 of 1962, S. 26 [w.e.f. 1-12-1963].

Bihar

For surcharge *see* Bihar Act XXV of 1948 as amended by Act XIV of 1958; for text of the Act, *see* Appendix I.

Delhi

Same as that of Punjab

—*See* G. S. R. 842, Gaz. of Ind. 1959, Pt. II, S. 3 (i), p. 1039 [w. e. f. 1-8-1963.]

Madhya Pradesh

Substitute the following for Art. 7 :

"7. Copy of a decree or order having the force of a decree.	When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court.	
	(a) if the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees.	One rupee.
	(b) if such amount or value exceeds fifty rupees.	Two rupees.
	When such decree or order is made by a High Court.	Five rupees and thirty naye paise."

—Court-fees (C. P. Amendment) Acts XVI of 1935 [21-5-1935], VII of 1948 and M. P. Act XV of 1958.

Manipur and Tripura

Same as that of Assam.

—*See* G. S. Rs. 1119-1120, Gaz. Ind. 1-7-1963, Pt. II, S. 3 (i), Ext., pp. 501-531.

Orissa

(1) For Art. 7 the following article was *substituted*, viz.,

7. " Copy of decree or order having the force of a decree.	When such decree or order is made by a Munsif's Court or a Court of Small Causes, or a Revenue Court—	
	(a) if the amount or value of the subject-matter of the suit wherein such decree or order is made does not exceed one hundred rupees :	Fifty naye paise.
	(b) if such amount or value exceeds one hundred rupees but does not exceed one thousand rupees ;	One rupee
	(c) if such amount or value exceeds one thousand rupees.	One rupee fifty naye paise.
	When such decree or order is made by the Court of a District Judge or of a Subordinate Judge.	Three rupees.

Schedule I, Articles 6 & 7 — Note 1 (contd.) in respect of grant of certified copies as claimed by the dealer petitioner. AIR 1956 Assam 110 (Prs 2, 3) (DB).

(7) The requirement of certain court-fee labels on the decree and judgment accompanying a memo of appeal is primarily for fiscal purposes. Court has certainly discretion under Section 28, Court-fees Act, and Section 149, Civil P. C., to get the defect remedied by having the deficiency in the court-fee made good. AIR 1955 Ajmer 64 (Pr 5).

(8) Where the Deputy Registrar, whose duty is to see that all documents presented in the High Court are duly stamped, accepts copies of judgments and decrees filed with an application for leave to appeal to Privy Council under Section 81 (2), Government of Burma Act, which have not been stamped as required by Articles 6 to 9, Court fees Act, it is an implied decision that the copies are in order and when an objection is raised that it is not in order, the applicant is entitled to time to furnish the necessary stamps. AIR 1941 Rang 294 (295) (DB).

	When such decree or order is made by a High	Three rupees if the amount or value of the subject-matter of the suit wherein such decree or order is made does not exceed one thousand rupees; six rupees if such amount or value exceeds one thousand rupees."

—Orissa Court-fees (Amendment) Acts V of 1939, [31-10-1939] and XVI of 1958, S. 2.

(2) For surcharge *see* Orissa Act XX of 1947 as amended by Act XVII of 1958 ; for text of the Act, *see* Appendix I.

Punjab Haryana : Chandigarh :

"7. Copy of a decree or order having the force of a decree.	When such decree or order is made by any Civil Court other than the High Court, or by any Revenue Court	Two rupees sixty-five naye paise.
	When such decree or order is made by the High Court	Five rupees twenty-five naye paise."

—Punj. Act XIV of 1958, S. 4. [25-4-1958] : Act 31 of 1966, S. 88, [1-11-1966]

Uttar Pradesh

For the words "eight annas" and "one rupee" and "four rupees" in the third column *substitute* the words "One rupee and fifty naye paise", "Three rupees" and "Seven rupees and fifty naye paise", respectively.

—U. P. Acts II of 1936, [2-4-1936]; XIV of 1948 ; XXV of 1952, S. 6 and XLIV of 1958, S. 3.

West Bengal

For the words "eitht annas" wherever they occur *substitute* the words "Fifty paise."

—Court-fees (W. B. Amendment) Act, 1968 (Presi. Act 7 of 1968) S. 2 [26-3-1968].

8. Copy of any document liable to stamp duty under the Indian Stamp Act, 1879,* when left by any party to a suit or proceeding in place of the original withdrawn.	*(a)* When the stamp-duty chargeable on the original does not exceed eight annas.	The amount of the duty chargeable on the original.
	(b) In any other case.	fifty paise.

* *See* now the Indian Stamp Act, 1899 (2 of 1899).

STATE AMENDMENTS

Andaman and Nicobar

Same as that of West Bengal — Reg. II of 1957, S. 16 (3) [1-8-1957].

Assam Nagaland

In column 1 for the figures '1879' *substitute* '1899' and in column 3, for the words 'fifty paise': *substitute* the words "one rupee."

—Assam Act 8 of 1963, S. 2 [1-4-63] : Act 27 of 1962, S. 26 [w. e. f. 1-12-1963].

Bihar

(1) The entry "one and a half times the amount of the duty chargeable on the original" was *substituted* for the entry "the amount of the duty chargeable on the original" and "seventy-five naye paise" were *substituted* for "eight annas" shown as proper fee against Art. 8.

— Bihar and Orissa Court-fees (Amendment) Act II of 1922. [21-8-1922].

(2) For surcharge, *see* Bihar Act XXV of 1948; for text of the Acts as amended, *see* Appendix I.

Delhi

Same as that of Punjab. —G. S. R. 842, Gaz. Ind. 1959, Pt. II, S. 3 (i), p. 1039.

Schedule I, Article 8 — Note 1

(1) Copies of entries in account books, etc., furnished under Order 13, Rule 5 of the Civil Procedure Code need not bear any court-fee. (1887) 11 Bom 526 (527, 528) (FB). (Copies of entries in account books.) ** ('03) 27 Bom 150 (154) (SB). (Copies of entries in receipt books.) ** (1902) 26 Bom 522 (525) (SB). (Copy or extract from an entry in an account book.) ** (1891) 15 Bom 687 (689, 690) (SB).

(2) Where a suit is instituted through an agent holding a duly stamped power-of-attorney and the power-of-attorney is produced in Court for verification and then returned, the copy of the power-of-attorney which is left on the record in its place need not be stamped with any court-fee. AIR 1918 Lah 113 (113) = 1918 Pun Re No. 9 (DB).

Madhya Pradesh

For Art. 8, *substitute* the following :

"8. Copy of any document liable to stamp duty under the Indian Stamp Act, 1899 (II of 1899), when left by any party to a suit or proceeding in place of the original withdrawn.	*(a)* when the stamp duty chargeable on the original does not exceed fifty paise.	The amount of duty chargeable on the original.
	(b) In any other case.	One rupee.

—M. P. Act 12 of 1966, S. 2 (iv) [w. e. f. 1-4-1966.]

Manipur and Tripura

Same as that of Assam — *See* G. S. Rs. 1119-1120, Gaz. Ind., 1-7-1963, Pt. II, S. 3 (i) Ext., pp. 501-531.

Pondicherry

Same as that of Andaman and Nicobar — *See* Act 26 of 1968, S. 3 and Sch., Pt. II [18-12-1968].

Punjab : Haryana : Chandigarh

For Art. 8 *substitute* the following :

Same as in Madhya Pradesh except that in col. 1 after "withdrawn" read ,provided that such copy is not subject to any duty under the Indian Stamp Act, 1899; and in col. 2 cl. (9) for 'fifty paise' read 'twelve annas.'

—Punj Act XIV of 1958, S. 4 [25-4-1958] : Act 31 of 1966, S. 88 [1-11-1966].

Uttar Pradesh

For the words "eight annas" in cl. (a) of second column *substitute* the words "one rupee" and for the words "eight annas" in the third column opposite cl. (b) in the second column *substitute* the words "one rupee and fifty naye paise."

—U. P. Act XLIV of 1958, S. 3 (iv) [1-4-1959.]

West Bengal

(1) For the figures "1879" in the first column the figures "1899" were *substituted.*

—Court-fees Bengal Second (Amendment) Act XI of 1935. [5-5-1935.]

(2) In the Article, for the words "eight annas" wherever they occur .*substitute* the words "fifty paise."

– Court-fees (W. B. Amendment) Act, 1968 (Presi. Act 7 of 1968), S. 2. [26-3-1968.]

Article 8A

Uttar Pradash

Between Arts. 8 and 9 the following article was *inserted* as Art. 8A, viz. :

"8A. A Copy of a power of attorney when filed in any suit or proceedings.	...	...	One rupee and fifty naye paise."

—U. P. Act XLIV of 1958, S. 3 (v).

9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report or the like, taken out of any Civil or Criminal or Revenue Court or Office, or from the office of any Chief Officer charged with the executive administration of a Division.	For every three hundred and sixty words or fraction of three hundred and sixty words.	Eight annas

STATE AMENDMENTS

Assam and Nagalana

In col. 3 for the words eight annas, *substitute* the words "one rupee" — *See* Assam Act 8 of 1963, S. 2 [w. e. f., 1-4-1963] : Act 27 of 1962, S. 26 [w. e. f., 1-12-1963].

Bihar

(1) Words "Twelve annas" were *substituted* for the words "Eight annas" in the third column.

—Bihar and Orissa Act II of 1922 [21-8-1922.]

(2) For surcharge *see* Bihar Act 25 of 1948; for text of this Act as amended, *see* Appendix I.

Schedule I, Article 9 — Note 1

(1) The article does not authorise the levy of any search fee. AIR 1928 Mad 370 (370) = 51 Mad 599.

(2) A copy of judgment or order of a criminal Court should be affixed with court-fee stamp according to the provisions of this article. The expression "judicial

Delhi

Same as that of Punjab — *See* G. S. R. 842, Gaz. Ind., 1959, Pt. II, S. 3 (i), p. 1039 [w. e. f. 1-8-1959.]

Madhya Pradesh

For Article 9, *substitute* the following, namely:—

"9. Copy of any Revenue or judicial proceeding or order not otherwise provided for by this Act or copy of any account statement, report or the like taken out of any Civil or Criminal or Revenue Court or Office or from the office of any Chief Officer charged with the executive administration of a Division	For every three hundred and sixty words or fraction of three hundred and sixty words".	One rupee.

—M. P. Act 12 of 1966, S. 2 (iv) [1-4-1966.]

Manipur and Tripura

Same as that of Assam — *See* G. S. Rs. 1119-1120, Gaz. Ind., 1-7-1963, Pt. II, S. 3 (i), Exp., pp. 501-531 [w. e. f. 15-7-1963.]

Orissa

(1) Same as that of Bihar. —Orissa Act 5 of 1939. [31-10-1939.]

(2) For surcharge *see* Orissa Act 20 of 1947; for text of this Act as amended, *see* Appendix I.

Punjab : Haryana : Chandigarh

For the words "eight annas" in the third column *substitute* the words "sixty-five naye paise." —Punj. Act 14 of 1958, S. 4. [25-4-1958]: Act 31 of 1966, S. 88 [1-11-1966.]

Uttar Pradesh

For the words "eight annas" in the third column *substitute* the words "One rupee."

—U. P. Act 44 of 1958, S. 3 (vi).

West Bengal

For the words "Eight annas" *substitute* "Fifty paise"

— Court-fees (W. B. Amendment) Act (Presi. Act 7 of 1968), S. 2 [26-3-1968.]

10. *[Repealed by the Guardians and Wards Act, 1890 (8 of 1890).]*

*[11. Probate of a will or letters of administration with or without will annexed.	†[When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, but does not exceed ten thousand rupees.	Two per centum on such amount or value.]]

Schedule I, Article 9 — Note 1 (contd.)

proceeding" in the article would cover judgment or order of a criminal Court. AIR 1953 Trav-Co 212 (Pr 3) = ILR (1953) Trav-Co 69 = 1953 Cri L Jour 1236 (DB) °° **AIR 1960 SC 128 (131) = 1960 Cri LJ 171 = (1960) 1 SCR 935** °° ILR (1959) 9 Raj 902 = 1959 Raj LW 574 (576).

(3) Order passed in security proceedings— Revision — Court-fee on copies of order is payable under Article 9. AIR 1958 Pat 160 (161) = 1958 Cri L Jour 404 (DB).

Schedule I, Article 11 — Note 1

(1) Grant of probate or letters of administration contemplated in Sch. I, Article 11 is grant under Sections 276 and 278 of Indian Succession Act of 1925 (Sections 62 and 64 of Probate and Administration Act.) AIR 1921 Pat 206 (214) = 6 Pat L Jour 411 (DB). (Property in Bengal and Bihar — Probate obtained in Bengal — Subsequent application in Bihar under Section 228, Succession Act — Held, valuation of assets at date of prior application should be accepted for court-fee purposes and if sufficient court-fee was paid on it, no separate fee was required on subsequent application.)

(2) In cases where it is unnecessary to take out a probate in order that the devise under the will should be effective, an order by a Court directing the issue of a probate will not necessarily involve the compulsory deposit of stamps necessary for the issue of the probate, by the party in such a case. AIR 1952 Mad 25 (Pr. 1) (DB)

(3) Court-fees chargeable under this article are in no sense a death duty, and are only payable if probate is taken out. AIR 1945 Bom 1 (3) = ILR (1945) Bom 783 (DB).

(4) "Amount or value of the property" under this article means net value. AIR 1942 Lah 173 (176) = ILR (1942) Lah 717 (FB) °° AIR 1916 Cal 543 (545) °° AIR 1914 Cal 40 (45) °° AIR 1914 Low Bur 245 (246) = 7 Low Bur Rul 356 (DB).

(5) Under Section 19-I (i) the court-fee on an application for the grant of probate bears a direct relation to the valuation of the property and is levied "on such valuation." This intention of the Legislature should be steadily kept in mind in inter-

When such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees.	Two and one half per centum on such amount or value.
When such amount or value exceeds fifty thousand rupees. Provided that when, after the grant of a certificate under the Succession Certificate Act, 1889, or under the Regulation of the Bombay Code, No. 8 of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.	Three per centum on such amount or value,]]

**Substituted* for the original Article 11, by the Succession Certificate Act, 1889 (7 of 1889) S. 13 (1). †*Substituted* by the Court-fees (Amendment) Act, 1910 (7 of 1910), S. 2 (i).

STATE AMENDMENTS

Andaman and Nicobar

Same as that of West Bengal. —Reg. 2 of 1957, S. 16 (4). [1-8-1957.]

Assam : Nagaland

(1) For the entries above the proviso in the second column and for the entries in th third column the following were *substituted*, viz : –

"When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees on such amount or value up to ten thousand rupees	two per centum.
and	
When such amount or value exceeds ten thousand rupees on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees,	three per centum.
and	
When such amount or value exceeds fifty thousand rupees on the portion of such amount or value which is in excess of fifty thousand rupees up to a lakh of rupees,	four per centum.
and	
When such amount or value exceeds a lakh of rupees on the portion of such amount or value which is in excess of a lakh of rupees up to two lakhs and fifty thousand rupees.	five per centum.
and	
When such amount or value exceeds two lakhs and fifty thousand rupees on the portion of such amount or value which is in excess of two lakhs and fifty thousand rupees up to three lakhs of rupees	five and a half pe centum.
and	
When such amount or value exceeds three lakhs of rupees on the portion of such amount or value which is in excess of three lakhs of rupees up to four lakhs of rupees.	six per centum.
and	

Schedule I, Article 11 — Note 1 (contd.) preting Article 11 of the first schedule. AIR 1957 All 207 (209) (DB).

(6) Figure arrived at by calculating fee on gross value of estate and also on debts due from estate and then deducting latter from former would not be correct. AIR 1914 Cal 40 (44).

(7) The Division Bench of the Allahabad High Court has held that clauses (4) to (8) of Article 11 of Schedule 1 as amended in Uttar Pradesh are inconsistent with Article 14 of the Constitution and have therefore, become void after the commencement of the Constitution. AIR 1957 All 207 (212). (DB).

(8) Gross value of estate exceeding Rs. 1,000 but liabilities reducing net value to less than Rs. 1,000 — Fee should be paid on gross value. (1912) 15 Ind Cas 621 (622) (DB) (Cal).

When such amount or value exceeds four lahks of rupees on the portion of such amount or value which is in excess of four lakhs of rupees up to five lakhs of rupees and	six and a half per centum.
When such amount or value exceeds five lakhs of rupees on the portion of such amount or value which is in excess of five lakhs of rupees.	seven per centum."

(2) In the proviso for the words and figures, "the Succession Certicate Act, 1889," the words and figures "the Indian Succession Act, 1925," were *substituted*.

—Assam Act 8 of 1950, S. 8 [1-4-1950]; Act 27 of 1962, S. 26 [w. e. f. 1-12-1983].

Note.—Section 17 of the Assam Act 8 of 1950 provides that nothing in the said Assam Act applies to any probate, letters of administration or certificate in respect of which the fee payable under the law for the time being in force has been paid prior to the commencement of the said Assam Act (namely, 1-4-1950) but which have not been issued

Bihar

(1) For the entries above the proviso in the second and the entries in the third column, the following were *substituted*, viz :—

"When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees, on such amount or value up to ten thousand rupees and	Two per centum.
When such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees and	Three per centum
When such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees and	Four per centum.
When such amount or value exceeds a lakh of rupees for the portion of such amount or value which is in excess of one lakh of rupees.	Five per centum."

—Bihar and Orissa Act 2 of 1922. [21-8-1922].

(2) For Surcharge *see* Bihar Act 25 of 1948 for text of the Act as amended, *see* Appendix I.

Delhi

—Same as that of Punjab—*See* G.S.R. 842, Gaz. Ind., Pt. II, S. 3 (1), p. 1039 [w.e.f., 1-8-1959].

Madhya Pradesh

For Art. 11 *substitute* the following article, namely,—

"11. Probate of a will or letters of administration with or without will annexed.	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees but does not exceed five thousand rupees.	2⅔ per centum on such amount or value.
	When such amount or value exceeds five thousand rupees but does not exceed ten thousand rupees.	One hundred thirty-three rupees and thirty paise plus 3½ per centum on the amount or value in excees of five thousand rupees.
	When such amount or value exceeds ten thousand rupees but does not exceed one lakh of rupees.	Three hundred thirty-three rupees and thirty paise plus 4 per centum on the amount or value in excess of ten thousand rupees.
	When such amount or value exceeds one lakh rupees.	Three thousand nine hundred and thirty-three rupees and thirty paise plus 5 per centum on the amount or value in excess of one lakh of rupees. Provided that when after the grant of a certificate under Part X of the Indian Succession Act, 1925 (34 of 1925), in respect of any property included in an estate a grant is made in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former.

—M. P. Act 12 of 1966, S. 2 (v). [1-4-1966]

Manipur and Tripura

—Same as that of Assam.—*See* G.S.Rs., 1119-1120, Gaz. Ind., 1-7-1963 Pt. II, S. 3 (i), Ext., pp. 501-531 [w.e.f., 15-7-1963.]

Orissa

Substituted the following for Art. 11, namely:—

(1)	(2)	(3)
"11. Probate of a will or letters of administration with or without will annexed.	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees, on such amount or value up to ten thousand rupees,	Two per centum.
	and	
	When such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees,	Three per centum.
	and	
	When such amount or value exceeeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees,	Four per centum.
	and	
	When such amount or value exceeds a lakh of rupees, on the portion of such amount or value which is in excess of one lakh of rupees:	Five per centum.
	Provided that when, after the grant of a certificate under the Indian Succession Act, 1925 or under the Regulation of the Bombay Code, No. 8 of 1827, in respect of any property included in an estate, a grant of probate or letters of admintstration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant".	

—Orissa Act (11 of 1967), S. 4 [19-7-1967.]

Pondicherry

Same as that of Andaman and Nicobar—*See* Act 26 of 1968, S. 3 & Sch. Pt. II, [18-1 1968.]

Punjab : Haryana : Chandigarh

For the words "Two per centum," "Two and one half per centum" and "Three pe centum" in the third column of Art. 11 *substitute* the words "Two and one half per centum,' "Three and one quarter per centum" and "Four per centum" respectively.

— Punj. Act XIV of 1958, S. 4 [25-4-1958.] : Act 31 of 1966, S. 88 [1-11-1966.]

Uttar Pradesh

For Art. 11 the following shall be *substituted* and shall be deemed to have been *suastituted* with effect from 22-10-1952:

"11. Probate of a will or letters of administration with or without will annexed :—	(a) When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, but does not exceed ten thousand rupees;	Two and a half per centum on such amount or value.
	(b) When such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees :	Three and one-fourth per centum on such amount or value.
	(c) When such amount or value exceeds fifty thousand rupees, but does not exceed one lakh rupees;	Three and three-fourth per centum on such amount or value.
	(d) When such amount or value exceeds one lakh of rupees, but does not exceed two lakhs of rupees;	On one lakh of rupees the fee payable under cl. (c) and on the remainder five per centum.

(e) When such amount or value exceeds two lakhs of rupees, but does not exceed three lakhs of rupees;	On two lakhs of rupees the fee payable under cl. (d) and on the remainder six and one fourth per centum.
(f) When such amount or value exceeds three lakhs of rupees, but does not exceed four lakhs of rupees;	On three lakhs of rupees the fee payable under cl. (e) and on the remainder seven and a half per centum.
(g) When such amount or value exceeds four lakhs of rupees, but does not exceed five lakhs of rupees;	On four lakhs of rupees the fee payable under cl. (f) and on the remainder eight and one-fourth per centum.
(h) When such amount or value exceeds five lakhs of rupees;	On five lakhs of rupees the fee payable under cl. (g) and on the remainder eight and three-fourth per centum.
Provided that when, after the grant of a certificate under Part X of the Indian Succession Act, 1925, or under the Regulation of the Bombay Code, No. VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant."	

— U. P. Act 28 of 1957, S. 3 [w. r. e. f. 22-10-1952.]

Section 5 of the U. P. Act 28 of 1957 is as follows :

"5. *Review of proceedings.* — (1) Where on or after the twentysecond day of October, 1952, any application for the grant of probate or letters of administration on which court-fee payable under Art. 11 of the Court-fees Act, 1870, as amended by this Act, has not been paid, has already been ordered to be received or recorded in the High Court, then notwithstanding anything in any law for the time being in force, the officer whose duty it is to see that any fee is paid under Chap. II of the said Act and in case of a reference having been made under section 5 of that Act, the Authority finally deciding the question of necessity of paying a fee or the amount thereof shall review its order or decision to receive or record such application and demand a payment within a period to be specified such court-fee on such application as he may find to be due and payable and in the meantime all further proceedings, on the application, including the grant of probate or letters of administration, shall remain stayed.

(2) In the event of default in payment of the fee demanded under sub-section (1), the application, notwithstanding the previous order to receive or record it, shall in all respects be dealt with as an application on which the requisite court-fee has not been paid and if the probate or letters of administration has or have already been granted, the court-fee found under sub-section (1) to be due shall on the certificate of the Chief Controlling Revenue Authority be recoverable by any Collector as if it were an arrear of land revenue."

Note. — "High Court" means the High Court of Judicature at Allahabad and includes the Lucknow Bench. — U. P. Act 28 of 1957, S. 2 (2).

West Bengal

The article as amended by the various amending Acts runs as follows :

'11. Probate of a will or letters of administration with or without will annexed—	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees on such amount or value up to ten thousand rupees,	Two per centum.
	and	
	When such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees,	Three per centum.
	and	
	When such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to a lakh of rupees,	Four per centum.
	and	

When such amount or value exceeds a lakh of rupees on the portion of such amount or value which is in excess of a lakh of rupees up to two lakhs and fifty thousand rupees,	Five per centum.
and	
When such amount or value exceeds two lakhs and fifty thousand rupees, on the portion of such amount or value which is in excess of two lakhs and fifty thousand rupees up to three lakhs of rupees,	Five and a half per centum.
and	
When such amount or value exceeds three lakhs of rupees, on the portion of such amount or value which is in excess of three lakhs of rupees up to four lakhs of rupees,	Six per centum.
and	
When such amount or value exceeds four lakhs of rupees, on the portion of such amount or value which is in excess of four lakhs of rupees up to five lakhs of rupees,	Six and a half per centum.
and	
When such amount or value exceeds five lakhs of rupees, on the portion of such amount or value which is in excess of five lakhs of rupees :	Seven per centum.
Provided that when, after the grant of certificate under the Indian Succession Act, 1925 or under the Regulation of Bombay Code, No. VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate the fee payable in respect of the latter grant shall be reduced by the amount of fee paid in respect of the former grant."	

- Beng. Acts IV of 1922; VI of 1922 and XI of 1935.

*[12- Certificate under the Succession Certificate Act, 1889.	In any case . . .	Two per centum on the amount or value of any debt or security specified in the certificate under section 8 of the Act, and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act. NOTE. — (1) The amount of a debt is its amount, including interest, on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained.

Schedule I, Article 12 — Note 1

(1) Words "amount of value of any debt or security" in this article refer to individual debts and individual securities and not agreegate of debts and securities and court-fee in respect of certificate of succession must be calculated according to amount of each individual item and not according to total amount of such items. AIR 1934 Oudh 414 (415) = 10 Luck 196 (DB) °° AIR 1940 Nag 400 (401) *° AIR 1945 Pat 318 (319, 320) = 24 Pat 100. (As amended by Bihar and Orissa Act 2 of 1922.)

[But see AIR 1950 Mad 211 (Pr. 3) = ILR (1950) Mad 772 °° AIR 1947 Bom 30 (31) = ILR (1947) Bom 605 (DB).]

(2) When, an extension of the certificate to the debt not originally specified therein is granted, the court-fee on the extended certificate should be calculated after taking into consideration all the debts specified in the certificate, and not only the debts to which the certificate is extended. AIR 1961 Bom 104 (104, 105) = 62 Bom LR 1024 (DB).

(3) Under the Bombay Amendment all the provisions which relate to the levying of court-fee on a probate apply in the mater of levying court-fee on a succession certificate. AIR 1956 Sau 93 (95) (DB).

(4) In Assam, Bengal and Central Provinces court-fee is not payable up to one thousand but when aggregate amount or value of debts or securities specified in certificate exceeds Rs. 1,000 or when their aggregate amount or value in original certificate and of the debts to which certificate is extended exceeds rupees 1,000

(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act, and, where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer, of the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained,]

* *Substituted* by the Succession Certificate Act, 1889 (7 of 1889), S. 13 (i).

STATE AMENDMENTS

Andaman and Nicobar

Same as that of West Bengal.—Reg. II of 1957, S. 16 (5) [1-8-1957.]

Assam : Nagaland

For Article 12 the following article was *substituted* :-

"12. Certificate under the Indian Succession Act, 1925.	When the amount or value of any debt or security specified in the certificate under S. 374 of the Act exceeds one thousand rupees	Two per centum on the first ten thousand rupees, Three per centum on the next forty thousand rupees. Four per centum on the next fifty thousand rupees. Five per centum on the next one lakh and fifty thousand rupees. Five and half per centum on the next fifty thousand rupees. Six per centum on the next one lakh of rupees. Six and half per centum on the next one lakh of rupees and Seven per centum on the remainder of such amount or value.
	and When the aggregate amount or value of any debts or securities specified in the certificate and of any debts or securities to which the certificate has been extended under S. 376 of the Act exceeds one thousand rupees.	In respect of such portion of the aggregate amount or value as consists of the amount or value of debts or securities so specified, the fee herein before provided in that behalf in this article and Three per centum on such portion of the first ten thousand rupees. Four and half per centum on such portion of the next forty thousand rupees. Six per centum on such portion of the next fifty thousand rupees. Seven and half per centum on such portion of the next one lakh and fifty thousand rupees. Eight and a quarter per centum on such portion of the next fifty thousand rupees. Nine per centum on such portion of the next one lakh of rupees, Nine and three quarters per centum on such portion of the next one lakh of rupees and

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Schedule I, Article 12 — Note 1 (contd.)

court-fee is payable. See AIR 1934 Cal 38 (39) = 60 Cal 1262 (DB).

[But see AIR 1940 Nag 400 (401). (Not good law — Article amended subsequently.)]

(5) If after filing of application law is changed and court-fee is increased applicant must pay additional fee. AIR 1936 All 309 (311) = 58 All 752 (DB).

(6) Sucession certificate issued on payment of fees mentioned in this article — Another application for issue of succession certificate made in respect of same debt — Fresh Court-fee has to be paid on second certificate. AIR 1917 Cal 380 (381) (DB).

Ten and half per centum on such portion of the remainder of such aggregate amount or value as consists of the amount or value of debts or securities to which the certificate has been extended.

Note.—(1) The amount of a debt is its amount including interest on the day on which the inclusion of the debt in the certificate is applied for so far as such amount can be ascertained.

(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act and where such a power has been so conferred whether the power is for the receiving of interest or dividends on or for the negotiation or transfer of the security, or for both purposes the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for so far as such value can be ascertained."

—Assam Act VIII of 1950, S. 9 [1-4-1950]:
Act 27 of 1962, S. 26 [w.e.f. 1-12-1963].

Bihar

(1) For the entry in the second column and for the first paragraph in the third column the following were *substituted*, viz.,

"When the amount or value of any debt security specified in the certificate under section 8 of the Act exceeds one thousand rupees on such amount or value up to ten thousand rupees, and	Two per centum and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, three per centum.
When such amount or value exceeds ten thousand rupees on the portion of such amount or value which is in excess of ten thousand rupees, up to the fifty thousand rupees, and	Three per centum and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, four and a half per centum.
When such amount or value exceeds fifty thousand rupees on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees, and	Four per centum and on the amount or value of any debt or security to which the cetificate is extended under section 10 of the Act, six per centum.
When such amount or value exceeds a lakh of rupees on the portion of such amount or value which is in excess of one lakh of rupees.	Five per centum and on the amount or value of any or debt security to which the certificate is extended under section 10 of the Act, seven and a balf per centum."

—Bihar and Orissa Court-fees (Amendment) Act (II of 1922). [21-8-1922].

(2) For surcharge *see* Bihar Act XXV of 1948 for texts of the Act as amended, *see* Appendix 1.

Delhi

Same as that of Punjab — *See* G. S. R. 842, Gaz. Ind., 1939, Pt. II-S. 3 (i), p. 1039 [w. e. f. 1-8-1959.]

Madhya Pradesh

For Art. 12 *substitute* the following, namely:—

"12. Certificate under Part X of the Indian Succession Act, 1925, (XXXIX of 1925).	When the total amount or value of the debts or securities specified in the certificate under S. 374 of the Act exceeds one thousand rupees but does not exceed five thousand rupees.	$2\frac{2}{3}$ per centum on such amount or value and four per centum on the amount or value of any debt or security to which the certificate is extended under S. 376 of the Act.
	When such amount or value exceeds five thousaud rupees but does not exceed ten thousand rupees.	One hundred thirty-three rupees and thirty paise plus $3\frac{1}{3}$ per centum on the amount or value in excess of five thousand rupees and six per centum on the amount or value of any debt or security to which the certificate is extended under S. 376 of the Act.

When such amount or value exceeds ten thousand rupees, but does not exceed one lakh rupees.	Three hundred thirty-three rupees and thirty paise plus four per centum on the amount or value in excess of ten thousand rupees and ten per centum on the amount or value of any debt or security to which the certificate is extended under S. 376 of the Act.
When such amount exceeds one lakh rupees.	Three thousand nine hundred thirty three rupees and thirty paise plus 5 per centum on the amount or value in excess of one lakh rupees and ten per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act."

—M. P. Act 12 of 1966, S. 2 (v) [1-4-1966.]

Manipur and Tripura.

Same as that of Assam — *See* G. S. Rs. 1119-1120, Gaz. Ind., 1-7-1963, Pt. II, S. 3 (i), Ext., pp. 501-531 (w. e. f. 15-7-1963.]

Orissa

For Art. 12 substitute the following:—

"12. Certificate under the Indian Succession Act, 1925.	When the amount or value of any debt or security specified in the certificate under section 374 of the Act, exceeds one thousand rupees, on such amount or value up to ten thousand rupees, and	Two per centum, and on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act, three per centum.
	When such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees, and	Three per centum, and on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act, four and a half per centum.
	When such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees, and	Four per centum, and on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act, six per centum.
	When such amount or value exceeds a lakh of rupees, on the portion of such amount or value which is in excess of one lakh of rupees.	Five per centum, and on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act, seven and a half per centum."

—Orissa Act 11 of 1967, S. 4 [19-7-1967.]

Pondicherry

Same as that of Andaman and Nicobar — *See* Act 26 of 1968, S. 3 and Sch., Pt. II [18-12-1968.]

Punjab : Haryana : Chandigarh

"12. Certificate under Part X of the Indian Succession Act, 1925—In any case—

Two and one half per centum on the amount or value of any debt or security specified in the certificate under section 374 of the Act, and four per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act,"

Note (1) and (2)- the same as in principal Act.

—Punj. Act XIV of 1958, S. 4 [25-4-1958], Act 31 of 1966, S. 88 [1-11-1966.]

Uttar Pradesh

For Art. 12 the following shall be *substituted :*

"

12. Succession certificate under the Indian Succession Act, 1925—	(a) When the amount or value of the debt or security or the aggregate amount of the debts or securities to be specified under section 374 does not exceed twenty thonsand rupees;	Two and a half per centum on such amount or value.
	(b) When such amount or value exceeds twenty thousand rupees but does not exceed fifty thousand rupees;	On twenty thousand rupees the fee payable under cl. (a) and on the remainder three and one-fourth per centum.
	(c) When such amount or value exceeds fifty thousond rupees but does not exceed a lakh of rupees;	On fifty thousad rupees the fee payable uner cl. (b) and on the remainder three and three-fourth per centum.
	(d) When such amount or value exceeds one lakh of rupees but does not exceed two lakhs of rupees;	On one lakh rupees the fee payable under cl. (c) and on the remainder five per centum.
	(e) When such amount or value exceeds two lakhs of rupees but does not exceed three lakhs of rupees;	On two lakh rupees the fee payable under cl. (d) and on the remainder six and one-fourth per centum.
	(f) When such amount or value exeeeds three lakhs of rupees but does not exceed four lakhs of rupees;	On three lakh rupees the fee payable under cl. (e) and on the remainder seven and a half per centum.
	(g) When such amount or value exceeds four lakhs of rupees but does not exceed five lakhs of rupees;	On four lakh rupees the fee payable under cl. (f) and on the remainder eight and one-fourth per centum.
	(h) When such amount or value exceeds five lakhs of rupees;	On five lakh rupees the fee payable under cl. (g) and on the remainder eight and three-fourth per ceutum.

Provided that the fee payable in the case of an application under section 376 of the Act shall be as worked out in the following manner:

(i) Ascertain the aggregate amount of the debts or securities specified already in the certificate and the debts or securities to be specified on the application aforesaid.

(ii) Calculate the fee payable on this aggregate amount in accordance with the provisions of cls. (a) to (h) above subject to the condition, however, that in respect of the amount in excess of the amount of debts or securities specified on application under section 372 of the Act the rates in the said cls. (a) to (h) shall respectively be deemed to be three and three-fourth per centum, four and three-fourth per centum five and three-fourth per centum, seven and a half per centum, nine and a half per centum, eleven and one-fourth per centum, twelve and a half per centum and thirteen and one-fourth per centum.

(iii) Out of the total amount of fee so worked out, deduct the court-fee already paid for specification of debts or securities on the application under section 372 and on the application, if any, under section 376 of the Act. The remainder shall be the fee payable on application under consideration.

Notes. — (1) The amount of a debt is its amount, including interest on the day on which he inclusion of the debt in the certificate is applied for, so far as such amount can be ascer-ained.

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(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act, and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.,
—U. P. Act XXVIII of 1957, S. 4. [8-10-1957.]

West Bengal

For Art. 12 the following article was *substituted*, viz.,

"12. Certificate under the Indian Succession Act, 1925.	When the amount or value of any debt or security specified under S. 374 of the Act exceeds one thousand rupees,	Two per centum on the first ten thousand rupees, three per centum on the next forty thousand rupees, four per centum on the next fifty thousand rupees, five per centum on the next one lakh and fifty thousand rupees, five and a half per centum on the next fifty thousand rupees, six per centum on the next one lakh of rupees, six and a half per centum on the next one lakh of rupees and seven per centum on the remainder of such amount or value.
	and When the aggregate amount or value of any debts or securities specified in the certificate and of any debts or securities to which the certificate has been extended under S. 376 of the Act exceeds one thousand rupees.	In respect of such portion of the aggregate amount or value as consists of the amount or value of debts or securities so specified, the fee hereinbefore provided in that behalf in this article; and three per centum on such portion of the first ten thousand rupees, four and a half per centum on such portion of the next forty thousand rupees, six per centum on such portion of the next fifty thousand rupees, seven and a half per centum on such portion of the next one lakh and fifty thousand rupees, eight and a quarter per centum: on such portion of the next fifty thousand rupees, nine per centum on such portion of the next one lakh of rupees, nine and three quarters per centum on such portion of the next one lakh of rupees, and ten and a half per centum on such portion of the remainder of such aggregate amount or value as consists of the amount or value of debts or securities to which the certificate has been extended.

Note — (1) The amount of a debt is its amount, including interest on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained.

(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market-value on the day which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained." Court-fees (Bengal Second Amendment) Act, XI of 1935. [5-5-1935.]

*[12A. Certificate under the Regulation of the Bombay Code No. 8 of 1827.	†[*(1)* As regards debts and securities.	The same fee as would be payable in respect of a certificate under the Succession Certificate Act, 1889, or in respect of an extension of such a certificate, as the case may be.
	(2) As regards other property in respect of which the certificate is granted— When the amount or value of such property exceeds one thousand rupees, but does not exceed ten thousand rupees.	Two per centum on such amount or value.

	When such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees.	Two and one-half per centum on such amount or value.
	When such amount or value exceeds fifty thousand rupees	Three per centum on such amount or value.]]

*Substituted by the Succession Certificate Act, 1889 (7 of 1889), S. 13 (1), for original Article 12A.

†Substituted by the Court-fees (Amendment) Act, 1910 (7 of 1910), section 2 (ii).

STATE AMENDMENTS

Bihar

For surcharge *see* Bihar Act 25 of 1948; the text of this Act as amended is given in Appendix I.

Delhi

Same as that of Punjab—*See* G. S. R. 842, Gaz. Ind., 1959, Pt. II, S. 3 (i), p. 1039 —[w. e. f. 1-8-1959.]

Orissa

For surcharge *see* Orissa Act 20 of 1947; the text of this Act as amended is given in Appendix I.

Punjab : Haryana : Chandigarh

In the third column of Art. 12-A in the three items opposite item (2) in the second column for the words "Two", "Two and one-half", and "Three" *substitute* the words "Two and one-half." "Three and one quarter" and "Four" respectively.—Punj. Act 19 of 1957, S. 5. [13-7-1957.] : Act 31 of 1966, S. 88 [1-11-1966].

Uttar Pradesh

The entries "Two and a half per centum on such amount or value " "Three and one-fourth per centum on such amount or value" and "Three and three-fourth per centum on such amount or value" were *substituted*, respectively, for the last three entries in the third column. —U. P. Acts 14 of 1948 and 25 of 1952, S. 6. [1-11-1952].

*13. Application to the †[High Court of ‡[Punjab]] for the exercise of its jurisdiction under section 44 of the Punjab Courts Act, 1918 or to the Court of the Financial Commissioner of ‡[Punjab] for the exercise of its revisional jurisdiction under section 84 of of the Punjab Tenancy Act, 1887.	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees,	Two rupees.
	When such amount or value exceeds twenty-five rupees.	The fee leviable on a memorandum of appeal.

*Inserted originally by the Punjab Courts Act, 1884 (18 of 1884), S. 71, as amended by the Punjab Courts Act, 1899 (25 of 1899), S. 6. Article 13 was repealed in the Punjab by S. 5 of the Punjab Courts (Amendment) Act, 1912 (Punjab Act 1 of 1912) ; but it has since been revived in this form by the Court-fees (Punjab Amendment), Act, 1922 (Punjab Act 7 of 1922).

†Substituted for "High Court of Judicature at Lahore," by A. C. A. O., 1948.

‡Substituted for "East Punjab" by A. L. O., 1950.

Schedule I, Article 13 — Note 1

Punjab Amendment. — (1) Value of subject-matter in dispute in application for revision against order refusing to file award in arbitration out of court exceeding Rs. 25 — Application is chargeable with court-fee payable on appeal from order under Sch. II Article 11. AIR 1929 Lah 367 (368) (DB).

(2) Revision from order refusing to set aside award made in pending suit — Court-fee of Rs. 4 held sufficient — Ad valorem court-fee not necessary. AIR 1929 Lah 369 (369, 370). (1911 Pun LR No. 4, Dissented.)

(3) Revision against decree in partition suit passed in accordance with award — Award attacked regarding mode of parti-

STATE AMENDMENTS

Delhi

Same as in Punjab (i). *See* G. S. R. 842, Gaz. Ind., 1959, Pt. II, S. 3 (i), p. 1039. —[w. e. f. 1-8-1959].

Punjab : Haryana and Chandigarh

(i) For the words "Two rupees" in the third column *substitute* "Two rupees sixty-five Naye Paise." Punj. Act 14 of 1958, S. 4. [25-4-1958]: Act 31 of 1966, S. 88· [1-11-1966].

(ii) For the words "High Court of Punjab" in col. 1, *substitute* the words "High Court of Punjab and Haryana"—Punj. A.L.O. 1968, Para 2 & Sch.; Act 31 of 1966, S. 26. [1-11-1966].

Uttar Pradesh

For the words "Two rupees" in the third column *substitute* the words "Two rupees and fifty naye paise."—U. P. Acts 14 of 1948 and 20 of 1958, S. 4 (b) (iv).

14. *[Repealed by A. O. 1937.]*

STATE AMENDMEN

Madhya Pradesh

For Art. 14 *subatitute* the following

"14. Application to the State Government or to a Forest Officer for the extension of the period of contract where such contract is in respect of sale, purchase or removal of any forest produce—	When the value of the subject-matter of the contract is two thousand rupees or less;	Five rupees,
	When the value of the subject-matter of the contract exceeds two thousand rupees for every one thousand rupees or part thereof in excess of two thousand rupees.	One rupee and fifty paise."

—M. P. Act 12 of 1966, S. 2 (vi). [1-4-1966].

15. *[Repealed by the Repealing and Amending Act, 1923 (11 of 1923), S. 3 and Sch. II.]*

Schedule I, Article 13 — Note 1 (contd.) tion — Court-fee of Rs. 10 under Article 17 held sufficient. 1913 Pun LR No. 1, p. 1 (4) (DB).

(4) Revision against dismissal of suit under Section 9, Specific Relief Act — Decision of dismissal held amounted to decree — Ad valorem court-fee held should be paid on memorandum under Sch. I, Article 13 for revision — Article 11 of Sch. II, held did not apply. AIR 1951 Punj 435 (Pr 3). (A decree passed by lower appellate Court against landlord in a suit for ejectment of tenants for failure to pay arrears of rent exceeding Rs. 25 — Revision filed by landlord in High Court under rules made by High Court under Section 14, Delhi and Ajmer-Merwara Rent Control Act, 1947, on a court-fee stamp of Rs. 4 — Objection that as Sch. I, Article 13 did not apply petition for revision was not properly stamped — Held overruling the objection that petition for revision was correctly stamped.) ** AIR 1954 Punj 45 (Prs. 11, 12).

Himachal Pradesh. — (5) The Court-fees Act, 1870, as amended by paragraph 36 of the Himachal Pradesh (Courts) Order, 1948, continues to be in force in the area which formed part of the former Bashahr State despite the provisions of Section 5 of the Merged States (Laws) Act, 1949. Therefore, the proper court-fee payable on the revision petition when the value of the subject-matter is Rs. 360 is under Sch. I, Article 13, Court-fees Act and not under Sch. II, Article 1 (d). AIR 1954 Him Pra 26 (Pr 7).

(6) Where the order against which revision is filed is one which is not appealable in order to see as to what the fee leviable on a memorandum of appeal would be in such a case under Sch. I, Article 13, the proper provision to be preferred would be Sch. II, Article 11 and not Sch. I, Article 1, Court-fees Act. Under the former provision, as amended by the Court-fees (Himachal Pradesh Amendment) Act IV of 1953, the proper court-fee payable on such application is Rs. 4. AIR 1954 Him Pra 41 (Pr 2).

TABLE OF RATES OF AD VALOREM FEES LEVIABLE ON THE INSTITUTION OF SUITS

[*Note.* — As to the construction of the value expressed in annas, pice and pies as references to that value expressed in new coins of decimal system *see* S. 14 of the India Coinage Act, 1906, the text of which is given in a Note above Art. 1 of the Schedule.]

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee			When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee		
Rs.	Rs.	Rs.	A.	P.	Rs.	Rs.	Rs.	A.	P
...	5	0	6	0	360	370	27	12	0
5	10	0	12	0	370	380	28	8	0
10	15	1	2	0	380	390	29	4	0
15	20	1	8	0	390	400	30	0	0
20	25	1	14	0	400	410	30	12	0
25	30	2	4	0	410	420	31	8	0
30	35	2	10	0	420	430	32	4	0
35	40	3	0	0	430	440	33	0	0
40	45	3	6	0	440	450	33	12	0
45	50	3	12	0	450	460	34	8	0
50	55	4	2	0	460	470	35	4	0
55	60	4	8	0	470	480	36	0	0
60	65	4	14	0	480	490	36	12	0
65	70	5	4	0	490	500	37	8	0
70	75	5	10	0	500	510	38	4	0
75	80	6	0	0	510	520	39	0	0
80	85	6	6	0	520	530	39	12	0
85	90	6	12	0	530	540	40	8	0
90	95	7	2	0	540	550	41	4	0
95	100	7	8	0	550	560	42	0	0
100	110	8	4	0	560	570	42	12	0
110	120	9	0	0	570	580	43	8	0
120	130	9	12	0	580	590	44	4	0
130	140	10	8	0	590	600	45	0	0
140	150	11	4	0	600	610	45	12	0
150	160	12	0	0	610	620	46	8	0
160	170	12	12	0	620	630	47	4	0
170	180	13	8	0	630	640	48	0	0
180	190	14	4	0	640	650	48	12	0
190	200	15	0	0	650	660	49	8	0
200	210	15	12	0	660	670	50	4	0
210	220	16	8	0	670	680	51	0	0
220	230	17	4	0	680	690	51	12	0
230	240	18	0	0	690	700	52	8	0
240	250	18	12	0	700	710	53	4	0
250	260	19	8	0	710	720	54	0	0
260	270	20	4	0	720	730	54	12	0
270	280	21	0	0	730	740	55	8	0
280	290	21	12	0	740	750	56	4	0
290	300	22	8	0	750	760	57	0	0
300	310	23	4	0	760	770	57	12	0
310	320	24	0	0	770	780	58	8	0
320	330	24	12	0	780	790	59	4	0
330	340	25	8	0	790	800	60	0	0
340	350	26	4	0	800	810	60	12	0
350	360	27	0	0	810	820	61	8	0

Rs.	Rs.	Rs.	A.	P.	Rs.	Rs.	Rs.	A.	P.
820	830	62	4	0	4,800	4,900	270	0	0
830	840	63	0	0	4,900	5,000	275	0	0
840	850	63	12	0	5,000	5,250	285	0	0
850	860	64	8	0	5,250	5,500	295	0	0
860	870	65	4	0	5,500	5,750	305	0	0
870	880	66	0	0	5,750	6,000	315	0	0
880	890	66	12	0	6,000	6,250	325	0	0
890	900	67	8	0	6,250	6,500	335	0	0
900	910	68	4	0	6,500	6,750	345	0	0
910	920	69	0	0	6,750	7,000	355	0	0
920	930	69	12	0	7,000	7,250	365	0	0
930	940	70	8	0	7,250	7,500	375	0	0
940	950	71	4	0	7,500	7,750	385	0	0
950	960	72	0	0	7,750	8,000	395	0	0
960	970	72	12	0	8,000	8,250	405	0	0
970	980	73	8	0	8,250	8,500	415	0	0
980	990	74	4	0	8,500	8,750	425	0	0
990	1,000	75	0	0	8,750	9,000	435	0	0
1,000	1,100	80	0	0	9,000	9,250	445	0	0
1,100	1,200	85	0	0	9,250	9,500	455	0	0
1,200	1,300	90	0	0	9,500	9,750	465	0	0
1,300	1,400	95	0	0	9,750	10,000	475	0	0
1,400	1,500	100	0	0	10,000	10,500	490	0	0
1,500	1,600	105	0	0	10,500	11,000	505	0	0
1,600	1,700	110	0	0	11,000	11,500	520	0	0
1,700	1,800	115	0	0	11,500	12,000	535	0	0
1,800	1,900	120	0	0	12,000	12,500	550	0	0
1,900	2,000	125	0	0	12,500	13,000	565	0	0
2,000	2,100	130	0	0	13,000	13,500	580	0	0
2,100	2,200	135	0	0	13,500	14,000	595	0	0
2,200	2,300	140	0	0	14,000	14,500	610	0	0
2,300	2,400	145	0	0	14,500	15,000	625	0	0
2,400	2,500	150	0	0	15,000	15,500	640	0	0
2,500	2,600	155	0	0	15,500	16,000	655	0	0
2,600	2,700	160	0	0	16,000	16,500	670	0	0
2,700	2,800	165	0	0	16,500	17,000	685	0	0
2,800	2,900	170	0	0	17,000	17,500	700	0	0
2,900	3,000	175	0	0	17,500	18,000	715	0	0
3,000	3,100	180	0	0	18,000	18,500	730	0	0
3,100	3,200	185	0	0	18,500	19,000	745	0	0
3,200	3,300	190	0	0	19,000	19,500	760	0	0
3,300	3,400	195	0	0	19,500	20,000	775	0	0
3,400	3,500	200	0	0	20,000	21,000	795	0	0
3,500	3,600	205	0	0	21,000	22,000	815	0	0
3,600	3,700	210	0	0	22,000	23,000	835	0	0
3,700	3,800	215	0	0	23,000	24,000	855	0	0
3,800	3,900	220	0	0	24,000	25,000	875	0	0
3,900	4,000	225	0	0	25,000	26,000	895	0	0
4,000	4,100	230	0	0	26,000	27,000	915	0	0
4,100	4,200	235	0	0	27,000	28,000	935	0	0
4,200	4,300	240	0	0	28,000	29,000	955	0	0
4,300	4,400	245	0	0	29,000	30,000	975	0	0
4,400	4,500	250	0	0	30,000	32,000	995	0	0
4,500	4,600	255	0	0	32,000	34 000	1,015	0	0
4,600	4,700	260	0	0	34,000	36,000	1,035	0	0
4,700	4,800	265	0	0	36,000	38,000	1,055	0	0

Rs,	Rs.	Rs.	A.	P,	Rs,	Rs.	Rs.	A.	P.
38,000	40,000	1,075	0	0	2,15,000	2,20,000	2,025	0	0
40,000	42,000	1,095	0	0	2,20,000	2,25,000	2,050	0	0
42,000	44,000	1,115	0	0	2,25,000	2,30,000	2,075	0	0
44,000	46,000	1,135	0	0	2,30,000	2,35,000	2,100	0	0
46,000	48,000	1,155	0	0	2,35,000	2,40,000	2,125	0	0
48,000	50,000	1,175	0	0	2,40,000	2,45,000	2,150	0	0
50,000	55,000	1,200	0	0	2,45,000	2,50,000	2,175	0	0
55,000	60,000	1,225	0	0	2,50,000	2,55,000	2,200	0	0
60,000	65,000	1,250	0	0	2,55,000	2,60,000	2,225	0	0
65,000	70,000	1,275	0	0	2,60,000	2,65,000	2,250	0	0
70,000	75,000	1,300	0	0	2,65,000	2,70,000	2,275	0	0
75,000	80,000	1,325	0	0	2,70,000	2,75,000	2,300	0	0
80,000	85,000	1,350	0	0	2,75,000	2,80,000	2,325	0	0
85,000	90,000	1,375	0	0	2,80,000	2,85,000	2,350	0	0
90,000	95,000	1,400	0	0	2,85,000	2,90,000	2,375	0	0
95,000	1,00,000	1,425	0	0	2,90,000	2,95,000	2,400	0	0
1,00,000	1,05,000	1,450	0	0	2,95,000	3,00,000	2,425	0	0
1,05,000	1,10,000	1,475	0	0	3,00,000	3,05,000	2,450	0	0
1,10,000	1,15,000	1,500	0	0	3,05,000	3,10,000	2,475	0	0
1,15,000	1,20,000	1,525	0	0	3,10,000	3,15,000	2,500	0	0
1,20,000	1,25,000	1,550	0	0	3,15,000	3,20,000	2,525	0	0
1,25,000	1,30,000	1,575	0	0	3,20,000	3,25,000	2,550	0	0
1,30,000	1,35,000	1,600	0	0	3,25,000	3,30,000	2,575	0	0
1,35,000	1,40,000	1,625	0	0	3,30,000	3,35,000	2,600	0	0
1,40,000	1,45,000	1,650	0	0	3,35,000	3,40,000	2,625	0	0
1,45,000	1,50,000	1,675	0	0	3,40,000	3,45,000	2,650	0	0
1,50,000	1,55,000	1,700	0	0	3,45,000	3,50,000	2,675	0	0
1,55,000	1,60,000	1,725	0	0	3,50,000	3,55,000	2,700	0	0
1,60,000	1,65,000	1,750	0	0	3,55,000	3,60,000	2,725	0	0
1,65,000	1,70,000	1,775	0	0	3,60,000	3,65,000	2,750	0	0
1,70,000	1,75,000	1,800	0	0	3,65,000	3,70,000	2,775	0	0
1,75,000	1,80,000	1,825	0	0	3,70,000	3,75,000	2,800	0	0
1,80,000	1,85,000	1,850	0	0	3,75,000	3,80,000	2,825	0	0
1,85,000	1,90,000	1,875	0	0	3,80,000	3,85,000	2,850	0	0
1,90,000	1,95,000	1,900	0	0	3,85,000	3,90,000	2,875	0	0
1,95,000	2,00,000	1,925	0	0	3,90,000	3,95,000	2,900	0	0
2,00,000	2,05,000	1,950	0	0	3,95,000	4,00,000	2,925	0	0
2,05,000	2,10,000	1,975	0	0	4,00,000	4,05,000	2,950	0	0
2,10,000	2,15,000	2,000	0	0	4,05,000	4,10,000	2,975	0	0
					4,10,000	..	3,000	0	0

STATE AMENDMENTS

Andaman and Nicobar : Pondicherry

"Table of rates of ad valorem fees leviable on the institution of suits

When the amount or value of the subject-matter exceeds	But does not exceed	Proper fee		When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee	
Rs.	Rs.	Rs.	nP.	Rs	Rs.	Rs.	nP.
...	5	0	37	45	50	3	70
5	10	0	74	50	55	4	7
19	15	1	11	55	60	4	44
15	20	1	48	60	65	4	81
20	25	1	85	65	70	5	18
25	30	2	22	70	75	5	55
30	35	2	59	75	80	6	5
35	40	2	96	80	85	6	55
40	45	3	33	85	90	7	5

Rs.	Rs.	Rs.	nP.
90	95	7	55
95	100	8	5
100	110	9	67
110	120	11	29
120	130	12	91
130	140	14	53
140	150	16	15
150	160	17	92
160	170	19	4
170	180	20	16
180	190	21	28
190	200	22	40
200	210	23	52
210	220	24	64
220	230	25	76
230	240	26	88
240	250	28	00
250	260	29	12
260	270	30	24
270	280	31	36
280	290	32	48
290	300	33	60
300	310	34	72
310	320	35	84
320	330	36	96
330	340	38	8
340	350	39	20
350	360	40	32
360	370	41	44
370	380	42	56
380	390	43	68
390	400	44	80
400	410	45	92
410	420	47	4
420	430	48	16
430	440	49	28
440	450	50	40
450	460	51	52
460	470	52	64
470	480	53	76
480	490	54	88
490	500	56	00
500	510	57	12
510	520	58	24
520	530	59	36
530	540	60	48
540	550	61	60
550	560	62	72
560	570	63	84
570	580	64	96
580	590	66	8
590	600	67	20
600	610	68	32
610	620	69	44
620	630	70	56
630	640	71	68
640	650	72	80
650	660	73	92
660	670	75	4
670	680	76	16
680	690	77	28
690	700	78	40
700	710	79	52
710	720	80	64
720	730	81	76
730	740	82	88
740	750	84	00
750	760	85	12
760	770	86	24
770	780	87	36
780	790	88	48
790	800	89	60
800	810	90	72
810	820	91	84
820	830	92	96
830	840	94	8
840	850	95	20
850	860	96	32
860	870	97	44
870	880	98	56
880	890	99	68
890	900	100	80
900	910	101	92
910	920	103	4
920	930	104	16
930	940	105	28
940	950	106	40
950	960	107	52
960	970	108	64
970	980	109	76
980	990	110	88
990	1000	112	00
1000	1100	119	50
1100	1200	127	00
1200	1300	134	50
1300	1400	142	00
1400	1500	149	50
1500	1600	157	00
1600	1700	164	50
1700	1800	172	00
1800	1900	179	50
1900	2000	187	00
2000	2100	194	50
2100	2200	202	00
2200	2300	209	50
2300	2400	217	00
2400	2500	224	50
2500	2600	232	00
2600	2700	239	50
2700	2800	247	00
2800	2900	254	50
2900	3000	262	00
3000	3100	269	50
3100	3200	277	00
3200	3300	284	50
3300	3400	292	00
3400	3500	299	50
3500	3600	307	00
3600	3700	314	50
3700	3800	322	00
3800	3900	329	50
3900	4000	337	00
4000	4100	344	50
4100	4200	352	00
4200	4300	359	50
4300	4400	367	00
4400	4500	374	50
4500	4600	382	00
4600	4700	389	50
4700	4800	397	00
4800	4900	404	50
4900	5000	412	00
5000	5100	419	50
5100	5200	427	00
5200	5300	434	50
5300	5400	442	00
5400	5500	449	50
5500	5600	457	00
5600	5700	464	50
5700	5800	472	00
5800	5900	479	50
5900	6000	487	00

Rs.	Rs.	Rs.	nP.
6000	6100	494	50
6100	6200	502	00
6200	6300	509	50
6300	6400	517	00
6400	6500	524	50
6500	6600	532	00
6600	6700	539	50
6700	6800	577	00
6800	6900	584	50
6900	7000	562	00
7000	7100	569	50
7100	7200	577	00
7200	7300	584	50
7300	7400	592	00
7400	7500	599	50
7500	7750	614	50
7750	8000	629	50
8000	8250	644	50
8250	8500	659	50
8500	8750	674	50
8750	9000	689	50
9000	9250	704	50
9250	9500	719	50
9500	9750	734	50
9750	10000	749	50
10000	10500	772	00
10500	11000	794	50
11000	11500	817	00
11500	12000	839	50
12000	12500	862	00
12500	13000	884	50
13000	13500	907	00
13500	14000	929	50
14000	14500	952	00
14500	15000	974	50
15000	15500	997	00
15500	16000	1019	50
16000	16500	1042	00
16500	17000	1064	50
17000	17500	1087	00
17500	18000	1109	50
18000	18500	1132	00
18500	19000	1154	50
19000	19500	1177	00
19500	20000	1199	50
20000	21000	1229	50
21000	22000	1259	50
22000	23000	1289	50
23000	24000	1319	50
24000	25000	1349	50
25000	26000	1379	50
26000	27000	1409	50
27000	28000	1439	50
28000	29000	1469	50
29000	20000	1499	50
30000	31000	1529	50
31000	32000	1559	50
32000	33000	1589	50
33000	34000	1619	50
34000	35000	1649	50
35000	36000	1679	50
36000	37000	1709	50
37000	38000	1739	50
38000	39000	1769	50
39000	40000	1799	50
40000	41000	1829	50
41000	42000	1859	50
42000	43000	1889	50
43000	44000	1919	50
44000	45000	1949	50
45000	46000	1979	50
46000	47000	2009	50
47000	48000	2039	50
48000	49000	2069	50
49000	50000	2099	50
50000	55000	2137	00
55000	60000	2174	50
60000	65000	2212	00
65000	70000	2249	50
70000	75000	2287	00
75000	80000	2324	50
80000	85000	2362	00
85000	90000	2399	50
90000	95000	2437	00
95000	100000	2474	50
100000	105000	2512	00
105000	110000	2549	50
110000	115000	2587	00
115000	120000	2624	50
120000	125000	2662	00
125000	130000	2699	50
130000	135000	2737	00
135000	140000	2774	50
140000	145000	2812	00
145000	150000	2849	50
150000	155000	2887	00
155000	160000	2924	50
160000	165000	2962	00
165000	170000	2999	50
170000	175000	3037	00
175000	180000	3074	50
180000	185000	3112	00
185000	190000	3149	50
190000	195000	3187	00
195000	200000	3224	50
200000	205000	3262	00

and the fee increases at the rate of thirty-seven rupees fifty naye paise for every five thousand rupees, or part thereof, up to a maximum fee of ten thousand rupees, for example :—

When the amount or value of the subject-matter exceeds Rs.	But does not exceed Rs.	Proper Fee Rs.	nP.
	300000	3974	50
	400000	4724	50
	500000	5474	50
	600000	6224	50
	700000	6974	50
	800000	7724	50
	900000	8474	50
	1000000	9224	50
	1100000	9974	50

— The Court-fees (Andaman and Nicobar Islands Amendment) Regulation (No. 2 of 1957), Ss. 16 and 17 [*1-8-1957*] *: Act 26 of 1968, S. 3 & Sch. Pt. II* [*18-12-1968*].

Assam : Nagaland

Table of rates of *ad valorem* fees leviable on the institution of suits.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee	When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee
(1)	(2)	(3)	(1)	(2)	(3)
Rs.	Rs.	Rs. P.	Rs.	Rs.	Rs. P.
...	5	0 50	480	490	59 55
5	10	1 00	490	500	60 75
10	15	1 50	500	510	61 95
15	20	2 00	510	520	63 15
20	25	2 50	520	530	64 35
25	30	3 00	530	540	65 55
30	35	3 50	540	550	66 75
35	40	4 00	550	560	67 95
40	45	4 50	560	570	69 15
45	50	5 00	570	580	70 35
50	55	5 50	580	590	71 55
55	60	6 00	590	600	72 75
60	65	6 50	600	610	73 95
65	70	7 00	610	620	75 15
70	75	7 50	620	630	76 35
75	80	8 00	630	640	77 55
80	85	8 50	640	650	78 75
85	90	9 00	650	660	79 95
90	95	9 50	660	670	81 15
95	100	10 00	670	680	82 35
100	110	11 75	680	690	83 55
110	120	13 50	690	700	84 75
120	130	15 25	700	710	85 95
130	140	17 00	710	720	87 15
140	150	18 75	720	730	88 35
150	160	19 95	730	740	89 55
160	170	21 15	740	750	90 75
170	180	22 35	750	760	91 95
180	190	23 55	760	770	93 15
190	200	24 75	770	780	94 35
200	210	25 95	780	790	95 55
210	220	27 15	790	800	96 75
220	230	28 35	800	810	97 95
230	240	29 55	810	820	99 15
240	250	30 75	820	830	100 35
250	260	31 95	830	840	101 55
260	270	33 15	840	850	102 75
270	280	34 35	850	860	103 95
280	290	35 55	860	870	105 15
290	300	36 75	870	880	106 35
300	310	37 95	880	890	107 55
310	320	39 15	890	900	108 75
320	330	40 35	900	910	109 95
330	340	41 55	910	920	111 15
340	350	42 75	920	930	112 35
350	360	43 95	930	940	113 55
360	370	45 15	940	950	114 75
370	380	46 35	950	960	115 95
380	390	47 55	960	970	117 15
390	400	48 75	970	980	118 35
400	410	49 95	980	990	119 55
410	420	51 15	990	1,000	120 75
420	430	52 35	1,000	1,100	128 25
430	440	53 55	1,100	1,200	135 75
440	450	54 75	1,200	1,300	143 25
450	460	55 95	1,300	1,400	150 75
460	470	57 15	1,400	1,500	158 25
470	480	58 35	1,500	1,600	165 75

(1)	(2)	(3)		(1)	(2)	(3)	
Rs.	Rs.	Rs.	nP.	Rs.	Rs.	Rs.	nP.
1,600	1,700	173	25	9,250	9,500	728	25
1,700	1,800	180	75	9,500	9,750	743	25
1,800	1,900	188	25	9,750	10,000	758	25
1,900	2,000	195	75	10,000	10,500	780	75
2,000	2,100	203	25	10,500	11,000	803	25
2,100	2,200	210	75	11,000	11,500	825	75
2,200	2,300	218	25	11,500	12,000	848	25
2,300	2,400	225	75	12,000	12,500	870	75
2,400	2,500	233	25	12,500	13,000	893	25
2,500	2,600	240	75	13,000	13,500	915	75
2,600	2,700	248	25	13,500	14,000	938	25
2,700	2,800	255	75	14,000	14,500	960	75
2,800	2,900	263	25	14,500	15,000	983	25
2,900	3,000	270	75	15,000	15,500	1,005	75
3,000	3,100	278	25	15,500	16,000	1,028	25
3,100	3,200	285	75	16,000	16,500	1,050	75
3,200	3,300	293	25	16,500	17,000	1,073	25
3,300	3,400	300	75	17,000	17,500	1,095	75
3,400	3,500	308	25	17,500	18,000	1,118	25
3,500	3,600	315	75	18,000	18,500	1,140	75
3,600	3,700	323	25	18,500	19,000	1,163	25
3,700	3,800	330	75	19,000	19,500	1,185	75
3,800	3,900	338	25	19,500	20,000	1,208	25
3,900	4,000	345	75	20,000	21,000	1,238	25
4,000	4,100	353	25	21,000	22,000	1,268	25
4,100	4,200	360	75	22,000	23,000	1,298	25
4,200	4,300	368	25	23,000	24,000	1,328	25
4,300	4,400	375	75	24,000	25,000	1,358	25
4,400	4,500	383	25	25,000	26,000	1,388	25
4,500	4,600	390	75	26,000	27,000	1,418	25
4,600	4,700	398	25	27,000	28,000	1,448	25
4,700	4,800	405	75	28,000	29,000	1,478	25
4,800	4,900	413	25	29,000	30,000	1,508	25
4,900	5,000	420	75	30,000	31,000	1,538	25
5,000	5,100	428	25	31,000	32,000	1,568	25
5,100	5,200	435	75	32,000	33,000	1,598	25
5,200	5,300	443	25	33,000	34,000	1,628	25
5,300	5,400	450	75	34,000	35,000	1,658	25
5,400	5,500	458	25	35,000	36,000	1,688	25
5,500	5,600	465	75	36,000	37,000	1,718	25
5,600	5,700	473	25	37,000	38,000	1,748	25
5,700	5,800	480	75	38,000	39,000	1,778	25
5,800	5,900	488	25	39,000	40,000	1,808	25
5,900	6,000	495	75	40,000	41,000	1,838	25
6,000	6,100	503	25	41,000	42,000	1,868	25
6,100	6,200	510	75	42,000	43,000	1,898	25
6,200	6,300	518	25	43,000	44,000	1,928	25
6,300	6,400	525	75	44,000	45,000	1,958	25
6,400	6,500	533	25	45,000	46,000	1,988	25
6,500	6,600	540	75	46,000	47,000	2,018	25
6,600	6,700	548	25	47,000	48,000	2,048	25
6,700	6,800	555	75	48,000	49,000	2,078	25
6,800	6,900	563	25	49,000	50,000	2,108	75
6,900	7,000	570	75	50,000	55,000	2,145	25
7,000	7,100	578	25	55,000	60,000	2,183	75
7,100	7,200	585	75	60,000	65,000	2,220	25
7,200	7,300	593	25	65,000	70,000	2,258	75
7,300	7,400	600	75	70,000	75,000	2,295	25
7.400	7,500	608	25	75,000	80,000	2,333	75
7,500	7,750	623	25	80,000	85,000	2,370	25
7,750	8,000	638	25	85,000	90,000	2,408	75
8,000	8,250	653	25	90,000	95,000	2,445	25
8,250	8,500	668	25	95,000	1,00,000	2,483	75
8,500	8,750	683	25	1,00,000	1,05,000	2,520	25
8.750	9,000	698	25	1,05,000	1,10,000	2,558	75
9,000	9,250	713	25	1,10,000	1,15,000	2,595	25
				1.15,000	1,20,000.	2,633	75

(1) Rs.	(2) Rs.	(3) Rs.	P.
1,20,000	1,25,000	2,670	75
1,25,000	1,30,000	2,708	25
1,30,000	1,35,000	2,745	75
1,35,000	1,40,000	2,783	25
1,40,000	1,45,000	2,820	75
1,45,000	1,50,000	2,858	25
1,50,000	1,55,000	2,895	75
1,55,000	1,60,000	2,933	25
1,60,000	1,65,000	2,970	75
1,65,000	1,70,000	3,008	25
1,70,000	1,75,000	3,045	75
1,75,000	1,80,000	3,083	25
1,80,000	1,85,000	3,120	75
1,85,000	1,90,000	3,158	25
1,90,000	1,95,000	3,195	75
1,95,000	2,00,000	3,233	25
2,00,000	2,05,000	3,270	75

and the fee increases at the rate of thirty-seven rupees fifty naye paise for every five thousand rupees, or part thereof, up to a maximum fee of ten thousand rupees, for example—

When the amount or value of the subject-matter exceeds (1) Rs.	But does not exceed (2) Rs.	Proper Fee (3) Rs.	nP.
	3,00,000	3 983	25
	4,00,000	4,733	25
	5,00,000	5,483	25
	6,00,000	6,233	25
	7,00,000	6,983	25
	8,00,000	7,733	25
	9,00,000	8.483	25
	10,00,000	9,233	25
	11,00,000	9 983	25
	11,05,000	10,020	75

—*Assam Act III of 1958, S. 4 [1-4-1958]: Act 27 of 1962, S. 26 [w. e. f. 1-12-1963].*

Bihar

[*Note.*—The fees have been increased by way of surcharge by Bihar Act 25 of 1948 the text whereof is given in Appendix I at the end of Sch. III.]

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee		When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee	
Rs.	Rs.	Rs.	P.	Rs.	Rs.	Rs.	P.
—	5	0	40	270	280	25	50
5	10	0	75	280	290	26	50
10	15	1	15	290	300	27	50
15	20	1	50	300	310	28	50
20	25	1	90	310	320	29	50
25	30	2	25	320	330	30	50
30	35	2	65	330	340	31	50
35	40	3	00	340	350	32	50
40	45	3	40	350	360	33	50
45	50	3	75	360	370	34	50
50	55	4	15	370	380	35	50
55	60	4	50	380	390	36	50
60	65	4	90	390	400	37	50
65	70	5	25	400	410	38	50
70	75	5	65	410	420	39	50
75	80	6	00	420	430	40	50
80	85	6	40	430	440	41	50
85	90	6	75	440	450	42	50
90	95	7	15	450	460	43	50
95	100	7	50	460	470	44	50
100	110	8	50	470	480	45	50
110	120	9	50	480	490	46	50
120	130	10	50	490	500	47	50
130	140	11	50	500	510	48	50
140	150	12	50	510	520	49	50
150	160	13	50	520	530	50	50
160	170	14	50	530	540	51	50
170	180	15	50	540	550	52	50
180	190	16	50	550	560	53	50
190	200	17	50	560	570	54	50
200	210	18	50	570	580	55	50
210	220	19	50	580	590	56	50
220	230	20	50	590	600	57	50
230	240	21	50	600	610	58	50
240	250	22	50	610	620	59	50
250	260	23	50	620	630	60	50
260	270	24	50	630	640	61	50

Rs.	Rs.	Rs.	P.	Rs.	Rs	Rs.	P.
640	650	62	50	4,500	4,600	367	50
650	660	63	50	4,600	4,700	375	0
660	670	64	50	4,700	4,800	382	50
670	680	65	50	4,800	4,900	390	0
680	690	66	50	4,900	5,000	397	50
690	700	67	50	5,000	5,250	412	50
700	710	68	50	5,250	5,500	427	50
710	720	69	50	5,500	5,750	442	50
720	730	70	50	5,750	6,000	457	50
730	740	71	50	6,000	6,250	472	50
740	750	72	50	6,250	6,500	487	50
750	760	73	50	6,500	6,750	502	50
760	770	74	50	6,750	7,000	517	50
770	780	75	50	7,000	7,250	532	50
780	790	76	50	7,250	7,500	547	50
790	800	77	50	7,500	7,750	562	50
800	810	78	50	7,750	8,000	577	50
810	820	79	50	8,000	8,250	592	50
820	830	80	50	8,250	8,500	607	50
830	840	81	50	8,500	8,750	622	50
840	850	82	50	8,750	9,000	637	50
850	860	83	50	9,000	9,250	652	50
860	870	84	50	9,250	9,500	667	50
870	880	85	50	9,500	9,750	682	50
880	890	86	50	9,750	10,000	697	50
890	900	87	50	10,000	10,500	720	0
900	910	88	50	10,500	11,000	742	50
910	920	89	50	11,000	11,500	765	0
920	930	90	50	11,500	12,000	787	50
930	940	91	50	12,000	12,500	810	0
940	950	92	50	12,500	13,000	832	50
950	960	93	50	13,000	13,500	855	50
960	970	94	50	13,500	14,000	877	50
970	980	95	50	14,000	14,500	900	0
980	990	96	50	14,500	15,000	922	50
990	1,000	97	50	15,000	15,500	945	0
1,000	1,100	105	0	15,500	16,000	967	50
1,100	1,200	112	50	16,000	16,500	990	0
1,200	1,300	120	0	16,500	17,000	1,012	50
1,300	1,400	127	50	17,000	17,500	1,035	0
1,400	1,500	135	0	17,500	18,000	1,057	50
1,500	1,600	142	50	18,000	18,500	1,080	0
1,600	1,700	150	0	18,500	19,000	1,102	50
1,700	1,800	157	50	19,000	19,500	1,125	0
1,800	1,900	165	0	19,500	20,000	1,147	50
1,900	2,000	172	50	20,000	21,000	1,177	50
2,000	2,100	180	0	21,000	22,000	1,207	50
2,100	2,200	187	50	22,000	23,000	1,237	50
2,200	2,300	195	0	23,000	24,000	1,267	50
2,300	2,400	202	50	24,000	25,000	1,297	50
2,400	2,500	210	0	25,000	26,000	1,327	50
2,500	2,600	217	50	26,000	27,000	1,357	50
2,600	2,700	225	0	27,000	28,000	1,387	50
2,700	2,800	232	50	28,000	29,000	1,417	50
2,800	2,900	240	0	29,000	30,000	1,447	50
2,900	3,000	247	50	30,000	32,000	1,477	50
3,000	3,100	255	0	32,000	34,000	1,507	50
3,100	3,200	262	50	34,000	36,000	1,537	50
3,200	3,300	270	0	36,000	38,000	1,567	50
3,300	3,400	277	50	38,000	40,000	1,597	50
3,400	3,500	285	0	40,000	42,000	1,627	50
3,500	3,600	292	50	42,000	44,000	1,657	50
3,600	3,700	300	0	44,000	46,000	1,687	50
3,700	3,800	307	50	46,000	48,000	1,717	0
3,800	3,900	315	0	48,000	50,000	1,747	50
3,900	4,000	322	50	50,000	55,000	1,785	50
4,000	4,100	330	0	55,000	60,000	1,822	50
4,100	4,200	337	50	60,000	65,000	1,860	0
4,200	4,300	345	0	65,000	70,000	1,897	50
4,300	4,400	352	50	70,000	75,000	1,955	0
4,400	4,500	360	0	75,000	80,000	1,972	50

Rs.	Rs.	Rs.	P.
80,000	85,000	2,010	0
85,000	90,000	2.047	50
90,000	95,000	2,085	0
95,000	1,00,000	2,122	50
1,00,000	1,05,000	2,160	0
1,05,000	1,10,000	2.197	50
1,10,000	1.15,000	2,235	0
1,15,000	1,20,000	2,272	50
1,20,000	1,25,000	2,310	0
1,25,000	1,30.000	2,347	50
1,30,000	1,35,000	2,385	0
1,35,000	1,40,000	2,422	50
1,40,000	1,45 000	2,460	0
1,45,000	1,50 000	2,497	50
1,50,000	1,55,000	2,535	0
1,55,000	1,60,000	2.572	50
1,60,000	1,65,000	2,610	0
1,65,000	1,70,000	2,647	0
1,70,000	1,75,000	2,685	0
1,75,000	1,80,000	2,722	50
1,80,000	1,85,000	2,760	0
1,85,000	1,90,000	2.797	50
1,90,000	1,95,000	2,835	0
1,95,000	2,00,000	2,872	50
2,00,000	2,05,000	2,910	0

and the fee increases at the rate of thirty seven rupees eight annas for every five thousand rupees, or part thereof, [subject to a maximum of ten thousand rupees, for example,—

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee	
Rs.	Rs.	Rs.	P.
3,00,000	3,05,000	3,660	0
4,00,000	4,05,000	4,410	0
5,00,000	5,05,000	5,160	0
6,00.000	6,05,000	5,910	10
7,00,000	7,05 000	6,600	0
8,00,000	8,05,500	7,410	0
9,00.000	9,05,000	8,160	0
10 00,000	10.05,000	8,910	0
11,00,000	11,05,000	9,660	0
11,45,000	11,50,000	9,997	50

and for all amounts and values exceeding Rs. 11,50,000 the court-fee is Rs. 10,000.]

—*Bihar & Orissa Act II of 1922* [21-8-1922]; *Bihar Act XVII of 1939* [2-11-1939] *and Bihar Act VII of 1958* [1-4-1958].

Chandigarh

See under Punjab.

Delhi

See under Punjab.

Madhya Pradesh

"Table of rates of *ad valorem* fees leviable on the institution of suits under Article 1-A.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee		When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee	
(1)	(2)	(3)		(1)	(2)	(3)	
Rs.	Rs.	Rs.	P.	Rs.	Rs.	Rs.	P.
...	5	0	50	160	170	17	00
5	10	1	00	170	180	18	00
10	15	1	50	180	190	19	00
15	20	2	00	190	200	20	00
20	25	2	50	200	210	21	00
25	30	3	00	210	220	22	00
30	35	3	50	220	230	23	00
35	40	4	00	230	240	24	00
40	45	4	50	240	250	25	00
45	50	5	00	250	260	26	00
50	55	5	50	260	270	27	00
55	60	6	00	270	280	28	00
60	65	6	50	280	290	29	00
65	70	7	00	290	300	30	00
70	75	7	50	300	310	31	00
75	80	8	00	310	320	32	00
80	85	8	50	320	330	33	00
85	90	9	00	330	340	34	00
90	95	9	50	340	350	35	00
95	100	10	00	350	360	36	00
100	110	11	00	360	370	37	00
110	120	12	00	370	380	38	00
120	130	13	00	380	390	39	00
130	140	14	00	390	400	40	00
140	150	15	00	400	410	41	00
150	160	16	00	410	420	42	00

(1)	(2)	(3)
420	430	43 00
430	440	44 00
440	450	45 00
450	460	46 00
460	470	47 00
470	480	48 00
480	490	49 00
490	500	50 00
500	510	51 00
510	520	52 00
520	530	53 00
530	540	54 00
540	550	55 00
550	560	56 00
560	570	57 00
570	580	58 00
580	590	59 00
590	600	60 00
600	610	61 00
610	620	62 00
620	630	63 00
630	640	64 00
640	650	65 00
650	660	66 00
660	670	67 00
670	680	68 00
680	690	69 00
690	700	70 00
700	710	71 00
710	720	72 00
720	730	73 00
730	740	74 00
740	750	75 00
750	760	76 00
760	770	77 00
770	780	78 00
780	790	79 00
790	800	80 00
800	810	81 00
810	820	82 00
820	830	83 00
830	840	84 00
840	850	85 00
850	860	86 00
860	870	87 00
870	880	88 00
880	890	89 00
890	900	90 00
900	910	91 00
910	920	92 00
920	930	93 00
930	940	94 00
940	950	95 00
950	960	96 00
960	970	97 00
970	980	98 00
980	990	99 00
990	1,000	100 00
1,000	1,100	110 00
1,100	1,200	120 00
1,200	1,300	130 00
1 300	1,400	140 00
1 400	1 500	150 00
1,500	16.00	160 00
1,600	1,700	170 00
1 700	1,800	180 00
1 800	1,900	190 00
1,900	2,000	200 00
2 000	2,100	210 00
2,100	2 200	220 00
2,200	2,303	230 00
2,300	2,400	240 00
2,400	2,500	250 00
2,500	2,600	260 00
2,600	2,700	270 00
2,700	2,800	280 00
2,800	2 900	290 00
2,900	3,000	300 00
3,000	3,100	310 00
3,100	3 200	320 00
3,200	3,300	330 00
3,300	3,400	340 00
3 400	3,500	350 00
3,500	3,600	360 00
3,600	3,700	370 00
3 700	3,800	380 00
3,800	3,900	390 00
3,900	4,000	400 00
4,000	4,100	410 00
4,100	4,200	420 00
4,200	4,300	430 00
4,300	4,400	440 00
4,400	4,500	450 00
4,500	4,600	460 00
4,600	4,700	470 00
4,700	4,800	480 00
4,800	4,900	490 00
4,900	5,000	500 00
5 000	5,100	510 00
5,100	5.200	520 00
5,200	5,300	530 00
5,300	5,400	540 00
5,400	5 500	550 00
5,500	5,600	560 00
5,600	5,700	570 00
5,700	5.800	580 00
5,800	5 900	590 00
5,900	6,000	600 00
6,000	6,100	610 00
6 100	6,200	620 00
6 200	6,300	630 00
6,300	6,400	640 00
6,400	6,500	650 00
6,500	6,600	660 00
6,600	6,700	670 00
6,700	6,800	680 00
6,800	6,900	690 00
6,900	7,000	700 00
7 000	7,100	710 00
7,100	7,200	720 00
7,200	7,300	730 00
7,300	7,400	740 00
7.400	7,500	750 00
7,500	7,600	760 00
7,600	7,700	770 00
7,700	7,800	780 00
7,800	7,900	790 00
7.900	8.000	800 00
8,000	8,100	810 00
8.100	8,200	820 00
8,200	8,300	830 00
8,300	8,400	840 00
8,400	8,500	850 00
8,500	8,600	860 00
8,600	8,700	870 00
8,700	8.800	880 00
8.800	8,900	890 00
8,900	9,000	900 00
9,000	9,100	910 00
9,100	9,200	920 00

(1)	(2)	(3)		(1)	(2)	(3)	
Rs.	Rs.	Rs.	.	Rs.	Rs.	Rs.	
9,200	9,300	930	00	62,000	63,000	3,900	00
9,300	9,400	940	00	63,000	64,000	3.950	00
9,400	9,500	950	00	64,000	65,000	4,000	00
9,500	9,600	960	00	65,000	66,000	4,050	00
9,600	9,700	970	00	66,000	67,000	4,100	00
9,700	9,800	980	00	67,000	68,000	4,150	00
9,800	9,900	990	00	68,000	69,000	4,200	00
9,900	10,000	1,000	00	69,000	70,000	4,250	00
10,000	10,500	1,037	50	70,000	71,000	4,300	00
10,500	11,000	1,075	00	71,000	72,000	4,350	00
11,000	11,500	1,112	50	72,000	73,000	4,400	00
11,500	12,000	1,150	00	73,000	74,000	4,450	00
12,000	12,500	1,187	50	74,000	75,000	4,500	00
12,500	13,000	1,225	00	75,000	76,000	4,550	00
13,000	13,500	1,262	50	76,000	77,000	4,600	00
13,500	14,000	1,300	00	77,000	78,000	4,650	00
14,000	14,500	1,337	50	78,000	79,000	4,700	00
14,500	15,000	1,375	00	79,000	80,000	4,750	00
15,000	15,500	1,412	50	80,000	81,000	4,800	00
15,500	16,000	1,450	00	81,000	82,000	4,850	00
16,000	16,500	1,487	50	82,000	83,000	4 900	00
16,500	17,000	1,525	00	83,000	84,000	4,950	00
17,000	17,500	1,562	50	84,000	85,000	5,000	00
17,500	18,000	1,600	00	85,000	86,000	5,050	00
18,000	18,500	1,637	50	86,000	87,000	5,100	00
18,500	19,000	1,675	00	87,000	88,000	5,150	00
19,000	19,500	1·712	50	88,000	89,000	5,200	00
19,500	20,000	1,750	00	89,000	90,000	5,250	00
20,000	21,000	1,800	00	90,000	91,000	5,300	00
21,000	22,000	1,850	00	91.000	92,000	5,350	00
22,000	23,000	1,900	00	92,000	93,000	5,400	00
23,000	24,000	1,950	00	93,000	94,000	5,450	00
24,000	25,000	2,000	00	94,000	95,000	5,500	60
25,000	26,000	2,050	00	95,000	96,000	5 550	00
26,000	27,000	2,100	00	96,000	97,000	5,600	00
27,000	28,000	2,150	00	97,000	98,000	5,650	00
28,000	29,000	2,200	00	98,000	99,000	5,700	00
29,000	30,000	2 250	00	99,000	1,00,000	5,750	00
30,000	31,000	2,300	00	1,00,000	1,01,000	5,790	00
31,000	32,000	2,350	00	1,01,000	1,02,000	5,830	00
32,000	33,000	2,400	00	1,02,000	1,03,000	5 870	00
33,000	34,000	2,450	00	1,03,000	1 04,000	5,910	00
34,000	35.000	2,500	00	1,04,000	1,05,000	5,950	00
35,000	36,000	2,550	00	1,05,000	1,06,000	5,990	00
36,000	37,000	2,600	00	1,06,000	1,07,000	6,030	00
37,000	38,000	2,650	00	1,07,000	1,08,000	6,070	00
38,000	39 000	2,700	00	1,08,000	1,09,000	6,110	00
39,000	40,000	2,750	00	1,09,000	1,10,000	6,150	00
40,000	41,000	2,800	00	1,10,000	1,11,000	6,190	00
41,000	42,000	2,850	00	1,11,000	1,12,000	6,230	00
42,000	43,000	2,900	00	1,12,000	1,13,000	6,270	00
43,000	44,000	2 950	00	1,13,000	1,14,000	6,310	00
44,000	45,000	3,000	00	1,14,000	1,15,000	6,350	00
45,000	46,000	3,050	00	1,15,000	1,16,000	6,390	00
46,000	47,000	3,100	00	1,16,000	1,17,000	6,430	00
47,000	48 000	3,150	00	1,17,000	1,18,000	6,470	00
48,000	49,000	3,200	00	1,18,000	1,19,000	6,510	00
49,000	50,000	3,250	00	1,19,000	1,20,000	6,550	00
50,000	51,000	3,300	00	1,20,000	1,21,000	6 590	00
51,000	52,000	3,350	00	1,21,000	1,22,000	6,630	00
52,000	53,000	3,400	00	1,22,000	1,23,000	6,670	00
53,000	54,000	3,450	00	1,23,000	1,24,000	6,710	00
54,000	55,000	3,500	00	1,24,000	1,25,000	6,750	00
55,000	56,000	3,050	00	1,25,000	1,26,000	6,790	00
56,000	57,000	3,600	00	1,26,000	1,27,000	6,830	00
57,000	58,000	3,650	00	1,27,000	1,28,000	6,870	00
58,000	59,000	3,700	00	1,28,000	1,29,000	6,910	00
59,000	60,000	3,750	00	1,29,000	1,30,000	6,950	00
60,000	61,000	3,800	00	1 30,000	1,31,000	6,990	00
61,000	62,000	3,850	00	1,31,000	1,32,000	7,030	00

(1) Rs.	(2) Rs.	(3) Rs.
1,32,000	1,33,000	7,070 00
1,33,000	1,34,000	7,110 00
1,34,000	1,35,000	7,150 00
1,35,000	1,36,000	7,190 00
1,36,000	1,37,000	7,230 00
1,37,000	1,38,000	7,270 00
1,38,000	1,39,000	7,310 00
1,39,000	1,40,000	7,350 00
1,40,000	1,41,000	7,390 00
1,41,000	1,42,000	7,430 00
1,42,000	1,43,000	7,470 00
1,43,000	1,44,000	7,510 00
1,44,000	1,45,000	7,550 00
1,45,000	1,46,000	7,590 00
1,46,000	1,47,000	7,630 00
1,47,000	1,48,000	7,670 00
1,48,000	1,49,000	7,710 00
1,49,000	1,50,000	7,750 00
1,50,000	1,51,000	7,790 00
1,51,000	1,52,000	7,830 00
1,52,000	1,53,000	7,870 00
1,53,000	1,54,000	7,910 00
1,54,000	1,55,000	7,950 00
1,55,000	1,56,000	7,990 00
1,56,000	1,57,000	8,030 00
1,57,000	1,58,000	8,070 00
1,58,000	1,59,000	8,110 00
1,59,000	1,60,000	8,150 00
1,60,000	1,61,000	8,190 00
1,61,000	1,62,000	8,230 00
1,62,000	1,63,000	8,270 00
1,63,000	1,64,000	8,310 00
1,64,000	1,65,000	8,350 00
1,65,000	1,66,000	8,390 00
1,66,000	1,67,000	8,430 00
1,67,000	1,68,000	8,470 00
1,68,000	1,69,000	8,510 00
1,69,000	1,70,000	8,550 00
1,70,000	1,71,000	8,590 00
1,71,000	1,72,000	8,630 00
1,72,000	1,73,000	8,670 00
1,73,000	1,74,000	8,710 00
1,74,000	1,75,000	8,750 00
1,75,000	1,76,000	8,790 00
1,76,000	1,77,000	8,830 00
1,77,000	1,78,000	8,870 00
1,78,000	1,79,000	8,910 00
1,79,000	1,80,000	8,950 00
1,80,000	1,81,000	8,990 00
1,81,000	1,82,000	9,030 00
1,82,000	1,83,000	9,070 00
1,83,000	1,84,000	9,110 00
1,84,000	1,85,000	9,150 00
1,85,000	1,86,000	9,190 00
1,86,000	1,87,000	9,230 00
1,87,000	1,88,000	9,270 00
1,88,000	1,89,000	9,310 00
1,89,000	1,90,000	9,350 00
1,90,000	1,91,000	9,390 00
1,91,000	1,92,000	9,430 00
1,92,000	1,93,000	9,470 00
1,93,000	1,94,000	9,510 00
1,94,000	1,95,000	9,550 00
1,95,000	1,96,000	9,590 00
1,96,000	1,97,000	9,630 00
1,97,000	1,98000	9,670 00
1,98,000	1,99,000	9,710 00
1,99,000	2,00,000	9,750 00
2,00,000	2,01,000	9,780 00
2,01,000	2,02,000	9,810 00
2,02,000	2,03,000	9,840 00
2,03,000	2,04,000	9,870 00
2,04,000	2,05,000	9,900 00
2,05,000	2,06,000	9,930 00
2,06,000	2,07,000	9,960 00
2,07,000	2,08,000	9,990 00
2,08,000	2,09,000	10,020 00
2,09,000	2,10,000	10,050 00
2,10,000	2,11,000	10,080 00
2,11,000	2,12,000	10,110 00
2,12,000	2,13,000	10,140 00
2,13,000	2,14,000	10,170 00
2,14,000	2,15,000	10,200 00
2,15,000	2,16,000	10,230 00
2,16,000	2,17,000	10,260 00
2,17,000	2,18,000	10,290 00
2,18,000	2,19,000	10,320 00
2,19,000	2,20,000	10,350 00
2,20,000	2,21,000	10,380 00
2,21,000	2,22,000	10,410 00
2,22,000	2,23,000	10,440 00
2,23,000	2,24,000	10,470 00
2,24,000	2,25,000	10,500 00
2,25,000	2,26,000	10,530 00
2,26,000	2,27,000	10,560 00
2,27,000	2,28,000	10,590 00
2,28,000	2,29,000	10,620 00
2,29,000	2,30,000	10,650 00
2,30,000	2,31,000	10,680 00
2,31,000	2,32,500	10,710 00
2,32,000	2,33,000	10,740 00
2,33,000	2,34,000	10,770 00
2,34,000	2,35,000	10,800 00
2,35,000	2,36,000	10,830 00
2,36,000	2,37,000	10,860 00
2,37,000	2,38,000	10,890 00
2,38,000	2,39,000	10,920 00
2,39,000	2,40,000	10,950 00
2,40,000	2,41,000	10,980 00
2,41,000	2,42,000	11,010 00
2,42,000	2,43,000	11,040 00
2,43,000	2,44,000	11,070 00
2,44,000	2,45,000	11,100 00
2,45,000	2,46,000	11,130 00
2,46,000	2,47,000	11,160 00
2,47,000	2,48,000	11,190 00
2,48,000	2,49,000	11,220 00
2,49,000	2,50,000	11,250 00
2,50,000	2,51,000	11,280 00
2,51,000	2,52,000	11,310 00
2,52,000	2,53,000	11,340 00
2,53,000	2,54,000	11,370 00
2,54,000	2,55,000	11,400 00
2,55,000	2,56,000	11,430 00
2,56,000	2,57,000	11,460 00
2,57,000	2,58,000	11,490 00
2,58,000	2,59,000	11,520 00
2,59,000	2,60,000	11,550 00
2,60,000	2,61,000	11,580 00
2,61,000	2,62,000	11,610 00
2,62,000	2,63,000	11,640 00
2,63,000	2,64,000	11,670 00
2,64,000	2,65,000	11,700 00
2,65,000	2,66,000	11,730 00
2,66,000	2,67,000	11,760 00
2,67,000	2,68,000	11,790 00
2,68,000	2,69,000	11,820 00
2,69,000	2,70,000	11,850 00
2,70,000	2,71,000	11,880 00
2,71,000	2,72,000	11,910 00

(1) Rs.	(2) Rs.	(3) Rs.	P.	(1) Rs.	(2) Rs.	(3) Rs.	P.
2,72 000	2,73,000	11,940	00	2,88,000	2,89,000	12,420	00
2,73,000	2,74 000	11,970	00	2,89,000	2,90,000	12,450	00
2,74,000	2,75,000	12,000	00	2,90,000	2,91,000	12,480	00
2,75,000	2,76,000	12,030	00	2,91 000	2,92,000	12,510	00
2,76,000	2,77,000	12,060	00	2,92,000	2,93,000	12,540	00
2,77,000	2,78 000	12,090	00	2,93,000	2,94,000	12,570	00
2,78,000	2,79,000	12,120	00	2,94,000	2,95,000	12,600	00
2,79 000	2,80 000	12,150	00	2,95,000	2,96,000	12,630	00
2,80,000	2,81,000	12,180	00	2,96,000	2,97,000	12,660	00
2,81,000	2,82,000	12,210	00	2,97,000	2,98,000	12,690	00
2,82,000	2,83,000	12,240	00	2,98,000	2,99,000	12,720	00
2,83,000	2,84,000	12,270	00	2,99,000	3,00,000	12,750	00
2,84,000	2,85,000	12,300	00	3,00,000	3,01,000	12,780	00
2,85,000	2,86,000	12,330	00				
2,86 000	2 87,000	12,360	00				
2,87,000	2 88 000	12,390	00				

—Court-fees (M. P. Amendment) Act (12 of 1966), S. 2 (vii), [1-4-1966.]

Manipur and Tripura

Same as that of Assam — *See* G. S. Rs. 1119-1120, Gaz. of Ind., 1 7-1963 Pt. II S. 3 (i), Ext., pp. 501-531- [w.e.f. 15-7-1963.]

Orissa

[*Note* :— The fees have been increased by way of surcharge by Orissa Act XX of 1947, the text whereof as amended is reproduced in Appendix I given at the end of Sch. III.]

(a) Table of rates of *ad valorem* fees leviable on plaints, etc., mentioned in Article 1 of Schedule I.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee		When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee	
(1)	(2)	(3)		(1)	(2)	(3)	
Rs.	Rs.	Rs.	P.	Rs.	Rs.	Rs.	P.
...	5	0	35	260	270	24	50
5	10	0	75	270	280	25	50
10	15	1	10	280	290	26	50
15	20	1	50	290	300	27	50
20	25	1	85	300	310	28	50
25	30	2	25	310	320	29	50
30	35	2	60	320	330	30	50
35	40	3	0	330	340	31	50
40	45	3	35	340	350	32	50
45	50	3	75	350	360	33	50
50	55	4	10	360	370	34	50
55	60	4	50	370	380	35	50
60	65	4	85	380	390	36	50
65	70	5	25	390	400	37	50
70	75	5	60	400	410	38	50
75	80	6	0	410	420	39	50
80	85	6	35	420	430	40	50
85	80	6	75	430	440	41	50
90	95	7	10	440	450	42	50
95	100	7	50	450	460	43	50
100	110	8	50	460	470	44	50
110	120	9	50	470	480	45	50
120	130	10	50	480	490	46	59
130	140	11	50	490	500	47	60
140	150	12	50	500	510	48	60
150	160	13	50	510	520	49	75
160	170	14	50	520	530	50	85
170	180	15	50	530	540	52	00
180	190	16	50	540	550	53	10
190	200	17	50	550	560	54	25
200	210	18	50	560	570	55	35
210	220	19	50	570	580	56	50
220	230	20	50	580	590	57	60
230	240	21	50	590	600	58	75
240	250	22	50	600	610	59	86
250	260	23	50	610	620	61	00

Rs.	Rs.	Rs.	P.	Rs.	Rs.	Rs.	P.
620	630	62	10	4,300	4,400	358	79
630	640	63	25	4,400	4,500	366	25
640	650	64	35	4,500	4.600	373	75
650	660	65	50	4,600	4,700	381	25
660	670	66	60	4,700	4,800	388	75
670	680	67	75	4,800	4 900	396	25
600	690	68	85	4,900	5,000	403	75
690	700	70	00	5,000	5,100	411	25
700	710	71	10	5,100	5,200	418	75
710	720	72	25	5,200	5,300	426	25
720	730	73	35	5,300	5,400	433	75
730	740	74	50	5,400	5,500	441	25
740	750	75	60	5.500	5,600	448	75
750	760	76	75	5 600	5,700	456	25
760	770	77	85	5,700	5,800	463	75
770	780	79	00	5,800	5,900	471	25
780	790	80	10	5,900	6,000	478	75
790	800	81	25	6,000	6,100	486	25
800	810	82	35	6,100	6,200	493	75
810	820	83	50	6,200	6,300	501	25
820	830	84	60	6,300	6,400	508	75
830	840	85	75	6 400	6,500	516	25
840	850	86	85	6,500	6,600	523	75
850	860	88	00	6,600	6,700	531	25
860	870	89	10	6,700	6 800	538	75
870	880	90	25	6,800	6,900	546	25
880	890	91	35	6,900	7,000	553	75
890	900	92	55	7 000	7,100	561	25
900	910	93	60	7 100	7,200	568	75
910	920	94	75	7,200	7,300	576	25
920	930	95	85	7 300	7 400	583	75
930	940	97	00	7.400	7,500	591	25
940	950	98	10	7,500	7,750	606	25
950	960	99	25	7,750	8,000	621	25
960	970	100	35	8,000	8,250	636	25
970	980	101	50	8,250	8,500	651	25
988	990	102	60	8,500	8,750	666	25
990	1,000	103	75	8,750	9,000	681	25
1,000	1,100	111	25	9,000	9,250	696	25
1,100	1,200	118	75	9,250	9,500	711	25
1,200	1,300	126	25	9,500	9,750	726	25
1,300	1,400	133	75	9.750	10,000	741	25
1,400	1,500	141	25	10,000	10,500	763	75
1,500	1,600	148	75	10 500	11,000	786	25
16,00	1,700	156	25	11 000	11 500	808	75
1,700	1,800	163	75	11 500	12.000	831	25
1,800	1,900	171	25	12 000	12,500	853	75
1 900	2,000	178	75	12 500	13.000	876	25
2,000	2,100	186	25	13,000	13 500	898	75
2,100	2,200	193	75	13,500	14 000	921	25
2,200	2 300	201	25	14,000	14.500	943	75
2,300	2,400	208	75	14,500	15 000	966	25
2,400	2,500	216	25	15,000	15,500	988	75
2 500	2,600	223	75	15,500	16 000	1,011	25
2,600	2,700	231	25	16,000	16 500	1,033	75
2,700	2,800	238	75	16,500	17 000	1,056	25
2,800	2,900	246	25	17,000	17,500	1.078	75
2,900	3,000	253	75	17,500	18,000	1,101	25
3,000	3,100	261	25	18 000	18 500	1,123	75
3,100	3,200	268	75	18,500	19,000	1 146	25
3,200	3,300	276	25	19 000	19,500	1,168	75
3,300	3,400	283	75	19,500	20 000	1,191	25
3,400	3,500	291	25	20,000	21 000	1.221	25
3,500	3,600	298	75	21,000	22,000	1,251	25
3,600	3,700	306	25	22,000	23,000	1,281	25
3,700	3,800	313	75	23,000	24,000	1,311	25
38,00	3,900	321	25	24,000	25,000	1,341	25
3,900	4,000	328	75	25.000	26,000	1 371	25
4,000	4,100	336	25	26,000	27,000	1,401	25
4,100	4.200	343	75	27,000	28,000	1,431	25
4.200	4,300	351	25	28,000	29.000	1,461	25

Rs.	Rs.	Rs.	P.
29 000	30 000	1 491	25
30 000	32.000	1 521	25
32,000	34,000	1,551	25
34,000	36 000	1,581	25
36,000	38,000	1,611	25
38,000	40.000	1.641	25
40,000	42,000	1,671	25
42,000	44,000	1 701	25
44,000	46 000	1 731	25
46 000	48.000	1,761	25
48,000	50,000	1,791	25

When the amount or value exceeds Rs. 50,000 for every five thousand rupees or part thereof in excess of fifty thousand rupees—thirty-seven rupees eight annas.

(*b*) Table of rates of *ad valorem* fees leviable on plaints, etc., mentioned in Article 3 of Schedule I.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee	
Rs.	Rs.	Rs.	P.
...	5	0	35
5	10	0	75
10	15	1	10
15	20	1	50
20	25	1	85
25	30	2	25
30	35	2	60
35	40	3	00
40	45	3	35
45	50	3	75
50	55	4	10
55	60	4	50
60	65	4	85
65	70	5	25
70	75	5	60
75	80	6	00
80	85	6	35
85	90	6	75
Rs.	Rs.	Rs.	P
90	95	7	10
95	100	7	50
100	110	8	25
110	120	9	00
120	130	9	75
130	140	10	50
140	150	11	25
150	160	12	00
160	170	12	75
170	180	13	50
180	190	14	25
190	200	15	00
200	210	15	75
210	220	16	50
220	230	17	25
230	240	18	00
240	250	18	75
250	260	19	50
260	270	20	25
270	280	21	00
280	290	21	75
290	300	22	50
300	310	23	25
310	320	24	00
320	330	24	75
330	340	25	50
340	350	26	25
350	360	27	00
360	370	27	75
370	380	28	50
380	390	29	25
390	400	30	00
400	410	30	75
410	420	31	50
420	430	32	25
430	440	33	00
440	450	33	75
450	460	34	50
460	470	35	25
470	480	36	00
480	490	36	75
490	500	37	50

—*Orissa Acts V of 1939* (31-10-1939) *and XVI of 1958, S. 2*

Punjab : Haryana and Chandigarh ; Delhi.

"Table of rates of *ad valorem* fees leviable on the institution of suits.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee	
Rs.	Rs	Rs.	P.
...	5	0	50
5	10	1	00
10	15	1	50
15	20	2	00
20	25	2	50
25	30	3	00
30	35	3	50
35	40	4	00
40	45	4	50
45	50	5	00
50	55	5	50
55	60	6	00
60	65	6	50
65	70	7	00
70	75	7	50
75	80	8	00
Rs.	Rs.	R	nP.
80	85	8	50
85	90	9	00
90	95	9	50
95	100	10	00
100	110	11	00
110	120	12	00
120	130	13	00
130	140	14	00
140	150	15	00
150	160	16	00
160	170	17	00
170	180	18	00
180	190	19	00
190	200	20	00
200	210	21	00
210	220	22	00

(1) Rs.	(2) Rs.	(3) Rs.	nP	(1) Rs.	(2) Rs.	(3) Rs.	nP.
220	230	23	00	910	920	138	00
230	240	24	00	920	930	139	50
240	250	25	00	930	940	141	00
250	260	26	00	940	950	142	50
260	270	27	00	950	960	144	00
270	280	28	00	960	970	145	50
280	290	29	00	970	980	147	00
290	300	30	00	980	990	148	50
300	310	31	00	890	1,000	150	00
310	320	32	00	1,000	1,100	162	20
320	330	33	00	1,100	1,200	174	40
330	340	34	00	1,200	1,300	186	60
340	350	35	00	1,300	1,400	198	80
350	360	36	00	1,400	1,500	211	00
360	370	37	00	1,500	1,600	223	20
370	380	38	00	1,600	1,700	235	40
380	390	39	00	1,700	1,800	247	60
390	400	40	00	1,800	1,900	259	80
400	410	41	00	1,900	2,000	272	00
410	420	42	00	2,000	2,100	284	20
420	430	43	00	2,100	2,200	296	40
430	440	44	00	2,200	2,300	308	60
440	450	45	00	2,300	2,400	320	80
450	460	46	00	2,400	2,500	333	00
460	470	47	00	2,500	2,600	345	20
470	480	48	00	2,600	2,700	357	40
480	490	49	00	2,700	2,800	369	60
490	500	50	00	2,800	2,900	381	80
500	510	76	50	2,900	3,000	394	00
510	520	78	00	3,000	3,100	406	20
520	530	79	50	3,100	3,200	418	40
530	540	81	00	3,200	3,300	430	60
540	550	82	50	3,300	3,400	442	80
550	560	84	00	3,400	3,500	455	00
560	570	85	50	3,500	3,600	467	20
570	580	87	00	3,600	3,700	479	40
580	590	88	50	3,700	3,800	491	60
590	600	90	00	3,800	3,900	503	80
600	610	91	50	3,900	4,000	516	00
610	620	93	00	4,000	4,100	528	20
620	630	94	50	4,100	4,200	540	40
630	640	96	00	4,200	4,300	552	60
640	650	97	50	4,300	4,400	564	80
650	660	99	00	4,400	4,500	577	00
660	670	100	50	4,500	4,600	589	20
670	680	102	00	4,600	4,700	601	40
680	690	103	50	4,700	4,800	613	60
690	700	105	00	4,800	4,900	625	80
700	710	106	50	4,900	5,000	638	00
710	720	108	00	5,000	5,250	662	40
720	730	109	50	5,250	5,500	686	80
730	740	111	00	5,500	5,750	711	20
740	750	112	50	5,750	6,000	735	60
750	760	114	00	6,000	6,200	760	00
760	770	115	50	6,250	6,500	784	40
770	780	117	00	6,500	6,750	808	80
780	790	118	50	6,750	7,000	833	25
790	800	120	00	7,000	7,250	857	60
800	810	121	50	7,250	7,500	882	00
810	820	123	00	7,500	7,750	906	40
820	830	124	50	7,750	8,000	930	80
830	840	126	00	8,000	8,250	955	20
840	850	127	50	8,250	8,500	979	60
850	860	129	00	8,500	8,750	1004	00
860	870	130	50	8,750	9,000	1028	40
870	880	132	00	9,000	9,250	1052	80
880	890	133	50	9,250	9,500	1077	20
890	900	135	00	9,500	9,750	1101	60
900	910	136	50				

(1) Rs.	(2) Rs.	(3) Rs.	P.
9,750	10,000	1126	00
10,000	10,500	1162	50
10,500	11,000	1199	00
11,000	11,500	1235	50
11,500	12,000	1272	00
12,000	12,500	1308	50
12,500	13,000	1345	00
13,000	13,500	1381	50
13,500	14,000	1418	00
14,000	14,500	1454	50
14,500	15,000	1491	00
15,000	15,500	1527	50
15,500	16,000	1564	00
16,000	16,500	1600	50
16,500	17,000	1637	00
17,000	17,500	1673	50
17,500	18,000	1710	00
18,000	18,500	1746	50
18,500	19,000	1783	00
19,000	19,500	1819	50
1,9500	20,000	1856	00
20,000	21,000	1904	80
21,000	22,000	1953	60
22,000	23,000	2002	40
23,000	24,000	2051	20
24,000	25,000	2100	00
25,000	26,000	2148	80
26,000	27,000	2197	60
27,000	28,000	2246	40
28,000	29,000	2295	20
29,000	30,000	2344	00
30,000	32,000	2392	80
32,000	34,000	2441	60
34,000	36,000	2491	40
36,000	38,000	2539	20
38,000	40,000	2588	00
40,000	42,000	2636	80
42,000	44,000	2685	60
44,000	46,000	2734	40
46,000	48,000	2783	20
48,000	50,000	2832	00
50,000	55,000	2880	80
53,000	60,000	2982	60
60,000	65,000	2978	40
65,000	70,000	3027	20
70,000	75,000	3076	00
75,000	80,000	3124	80
80,000	85,000	3173	60
85,000	90,000	3222	40
90,000	95,000	3271	20
95,000	1,00,000	3320	00
1,00,000	1,05,000	3368	80
1,05,000	1,10,000	3417	60
1,10,000	1,15,000	3466	40
1,15,000	1,20,000	3515	20
1,20,000	1,25,000	3,564	00
1,25,000	1,30,000	3,612	80
1,30,000	1,35,000	3,661	60
1,35,000	1,40,000	3,710	40
1,40,000	1,45,000	3,759	20
1,45,000	1,50,000	3,808	00
1,50,000	1,55,000	3,856	80
1,55,000	1,60,000	3,908	60
1,60,000	1,65,000	3,954	40
1,65,000	1,70,000	4,003	20
1,70,000	1,75,000	4,052	00
1,75,000	1,80,000	4,100	80
1,80,000	1,85,000	4,149	60
1,85,000	1,90,000	4,198	40
1,90,000	1,95,000	4,247	20
1,95,000	2,00,000	4,296	00
2,00,000	2,05,000	4,344	80
2,05,000	2,10,000	4,393	60
2,10,000	2,15,000	4,442	40
2,15,000	2,20,000	4,491	20
2,20,000	2,25,000	4,540	00
2,25,000	2,30,000	4,588	80
2,30,000	2,35,000	4,637	60
2,35,000	2,40,000	4,686	40
2,40,000	2,45,000	4,735	20
2,45,000	2,50,000	4,784	00
2,50,000	2,55,000	4,832	80
2,55,000	2,60,000	4,881	60
2,60,000	2,65,000	4,930	40
2,35,000	2,70,000	4,979	20
2,70,000	2,75,000	5,028	60
2,75,000	2,80,000	5,076	80
2,80,000	2,85,000	5,125	69
2,85,000	2,90,000	5,174	40
2,90,000	2,95,000	5,223	20
2,95,000	3,00,000	5,272	00
3,00,000	3,05,000	5,320	80
3,05,000	3,10,000	5,369	60
3,10,000	3,15,000	5,418	40
3,15,000	3,20,000	5,411	20
3,20,000	3,25,000	5,516	00
3,25,000	3,30,000	5,564	80
3,30,000	3,35,000	5,613	60
3,35,000	3,40,000	5,662	40
3,40,000	3,45,000	5,711	20
3,45,000	3,50,000	5,760	00
3,50,000	3,55,000	5,808	80
3,55,000	3,60,000	5,857	60
3,60,000	3,65,000	5,905	40
3,65,000	3,70,000	5,955	20
3,70,000	3,75,000	6,004	00
3,75,000	3,80,000	6,052	80
3,80,000	3,85,000	6,101	60
3,85,000	3,90,000	6,150	40
3,90,000	3,95,000	6,199	20
3,95,000	4,00,000	6,248	00

and when the amount or value of the subject matter exceeds rupees 4,00,000 (Four Lacs) the proper fee leviable shall be Rs. 6,248 (Six thousand two hundred and forty-eight) plus forty-eight rupees eighty naye paise for each five thousand rupees or part thereof, in excess of rupees 4,00,000 (Four Lacs.')

—Punjab Act XIV of 1958, S. 4 [25-4-1958]; Act 31 of 1966, S. 88 [1-11-1966] and for Delhi, *see* G.S.R. 849, Gaz. Ind., 1959, Pt. II, S. 3 (i), p. 1039 [w.e.f. 1-8-1959.]

Uttar Pradesh

Table of rates of *ad valorem* fees leviable on the institution of suits.

Where the amount or value of the subject-matter exceeds (1) Rs.	But does not exceed (2) Rs.	Proper Fee (3) Rs.	P.
...	5	0	50
5	10	1	00
10	15	1	50
15	20	2	00
20	25	2	50
25	30	3	00
30	35	3	50
35	40	4	00
40	45	4	50
45	50	5	00
50	55	5	50
55	60	6	00
60	65	6	50
65	70	7	00
70	75	7	50
75	80	8	00
80	85	8	50
85	90	9	00
90	95	9	50
95	100	10	00
100	110	11	25
110	120	12	50
120	130	13	75
130	140	15	00
140	150	16	25
150	160	17	50
160	170	18	75
170	180	20	00
180	190	21	25
190	200	22	50
200	210	23	75
210	220	25	00
220	230	26	25
230	240	27	50
240	250	28	75
250	260	30	00
260	270	31	25
270	280	32	50
280	290	33	75
290	300	35	00
300	310	36	50
310	320	38	00
320	330	39	50
330	340	41	00
340	350	42	50
350	360	44	00
360	370	45	50
370	380	47	00
380	390	48	50
390	400	50	00
400	410	51	50
410	420	53	00
420	430	54	50
430	440	56	00
440	450	57	50
450	460	59	00
460	470	60	50
470	480	62	00
480	490	63	50
490	500	65	00
500	510	67	25
510	520	69	50
520	530	71	75
530	540	74	00
540	550	76	25
550	560	78	50
560	570	80	75
570	580	83	00
580	590	85	25
590	600	87	50
600	610	89	75
610	620	92	00
620	630	94	25
630	640	96	50
640	650	98	75
650	660	101	00
660	670	103	25
670	680	105	50
680	690	107	75
690	700	110	00
700	710	112	25
710	720	114	50
720	730	116	75
730	740	119	00
740	750	121	25
750	760	123	50
760	770	125	75
770	780	128	00
780	790	130	25
790	800	132	50
800	810	134	75
810	820	137	00
820	830	139	25
830	840	141	50
840	850	143	75
850	860	146	00
860	870	148	25
870	880	150	50
880	890	152	75
890	900	155	00
900	910	157	25
910	920	159	50
920	930	161	75
930	940	164	00
940	950	166	25
950	960	168	50
960	970	170	75
970	980	173	00
980	990	175	25
990	1,000	177	50
1,000	1,100	189	50
1,100	1,200	201	50
1,200	1,300	213	50
1,300	1,400	225	50

(1)	(2)	(3)	
Rs.	Rs.	Rs.	P.
1,400	1,500	237	50
1,500	1,600	249	50
1,600	1,700	261	50
1,700	1,800	273	50
1,800	1,900	285	50
1,900	2,000	297	50
2,000	2,100	309	50
2,100	2,200	321	50
2,200	2,300	333	50
2,300	2,400	345	50
2,400	2,500	357	50
2,500	2,600	369	00
2,600	2,700	381	50
2,700	2,800	393	50
2,800	2,900	405	50
2,900	3,000	417	50
3,000	3,100	429	50
3,100	3,200	441	50
3,200	3,300	453	50
3,300	3,400	465	50
3,400	3,500	477	50
3,500	3,600	489	50
3,600	3,700	501	50
3,700	3,800	513	50
3,800	3,900	525	50
3,900	4,000	537	50
4,000	4,100	549	50
4,100	4,200	561	50
4,200	4,300	573	50
4,300	4,400	585	50
4,400	4,500	597	50
4,500	4,600	609	55
4,600	4,700	621	50
4,700	4,800	633	50
4,800	4,900	645	50
4,900	5,000	657	50
5,000	5,200	677	50
5,200	5,400	697	50
5,400	5,600	717	50
5,600	5,800	737	50
5,800	6,000	757	50
6,000	6,200	777	50
6,200	6,400	797	50
6,400	6,600	817	50
6,600	6,800	837	50
6,800	7,000	857	50
7,000	7,200	877	50
7,200	7,400	897	50
7,400	7,600	917	50
7,600	7,800	937	50
7,800	8,000	957	50
8,000	8,200	977	50
8,200	8,400	997	50
8,400	8,600	1,017	50
8,600	8,800	1,037	50
8,800	9,000	1,057	50
9,200	9,200	1,077	50
9,200	9,400	1,097	50
9,400	9,600	1,117	50
9,600	9,800	1,137	50
9,800	10,000	1,157	50
10,000	10,500	1,195	00
10,500	11,000	1,232	50
11,000	11,500	1,270	00
11,500	12,000	1,307	50
12,000	12,500	1,345	00
12,500	13,000	1,382	50
13,000	13,500	1,420	00
13,500	14,000	1,457	50
14,000	14,500	1,495	00
14,500	15,000	1,532	50
15,000	15,500	1,570	00
15,500	16,000	1,607	00
16,000	16,500	1,645	00
16,500	17,000	1,682	50
17,000	17,500	1,720	00
17,500	18,000	1,757	50
18,000	18,500	1,795	00
18,500	19,000	1,832	50
19,000	19,500	1,870	00
19,500	20,000	1,907	50
20,000	20,500	1,915	00
20,500	21,000	1,982	50
21,000	21,500	2,020	00
21,500	22,000	2,057	50
22,000	22,500	2,095	00
22,500	23,000	2,132	50
23,000	23,500	2,170	00
23,500	24,000	2,207	50
24,000	24,500	2,245	00
24,500	25,000	2,282	50
25,000	25,500	2,320	00
25,500	26,000	2,357	50
26,000	26,500	2,395	00
26,500	27,000	2,432	50
27,000	27,500	2,470	00
27,500	28,000	2,507	50
28,000	28,500	2,545	00
28,500	29,000	2,582	50
29,000	29,500	2,620	00
29,500	30,000	2,657	50

and the fee increases at the rate of thirty seven rupees and fifty Naye paise for every five hundred rupees or part thereof, for example:—

Value (1) Rs.	Proper fee (2) Rs.	P.
40,000	3,407	50
50,000	4,157	50
60,000	4,907	50
75,000	6,032	50
1,00,000	7,907	50
2,00,000	15,407	50
3,00,000	22,907	50
4,00,000	30,407	50
5,00,000	37,907	50

West Bengal

When the amount or value of the subject-matter exceeds (1) Rs.	But does not exceed (2) Rs.	Proper Fee. (3) Rs.	P.	When the amount or value of the subject-matter exceeds (1) Rs.	But does not exceed (2) Rs.	Proper Fee. (3) Rs.	P.
...	5	0	40	500	510	57	40
5	10	0	75	510	520	58	50
10	15	1	15	520	530	59	65
15	20	1	50	530	540	60	75
20	25	1	90	540	550	61	90
25	30	2	25	550	560	63	00
30	35	2	65	560	570	64	15
35	40	3	00	570	580	65	25
40	45	3	40	580	590	66	40
45	50	3	75	590	600	67	50
50	55	4	15	600	610	68	65
55	60	4	50	610	620	69	75
60	65	4	90	620	630	70	90
65	70	5	25	630	640	72	00
70	75	5	65	640	650	73	15
75	80	6	15	650	660	74	25
80	85	6	65	660	670	75	40
85	90	7	15	670	680	76	50
90	95	7	65	680	690	77	65
95	100	8	15	690	700	78	75
100	110	9	75	700	710	79	90
110	120	11	40	710	720	81	00
120	130	13	00	720	730	82	15
130	140	14	65	730	740	83	25
140	150	16	25	740	750	84	40
150	160	18	00	750	760	85	50
160	170	19	15	760	770	86	65
170	180	20	25	770	780	87	75
180	190	21	40	780	790	88	90
190	200	22	50	790	800	90	00
200	210	23	65	800	810	91	15
210	220	24	75	810	820	92	25
220	230	25	90	820	830	93	40
230	240	27	00	830	840	94	50
240	250	28	15	840	850	95	65
250	260	29	25	850	860	96	75
260	270	30	40	860	870	97	90
270	280	31	50	870	880	99	00
280	290	32	65	880	890	100	15
290	300	33	75	890	900	101	25
300	310	34	90	900	910	102	40
310	320	36	00	910	920	103	50
320	330	37	15	920	930	104	65
330	340	38	25	930	940	105	75
340	350	39	40	940	950	106	90
350	360	40	50	950	960	108	00
360	370	41	65	960	970	109	15
370	380	42	75	970	980	110	25
380	390	43	90	980	990	111	40
390	400	45	00	990	1,000	112	50
400	410	46	15	1,000	1,100	120	00
410	420	47	25	1,100	1,200	127	50
420	430	48	40	1,200	1,300	135	00
430	440	49	50	1,300	1,400	142	50
440	450	50	65	1,400	1,500	150	00
450	460	51	75	1,500	1,600	157	50
460	470	52	90	1,600	1,700	165	00
470	480	54	00	1,700	1,800	172	50
480	490	55	15	1,800	1,900	180	00
490	500	56	25	1,900	2,000	187	50

(1)	(2)	(3)		(1)	(2)	(3)	
Rs.	Rs.	Rs.	P.	Rs.	Rs.	Rs.	P.
2,000	2,100	195	00	12,500	13,000	885	00
2,100	2,200	202	50	13,000	13,500	907	50
2,200	2,300	210	00	13,500	14,000	930	00
2,300	2,400	217	50	14,000	14,500	952	50
2,400	2,500	225	00	14,500	15,000	975	00
2,500	2,600	232	50	15,000	15,500	997	50
2,600	2,700	240	00	15,500	16,000	1,020	00
2,700	2,800	247	50	16,000	16,500	1,042	50
2,800	2,900	255	00	16,500	17,000	1,065	00
2,900	3,000	262	50	17,000	17,500	1,087	50
3,000	3,100	270	00	17,500	18,000	1,110	00
3,100	3,200	277	50	18,000	18,500	1,132	50
3,200	3,300	285	00	18,500	19,000	1,155	00
3,300	3,400	292	50	19,000	19,500	1,177	50
3,400	3,500	300	00	19,500	20,000	1,200	00
3,500	3,600	307	50	20,000	21,000	1,230	50
3,600	3,700	315	00	21,000	22,000	1,260	00
3,700	3,800	322	50	22,000	23,000	1,290	00
3,800	3,900	330	00	23,000	24,000	1,320	00
3,900	4,000	337	50	24,000	25,000	1,350	00
4,000	4,100	345	00	25,000	26,000	1,380	00
4,100	4,200	352	50	26,000	27,000	1,410	00
4,200	4,300	360	00	27,000	28,000	1,440	00
4,300	4,400	367	50	28,000	29,000	1,470	00
4,400	4,500	375	00	29,000	30,000	1,500	00
4,500	4,600	382	50	30,000	31,000	1,530	00
4,600	4,700	390	00	31,000	32,000	1,560	00
4,700	4,800	397	50	32,000	33,000	1,590	00
4,800	4,900	405	00	33,000	34,000	1,620	00
4,900	5,000	412	50	34,000	35,000	1,650	00
5,000	5,100	420	00	35,000	36,000	1,280	00
5,100	5,200	427	50	36,000	37,000	1,710	00
5,200	5,300	435	00	37,000	38,000	1,740	00
5,300	5,400	442	50	38,000	39,000	1,770	00
5,400	5,500	450	00	39,000	40,000	1,800	00
5,500	5,600	457	50	40,000	41,000	1,830	00
5,600	5,700	465	00	41,000	42,000	1,860	00
5,700	5,800	472	50	42,000	43,000	1,890	00
5,800	5,900	480	00	43,000	44,000	1,920	00
5,900	6,000	487	50	44,000	45,000	1,950	00
6,000	6,100	495	00	45,000	46,000	1,980	00
6,100	6,200	502	50	46,000	47,000	2,010	00
6,200	6,300	510	00	47,000	48,000	2,040	00
6,300	6,400	517	50	48,000	49,000	2,070	00
6,400	6,500	525	00	49,000	50,000	2,100	00
6,500	6,600	532	50	50,000	55,000	2,137	50
6,600	6,700	540	00	55,000	60,000	2,175	00
6,700	6,800	547	50	60,000	65,000	2,212	50
6,800	6,900	555	00	65,000	70,000	2,250	00
6,900	7,000	562	50	70,000	75,000	2,287	50
7,000	7,100	570	00	75,000	80,000	2,325	00
7,100	7,200	577	50	80,000	85,000	2,362	50
7,200	7,300	585	00	85,000	90,000	2,400	00
7,300	7,400	592	50	90,000	95,000	2,437	50
7,400	7,500	600	00	95,000	1,00,000	2,475	00
7,500	7,750	615	00	1,00,000	1,05,000	2,512	50
7,750	8,000	630	00	1,05,000	1,10,000	2,550	00
8,000	8,250	645	00	1,10,000	1,15,000	2,587	50
8,250	8,500	660	00	1,15,000	1,20,000	2,625	00
8,500	8,750	675	60	1,20,000	1,25,000	2,662	50
8,750	9,000	690	00	1,25,000	1,30,000	2,700	00
9,000	9,250	705	00	1,30,000	1,35,000	2,737	50
9,250	9,500	720	00	1,35,000	1,40,000	2,775	00
9,500	9,750	735	00	1,40,000	1,45,000	2,812	50
9,750	10,000	750	00	1,45,000	1,50,000	2,850	00
10,000	10,500	772	50	1,50,000	1,55,000	2,887	50
10,500	11,000	795	00	1,55,000	1,60,000	2,925	00
11,000	11,500	817	50	1,60,000	1,65,000	2,962	50
11,500	12,000	840	00	1,65,000	1,70,000	3,000	00
12,000	12,500	862	50	1,70,000	1,75,000	3,037	50

(1) Rs.	(2) Rs.	(3) Rs.	P.
1,75 000	1,80 000	3,075	00
1,80 000	1,85,000	3 112	50
1,85,000	1,90,000	3,150	00
1,90 000	1,95,000	3,187	50
1 95,000	2,00 000	3,225	00
2 00 000	2 05,000	3,262	50

and the fee increases at the rate of thirty-seven rupees, fifty paise for every five thousand rupees, or part thereof, up to a maximum fee of ten thousand rupees, for example—

(1) Rs.	(2) Rs.	P
3,00,000	4,012	50
4,00,000	4 762	50
5,00,000	5,512	50
6,00,000	6,262	50
7,00 000	7,012	50
8,00 000	7,762	50
9 00 000	8,512	50
10,00 000	9,262	50
11,00 000	10 000	00.';

—Court-fees (W. B. Amendment) Act (Presi. Act 7 of 1968), S. 2 (c) [26-3-1968].

SCHEDULE II

FIXED FEES

[*Note.* — As to the effect on the Schedule of "Proper Fee" produced by the introduction of the new decimal system of coinage, see the Note given at the top of Art. 1 of Sch. I.]

Number	—	Proper Fee
1. Application or petition	(*a*) When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings; when presented to any officer of land-revenue by any person holding temporarily settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement;	One anna,

SCHEDULE II, ARTICLE 1 — SYNOPSIS

1. **Scope.**
2. **Application for two or more reliefs.**
3. **Written statement.**
4. **Appeal.**
5. **Application under Order 34, Rule 6 of the Civil P. C.**
6. **Memorandum of objections under Order 41, Rule 26 of the Civil P. C.**
7. **Application for probate or letters of administration.**
8. **Application for copy of order.**
9. **Petition informing Court of compromise.**
10. **Application for transfer of a case.**
11. **Objection to award.**
12. **Revision petitions.**
13. **Application under Trusts Act.**
14. **Application for writs under Constitution of India.**
15. **Petition for dissolution of marriage.**

1. Scope.— (1) Obiter — Schedule II, Article 11 applies where the order appealed against is not a decree. ILR (1959) Andh Pra 194 (196) (DB).

(2) The article provides for the Court-fee payable on application. (1892) 16 Bom 700 (702) (DB) ** 1873 Pun Re No. 6, p. 11 (11) (DB).

(3) An oral application will not require any Court-fee. (1870) 2 NWPHCR 418 (418) (DB).

(4) Where under the law no application is necessary for a certain relief, but a person chooses to apply in writing claiming that relief, the paper purporting to be an application need bear no stamp. (1889) 13 Bom 670 (671) (DB).

(5) It has been held that the proceedings to be initiated by displaced persons for adjustment of their debts under the Displaced Persons (Debts Adjustment) Act (1951) are by applications and such applications cannot be regarded as plaints in civil suits and are not required to bear Court-fee under Sche-

Number	—	Proper Fee
	or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement; or when presented to any Civil Court other than a principal Civil Court of original jurisdiction *[* * *]; or to any Court of Small Causes constituted under †Act No. 11 of 1865 or under ‡Act No. 16 of 1868 section 20 or to a Collector or other officer oi revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees; or when presented to any Civil, Criminal or Revenue Court, or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or officer, or of any other document on record in such Court or Office;	One anna.

Schedule II, Article 1 — (contd.)
dule I, Article 1. AIR 1956 Bom 563 (565) = ILR (1956) Bom 211.

(6) Court-fee imposed by Amendment is not tax but a fee — Section 4 and Schedule II, Article 1 (e) as amended by Court-fees (U. P. Amendment) Act (10 of 1959) are within legislative competence of U. P. Legislature. AIR 1960 All 462 (465, 466) = 1960 All LJ 170 (FB).

2. Application for two or more reliefs.— (1) The Court-fee on an application comprising two reliefs will not be calculated separately on the two reliefs. AIR 1933 Sind 343 (344) = 27 Sind LR 312 ** AIR 1954 All 736 (Prs. 5, 6, 8).

3. Written statement.— (1) The expression "application or petition" does not include written statements. (1883) 12 Cal LR 367 (371) (DB).

(2) Applicability — Bank in liquidation — Application by liquidator under Section 45-B, Banking Companies Act, for recovery for amount due to Bank — Debtor filing reply claiming set-off against his fixed deposit with Bank — The document claiming a set-off could not be called a written statement — The proper Court-fee payable by the debtor on his objection was under Schedule II, Article 1 (5) and not under Article 1, Schedule 1. AIR 1963 All 90 (92) = 1962 All LJ 957 (DB).

4. Appeal.— (1) Appeal from order having the force of a decree but not arising out of a suit — Neither Sch. I. Article 1 nor Schedule II, Article 17 is applicable — Schedule II, Article 1 applies. AIR 1936 Rang 352 (353) ** (1911) 21 Mad L Jour 481 (482) (DB) ** (1903) 6 Oudh Cas 372 (378) (DB). (Application for partition under Section 107 of the N. W. P. and Oudh Act, 3 of 1901.) ** ('01) 14 CPLR 100 (103). (Appeal against an order absolute for foreclosure or sale.) ** ('01) 4 Oudh Cas 289 (292) (DB). (Proceedings under Oudh Land Revenue Act.) ** (1896) 23 Cal 723 (730) (FB). (Application under Section 104 (2) of Bengal Tenancy Act — Appeal under Section 108 (2).) ** (1892) 16 Bom 408 (413) (DB) ** (1889) 1889 All WN 27 (27). (Memorandum of appeal to High Court under Section 263, Succession Act (10 of 1865).)

[See however AIR 1944 Cal 230 (231). (Application by debtor under Section 38, Bengal Money-lenders Act — Declaration by Court as to the amount due — Appeal under Section 38 (3) is governed by Schedule II, Article 17 (iii).) ** AIR 1938 Rang 141 (143, 144) = 1938 Rang LR 72. (When an appeal is preferred

Number	——	Proper Fee
	(b) When containing a complaint or charge of any offence other than an offence for which police-officers may, under the Criminal Procedure Code§, arrest without warrant and presented to any Criminal Court; or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any revenue officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act; or to deposit in Court revenue or rent; or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant.	Eight annas.
	(c) When presented to a Chief Commissioner or other Chief Controlling Revenue or Executive Authority, or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a Division and not otherwise provided for by this Act.	—One rupee.
	(d) When presented to a High Court.	—Two rupees.

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* The words "or to any Cantonment Magistrate sitting as a Court of Civil Judicature under Act No. 3 of 1859" were *repealed* by the Cantonments Act, 1889 (13 of 1889).

† *See* now the Provincial Small Causes Courts Act, 1887 (9 of 1887), by which Act 11 of 1865 was *repealed*.

‡ *See* now the Bengal, Agra and Assam Civil Courts Act, 1887 (12 of 1887), S. 25.

§ *See* now the Code of Criminal Procedure, 1898 (Act 5 of 1898).

Schedule II, Article 1 — Note 4 (contd.)

from the order granting or refusing letters or probate of a will, Schedule II, Article 1 does not apply.) ** (1913) 35 All 448 (450) (DB). (An order of District Judge granting or refusing to grant letters of administration is a "decree" and Court-fee payable on appeal from such order is under Article 17 (vi)).]

5. Application under Order 34, Rule 6 of the Civil P. C.— (1) An application under Order 34, Rule 6, Civil P. C., by a decree-holder for recovery of the balance due on a mortgage, is chargeable under this article. AIR 1936 Rang 352 (353).

6. Memorandum of objections under Order 41, Rule 26 of the Civil P. C.— (1) A memorandum of objections filed under Order 41, Rule 26 of the Civil P. C., cannot be regarded as an application or petition within the meaning of this article and no Court-fee is chargeable on it. AIR 1936 Oudh 180 (181) = 11 Luck 704 (DB) ** AIR 1932 All 526 (526, 527) = 54 All 465 ** AIR 1928 Pat 85 (86).

7. Application for probate or letters of administration.— (1) Application for initiating proceeding for a probate of a will or letters of administrations is governed by this Article. AIR 1938 Rang 141 (143) = 1938 Rang LR 72. (The article applies only in initial stage of this proceeding but not when it reaches the stage of an appeal.) ** (1871) 15 Suth WR 40 (41) (DB).

(2) A petitioner for the probate of a will is not liable under any provision of law to pay the amount of Court-fee out of his own property. This sum is to be paid out of the deceased's estate. AIR 1956 All 152 (Pr. 3) ** AIR 1963 All 153 (159) = 1962 All LJ 1135 (FB). (ILR 35 All 448, **Overruled** on another **point.**)

AMENDMENTS

Andaman and Nicobar : Pondicherry.

In Art. 1 of Sch. II in the column of "Proper Fee" for the words "One anna," "One anna", "Eight annas" and "One rupee" opposite clauses *(a)*, *(b)*, *(c)* in the second column *substitute* the words "Twelve naye paise," "Twelve naye paise," "In the case of a complaint or charge of an offence presented to a Criminal Court; one rupee, and in other cases seventy-five naye paise" and "One rupee fifty naye paise" respectively. And for clause *(d)* of the entries in the second column and the entry in the third column corresponding to that clause *substitute* the following entries namely,—

"*(d)* *(i)* When presented to the High Court under section 115 of the Code of Civil Procedure, 1908 for revision of an order –	
(a) When the value of the suit to which the order relates does not exceed Rs. 1,000;	Five rupees.
(b) When the value of the suit exceeds Rs. 1 000;	Ten rupees.
(ii) When presented to the High Court otherwise than under that section;	Two rupees."

—Reg. II of 1957 S. 16. [1-8-1957] : Act 26 of 1968 S. 3 & Sch. Pt. II [18-12-1968].

Schedule II, Article 1 (contd.)

8. Application for copy of order.— (1) An application for a copy of an order passed by an Assistant Commissioner of Income-tax is governed by paragraph 5, Clause (a). AIR 1937 Lah 876 (878) = ILR (1938) Lah 229 (DB) ** AIR 1932 Pat 103 (105) = 11 Pat 40 (DB).

(2) See also the following case: AIR 1956 Mad 597 (598, 599) = ILR (1957) Mad 97.

9. Petition informing Court of compromise.— (1) A petition informing the Court of an agreement into which the parties have entered for the compromise of the suit is chargeable under para 2, Cl. (b). (1885) 8 Mad 15 (17). (Parties praying for removal of suit from file.) ** AIR 1918 All 307 (308) = 40 All 19 (DB). (Parties praying for a decree in terms of compromise.)

(2) An order directing a compromise to be recorded under Order 23, Rule 3 being not a decree, but an order, Art. 4 of Schedule I of the Court-fees Act will not apply to the application for review of the order passed under Order 23, Rule 3 of the Civil P. C., and to such a case, Schedule II, Article 1 (b) Act will apply. AIR 1957 Pat 143 (145).

10. Application for transfer of a case.— (1). Fifteen suits were tried analogously and dismissed. They were governed by the same judgment. Two appeals against the dismissal were filed in the High Court and thirteen in the District Court. The appellant subsequently made an application to the High Court praying for the transfer of the thirteen appeals in the District Court to the High Court and for analogous trial of them with the two appeals in High Court. It was held that the application for transfer of the thirteen appeals could not be considered as an independent application for transfer but must be treated as an application made in the appeals pending before the High Court with thirteen prayers for transfer and was properly stamped with a single stamp of Rs. 2. AIR 1940 Cal 84 (85) = ILR (1939) 2 Cal 264 (DB).

11. Objection to award.— (1) A written objection to an award made in a pending suit is an "application" and chargeable under Clause (b). AIR 1928 Sind 87 (88) = 23 Sind LR 91 (DB) ** AIR 1946 Mad 104 (105).

12. Revision petitions.— (1) The word "proceeding" is used as meaning a proceeding in the nature of a suit (such as probate) and not a proceeding in the suit (such as execution proceeding) and both the words "suit" and "proceeding" are used as comprising the entire litigation commencing with the filing of the plaint or petition in the trial Court down to the stage when ultimate decision is reached in the final Court of appeal or revision. AIR 1942 Mad 390 (391). (Case under State amendment Clause (d) (i).)

(2) A writ petition under Article 227 of the Constitution, wherein the Judicial Commissioner's Court is requested to set aside the order of the District Judge, acting as an appellate authority under the East Punjab Urban Rent Restriction Act, as applied to Himachal Pradesh, would be governed not by Article 22, Schedule II, but by Article 1 (d) (iii), (Himachal Pradesh). AIR 1955 Him Pra 41 (Pr. 1).

(3) The definition of the word 'suit in Section 2, Clause (ii), has to be read subject to the overriding clause in the section itself namely — "Unless there is anything repugnant in the subject or context" The word 'suit' in Schedule II, Article 1, Clause (d) can never mean appeal. In all cases of Civil Revision, whether against original order or appellate order, they have to be valued for the purpose of Court-fee according to the value of the suit and not on the value of appeal. ILR (1962) Cut 929 = (1963) 29 Cut LT 49 (53) (Orissa).

Assam: Nagaland.

For Article 1 *substitute* the following : -

Number	—	Proper fee
1. Application or petition.	(a) When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings ; or When presented to any Municipal Board or other local authority constituted under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement; or When presented to any Civil Court other than a Principal Civil Court of original jurisdiction, or to any Court of Small Causes constituted under Act No. 11 of 1865 or under Act No. 16 of 1868, section 20 or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees; or When presented to any Civil, Criminal or Revenue Court, or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or officer or of any other document or record in such Court or Office.	Fifty paise.
	(b) When presented to a Regional Transport Authority or State Transport Authority containing a prayer for permits for Contract Carriage, Stage Carriage Private Carrier or Public Carrier or for any other purpose.	Seven rupees and fifty naye paise.

Schedule II, Article 1 — Note 12 (contd.)

(4) A Revision petition filed under Section 35 of the Delhi and Ajmer Rent Control Act is in no sense a petition for the exercise of High Court's revisional jurisdiction either under Sec. 44 of the Punjab Courts Act or Section 115, Civil P. C. The general provision in respect of petitions filed in the High Court is contained in Schedule II, Article 1, Court-fees Act. Therefore these petitions do not have to bear ad valorem Court-fee on the value of the subject-matter of the suits and the proper Court-fee payable thereon is the same as payable on other petitions to High Court mentioned in Schedule II, Article 1, Court-fees Act. AIR 1962 Punj 378 (378) = ILR (1962) 2 Punj 93 (DB).

13. Application under Trusts Act.— (1) Application under Section 74 of the Trust Act for the appointment of a trustee — Clause (d) of the Article will apply when such applications are presented to the High Court. AIR 1934 Oudh 118 (121) = 9 Luck 507.

14. Application for writs under Constitution of India. — (1) An application for relief under Article 227 of the Constitution of India made to the High Court should be stamped with a Court-fee of Rs. 2 only under Article 1 (d) (ii) of Schedule II as amended in Bengal and not on the basis of an application under Section 115 of the Civil P. C. (1950) 54 Cal WN 795 (796) (DB).

(2) As amended by U. P. Act (Second Amendment) Act, 1958 — Petition under Article 226 does not come under Section 4 — Court-fee payable is not under Clause (e) of Article 1 of Schedule II but under Rule 40, Chapter VIII of Rules of Court. AIR 1960 All 179 (184).

15. Petition for dissolution of marriage.— (1) A petition for dissolution of marriage under the Colonial Divorce Jurisdiction Act, 1926, is in the nature of a suit and is not a mere petition. Article 17 (vi) and not Article 1 of Schedule II applies to such a petition. AIR 1946 Pat 401 (402) = 25 Pat 194.

[But see AIR 1935 All 791 (791) = 58 All 259.]

(2) A petition under Section 13 of the Hindu Marriage Act, 1955 must be regarded as a petition of the nature described in Article 1 (b) of Schedule II of the Court-fees Act and is liable to Court-fees accordingly. AIR 1958 Bom 425 (426) = ILR (1957) Bom 353 ** AIR 1958 Andh Pra 340 (340) = ILR (1957) Andh Pra 49 (DB) ** AIR 1959 Pat 186 (187) = ILR 37 Pat 83 (DB).

Number	—	Proper Fee
	(c) When containing a complaint or charge of any offence other than an offence for which police-officers may, under the Criminal Procedure Code arrest without warrant and presented to any Criminal Court; or When presented to a Civil, Criminal or Revenue Court, or to a Collector, or any revenue officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act; or to deposit in Court revenue or rent; or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant; or when presented to a collector or other officer making a settlement of land revenue or to a Board of Revenue, or a Commissioner of Revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interest therein, if presented previous to the final confirmation of such settlements; or When presented to any officer of land revenue by any person holding temporarily settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement.	In the case of a complaint or charge of an offence presented to a Criminal Court or in the case of an application or petition presented to any officer of land revenue by any person holding temporarily settled land under direct engagement with Government and when the subject-matter of the application or petition relates exclusively to such engagement one rupee and fifty naye paise and in other cases one rupee.
	(d) When presented to a Chief Commissioner or other Chief Controlling Revenue or Executive Authority, or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a Division and not otherwise provided for by this Act.	Three rupees.
	(e) When presented to a High Court.	Six rupees.
	(f) When presented to any officer containing prayer for settlement of fishery, ferry, forest produce, forest mahals, elephant mahals, or an offer giving terms for acceptance of Government for any construction or an application for a permit or license to deal in controlled commodities.	Seven rupees and fifty naye paise.
	(g) When presented to an Appropriate Revenue Authority for demarcation of land—	
	(i) When the area of such land does not exceed one hectare;	Two rupees.
	(ii) for each subsequent area of one hectare or part thereof.	One rupee.

—Assam Act 8 of 1963, S. 2 (2) [1-4-1963] : Act 27 of 1962, S. 26 [w. e. f. 1-12-1963].

Bihar

(1) "Fifteen naye paise", "Seventy-five naye paise", "One rupee and fifty naye paise" and "Three rupees" were respectively *substituted* for "One anna", "Eight annas", "One rupee" and "Two rupees" as proper fee shown against the article.—Bihar and Orissa Act II of 1922 and Bihar Act VII of 1958, S. 4 [1-4-1958].

(2) For surcharge *see* Bihar Act XXV of 1948; for text of this Act as amended, *see* Appendix I,

Delhi

Same as that Punjab with the modification that in Col. 2, Para. 3, for the words 'Municipal Commissioner' *substitute* "Municipality or any other local authority."

—*See* G. S. R. 842,Gaz. Ind. 1959, Pt. II, S. 3, p. 1039 [w. e. f. 1-8-1959] : Act 28 of 1967, S. 3 [16-12-1967].

Madhya Pradesh:

Number		Proper Fee
“1. Application or petition :—	(a) When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings; or when presented to any officer of land revenue by any person holding temporarily settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement; or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement; or when presented to any Civil Court other than a principal Civil Court of original jurisdiction or to any Court of Small Causes constituted under the Provincial Small Causes Courts Act, 1887, or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees; or when presented to any Civil, Criminal or Revenue Court, or to any Board or Executive Officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or Officer, or of any other document on record in such Court or Office·	Twenty-five paise.
	or when presented to any Officer of the Forest Department not lower in rank than the Divisional Forest Officer and not otherwise provided for in this Act;	One rupee.
	(b) When containing a complaint or charge of any offence other than an offence for which police officers may under the Code of Criminal Procedure, 1898 (V of 1898), arrest without warrant, and presented to any Criminal Court;	Two rupees.
	or for orders of arrest or attachment before judgment or for temporary injunctoins;	Three rupees and fifty paise.
	or for compensation for arrest or attachment before judgment or in respect of a temporary injunction obtained on insufficient grounds;	Three rupees and fifty paise.
	or for the appointment of a Receiver in a case in which the applicant has no present right of possession of the properties in dispute;	Ten rupees.
	or for setting aside decrees passed ex parte and for review of orders dismissing suits for default;	Two rupees
	or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any Revenue Officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity and not otherwise provided for by this Act;	Two rupees
	or to deposit in Court, revenue or rent;	One rupee fifty paise.
	or for determination by a Court of the amount of compensation to be paid by landlord to his tenant.	Sixty Naye Paise.
	(c) When presented to a Commissioner of Revenue or to any Chief Officer charged with the executive administration of a division, and not otherwise provided for by this Act.	Two rupees, fifty paise.
	(d) When presented to a Chief Controlling Revenue Authority or Executive Authority not otherwise provided for by this Act.	Three rupees and fifty paise.
	(e) When presented to the High Court— (i) otherwise than— (a) under Article 226 of the Constitution of India; (b) under Section 25 of the Provincial Small Cause Courts Act, 1887 (IX of 1887); (c) under Section 115 of the Code of Civil Procedure, 1908 (V of 1908);	Three rupees and fifty paise.

(d) under Section 64 of the Estate Duty Act, 1953 (34 of 1953);	
(e) under Section 27 of the Wealth-Tax Act, 1957 (27 of 1957);	
(f) under Section 26 of the Gift Tax Act, 1958 (18 of 1958);	
(g) under Section 256 of the Income Tax Act, 1961 (43 of 1961);	
(h) under Section 44 of Madhya Pradesh General Sales Act, 1958 (2 of 1959);	
(i) under Section 45B (1) of the Banking Companies Act, 1949 (X of 1949).	
(ii) Under Article 226 of the Constitution of India;	Twenty-five rupees.
(iii) under Section 25 of Provincial Small Cause Courts Act, 1887 (IX of 1887);	Seven rupees and fifty paise.
(iv) under Section 115 of the Civil Procedure Code, 1908 (V of 1908);	Seven rupees and fifty paise.
(v) under Section 64 of Estate Duty Act, 1953 (34 of 1953);	Seventy-five rupees.
(vi) under Section 27 of the Wealth-Tax Act, 1957 (27 of 1957);	Seventy-five rupees.
(vii) under Section 26 of the Gift Tax Act, 1958 (18 of 1958);	Seventy-five rupees.
(viii) under Section 256 of the Income Tax Act, 1961 (43 of 1961);	Seventy-five rupees.
(ix) under section 44 of the Madhya Pradesh General Sales Tax Act, 1958 (2 of 1959).	Thirty rupees.
(x) under section 45B (1) of the Banking Companies Act, 1949 (X of 1949) in respect of any claim, counter-claim or set-off—	
(a) when the amount or value does not exceed two thousand and five hundred rupees .	Twenty rupee
(b) when the amount or value exceeds two thousand and five hundred rupees, but does not exceed ten thousand rupees,	Forty rupees.
(c) when the amount or value exceeds ten thousand rupees;	Sixty rupees.
f) When presented to the High Court by way of appeal or revision –	
(i) otherwise than—	
(a) under S. 25 of the Provincial Small Cause Courts Act, 1887 (IX of 1887)	Seven rupees and fifty paise.
(b) under S. 115 of the Code of Civil Procedure, 1908 (V of 1908).	
(c) under S. 45-B (2) of the Banking Companies Act, 1949 (X of 1949):	
(ii) under S. 45-B (2) of the Banking Companies Act, 1949 (X of 1949) –	
(a) when the amount or value does not exceed two thousand and five hundred rupees:	Forty-five rupees.
(b) when the amount or value exceeds two thousand and five hundred rupees but does not exceed ten thousand rupees,	Ninety rupees.
(c) when the amount or value exceeds ten thousand rupees:	One hundred and fifty rupees.
(g) When presented by way of appeal or revision to a Criminal Court other than the High Court;	Three rupees.
—M. P. Act XII of 1966, S. 3	[1-4-1966.]

Orissa

(a) In the third column opposite clause (a) for the words "one anna" the words "ten naye paise" were *substituted.*

(b) In the third column opposite clause (b) for the words "eight annas" the words "in the case of a criminal complaint and appeal one rupee and in other cases seventy-five naye paise" were *substituted.*

(c) In the third column opposite clause (c) for the words "one rupee" the words" one rupee fifty naye paise" were *substituted.*

(d) In the second and third columns for clause (d) and the words opposite the said clause the following was *substituted* :

"*(d)* (i) When presented to a High Court under S. 115 of the Code of Civil procedure, 1908 for revision of an order—

(a) When the value of the suit or proceedings to which the order relates does not exceed one thousand rupees.	Five rupees.
(b) When the value of the suit or proceeding exceeds one thousand rupees.	Ten rupees.
(ii) When presented to the High Court otherwise than under that section.	Two rupees."

- Orissa Acts 5 of 1939 [31-10-1939] and 16 of 1958, S. 2.

(e) For surcharge *see* Orissa Act 20 of 1947; for text of this Act as amended, *see* Appendix I.

Punjab: Haryana: Chandigarh.

(1) For the words "one anna" in the third column opposite clause (a) in the second column the words "Forty naye paise" were *substituted*.

(2) For the words "eight annas" in the third column opposite clauses (b) and (c) in the second column the words "One rupee twenty-five naye paise" were *substituted*.

(3) For clause (d) in the second column and the corresponding entry in the third column the following clause and entry were *substituted*, viz.,

"*(d)* When presented to the High Court

(i) under the Indian Companies Act 1956, for winding up a company	Two hundred and sixty rupees.
(ii) under the same Act for taking some other judicial action.	Thirteen rupees.
(ii-A) under Article 226 of the Constitution of India other than petitions for habeas corpus and petitions arising out of criminal proceedings;	Fifty rupees.
(iii) in all other cases ,	Two rupees sixty-five naye paise."

—Punjab Acts 14 of 1958, S. 4. [25-4-1958.] and 20 of 1960, S. 3. [13-5-1960]; Act 31 of 1966, S. 88 [1-11-1966.]

Uttar Pradesh.

(1) For the word "one anna's' "eight anna" and "one rupee" in third column the words "fifty naye paise," "one rupee twenty-five naye paise" and "Two rupees fifty naye paise" were respectively *substituted* : against clause (b) for the words 'one rupee twenty-five naye paise wherever they occur words 'one rupee fifty naye paise' shall be *substituted* similarly against clause (e), for the words 'two rupees fifty naye paise,' words "Three rupees shall be *substituted* and in clause (f), for the words "two rupees fifty naye paise" and 'five rupees,' words "five rupees" and "ten rupees" shall be *substituted* respectively. *See* U. P. Act XIV of 1963, S. 2 (a). [25-5-1963]

(2) The following was *substituted* for cl. (d) in the second column and the entry against the same in the third column :

"*(d)* When presented to the Board of Revenue for revision of a judgment or order	Five rupees.
(e) When presented to a High Court -	
(1) under the Companies Act, 1956, for the winding up a company;	One hundred rupees.
(2) under Art. 226 of the Constitution not being for a writ in the nature of Habeas Corpus, or under Art. 227 of the Constitution ;	Fifty rupees.
(3) for probate or letters of administration to have effect throughout India ;	Twenty-five rupees.
(4) under S. 115 of the Code of Civil Procedure, 1908, for revision of an order ;	Ten rupees.
(5) in any other case not otherwise provided for ;	Five rupees.
(f) When presented under Ch. IV of the Motor Vehicles Act, 1939,	
(i) to a Regional Transport Authority or its Chairman or Secretary	Two rupees and fifty naye paise.
(ii) to the Provincial Transport Authority or its Chairman or Secretary	Five rupees.

—U. P. Act 2 of 1936 [2-4-1936] and U. P. Acts 9 of 1941 [19-6-1941] to U. P. Act 44 of 1958, S. 4 [1-4-1959.]

(3) From Art. 1 (a) the clause "when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the

application or petition relates solely to such conservancy or improvement" was *omitted* and in its place the following new clause was *inserted*, viz.

"when presented to the District Magistrate or any other officer for the correction of an electoral roll."

(4) In Art. 1 (b) the words "other than an offence for which police-officer may under the Code of Criminal Procedure arrest without warrant" were *deleted* from the first paragraph and the following paragraphs were *inserted* between the first and second paragraphs :

"or when presented to a Collector containing a request from a local body such as the Municipal Board, the District Board or the Notified Area Committee for the realisation of any dues by issue of warrant or by other distress :

or when presented to a District Magistrate for permission to have displays of fire works, or for a police escort :

or when presented to a District Magistrate in the form of a programme or in any other form for the exhibition of a film at a shorter notice than that permitted by the conditions of the licence issued to cinema companies for exhibiting films;

or when presented to a District Magistrate or Collector or any officer subordinate to him, under the Village Panchayat Act, the Indian Arms Act, the Poisons Act, the Explosives Act, the Stage Carriage Act, the Indian Cinematograph Act or any other enactment for the time being in force, unless specifically exempted from payment of court-fee"

—U. P. Act 19 of 1938 [9-1-1939.]

West Bengal

In clause (a) after the words "Municipal Commissioner" in the third entry in the second column, the words "or member of a District Board" were *inserted*. For the words "two annas" wherever they occur, the words "Fifteen paise" were *substituted*. For the words "twelve annas" opposite clause *(b)* in the second column, the following was *substituted*, viz., "In the case of a complaint or charge of an offence presented to a Criminal Court, one rupee and in other cases seventy five paise ;" For the words "one rupee opposite clause *(c)* in the second column the words "one rupee and fifty paise" were *substituted*. For clause *(d)* in the second column and for the entries opposite that clause in the third column the following clause and entries were *substituted* :

"*(d)* *(i)* When presented to the High Court under S. 115 of the Code of Civil Procedure, 1908, for revision of an order

(a) When the value of the suit to which the order relates does not exceed Rs. 1,000.	Five rupees.
(b) When the value of the suit exceeds Rs. 1,000.	Ten rupees.
(ii) When presented to the High Court otherwise than under that section.	Two rupees.

—Bengal Act 4 of 1922. [22-3-1922] and Court-fees (W. B. Amendment) Act (Presi. Act 7 of 1968). [26-3-1968.]

*[1A. Application to any Civil Court that records may be called for from another Court.	When the Court grants the application and is of opinion that the transmission of such records involves the use of the post.	Twelve annas in addition to any fee levied on the application under clause *(a)*, clause *(b)* or clause *(d)* of Article 1 of this Schedule.]

**Inserted* by the Court-fees (Amendment) Act, 1911 (14 of 1911), S. 2.

STATE AMENDMENTS

Assam : Nagaland

For column three *substitute* the following, viz: "One rupee and fifty naye paise in addition to any fee levied on the application under clause *(a)*, clause *(c)* or clause (e) of Article 1 of this Schedule."

—Assam Act 8 of 1963, S. 2 (2). [1-4-1963.] : Act 27 of 1962, S. 26. [w.e.f. 1-12-1963.]

Bihar

(1) The entry "one rupee in addition to any fee levied on the application under clause *(a)*, clause *(b)* or clause *(d)* of Article 1 of this Schedule" was *substituted* for the entry "twelve annas in addition to any fee levied on the application under clause *(a)*, clause *(b)* or clause *(d)* of Article 1 of this Schedule" as proper fees shown against the article.

—Bihar and Orissa Act 2 of 1922. [21-8-1922.]

(2) For surcharge *see* Bihar Act 25 of 1948; for text of this Act as amended, *see* Appendix.I.

Madhya Pradesh

For the words "twelve annas" in the third column *substitute* the words 'one rupee.'

—M. P. Act 12 of 1966, S. 3 [w. e. f. 1-4-1966.]

Manipur and Tripura

Same as that of Assam —*See* G. S. Rs. 1119-1120, Gaz. Ind., 1-7-1963, Pt. II, S. 3 (i) Ext., pp. 501-531 [w. e. f. 15-7-1963.]

Orissa

(1) In the third column for the words "twelve annas" the words "one rupee" were *substituted*.

—Orissa Act 5 of 1939. [31-10-1939.]

(2) For surcharge *see* Orissa Act 20 of 1947; for text of this Act as amended, *see* AppendixI.

Punjab: Haryana: Chandigarh: Delhi

For the words "Twelve annas" in the third column *substitute* the words "One rupee.'

—Punj. Act 14 of 1958, S. 4. [25-4-1958] : Act 31 of 1966, S. 88 [1-11-1966] & G. S. R. 842, Gaz. Ind. 1959, Pt. II, S. 3 (i), p. 1039. [1-8-1959.]

Uttar Pradesh

For the words "Twelve annas" and letter 'd' in the third column *sustitute* the words "One rupee fifty Naye Paise" and letter 'e' respectively.

—U. P. Acts 2 of 1936; 14 of 1948; 25 of 1952 and 20 of 1958.

West Bengal

In Art. 1A, for the words "twelve annas" *substitute* the words "seventy five naye paise."

—Court-fees (W. B. Amendment) Act (Presi. Act 7 of 1968).

2. Application for leave to sue as a pauper.	...	Eight annas.

STATE AMENDMENTS

Assam : Nagaland

In Col. 3, for the words 'eight annas,' *substitute* the words 'One rupee.'

—Assam Act 8 of 1963, S. 2 (2). [1-4-1963] : Act 27 of 1962, S. 26 [w. e. f. 1-12-1963.]

Bihar

For surcharge *see* Bihar Act 25 of 1948; for text of this Act as amended, *see* Appendix I.

Madhya Pradesh

For "Eight annas" in the third column *substitute* "Sixty Paise."

—M. P. Act 12 of 1966, S. 3. [1-4-1966.]

Manipur and Tripura

Same as that of Assam —*See* G. S. Rs. 1119-1120, Gaz. Ind., 1-7-1963, Pt. II, S. 3 (i), Ext., pp. 501-531 [w. e. f. 15-7-1963.]

Orissa

For surcharge *see* Orissa Act 20 of 1947; for text of this Act as amended, *see* Appendix I.

Punjab : Haryana : Chandigarh Delhi :

For "Eight annas" in the third column *substitute* "One rupee twenty-five Naye Paise."

—Punj. Act 14 of 1958, S. 4. [25-4-1958.] : Act 31 of 1966, S. 88. [1-11-1966] and G S.R. 842, Gaz. Ind., 1959, Pt. II, S. 3 (i), p. 1039 [w. e. f. 15-7-63.]

Uttar Pradesh

For "Eight annas" in the third column *substitute* "Seventy-five Naye Paise."

—U. P. Acts 14 of 1948; 25 of 1952; 20 of 1958.

West Bengal

For the words "Eight annas" wherever they occur *substitute* "Fifty paise."

—Court-fees (W. B. Amendment) Act (Presi. Act 7 of 1968)

3. Application for leave to appeal as a pauper.	*(a)* When presented to a District Court.	One rupee.
	(b) When presented to a Commissioner or a High Court.	Two rupees.

STATE AMENDMENTS

Assam : Nagaland

In column three for "one rupee" *svbstitute* "Two rupees" and for "Two rupees" *substitute* "Three rupees."

—Assam Act 8 of 1963, S. 2 (2). [1-4-1963] : Act 27 of 1962, S. 26 [w.e.f. 1-12-1963.]

Bihar

For surcharge *see* Bihar Act 25 of 1948; for text of this Act as amended, *see* Appendix I.

Madhya Pradesh

For the words "One rupee" and "Two rupees" in the third column *substitute* the words "One rupee and thirty Paise" and "Two rupees and sixty Paise" respectively.

—M. P. Act 12 of 1966, S. 3. [1-4-66.]

Manipur: Tripura

Same as that of Assam -G.S.Rs. 1119-1120, Gaz. Ind., 1-7-1963, Pt. II, S. 3 (i), Ext. pp. 501, 531, [15-7-1963.]

Orissa

For surcharge *see* Orissa Act 20 of 1947; for text of this Act as amended, *see* Appendix I

Punjab : Haryana : Chandigarh : Delhi

For the words "One rupee" and "Two rupees" in the column *substitute* the words "One rupee twenty-five Naye Paise" and "Two rupees sixty-five Naye Paise" respectively.

– Punj. Act 14 of 1958, S. 4. [25-4-1958.] : Act 31 of 1966, S. 88. [1-11-1966] & G.S.R. 842, Gaz. Ind., 1959, Pt. II, S. 3 (i), p. 1039. [15-7-1963].

Uttar Pradesh

For the words "One rupee" and "Two rupees" in the third column *substitute* the words "One rupee and twenty-five Naye Paise" and "Two rupees and fifty Naye Paise" respectively

—U. P. Acts 14 of 1948 and 20 of 1958, S. 5 (iv).

4. Plaint or memorandum of appeal in a suit to obtain possession under *Act No. 16 of 1838, or †[the ‡Mamlatdars' Courts Act, 1876.]	...	Eight annas.

* The Bombay Courts of Adalat Act, 1838. †*Substituted* for "Bombay Act 5 of 1864 (to give Mamlatdars' Courts jurisdiction in certain cases to maintain existing possession, or to restore possession to any party dispossessed otherwise than by course of law)." by the Amending Act, 1891 (12 of 1891). ‡ *See* now the Mamlatdars' Courts Act, 1906 (Bom. 2 of 1906.)

STATE AMENDMENTS

Bihar

For surcharge *see* Bihar Act 25 of 1948; for text of this Act as amended, *see* Appendix

Delhi

Same as that of Punjab. —G.S.R. 842, Gaz. Ind. 1959, Pt. II, S. 3 (i). [w.e.f. 1-8-1959].

Orissa

For surcharge *see* Orissa Act 20 of 1947; for text of this Act as amended, *see* Appendix I.

Punjab : Haryana : Chandigarh

For "Eight annas" in the third column *substitute* "One rupee four annas."

– Punj. Act 19 of 1957, S. 5 [13-7-1957] : Act 31 of 1966, S. 88 [1-11-1966.]

Uttar Pradesh

For the words "Eight annas" in the third column *substitute* "Seventy-five Naye Paise."

– U. P. Acts 14 of 1948; 25 of 1952 and 20 of 1958, S. 5 (v).

West Bengal

For the words "Eight annas" *substitute* the words "Fifty Paise."

- Court-fees (W. B. Amendment) Act (Presi. Act 7 of 1966) [26-3-1968.]

5. Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.	...	Eight annas.

Schedule II, Article 5 — Note 1

(1) Expression "right of occupancy" in this article did not mean right of mere tenant. (1902) 1 Low Bur Rul 303 (308) (SB).

(2) Expression "right of occupancy" in this article cannot be read as synonymous with "right of occupancy" under any of Acts relating to landlord and tenant. AIR 1934 Cal 674 (677) = 61 Cal 513.

(3) Right of occupancy ryot is occupancy right within meaning of this article. AIR 1934 Cal 674 (677) = 61 Cal 513 ** (1908) 31 Mad 14 (16) ** (1882) 11 Cal LR 91 (94).

(4) Suit for declaration that person has occupancy rights in holding is governed not by Art. 17 (iii) of Sch. II but by this article. AIR 1918 All 228 (228) = 40 All 538.

STATE AMENDMENTS

Assam : Nagaland

In column three for the words "Eight annas" *substitute* the words "One rupee."

—Assam Act 8 of 1963, S. 2 (2) [1-4-1963]; Act 27 of 1962, S. 26 [w. e. f. 1-12-1963.]

Bihar

(1) After the words "memorandum of appeal" the words "or of cross-objection" were *inserted* in the first column - Bihar and Orissa Act II of 1922 [21-8-1922.]

(2) For surcharge *see* Bihar Act XXV of 1948; for text of this Act as amended, *see* Appendix I.

Madhya Pradesh

For "Eight annas" in the third column *substitute* "Sixty Paise."

—M. P. Act XII of 1966, S. 3 [1-4-1966.]

Punjab : Haryana : Chandigarh : Delhi

For "Eight annas" in the third column *substitute* "One rupee twenty-five Naye Paise."

—Punj. Act XIV of 1958, S. 4 [25-4-1958]; Act 31 of 1966, S. 88 [1-11-1966] & G. S. R. 842, Gaz. Ind., 1959, Pt. II, S. 3 (1), p. 1039 [w. e. f. 1-8-1959.]

Uttar Pradesh

For "Eight annas" in the third column *substitute* "Two rupees."

--[U. P. Act XLIV of 1958, S. 4 [1-4-1959.]

West Bengal

For the words "Eight annas" *substitute* the words "Fifty Paise."

—Court-fees (W. B. Amendment) Act (Presi. Act 7 of 1966) [26-3-1966.]

*[6. Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1898, or the Code of Civil Procedure, 1908 and not otherwise provided for by this Act]	...	Eight annas.

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* *Substituted* by the Second Repealing and Amending Act, 1914 (17 of 1914), S. 2.

Schedule II, Article 5 — Note 1 (contd.)

(5) Suit to establish right of occupancy and for recovery of possession — This article will not apply. AIR 1931 Cal 333 (335).

(6) This article applies in terms to memorandum of appeal in suit of kind mentioned therein. AIR 1918 All 228 (228) = 40 All 358.

(7) (Orissa amendment) — Suit for recovery of land over which occupancy rights were claimed by the plaintiff against defendant zamindars claiming to be in khas possession — Proceedings under Section 145, Cr. P. C. ending in defendants' favour — Vesting of land in the State under Orissa Estates Land Abolition Act — Court-fees must be paid on market value of land as the suit was against zamindars who became trespassers after the land vested in the State. The suit could not be treated as one between tenant and landlord and hence Section 7 (xi) (e) did not apply. AIR 1969 Orissa 140 (140, 141).

(8) Suit for ejectment of licensee falls under Section 7 (v). Section 7 (xi) (cc) governs suits between landlord and tenant only. Art. 5, Sch. II also does not apply as no question of tenancy is involved. AIR 1960 Tripura 7 (7).

(9) No right of occupancy involved in suit — Suit for declaration and recovery of possession — Not Sch. II, Art. 5 but Section 7 (4) (c) applies — Plaintiff held entitled to value suit as he liked under Section 7 (4) (c). AIR 1968 Tripura 11 (23).

Schedule II, Article 6 — Note 1

(1) Bond given under Guardians and Wards Act does not fall under Civil P. C. or Criminal P. C. and is not chargeable with any court-fee under this article. AIR 1940 Bom 275 (275) (SB). (Bond falls under Sch. I, Art. 57, Stamp Act.)

(2) Security bonds given under the following sections of Civil P. C., fall under this article and are chargeable with court-fee of eight annas:

- (a) Section 55 (4). AIR 1933 Lah 89 (90) = 14 Lah 284 (SB).
- (b) O. 32, R. 6 (2). AIR 1929 Lah 205 (205) ** AIR 1925 Cal 906 (907) = 53 Cal 101 (FB). (**Overruling** AIR 1918 Cal 125 (DB).)
- (c) O. 40, R. 3. AIR 1920 Mad 939 (940) = 43 Mad 363 (FB). (It is also chargeable with stamp-duty under Art. 40 of Sch. I, Stamp Act.)
- (d) O. 41, R. 5 or R. 6. AIR 1936 Sind 41 (41) = 30 Sind LR 1 (DB) ** AIR 1947 Nag 26 (31) = ILR (1946) Nag 49 ** AIR 1934 Lah

STATE AMENDMENTS

Assam : Nagaland

In column three, for the words "Eight annas" *substitute* the words "One rupee."
— Assam Act 8 of 1963, S. 2 (2) [1-4 1963]; Act 27 of 1962, S. 23 [w. e. f. 10-12-1963.]

Bihar

For surcharge *see* Bihar Act XXV of 1948; for text of this Act as amended, *see* Appendix I.

Madhya Pradesh

For the words "Eight annas" in the third column *substitute* the words "One rupee."
- M. P. Act XII of 1966, S. 3 [1-4-1966.]

Manipur and Tripura

Same as that of Assam — *See* G. S. Rs. 1119-1120, Gaz. Ind., 1-7-63, Pt. II, S. 3 (i) Ext., pp. 501-531 [w. e. f. 15-7-63.]

Orissa

For surcharge *see* Orissa Act XX of 1947; for text of this Act as amended, *see* Appendix I.

Punjab : Haryana : Chandigarh : Delhi

For the words "Eight annas" in the third column *substitute* the words 'Sixty-five naye paise." - Punj. Act XIV of 1958, S. 4 [25-4-1958]; Act 31 of 1966, S. 88 [1-11-1966];
G. S. R. 842, Gaz. Ind. 1959, Pt. II, S. 3 (i) p. 1039 [w. e. f. 1-8-1959.]

Uttar Pradesh

For the words "Eight annas" in the third column *substitute* the words "One rupee."
—U. P. Act XXV of 1952 S. 7 [1-11-1952.]

West Bengal

For the words "Eight annas" *substitute* the words "Fifty paise."
— Court-fees (W. B Amendment) Act (Presi. Act 7 of 1968)

7. Undertaking under section 49 of the Indian Divorce Act.	...	Eight annas.

STATE AMENDMENTS

Assam : Nagaland

In column three, for the words "Eight annas" *substitute* "One rupee."
—Assam Act 8 of 1963, S. 2 (2) [1-4-1963]; Act 27 of 1962 S. 26 [1-12-1963.]

Bihar

For surcharge *see* Bihar Act 25 of 1948, for text of this Act as amended, *see* Appendix I.

Madhya Pradesh

For the words "Eight annas" in the third column *substitute* the words "Sixty paise."
— M. P Act XII of 1966, S 3 [1-4-1966.]

Manipur and Tripura

Same as that of Assam — *See* G. S. Rs. 1119-1120, Gaz Ind., 1-7-63, Pt. II, S 3 (i), Ext., pp. 501-531 [w. e. f. 15-7-63.]

Orissa

For surcharge *see* Orissa Act 20 of 1947; for text of this Act as amended, *see* Appendix I.

Punjab : Haryana : Chandigarh : Delhi

For the words 'Eight annas" in the third column *substitute* the words 'One rupee twenty-five naye paise."
– Punj. Act 14 of 1958, S. 4 [25-4-1958]; Act 31 of 1966, S. 88 [1-11-1966] and G. S. R. 842, Gaz. Ind. 1959, Pt. II, S. 3 (i), p. 1039 [w. e. f. 1-8-1959].

Schedule II, Article 6 — Note 1 (contd.)

228 (229) = 14 Lah 708 (DB) ** AIR 1929 Lah 205 (205).
[But see AIR 1925 Lah 562 (554).]
(e) O. 41, R. 10. ('89) 11 All 16 (17) (FB).

(3) Security bond executed in claim case on release of attached animals in accordance with rules framed under Civil P. C., is bond given in pursuance of order of Court under Civil P. C., and must bear court-fee stamp under this article. AIR 1923 Cal 269 (269, 270) = 49 Cal 997 (DB) ** AIR 1914 Mad 652 (654) = 37 Mad 17 (FB).

(4) Security bond taken by Village Court under Section 53, Madras Village Courts Act (1 of 1889) is not bond under Civil P. C. AIR 1927 Mad 377 (377) (FB).

(5) Security bond executed under Civil P. C., and coming under this article, is also chargeable under Art. 40 or Art. 57, Sch. I of Stamp Act, unless it falls under residuary Art. 15, Sch. I of that Act. AIR 1929 Lah 205 (205) ** AIR 1925 Cal 906 (907) = 53 Cal 101 (FB) ** AIR 1920 Mad 939 (940) = 43 Mad 363.
[See also (1953) 2 Mad LJ 692 (695) (DB).]

(6) Security bond given under Court's order under Section 17, Provincial Small Cause Courts Act, IX of 1887, to have ex parte decree set aside, must be deemed to be one given under Civil P. C., and is governed by this article. AIR 1935 Mad 380 (382) = 58 Mad 687 (FB).
[But see AIR 1956 Cal 375 (376) (DB) ** 1897 Bom PJ 167 (SB).]

Uttar Pradesh

For the words "Eight annas" in the third column *substitute* the words "One rupee."

—U. P. Act 25 of 1952 S. 7 [1-11-1952]

West Bengal

For the words "Eight annas" in the third column, *substitute* the words "Fifty paise."

—Court-fees (W. B. Amendment) Act (Presi. Act 7 of 1968) [26.3-1968.]

8. *[Repealed by the Repealing and Amending Act, 1891 (12 of 1891).]*

9. *[Repealed by the Repealing and Amending Act 1891 (12 of 1891).]*

10. Mukhtarnama or Vakalatnama.	When presented for the conduct of any one case— (*a*) to any Civil or Criminal Court other than a High Court, or to any Revenue Court, or to any Collector or Magistrate, or other executive officer except such as are mentioned in clauses (*b*) and (*c*) of this Number.	Eight annas.
	(*b*) to a Commissioner of Revenue, Circuit or Customs, or to any officer charged with the executive administration of a Division, not being the Chief Revenue or Executive Authority.	One rupee.
	(*c*) to a High Court, Chief Commissioner, Board of Revenue, or other Chief Controlling Revenue or Executive Authority.	Two rupees.

Schedule II, Article 10 — Note 1

(1) Documents specified in this article are documents which it was intended to exclude from definition of power-of-attorney in Section 2 (21), Stamp Act. 1912 Pun LR No. 202 page 647 (648) (FB) ** (1911) 33 All 487 (489) (FB).

(2) Mukhtar is attorney, whether appointed specially or generally or certificated as legal practitioner, and mukhtarnama is document which empowers holder to act for person by or on whose behalf document is executed. 1912 Pun LR No. 202, page 647 (648) (FB).

(3) This article does not apply to mukhtarnama executed in favour of person who is not certificated mukhtar. (1911) 33 All 487 (489, 490) (FB) ** (1886) 9 Mad 358 (358, 359) (FB).

[But see 1912 Pun LR No. 202, p. 647 (648) (FB).]

(4) Word "vakalatnama" relates to power filed by pleader, under O. 3, R. 4 of Civil P. C. to conduct case on behalf of suitor irrespective of class to which legal practitioner belongs. AIR 1926 Pat 246 (249) = 5 Pat 255. (Vakalatnama filed by an Advocate whether barrister or not comes under Art. 10 of Sch. II.)

(5) Vakalatnama is a kind of power-of-attorney. AIR 1937 Nag 65 (66) = ILR (1937) Nag 494 ** AIR 1934 Bom 299 (302) = 58 Bom 597 (DB). (Art. 10, Sch. II does not apply to vakalatnama filed in Presidency Small Cause Court.)

(6) Vakalatnama to appear and act if fees were paid in advance, is chargeable under this article and need not be stamped as agreement under Stamp Act. AIR 1936 Cal 814 (815) = ILR (1937) 1 Cal 461 (DB).

(7) A letter of appointment authorising Advocate to act and plead and to make or withdraw all deposits on behalf of his client, is chargeable with court-fee prescribed for vakalatnama under this article. AIR 1926 Pat 246 (248, 249) = 5 Pat 255.

(8) (As amended by U. P. Act (XLIV of 1958)) — Memorandum of appearance by standing counsel — Stamp duty payable is under Sch. II, Art. 10 as amended by U. P. Act (44 of 1958). AIR 1960 All 588 (589).

(9) Where a post-card authorising the pleader to file the appeal is stitched to a blank sheet of paper on which court-fee labels of the requisite amount are affixed the document constitutes a valid power of attorney so as to enable the pleader to file the appeal. AIR 1951 All 451 (Pr. 5).

(10) A "case" need not necessarily mean suit or judicial proceeding, but

STATE AMENDMENTS

Andaman and Nicobar

For the words 'Eight annas" and "one rupee" in the third column *substitute* the words "One rupee" and One rupee fifty naye paise" respectively.—Reg II of 1957 [1-8-1957]

Assam : Nagaland

For Art. 10 *substitute* the following :

"10 Mukhtarnama or Wakalatnama.	When presented for the conduct of any one case—	
	(a) to any Civil or Criminal Court other than a High Court, or to any Revenue Court or to any Collector or Magistrate, or other executive officer except such as are mentioned in clauses (b) and (c) of this Number;	One rupee.
	(b) to a Commissioner of Revenue, Circuit or Customs, or to any officer charged with the executive administration of a Division not being the Chief Revenue or Executive Authority;	Two rupees and fifty naye paise
	(c) to a High Court, Chief Commissioner, Board of Revenue, or other Chief Controlling Revenue or Executive Authority or/an appellate authority prescribed under the Motor Vehicles Act, 1939 or to an appellate authority prescribed under the Assam Sales Tax Act, 1947.	Five rupees."

—Assam Act VIII of 1963, S. 2 [w. e. f 1-4-1963],
Act 27 of 1962, S. 26 [w e f. 1-12-1963].

Bihar

(1) Words "one rupee", "two rupees" "three rupees" were respectively *substituted* for "eight annas", "one rupee", "two rupees" as proper fees shown against the article. Bihar and Orissa Act II of 1922. [21-8-1922.]

(2) For surcharge *see* Bihar Act 25 of 1948; for text of this Act as amended, *see* Appendix I.

Delhi

Same as that of Punjab —*See* G. S. R. 842, Gaz. Ind., 1959, Pt. II, S. 3 (i), p. 1039. [w.e.f. 1 8-1959.]

Madhya Pradesh

For Art. 10 *substitute* the following : —

"10. Mukhtarnama or, Wakalatnama.	When presented for the conduct of any one case to—	
	(a) any Civil or Criminal Court other than a High Court, any Collector or Magistrate or other executive officer except such as are mentioned in clauses (b) and (c) below	One rupee. fifty paise
	(b) Commissioner of Revenue or to any officer charged with executive administration of a Division not being the Chief Revenue or Executive authority;	Three rupees.
	(c) Board of Revenue or Chief executive authority;	Five rupees.
	(d) the High Court;	Five rupees.
	(e) the Government.	Five rupees".

—M. P. Act XII of 1966, S. 3 [w.e.f. 1-4-1966.]

Schedule II, Article 10 — Note 1 (contd.) would include any petition or application to Court or officer. (1886) 9 Mad 146 (148) (FB).

(11) Word "case" must be confined to judicial cases or quasi judicial cases as opposed to transactions. 1912 Pun LR No. 202, page 647 (648) (FB).

(12) Where a criminal case is transferred from one Magistrate to another Magistrate it cannot be said that the case is not one in which the vakalat was originally filed and hence no fresh vakalat is necessary for conduct of the case in the Court of the Magistrate to whom the case is transferred. AIR 1956 Trav Co 110 (Pr. 2) = ILR (1955) Trav-Co 989 = 1956 Cri L Jour 421 (1).

(13) This article does not make it necessary that mukhtarnama or vakalatnama must be filed in criminal cases. AIR 1926 Pat 296 (298) = 27 Cri L Jour 666 (DB).

(14) Court has no inherent power to consolidate appeals in cases disposed of by single judgment so as to enable appellant to pay court-fee on value of consolidated appeals and file only one vakalatnama. AIR 1930 Mad 376 (381) = 53 Mad 248 (FB). (AIR 1928 Mad 463, **Overruled.**)

(15) Several revisions from one judgment against common respondents cannot be consolidated for purposes of vakalat and process fee. AIR 1930 Mad 381 (382) = 53 Mad 262 (FB).

Manipur and Tripura

Same as that of Assam — *See* G. S. Rs. 1119-1120, Gaz. Ind., 1-7-1963, Pt. II, S. 3 (i), Ext., pp. 501-531. [w.e.f. 15-7-1963.]

Orissa

(1) In the third column the words "one rupee", "two rupees", and "three rupees" were respectively *substituted* for the words "eight annas" "one rupee" and "two rupees". — Orissa Act V of 1939. [31-10-1939.]

(2) For surcharge *see* Orissa Act 20 of 1947; for text of this Act as amended, *see* Appendix I.

Pondicherry

Same as that of Andaman and Nicobar — *See* Act 26 of 1968, S. 3, Sch., Pt. II. [18-12-1968.]

Punjab : Haryana : Chandigarh

For the words "Eight annas", "One rupee" and "Two rupees" in the third column *substitute* the words "One rupee twenty-five naye paise", "One rupee twenty-five naye paise" and "Two rupees sixty-five naye paise" respectively. –Punj. Act 14 of 1958, S. 4. [25-4-1958]: Act 31 of 1966, S. 88. [1-11-1966.]

Uttar Pradesh

(1) In the first column of Art. 10, for the words "Mukhtarnama or Vakalatnama" *substitute* the words "Mukhtarnama, Vakalatnama or any paper signed by an Advocate, Attorney and Pleader signifying or intimating that he is retained by a party".

(2) For the words "Eight annas", "One rupee" and "Two rupees" in the third column *substitute* the words "One rupee and fifty naye paise", "Three rupees" and "Five rupees" respectively.—U. P. Act 44 of 1958, S. 4 (v) [1-4-1959.]: U. P. Act 4 of 1961, S. 4 (1) [17-3-1961.]: U. P. Act XIV of 1963, S. 2 (b) [25-5-1963.]

West Bengal

For the words "one rupee eight annas" in the third column *substitute* the words "One rupee and fifty paise"—Court-fees (W. B. Amendment) Act (Presi. Act 7 of 1968) [26-3-1968.]

11. Memorandum of appeal when the appeal is not *[* * *] from a decree or an order having the force of a decree, and is presented—	(*a*) to any Civil Court other than a High Court, or to any Revenue Court or executive officer other than the High Court or Chief Controlling Revenue or Executive Authority,	Eight annas.
	(*b*) to a High Court or Chief Commissioner, or other Chief Controlling Executive or Revenue Authority.	Two rupees.

*The words "from an order rejecting a plaint or" were *omitted* by the Code of Civil Procedure, 1908 (Act 5 of 1908), S. 155 and Sch. IV.

SCHEDULE II, ARTICLE 11 — SYNOPSIS

1. "When the appeal is not from a decree or an order having the force of a decree."
2. Order rejecting plaint.
3. Order under Section 47, Civil P. C.
4. Order regarding restitution under Section 144, Civil P. C.
5. Order under O. 21, R. 50 (2), Civil P. C.
6. Final decree in mortgage suit.
7. Order under O. 34, R. 6, Civil P. C
8. Order of remand
9. Appeal against decree on award.
10. Order relating to compensation in land acquisition proceedings.
11. Order in probate proceedings.
12. Order relating to mesne profits.
13. Memorandum of cross-objections.
14. Orders under special and local Acts.

1. "When the appeal is not from a decree or an order having the force of a decree." — (1) The definition of "decree" in the Civil Procedure Code may be regarded as applicable for the purposes of this Act also. AIR 1938 All 50 (51) = ILR (1938) All 181 (DB).

[But see AIR 1938 Rang 141 (144) = 1938 Rang LR 72.]

(2) To have the force of a decree, the order must possess all the characteristics of decree. AIR 1938 All 50 (51) = ILR (1938) All 181 (DB) ** AIR 1946 Oudh 254 (255) = 21 Luck 444.

(3) An order which is appealable "as if it were a decree" is not the same as an order having the force of a decree. AIR 1941 Mad 639 (640) = ILR (1941) Mad 935 (DB).

(4) An order of the Court under the Civil Procedure Code, Sch. III, Paras 4 and 5 has the force of a decree. (See Sch. III, Para 6.) An appeal from such an order will not come under this article. (1885) 7 All 565 (567) (DB). ((1882) 4 Mad 420, **Dissented from.**)

STATE AMENDMENTS

Andaman and Nicobar

For Article 11, *substitute* the following:

"11. Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree, and is presented —	*(a) (i)* to any Revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority;	One rupee
	(ii) to any Civil Court other than a High Court;	One rupee.
	(b) to Chief Commissioner or other Chief Controlling Executive or Revenue Authority;	Two rupees
	(c) to a High Court;	Five rupees."

—Reg. II of 1957, [1-8-1957.]

Assam : Nagaland

For Article 11 *substitute* the following article:

"11. Memorandum of appeal when the appeal is not from a decree or order having the force of a decree, and is presented.—	*(a)* to any Civil Court other than a High Court, or to any Revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority except an authority specified in clause (b)	Three rupees.
	(b) to an Exeise Appellate Authority under Rule 340 of the Assam Excise Rules	Fifteen rupees
	(c) to a High Court or Chief Commissioner, or other Chief Controlling Executive or Revenue Authority except an authority specified in clause (d)	Ten rupees.
	(d) to an excise Appellate Authority under Rule 341 of the Assam Excise Rules	Fifty rupees
	(e) to a High Court in miscellaneous revenue matters except (f) below or to an Appellate Authority prescribed under the Motor Vehicles Act, 1939 and	Fifteen rupees.
	(f) to a High Court in appeal and revision matters arising out of settlement of fisheries;	Fifteen rupees.
	(i) when the bid money is below ten thousand rupees	Fifteen rupees.
	(ii) when the bid money is above ten thousand rupees but below twenty thousand rupees	Twenty-five rupees.
	(iii) when the bid money is above twenty thousand rupees	Thirty rupees."

—Assam Acts 8 of 1963, S. 2 (2) [1-4-1963]: Act 27 of 1962, S. 26 [w.e.f. 1-12-1963.]

Schedule II, Article 11 — Note 1 (contd.)

(5) The court-fee payable on a memorandum of appeal filed against an order on an application under Art. 226 of the Constitution is Rs. 2 under Sch. II, Art. 6 of the Travancore-Cochin Court-fees Act. AIR 1958 Ker 338 (339) = ILR (1958) Ker 870 (DB).

(6) (Madras Amendment) Expression "Order" is not used in its generic sense to include all orders including those deemed to have been included within the definition of decree under Section 2 (2) C. P. C. AIR 1968 Andh Pra 239 (244) = (1968) 2 Andh WR 301 (FB).

2. Order rejecting plaint. — (1) An appeal from an order rejecting a plaint will not be governed by this article. AIR 1929 Pat 615 (616, 617) (DB) ** AIR 1953 Raj 6 (Prs. 2, 3) = ILR (1952) 2 Raj 195 (DB) ** AIR 1927 Nag 100 (101) ** AIR 1921 Lah 43 (43) (DB) ** AIR 1968 Andh Pra 239 (244) = (1968) 2 Andh WR 301 (FB).

3. Order under Section 47, Civil P. C. —(1) Under Section 35, the various Provincial Governments have by notifications directed that the court-fee chargeable on appeals from orders under Section 47, Civil P. C., shall be limited to the fixed fee leviable under this article. AIR 1943 Pat 280 (280) = 22 Pat 278.

[See also (1) Calcutta High Court Civil Rules and Orders Vol. I, R. 688 (A) (3); (2) Madras Government Notification No. 358, dated 11th October 1921, (Fort St. George Gazette, pp. 1008, 1011); (3) Bombay Government Notification No. 590, dated 22nd September 1921. (Bombay Government Gazette, pp. 2271 to 2274); (4) U. P. Government Notification No. M 6001-X-501, dated 25th March 1942; (5) Government of India Notification No. 4344-S. R.. dated 6-10-1893) ** AIR 1954 Ajmer 10 (Pr. 2).]

(2) An order under O. 21, R. 63-H of the Civil P. C., as amended by the Patna High Court, has the force of a decree and is not one under Section 47 of the Code. AIR 1943 Pat 280 (280) = 22 Pat 278.

(3) An appeal against an order refusing to execute a decree against the surety of the judgment-debtor has been held to be governed by this Article. 1902 Pun Re No. 72, p. 261 (264).

Bihar

(1) After the words "Memorandum of appeal" in the first column *insert* the words "or of cross-objection."

(2) For the words "Eight annas" and "Two rupees" in the third colum *substitute* the words "One rupee" and "Four rupees" respectively.

—Bih. & Orissa Act 2 of 1922 [21-8-1922.]

(3) For surcharge *see* Bihar Act 25 of 1948, for text of this Act as amended, *see* Appendix I.

Delhi

Same as that of Punjab—*See* G. S. R. 842 Gaz. Ind. 1959, Pt. II, S. 3 (i), p. 1039 [w.e.f. 1-8-1959.]

Madhya Pradesh

For Article 11, *substitute* the following:

"11. Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree—	*(a)* When presented to the High Court.	Seven rupees and fifty paise.
	(b) When presented to a Civil Court other than the High Court.	Three rupees."

—M. P. Act 12 of 1966, S. 3 [1-4-1966.]

Manipur and Tripura

Same as that of Assam—*See* G. S. Rs. 1119-1120, Gaz. Ind., 1-7-1963. Pt. VI, S. 3 (i) Ext., pp. 501-531 [w. e. f. 15-7-1963.]

Orissa

(1) For the entry in the first column the following entry was *substituted*.

"Memorandum of appeal when the appeal is from an order inclusive of an order determining any question under section 47 or section 144 of the Code of Civil Procedure and is presented."

(2) In the third column for the words "Eight annas" and "Two rupees" the words "One rupee" and "Four rupees" were respectively *substituted*. Orissa Act 5 of 1939 [31-10-1939.]

(3) For surcharge *see* Orissa Act 20 of 1947; for text of this Act as amended, *see* Appendix I.

Pondicherry

Same as that of Andaman and Nicobar — *See* Act 26 of 1968, S. 3 and Sch. [w.e.f. 18-12-1968.]

Schedule II, Article 11 — Note 3 (contd.)

(4) Where in a suit for partition of the house the parties agree to the sale of the suit property and the house is ordered to be sold, the sale is one in the suit and not in an execution proceeding. When, therefore, objections to the sale are dismissed and a final decree is passed then an appeal lies against the final decree and not against the order dismissing the objections as an order under Section 47, Civil P. C. The appellant when filing an appeal against the final decree will have to pay ad valorem court-fee on the amount that he considers is involved in the appeal. AIR 1955 Punj 180 (Pr. 5).

4. Order regarding restitution under Section 144, Civil P. C. — (1) Where under Section 35 of the Act the provincial Governments have directed that the fee payable on appeals from orders under Section 47 of the Civil P. C. shall be limited to the amount chargeable as a fixed fee under this article appeals from orders regarding restitution would be chargeable under this Article, inasmuch as such orders fall under Section 47 of the Code. AIR 1923 Mad 270 (271, 272) ** 1957 BLR 534 (537) ** AIR 1925 Pat 577 (580) = 4 Pat 294 ** AIR 1918 Cal 335 (335, 336) ** AIR 1928 Lah 143 (144) ** AIR 1927 Lah 635 (636).

[But see AIR 1930 Lah 24 (25) ** AIR 1925 All 137 (138) = 47 All 98 ** AIR 1937 Cal 152 (155) = ILR (1937) 1 Cal 637 (DB) ** AIR 1941 Nag 313 (316) = ILR (1941) Nag 662 (DB). **(Overruling AIR 1922 Nag 662 = 18 Nag LR 15.) ** AIR 1939 Rang 32 (34) = 1938 Rang LR 635 (DB) ** AIR 1930 Rang 241 (242, 243)** 8 Rang 271.]

5. Order under Order 21, Rule 50 (2), Civil P. C. — (1) An appeal from an order under O. 21, R. 50 (2), Civil P. C. is governed by Sch. I, Art. 1 and not by this article. AIR 1939 Sind 161 (163) = ILR (1939) Kar 589 (FB) ** AIR 1934 Lah 958 (959) = 15 Lah 893 (DB). (Letters Patent Appeal from AIR 1930 Lah 825 affirming that decision.) ** AIR 1933 Cal 546 (547) = 60 Cal 530 ** AIR 1917 Low Bur 179 (179) = 8 Low Bur Rul 300 (DB).

6. Final decree in mortgage suit. — (1) An appeal from a final decree under O. 34, Civil P. C. must bear ad valorem court-fee. AIR 1928 Nag 146 (147) ** AIR 1947 Pat 113 (114) = 25 Pat 305 ** AIR 1920 Bom 101 (101) ** AIR 1915 Oudh 121 (121) = 18 Oudh Cas 114 (DB) ** (1913) 35 All 476 (478) (FB) ** AIR 1963 Him Pra 47 (48, 49). (Because the final decree is passed in pursuance of an application the decree cannot be treated as an order.)

(2) Even where an appeal from a final decree under Order 34, Civil P. C., is based on the ground that the appellant ought to have been given further time

Punjab, Haryana, Chandigarh

In the third column of the article .

(1) For the words "Eight annas" opposite clause *(a)* in the second column the words "One rupee twenty-five naye paise" were *substituted.*

(2) For the words "Two rupees" opposite clause *(b)* in the second column the words "Four rupees twenty-five naye paise" were *substituted.*

—Punjab Act 14 of 1958, S. 4 [25-4-1958.] : Act 31 of 1966, S. 88 [1-11-1966.]

Uttar Pradesh

For Article 11 the following article was *substituted*, viz.,

"11. Memorandum of appeal when the appeal is not from a decree or order having the force of a decree and is presented —	*(a)* to any Civil Court other than a High Court or to any Revenue Court or Executive Officer other than a Commissioner of the division or Chief Controlling revenue or executive authority;	One rupee and fifty naye paise.
	(b) to a Commissioner of the division;	Three rupees.
	(c) to a High Court or to a Chief Controlling Executive or Revenue Authority.	Five rupees."

—U. P. Act 44 of 1958, S. 4 (vi) [1-4-1959.]

West Bengal

For Article 11 the following article was *substituted*:

'11. Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree and is presented —	*(a) (i)* to any Revenue Court or Executive officer other than the High Court or Chief Controlling Revenue or Executive Authority;	Fifty paise.
	(ii) to any Civil Court other than a High Court;	One rupee.
	(b) to a Chief Controlling Executive or Revenue Authority	Two rupees.
	(c) to a High Court.	Five rupees."

—Bengal Act 4 of 1922 [29-3-1922.] and Presi. Act 7 of 1968 [26-3-1968.]

Schedule II, Article 11 — Note 6 (contd.) to pay the mortgage-money, the appeal will have to be stamped with ad valorem court-fee as an appeal from a decree. AIR 1931 Nag 1 (4) (FB). (7 Nag LR 41, **Overruled**); 35 All 476; AIR 1920 Bom 101; AIR 1928 Rang 194 = 6 Rang 285; AIR 1927 Pat 46, **Rel. on.**)

(3) No appeal lies from an order allowing an application for final decree. The appeal in such a case should be stamped ad valorem as an appeal from a decree. AIR 1934 Mad 198 (198) = 57 Mad 437 (DB). (**Dissenting from** AIR 1930 Mad 20 = 53 Mad 155.) ** AIR 1928 Rang 194 (195) = 6 Rang 285 (DB) ** AIR 1925 Oudh 102 (102) = 27 Oudh Cas 225 (DB).

(4) If the order is one refusing to extend time for payment of mortgage-money and directing the drawing up of a final decree, the appeal from such an order will come under this article. AIR 1928 Nag 333 (335) = 25 Nag LR 175.

[See also AIR 1915 Oudh 121 (121) = 18 Oudh Cas 114 (DB).]

(5) An appeal against an order rejecting an application for final decree must bear ad valorem court-fee. AIR 1920 All 145 (147) (DB) ** (1908) 12 Cal WN 1028 (1029) (DB) ** AIR 1945 Nag 68 (68, 69).

7. Order under O. 34, R. 6, Civil P. C. — (1) An appeal from decree under O. 34, R. 6 must be stamped ad valorem. AIR 1916 All 357 (358) ** AIR 1957 Raj 165 (166) = ILR (1956) 6 Raj 413 (DB).

(2) An appeal from an order refusing to pass a personal decree under O. 34, R. 6 does not fall under this article. AIR 1918 All 97 (97) = 40 All 553 (DB) ** AIR 1941 Pesh 56 (56) (DB).

[But see AIR 1936 Rang 352 (353).]

8. Order of remand. — (1) This article applies to an appeal from an order of remand. AIR 1933 Oudh 191 (192) = 8 Luck 676 (DB) ** (1899) 21 All 178 (180) ** 1880 Pun Re No. 6 p. 15 (16) (DB).

[See also ILR (1954) 4 Raj 622 (631).]

(2) Where the lower Court decides the case on the merits and the appellate Court, reversing the decision on the merits, remands the case, an appeal from the appellate decision will not come under this article. AIR 1919 Pat 478 (479). (Ad valorem court-fee to be paid.) ** AIR 1917 Pat 100 (101) = 3 Pat L Jour 99 (DB) ** (1908) 5 All L Jour 545 (546) (DB).

9. Appeal against decree on award.— (1) An appeal against a decree on an award will not come under this article. AIR 1926 Lah 403 (403).

(2) Appeal under M. P. Co-operative Societies Act from award of Assistant Registrar filed before Board of Revenue — Appeal returned for want of Court-fee — In regard to Court-fees, Court-Fees Act is the general Act — M. P. Co-operative Societies Act is a special Act — Where there is no special provision in such special Act, Court-fees Act prevails — The Board of Revenue being competent to hear an appeal stamped with

STATE AMENDMENTS

Sch. II, Art. 11-A

Madhya Pradesh

After Article 11, *insert* the following article, namely,—

"11-A Memorandum of appeal or application by way of revision.	When presented— *(a)* to the Revenue Tribunal or Financial Commissioner or a Chief Controlling Executive or Revenue Authority;	Seven rupees and fifty paise
	(b) to a Commissioner of Division or the Settlement Commissioner or Excise Commissioner;	Four rupees and fifty paise
	(c) to a Revenue Court or Officer or an Executive Officer not otherwise provided for under clauses *(a)* and *(b)*;	Three rupees.'

—M. P. Act 12 of 1966, S. 3 [1-4-1966.]

Uttar Pradesh

After Article 11, *add* the following :

"11A. Memorandum of appeal under section 39 of the Arbitration Act.	*(a)* When the appeal is from an order in a case where the value for purposes of jurisdiction does not exceed five thousand rupees;	Fifteen rupees
	(b) In any other case;	One hundred rupees.''

— U. P. Act 44 of 1958, S. 4 (vii) [1-4-1959.]

Schedule II, Article 11 — Note 9 (contd.) Court-fee as prescribed by Sch. II, Art. 11 (A), the ruling of the Board on appeal memo, is correct — (Co-operative Societies — M. P. Co-operative Societies Act (XVII of 1961), S. 71). AIR 1967 Madh Pra 173 (176) = 1966 Jab LJ 614 (DB).

10. Order relating to compensation in land acquisition proceedings.— (1) Section 8 does not apply to an appeal against an award of compensation made by an arbitrator acting under the Punjab Requisitioning and Acquisition of Immovable Property Act (11 of 1953) because for a matter to be brought within Section 8 there must be an order as defined by Section 2 (14), Civil P. C. and the Court-fee is payable under this article. AIR 1957 Punj 32 (34) = ILR (1957) Punj 142 (DB).

(2) It has been held that ad valorem Court-fee, and not a fixed Court-fee under this Article, is payable on a memorandum of appeal from an order accepting the award given by the Collector under the Land Acquisition Act. AIR 1957 Punj 222 (223) = ILR (1956) Punj 420 ** ILR (1966) 2 Punj 481 (486, 494) = (1966) 68 Pun LR 299 (D) (FB).

(3) Memorandum of appeal against order of Land Acquisition Judge — Amount of fee payable is ad valorem on difference between amount claimed and amount awarded under Schedule I, Article 1 — Schedule II, Articles 17 (iii) and 11 are not attracted, as neither of those articles deal with a memo of appeal against an order relating to compensation under the Land Acquisition Act for acquisition of land for public purposes. But Section 8 does. AIR 1968 Cal 365 (371) = 71 Cal WN 662. ((1957) Raj 275, **Diss.)**

(4) Award under Section 7 of the Requisitioning and Acquisition of Immovable Property Act, 1952 — Appeal against award — Award is an order within the meaning of Sec. 8 Court-fees Act — Ad valorem Court-fee is payable under Article 1 of Schedule I — Schedule II, Article 11 does not apply. AIR 1968 Andh Pra 348 (350) = (1968) 1 Andh WR 298. (AIR 1945 Bom 348, AIR 1951 Punj 32, AIR 1934 All 127, **Diss.)** ** AIR 1967 Cal 617 (618, 619) = 71 Cal WN 673. (AIR 1945 Cal 348, **Diss.** AIR 1957 Cal 609, **Foll.)**

(5) Award of compensation by arbitrator under provisions of Re-settlement of Displaced Persons (Land Acquisition) Act 60 of 1948 — Award is not a decree or an order having the force of a decree — Appeal against 'award' attracts fixed Court-fee under Article 11 of Schedule II of the Court-fees Act — Ad valorem Court-fee on basis of Sec. 8 not payable. AIR 1970 Delhi 44 (49, 50) (DB). (AIR 1946 Cal 524, AIR 1959 Cal 609 and AIR 1968 AP 348, **Diss.)**

11. Order in probate proceedings.— (1) An order granting or refusing probate or letters of administration is a decree or order having the force of a decree for the purpose of this article. (1911) 21 Mad L Jour 481 (481) (DB) ** ('13) 35 All 448 (450) (DB) ** AIR 1967 Orissa 41 (43, 44) = 33 Cut LT 13.

[But see AIR 1956 Raj 119 (120) = ILR (1956) 6 Raj 299 ** AIR 1938 Rang 141 (144) = 1938 Rang LR 72.]

12. Order relating to mesne profits.— (1) Mesne profits left to be ascertained subsequently — Decree passed thereafter for the amount found to be due — Appeal from the decree will not come under this article. (1937) 18 Pat L Tim 864 (865).

(2) Where the amount of mesne profits was left to be ascertained by the executing Court, the order of the executing Court ascertaining the amount and directing its payment was held to fall under Section 47 of the Civil P. C., and under the Government Notification under Section 35 of the Act an appeal from

Schedule II, Article 11 — Note 12 (contd.) such an order was held chargeable under this article. AIR 1938 Bom 320 (321).

[But see AIR 1958 Mad 414 (415) ** (1924) 79 Ind Cas 906 (906) (Pat).]

(3) An appeal from order rejecting an application under Order 20, Rule 12, Civil P. C., asking for an inquiry into mesne profits and for an order for the payment of such profits, falls under this article. AIR 1939 Mad 667 (669).

[But see AIR 1918 Pat 623 (624) = 3 Pat L Jour 101 (DB) ** AIR 1931 All 538 (539) (DB). (Ad valorem fee is payable.)]

13. Memorandum of cross-objections.— (1) The article does not apply to cross-objections. AIR 1921 Cal 55 (58).

14. Orders under special and local Acts.— (1) Appeal against order imposing fine under Section 81 of the Lunacy Act, 1912, is governed by this article. AIR 1934 Lah 853 (853).

(2) Schedule II, Article 11 as amended in Madras applies to an appeal filed under Rule 9 of the rules framed under Madras Agriculturists' Relief Act IV of 1938. AIR 1941 Mad 639 (640) = ILR (1941) Mad 935 (DB).

(3) Order under Section 5 (1) of the U. P. Agriculturists' Relief Act — Appeal from the order falls under this Article. AIR 1938 All 50 (51) = ILR (1938) All 181 (DB).

(4) An order passed under Section 12 of the U. P. Agriculturists' Relief Act has the force of a decree. AIR 1944 Oudh 113 (114) ** AIR 1954 All 184 (Pr. 2) (DB) ** AIR 1938 All 14 (15) = ILR (1937) All 949 (DB).

(5) Appeal against order under Section 19-A of U. P. Encumbered Estates Act — Order being executable had force of decree — Court-fee payable on memorandum of appeal is under Schedule I, Article 1 and not under Schedule II, Article 11. AIR 1965 All 298 (299, 300) = 1964 All LJ 977.

(6) Decree passed by Special Judge on application under Section 4, U. P. Encumbered Estates Act (1934) — Appeal — Ad valorem Court-fee payable under Schedule 1, Article 1. AIR 1946 Oudh 60 (61) = 20 Luck 595.

(7) A determination of proportionate liability under Section 9 (5) of the U. P. Encumbered Estates Act, 1934, is not a decree or even an order having the force of a decree. Hence an appeal challenging such determination is governed by this article. AIR 1952 All 695 (Prs. 5, 8).

(8) An appeal against order awarding compensation made by a Commissioner under the Workmen's Compensation Act is governed by Article 11. AIR 1944 Oudh 83 (84) = 19 Luck 460.

[But see ('36-43) Tax Dec (Nag) 88 (89, 90).]

(9) An appeal against order of District Judge under Section 214 of the Indian Companies Act. VI of 1882 was held to be governed by this article. (1895) 17 All 238 (240, 241).

(10) Appeal from order under Sec. 58 of the Indian Companies Act (6 of 1882) was held to be governed by this article. 1885 Bom PJ 214.

(11) An executable order made under the Companies Act. and enforceable under Section 199 of that Act as a decree, is not an order having the force of a decree. AIR 1945 Lah 146 (149) (FB).

(12) An order of a Special Judge passed under Section 13 of the U. P. Encumbered Estates Act does not have the force of a decree. AIR 1941 All 163 (163) = ILR (1941) All 323 ** AIR 1939 Oudh 43 (44) = 14 Luck 344 (DB).

(13) An order of a Special Judge passed under Section 14 of the U. P. Encumbered Estates Act is a decree. AIR 1938 All 97 (98) = ILR (1938) All 230 (FB) ** AIR 1949 All 270 (Prs. 5, 6) = ILR (1949) All 885 ** AIR 1937 Oudh 501 (502) (DB).

[But see AIR 1941 Oudh 60 (61) = 16 Luck 153 (DB).]

(14) A memorandum of appeal against an order rejecting an application for leave for Letters Patent Appeal is governed by this article. AIR 1929 Cal 575 (576) = 56 Cal 482.

(15) On an application for payment of compensation money made to a District Judge under Section 18 of the Land Acquisition Act, he ordered the parties to seek redress in Civil Court. It was held that the order was not a decree and the appeal against it was governed by this article. (1904) 8 Cal WN 821 (824) (DB).

(16) An award given by the Additional District Judge under the Land Acquisition Act 1894. is to be deemed to be a decree under Section 26 (2) of that Act. An appeal against such an award will be governed by Schedule I, Article 1. AIR 1951 Pat 608 (Prs. 2, 3, 4).

(17) A declaration as to the amount due is appealable under Section 38 (3) of the Bengal Money Lenders Act as if it were a decree — Such appeal is governed by Schedule II, Article 17 and not by this article. AIR 1944 Cal 230 (231).

(18) Court-fee on an appeal from an order under Section 11, Central Provinces Money-Lenders Act is payable as on a miscellaneous appeal under Section 47, Civil P. C. ('36-43) Tax Dec (Nag) 26 (27).

(19) Decision of claims officer under Bihar Land Reforms Act 30 of 1950 — Appeal — Article applies. AIR 1958 Pat 235 (236) = 36 Pat 507.

(20) See also the following cases under the Displaced Persons (Debts Adjustment) Act (1951). AIR 1957 Raj 146

12. Caveat		Five rupees

STATE AMENDMENTS

Andaman and Nicobar

For "Five rupees" in the third column *substitute* "Ten rupees".
—Reg. II of 1957 [1-8-1957.]

Assam Nagaland

For the words "Five rupees" in the third column opposite Art. 12, *substitute* the words "Ten rupees". —Assam Act 8 of 1963, S. 2 (2) [1-4-1963]: Act 27 of 1962, S. 26 [w.e.f. 1 12-1963.]

Bihar

(1) "Ten rupees" were *substituted* for "five rupees" as proper fees shown against the article.
—Bihar and Orissa Act 2 of 1922 [21.8-1922.]

(2) For surcharge *see* Bihar Act 25 of 1948; for text of this Act as amended *see* Appendix I,

Delhi

Same as that of Punjab — *See* G. S. R. 842, Gaz. Ind., 1959, Pt. II, S. 3 (i), p. 1039 [w.e.f. 1-8-1959.]

Madhya Pradesh

For the words "five rupees" in the third column *substitute* the words "six rupees and sixty naye paise". - C. P. Act 16 of 1935 and M. P. Act 15 of 1958. [3-7-1958.]

Manipur and Tripura

Same as that Assam — *See* G. S. Rs. 1119-1120, Gaz. Ind. 1-7 1963, Pt. II, S. 3 (i), Ext.; pp. 501-531 [w.e.f, 15-7-1963.]

Schedule II, Article 11 — Note 14 (contd.)

(148) = ILR (1957) 7 Raj 168 (FB) ** AIR 1958 Cal 675 (677) (DB) ** AIR 1956 Bom 563 (566) = ILR (1956) Bom 211 ** AIR 1956 Punj 153 (155) ** AIR 1956 Pepsu 53 (Prs. 4, 5, 7) = ILR (1956) Patiala 200 ** AIR 1955 Raj 81 (Pr. 6) = ILR (1954) 4 Raj 697 (DB) ** AIR 1954 All 672 (Prs. 3, 6) ** (1958) 8 Raj 216 (218) = 1958 Raj LW 222.

(21) Hindu Marriage Act (1955), Section 28 — Proceeding under latter Act is suit, though initiated by application — Appeals against decree thereunder — Court-fee is payable under Schedule II, Article 17 (vi) — Schedule II, Articles 1 (f) and 11 are not applicable. 1967 Jab LJ 712.

(22) An order that a company shall be wound up or shall not be wound up, does not adjudicate upon any right of any person in controversy before the Court cannot have the status of an order having the force of a decree. AIR 1966 Mys 150 (152) = (1965) 1 Mys LJ 557.

(23) Application for divorce and damages under Section 13 of Hindu Marriage Act — Dismissal — Appeal — It is not an appeal from a decree — Court-fee payable on memorandum of appeal is under Schedule II, Article 11. AIR 1962 Pat 489 (490, 491, 492) = ILR 41 Pat 757.

(24) Order on claim made by bank under Section 45-B Banking Companies Act after commencement of its winding up proceedings — Appeal against order — Schedule II, Article 11 and not Schedule I, Article 1 governs the appeal. AIR 1964 Raj 202 (204) = 1964 Raj LW 235 (DB).

(25) The expression 'judgment' in Rule 5, Chapter VIII of the Allahabad High Court Rules includes decree — A special appeal under Rule 5 — The memo of appeal is exigible under Art. 1, Schedule I and not under Article 11, Schedule II. 1961 All LJ 561 (563) = 1961 All WR (HC) 521.

(26) The judgment of a single judge when conclusively determines the rights of the parties with regard to the matters in dispute in the suit and becomes appealable under Section 10 of the Delhi High Court Act is treated as a decree and the Court-fee payable on the memo of appeal against such judgment is not under Article 11, Schedule II but under Article 1, Schedule 1. AIR 1969 Delhi 85 (89, 90) = (1969) 71 Pun LR (D) 75 (FB).

(27) (As amended by Assam Act 8 of 1950) does not repeal Assam Sales Tax Rules, Rule 74 by implication — Court-fee on a memo of appeal under Sec. 40 of the Assam Sales Tax Act 1947 has therefore to be paid as prescribed by Rule 74 of the Assam Sales Tax Rules. AIR 1959 Assam 216 (220) = (1960) 11 STC 125 (DB).

(28) A final order passed in an application for letters of administration can be described as an order having the force of a decree. An appeal from such an order would not, therefore, be governed by the provisions of Article 11 of Schedule II of the Act but by the provisions of Schedule 2, Article 1 (e) (5). AIR 1963 All 153 (156, 158, 159) = 1962 All LJ 1135 (FB). (AIR 1938 Rang 141 and AIR 1954 Hyd 82, **Dissented from** and ILR 35 All 448, **Overruled** on another point.)

Schedule II, Article 12 — Note 1

(1) Fee prescribed for ordinary application (under Schedule II, Article 1) would be sufficient on application in which a person intimates his intention of opposing application for probate. AIR 1917 Cal 311 (311) (DB).

[See however (1882) 10 Cal LR 550 (550) (DB).]

Orissa

(1) In the third column for the words "five rupees", the words "ten rupees", were *substituted*. —Orissa Act 5 of 1939. [31-10-1939.]

(2) For surcharge *see* Orissa Act 20 of 1947; for text of this Act as amended, *see* Appendix I.

Pondicherry

Same as that of Andaman and Niscobar — *See* Act 26 of 1968, S. 3 and Sch., Pt II [w.e.f. 18-12-1968.]

Punjab : Haryana : Chandigarh

For the words "five rupees" in the third column *substitute* the words "six rupees fifty naye paise." — Punj. Act 14 of 1958, S. 4 [25-4-1958.]: Act 31 of 1966, S. 88 [1-11-1966.]

Uttar Pradesh

The bracket opposite the article was *omitted* and the following article was *substituted* for the original :

"12. Caveat.	Where the amount or value of the property in respect of which the caveat is lodged—	
	(a) does not exceed five thousand rupees.	Six rupees and twenty-five naye paise.
	(b) exceeds five thousand rupees.	Twelve rupees and fifty naye paise."

—U. P. Act 20 of 1958, S. 5 (VIII).

West Bengal

Above the words "five rupees" where they occur in the third column opposite Arts. 12 and 13 the words "ten rupees" were *inserted* opposite Art. 12 and the bracket between Arts. 12 and 13 in the second column was *omitted*. — Bengal Act 4 of 1922.[29-3-1922.]

13. Application under *Act No. 10 of 1859, section 26, or †Bengal Act No. 6 of 1862, section 9, or ‡ Bengal Act No. 8 of 1869, Section 37.	...	Five rupees.

*Act 10 of 1859 was *Repealed* by the Bengal Tenancy Act; 1885 (8 of 1885), in those portions of the Lower Provinces to which that Act extends; in the Chota Nagpur Division (except Manbhum and the Tributary Mahals) by the Chota Nagpur Landlord and Tenant Procedure Act, 1879 (Bengal I of 1879), [now *repealed* by the Chota Nagpur Tenancy Act, 1908 (Bengal 6 of 1908)]; in the Province of Agra by Act 18 of 1873 ; and in the C. P. by the C. P. Tenancy Act, 1883 (9 of 1883).

[†] Bengal Act 6 of 1862 was *Repealed* by the Bengal Tenancy Act, 1885 (8 of 1885) so far as it affected those portions of the Lower Provinces to which that Act extends; and in the Chota Nagpur Division (except Manbhum and the Tributary Mahals) by the Chota Nagpur Landlord and Tenant Procedure Act, 1879 (Ben. I of 1879) [now *Repealed* by the Chota Nagpur Tenancy Act 1908 (Ben. 6 of 1908).]

‡ Bengal Act 8 of 1869 was *Repealed* by the Bengal Tenancy Act, 1885 (8 of 1885).

STATE AMENDMENTS

Bihar

For surcharge *see* Bihar Act 25 of 1948; for text of this Act as amended, *see* Appendix I.

Delhi

Same as that of Punjab — *see* G. S. R. 842, Gaz. Ind. 1959, Pt. II, S. 3 (i), p. 1039 [1-8-1959].

Orissa

For surcharge *see* Orissa Act 20 of 1947; for text of this Act as amended, *see* Appendix I.

Punjab: Haryana Chandigarh

For the words "Five rupees" in the third column *substitute* the words "Six rupees fifty naye paise." - Punj. Act 14 of 1958, S. 4 [25-4-1958]; Act 31 of 1966, S. 88 [1-11-1966.]

Uttar Pradesh

For the words "Five rupees" in the third column *substitute* the words "Six rupees and twenty-five naye paise". —U. P. Act 20 of 1958, S. 5 (ix).

14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866.		Five rupees.

STATE AMENDMENTS

Assam

Same as in the Central Act Assam Act 8 of 1963, S. 2 (ii) [1-4-1963.]

Bihar

(1) "Ten rupees" were *substituted* for "Five rupees" as proper fees shown against the article.—Bihar and Orissa Act II of 1922. [21-8-1922.]

(2) For surcharge *see* Bihar Act, 25 of 1948; for text of this Act as amended, *see* Appendix I.

Delhi

Same as that of Punjab —*See* G. S. R. 842, Gaz. Ind. 1959, Pt. II, S. 3 (i), p. 1039. [1-8-1959.]

Madhya Pradesh

For the words "Five rupees" in the third column the words "six rupees and sixty paise" were *substituted* —M. P. Act XII of 1966. [1-4-1966.]

Manipur and Tripura

Same as that of Assam —*See* G. S. Rs. 11-19-1120, Gaz. Ind. 1-7-1963, Pt. II, S. 3 (i), Ext,, pp. 501-531. [w.e.f. 1-7-1963.]

Orissa

(1) In the third column, for the words "Five rupees" the words "Ten rupees", were *substituted*. - Orissa Act 5 of 1939. [30-10-1939.]

(2) For surcharge *see* Orissa Act 20 of 1947; for text of this Act as amended, *see* Appendix I.

Punjab ; Haryana; Chandigarh

For the words "Five rupees" in the third column *substitute* the words "Six rupees fifty naye paise." – Punj. Act 14 of 1958, S. 4. [25-4-1958.]; Act 31 of 1966, S. 88 [1-11-1966]

Uttar Pradesh

The brackets opposite the article were omitted and in the third column for the words "Five rupees" the words "nine rupees and fifty naye paise" were *substituted*. — U. P. Act 20 of 1958, S. 5 (x).

Article 14-A STATE AMENDMENTS

Punjab ; Haryana : Chandigarh

14-A. Every petition or application or memorandum of appeal under the Special Marriage Act 1954 (43 of 1954) or the Hindu Marriage Act, 1955 (25 of 1955).		**Nineteen rupees fifty naye paise.**

– Punj. Act 14 of 1958, S. 4 [25-4-1958]; Act 31 of 1966, S. 88 [1-11-1966]

Delhi

Same as in Punjab except that in column 3 for the words "nineteen rupees fifty naye paise" read "Fifteen rupees." —*See* G. S. R. 842, Gay. Ind. 1959, Pt. II, S. 3 (i) p. 1039 [10-8-1959.]

15. *[Repealed by the Code of Civil Procedure, 1908 (5 of 1908)]*

16. *[Repealed by the Probate and Administration Act, 1889 (6 of 1889), S. 18 (1).]*

17. Plaint or memorandum of appeal in each of the following suits :— *(i)* to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court ; *(ii)* to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates ; *(iii)* to obtain a declaratory decree where no consequential relief is prayed ; *(iv)* to set aside an award ; *(v)* to set aside an adoption ; *(vi)* every other suit where it is not possible to estimate at a money-value the subject-matter in dispute, and which is not otherwise provided for by this Act.	...	**Ten rupees.**

STATE AMENDMENTS

Andaman and Niçobar

Same as that of West Bengal — Reg. II of 1957. [1-8-1957.]

Assam : Nagaland

In the third column opposite entries (i), (ii) (iv) and (vi) read "Fifteen rupees"; opposit entry (iii) and (v) read Twenty rupees", —Assam Act 8 of 1963 S 2 (2) [1-4-1963]; Ac 27 of 1962, S. 26 [w.e.f. 1-12-1963.]

Bihar

(1) After the words "memorandum of appeal" in the first column the words "or of cross-objection" were *inserted*, and "fifteen rupees" were *substituted* for "ten rupees" as proper fees shown in the third column. Bihar and Orissa Act II of 1922 [21-8-1922.]

(2) For surcharge *see* Bihar Act XXV of 1948 for the text of this Act as amended *se* Appendix I.

Delhi

Same as that of Punjab — *See* G. S R 842, Gaz. Ind. 1959, Pt. II, S. 3 (i) p. 1039*e* [w.e f. 1-8-1959]

Madhya Pradesh

For the words "Ten rupees" in the third column *substitute* the words "Thirty rupees." —M. P. Act XII of 1966, S. 3 [1-4-1966.]

Manipur and Tripura

Same as that of Assam — *See* G.S.Rs. 1119-1120, Gaz. Ind. 1 7-1963, Pt. II, S. 3 (i), Ext., pp. 501-531. [w.e f. 15-7-63.]

Pondicherry

Same as that of Andaman and Nicobar — *See* Act 26 of 1968 S 3 & Sch., Pt II. [w e.f. 18-12-1968.]

Orissa

(1) For Art. 17 the following two articles were *substituted* :

"17. Plaint or memorandum of appeal in a suit.—		
(i) to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court ;		Fifteen rupees.
(ii) to alter or cancel any entry in a register of the names of the proprietors of revenue paying estates ;		Fifteen rupees.
(iii) for relief under S. 14 of the Religious Endowments Act, 1863 or under S. 91 or S. 92 of the Code of Civil Procedure, 1908.		Fifteen rupees.
17A. Plaint or memorandum of appeal in every suit where it is not possible to estimate at a money-value the subject-matter in dispute and which is not otherwise provided for by this Act.	When the plaint is presented to, or the memorandum of appeal is against the decree of —	
	(a) Revenue Court in the district of Ganjam or Koraput;	Ten rupees.
	(b) any other Revenue Court, or any Court of a District Judge, Subordinate Judge or Munsif.	Fifteen rupees if the value for purposes of jurisdiction does not exceed four thousand rupees, one hundred rupees if such value exceeds four thousand rupees."

Orissa Act V of 1939. [31-10-1939.]

(2) For surcharge *see* Orissa Act XX of 1947; for text of this Act as amended, *see* Appendix I.

Punjab: Haryana: Chandigarh

For the words "Ten rupees" in the third column *substitute* the words "Nineteen rupees fifty naye paise." — Punj. Act XIV of 1958, S. 4. [25-4-1958]:Act 31 of 1966, S. 88 [1-11-1966.]

Uttar Pradesh

For Art 17, *substitute* the following.

"17. Plaint or memorandum of appeal in each of the following suits —

(i) to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court;	Twenty-two rupees.
(ii) to alter or cancel any entry in a register of the names of proprietors of revenue paying estates;	Twenty-two rupees.

(iii) to obtain a declaratory decree where no consequential relief is prayed in any suit, not otherwise provided for by this Act; (iv) and (v) [*Omitted* by U. P. Act XIX of 1938.] (vi) for relief under section 14 of the Religious Endowments Act, 1863, or under section 91 or section 92 of the Code of Civil Procedure, 1908. (vii) every other suit not otherwise provided for by this Act.	(a) When the value of the suit or appeal, for purposes of jurisdiction, does not exceed one thousand rupees;	*Thirty rupees.
	(b) When such value exceeds one thousand rupees but does not exceed five thousand rupees;	Fifty rupees.
	(c) When such value exceeds five thousand rupees, but does not exceed ten thousand rupees; and	One hundred rupees.
	(d) When such value exceeds ten thousand rupees :	Two hundred rupees."
	Provided that in a suit filed before a High Court under its original jurisdiction, the fee chargeable in all cases under this article shall be two hundred and fifty rupees.	

—U. P. Act XLIV of 1958, S. 4(viii). [1-4-1959.]; *U. P. Act XIV of 1963, S. 2(c). [25-5-1963]

West Bengal

(1) The words "ten rupees" in the third column and the bracket opposite to the article in the second column were *omitted*: In the third column opposite entries (i), (ii) (iv) and (vi) the words "fifteen rupees" were *inserted* and opposite entries (iii) and (v) the words 'twenty rupees" were *inserted*. —Bengal Act IV of 1922. [29-3-1922.]

(2) After entry (v) the following entry was *inserted* viz. –

"VA. for partition and separate possession of a share of joint family property or of joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property if the plaintiff is in possession of the property of which he claims to be a coparcener or co-owner.	Fifteen rupees."

— Bengal Act VII of 1935. [2-5-1935.]

Schedule II, Article 17 (General) — Note 1

(1) This article does not apply to cross-objections. AIR 1933 Oudh 528 (529) = 9 Luck 406 (DB) ** AIR 1948 Pat 103 (104) = 26 Pat 119 ** AIR 1925 All 119 (119) = 47 All 89 ** AIR 1923 Oudh 44 (44) = 25 Oudh Cas 275 (DB) ** AIR 1918 All 185 (186) = 40 All 93 ** AIR 1918 Pat 145 (145) = 3 Pat L Jour 197 ** AIR 1962 Punj 110 (115) = ILR (1961) 1 Punj 728 (DB).

[But see AIR 1934 All 728 (729) = 57 All 151.]

(2) In suits mentioned in this article the value of the subject-matter is not relevant for computation of Court-fees. AIR 1916 Mad 858 (858) = 39 Mad 602 (DB) ** (1908) 35 Cal 202 (207) = 35 Ind App 22 (PC).

(3) Article 17 of Schedule II, would not, in its application to U. P., override the provisions of Section 7 (iv-A), Court-fees Act. AIR 1955 All 667 (Pr. 5) (DB).

(4) Where the mortgage debt mentioned in the preliminary decree of redemption is deposited in Court beyond the time prescribed and in the appeal 'filed against the final decree for foreclosure subsequently passed the amount of debt is not in dispute but only a subsidiary or ancillary question is to be considered, the appeal filed on a fixed Court-fee of Rs. 20 is sufficient and no ad valorem Court-fee is payable. AIR 1962 Madh Pra 237 (238, 239) = 1961 Jab LJ 1267.

Schedule II, Article 17 (i) — Note 1

(1) A summary decision is the decision of a Court which hears and determines the matter, but does not finally conclude the parties. (1870) 5 Beng LR 162 (166) (FB).

[See AIR 1940 Cal 215 (217) (DB). (The definition of 'Summary decision' in 5 Beng LR 162 (FB) accepted.)]

(2) A suit under Order 21, Rule 63 of the Civil Procedure Code is governed for purposes of Court-fees by this clause. (1908) 35 Cal 202 (206) = 35 Ind App 22 (PC). (Reversing 31 Cal 511.) ** AIR 1941 Cal 28 (29) ** AIR 1941 Pat 174 (175) (DB) ** AIR 1955 Punj 104 (Pr. 8) (DB) ** AIR 1939 Pat 571 (572) = 18 Pat 323 (DB) ** AIR 1933 Mad 439 (440) = 56 Mad 716 ** AIR 1959 Mad 155 (156) = (1959) 1 Mad LJ 151.

(3) Suit and a decree before Madras Court Fees Act, 1955 came into force — Claim petition under Order 21, Rule 58 decided in 1961 — A claim suit under Order 21, Rule 63 — Claim suit is not

Schedule II, Article 17 (i) — Note 1 (contd.)

continuation of the original suit — Court-fee in the suit under Order 21, Rule 63 is to be paid under Section 41 (2) of the Madras Court Fees Act 14 of 1955 and not under the Court Fees Act (1870), Article 17 (1). (1965) 78 Mad LW 497 (497, 498) = (1965) 2 Mad LJ 449.

(4) A suit under Order 21, Rule 63 would only come under this clause though it seeks, under Section 53 of the Transfer of Property Act, to avoid a deed of transfer executed by the judgment-debtor. AIR 1934 Rang 332 (333) = 12 Rang 670 ** AIR 1947 Mad 275 (276).

[But see (1894) 16 All 308 (310) (FB).]

(5) Suit by unsuccessful decree-holder under Order 21, Rule 63, Civil P. C., with a prayer that declaration be made that he will be entitled to execute the decree. The prayer does not alter its character to bring it within this clause. AIR 1925 Pat 44 (46, 47) = 3 Pat 795 ** (1894) 16 All 308 (310) (FB). (2 All 720, **Dissented from.**)

(6) Suit by defeated claimant — The clause applies though sale has taken place in execution of the decree. AIR 1923 Pat 152 (152).

(7) Suit by defeated claimant — Delivery of possession made in pursuance of the decree does not take it out of this clause. AIR 1941 Pat 174 (175) (DB).

(8) Even if the objector plaintiff also asks for possession, the suit is governed by this clause. (1886) 10 Bom 610 (613) (FB).

(9) The mere fact that the judgment-debtor is made a party to the suit cannot alter the nature of the suit. AIR 1933 All 249 (250) = 55 All 315 (FB). (17 All 69, Not Approved.)

[But see AIR 1915 Mad 591 (591). (17 All 69, Followed.) ** (1894) 16 All 308 (310) (FB). (There are two declarations in such a case.)]

(10) Objector suing under Order 21, Rule 63, Civil P. C., making judgment-debtor party alleging that he is only the ostensible owner and seeking possession as the real owner. The suit will not fall under this clause. AIR 1918 Pat 605 (606). (**Held,** Section 7 (iv) (c) applied.)

(11) A suit under Order 21, Rule 103 is a suit to set aside a summary decision and falls under this clause even though plaintiff prays for possession. AIR 1938 Nag 300 (302) = ILR (1939) Nag 422 ** AIR 1945 All 111 (112, 113) = ILR (1945) All 68.

[But see (1900) 22 All 384 (386) (DB). (Section 7 (iv) (c) applied.)]

(12) Where a suit under Order 21, Rule 103 relates to two separate adverse orders against the plaintiff he is liable to pay a separate amount of Rs. 10 in respect of each order impeached. AIR 1935 Sind 129 (131).

(13) Suit under Civil P. C., Order 21, Rule 103, for avoiding summary order of executing Court under Order 21, Rule 98 — Suit in substance not one for avoiding decree passed in favour of decree-holders but only to secure reversal of order passed by executing Court — Case is governed by Schedule 2, Article 17 (i) and not Section 7 (iv-A) — Moreover special provisions in Schedule 2, Article 17 (i) override Section 7 (iv-A). AIR 1945 All 111 (112, 113) = ILR (1945) All 68.

(14) Summary decision by a Revenue Court — The fact that the party was given an opportunity to object or that he has a right of appeal to a superior Revenue Court will not take away its summary character. AIR 1940 Cal 215 (217) (DB).

(15) A suit filed under Section 169 (3) of the C. P. Land Revenue Act to set aside an order passed by the Revenue Court is governed by this article and not by Section 7 (iv) (c) even though the plaintiff has to establish his title in order to secure the relief claimed by him. AIR 1951 Nag 289 (Prs. 6, 8) = ILR (1951) Nag 76.

(16) A plaint or a memorandum of appeal in a suit for declaration that the certificate issued against the plaintiff under the Rajasthan Public Demands Recovery Act should be declared void and ineffective is chargeable with a fixed Court-fee under Schedule II Article 17 (i) and not with ad valorem Court-fee under Schedule I, Article 1. The issue of a certificate amounts to a summary decision of a Revenue Court within the meaning of Schedule II, Article 17 (i). AIR 1960 Raj 171 (172, 173) = 1960 Raj LW 236 (DB). (AIR 1957 Raj 277, **Overruled.**)

(17) A suit under Section 25 of the Boundary marks Act, 28 of 1860 is a suit to set aside a summary decision of a Revenue Court within the meaning of Article 17 (i) of Schedule II. (1882) 4 Mad 204 (208) (DB).

(18) A suit under Section 25-A of the Sonthal Parganas Settlement Regulation, 3 of 1872 is governed by Clauses (i) and (ii) of this Article 6. AIR 1936 Pat 171 (172) = 15 Pat 386.

(19) Suit for declaration that plaintiff is nearest reversionary heir filed before summary decision under Section 194, Succession Act — Plaint amended after summary decision without adding a prayer to set aside that decision. Suit held not one under Schedule II, Article 17 (i). AIR 1946 Pat 408 (410, 411) (DB).

(20) The clause applies to appeals in the suits mentioned therein. (1880) 4 Bom 515 (523) (FB).

(21) The clause will apply whether appeal is by a plaintiff whose suit is dismissed or by defendant against whom

Schedule II, Article 17 (i) — Note 1 (contd.)

the suit is decreed. But if the nature of the dispute in the appeal is different, this clause will not apply. AIR 1939 Pat 571 (572) = 18 Pat 323 (DB).

(22) Where the plaintiff's property is attached at the instance of a creditor of its ostensible owner and the plaintiff asks only for the release of his property from attachment, the Court-fee payable would be Rs. 10 under Schedule II, Article 17 (i) of the Court-fees Act.

If the ostensible owner is also joined as a party to the suit and a prayer is made against him for recovery of possession, the Court-fee payable would be calculated upon the value of the property in accordance with Section 7 (iv) (c) of the Act.

If in such a suit the plaintiff is defeated and he prefers an appeal he must pay Court-fees on the value of the property plus Rs. 10 for declaration.

If the plaintiff succeeds in the suit and an appeal is preferred by the defendants, the Court-fee to be paid must be regulated by consideration of the relief sought in appeal.

If the attaching creditor appeals the Court-fee payable would be Rs. 10 only.

If the ostensible owner appeals, the Court-fee payable would be the Court-fee calculated upon the value of the property. AIR 1913 Pat 605 (606) (DB).

(23) The suit contemplated by Sec. 88 (6-D), Criminal P. C., is a suit to obtain a declaratory decree where no consequential relief is asked for within the meaning of Article 17-A (Mad.) of Schedule II, Article 17 (i) would not apply because the attachment is ordered not by a Civil Court, nor by a revenue Court but by a Criminal Court. AIR 1954 Mad 290 (Pr. 4).

(24) Suit for cancellation of a certificate under Section 22 of Madhya Bharat Public Demands Recovery Act is a suit contemplated by Article 17 (i) of Schedule 2 to the Court Fees Act, and payment of fixed Court-fee under Article 17 (i), Schedule 2 is sufficient. 1968 Jab LJ 995 (1001) = 1968 MPLJ 680 (DB).

Schedule II, Article 17 (ii) — Note 1

(1) A suit against the government for settlement of fair rent by altering or setting aside the rents already settled is one for a declaratory decree with the consequential relief of amendment of the Record of Rights. (1910) 11 Cal L Jour 158 (158) (DB).

(2) A suit for declaration of title to certain land and that the Record of Rights is null and void is a suit for declaration with consequential relief. (1929) 118 Ind Cas 357 (358) (DB) (Cal).

(3) Suit for declaration of title to certain land with prayer for cancellation of mutation is one for declaration as the latter relief is redundant. AIR 1936 Pesh 140 (141) (DB) ** ('36-43) Tax Dec (Nag) 64 (66, 67).

(4) Suit for partition of watan property on allegation that plaintiff has been validly adopted into the family — Plaintiff not in actual possession of suit properties — Plaintiff should be considered as a coparcener and to be in possession constructively through defendants — He merely seeks to disrupt the joint possession and convert the same into separate possession — Relief comes within scope of Article 17 (ii). AIR 1962 Mys 53 (56) = 1962 (1) Cri LJ 441 = 39 Mys LJ 830 (DB).

Schedule II, Article 17 (iii) — Note 1

(1) It depends upon the construction of the relief claimed by the plaintiff to see whether the plaintiff has claimed a declaration simpliciter or also some consequential relief in addition to it. The plaint has to be seen in order only to construe the prayer and not in order to spell out of the prayer something which is not contained in it. AIR 1967 Punj 263 (266, 267) = (1967) 69 Pun LR (D) 52 (FB). (On facts Court-fee paid under Article 17 (iii) was held sufficient.)

(2) Where a transaction is void ab initio, fixed Court-fee under Schedule 2, Article 17 is payable for a suit for a declaration to that effect. But where a transaction is not void ab initio and is alleged to be vitiated on grounds like fraud or misrepresentation, a suit for declaring the transaction void is not covered by Schedule 2, Article 17. In such a suit, the Court is called upon to make a proper declaration as distinguished from recording a mere finding that the transaction is void and in such suit Court-fee must be paid on ad valorem basis.

Though one of the grounds of challenge of the sale deed may fall under Schedule 2, Article 17, the second ground falls under Section 7 (iv) (c) and hence ad valorem fee alone is payable. AIR 1968 Pat 187 (187).

(3) Suit for declaration of title to property and to set aside order of attachment and sale of property before filing a claim petition under Order 21, Rule 58 — Prayer for possession added subsequently —Such a suit cannot be called a suit under Order 21, Rule 63 and proper Court-fee payable is under Sec. 7 (iv) (c) and not a fixed fee under Article 17 (iii), Schedule 2 of the Act. AIR 1968 Manipur 1 (3).

(4) Suit for declaration of title to property and permanent injunction restraining the defendant from attaching it is a suit for declaration and consequential relief — Such a suit is not a suit for setting aside a summary decision under Article 17 (i) but is governed by Section 7 (iv) (c). AIR 1965 Madh Pra 4 (5) = 1964 MPLJ 362.

Schedule II, Article 17 (iii) — Note 1 (contd.)

(5) Suit for declaration and injunction — Injunction not dependent on declaration — Relief for injunction could be valued for purposes of court-fee under Section 7 (iv-B) (b) and not under Section 7 (iv) (a) and the relief for declaration could be valued under Article 17 (iii) of Schedule 2. AIR 1963 All 86 (89) = 1961 All LJ 763 (DB).

(6) Suit for mere declaration that an attachment is illegal is not equivalent for purposes of Court-fee to a suit for setting it aside — Plaintiff cannot be asked to pay ad valorem Court-fee on the ground that the result may involve the setting aside of the impugned attachment. AIR 1960 All 688 (691) = 1960 All LJ 687.

(7) Suit to declare rights of plaintiff to certain properties — Plaintiff also seeking declaration that a decree passed in a prior suit declaring defendant as owner as invalid and ineffective on the ground of fraud — The present plaintiff could have appealed against the decree in the prior suit by paying Court-fee under Article 17 (iii) — The present suit is also maintainable on a declaratory court-fee. AIR 1965 All 10 (13) = 1964 All LJ 498.

(8) Suit for declaration of sale deed unauthorised, void, illegal and ineffective against plaintiff is for adjudicating the sale deed void or voidable and squarely falls under Section 7 (iv-A) (U. P. and Article 17 (iii) does not come into play. AIR 1968 All 216 (220) = 1967 All LJ 612 (FB). (AIR 1956 All 168, Overruled.)

(9) Suit by stranger styled as one for cancellation of sale-deed — Relief claimed to the effect that sale deed was void and inoperative against plaintiff — Suit must be treated for Court-fee, as for simple declaration under Schedule II, Article 17 (iii). AIR 1965 J and K 33 (35) = 1964 Kash LJ 397.

(10) Suit for declaration that the plaintiff is a mutawalli of the wakf Estate — No averment in the plaint that the office carries any salary or any other emoluments — Suit is incapable of valuation — Suit is for a mere declaratory decree without any consequential relief and is governed by Schedule 2, Article 17 (iii). ILR (1962) 1 Cal 75 (80) (DB).

(11) Suit for declaration — Demarcating line between suit under Section 7 (iv) (c) and one under Schedule II, Article 17 (iii) — Suit for declaration that decree passed in previous partition is not binding — It was not possible to say that the necessary consequence of the grant of declaration prayed for would be to set aside the decree — **Held**, that Court-fee paid under Article 17 (iii) was proper. AIR 1961 Pat 470 (472) = ILR 39 Pat 571.

(12) Suit for declaration that previous decree for partition was null and void and be set aside and for reopening of partition — Allegations in plaint showing that plaintiffs were parties to previous decree — Reliefs for setting aside decree and for fresh partition are consequential to main declaratory relief that decree was null and void — Section 7 (iv) (c) applies — Schedule II, Article 17 (iii) and (vi) not applicable. AIR 1965 Punj 1 (10, 11, 12) = ILR (1964) 2 Punj 886 (FB).

(13) Revenue sale of touzi — Possession delivered to auction-purchaser — Estate taken over by State under Orissa Estates Abolition Act (1 of 1952) — Suit for setting aside sale — Court-fee paid as in declaratory suit — Consequential relief not necessary — Court-fee held sufficient. ILR (1961) Cut 478 (483) (DB).

(14) Suit for declaration that a Zarpeshgi deed executed by him in favour of defendant was without consideration and did not confer any title upon the defendant — Document void ab initio and no prayer for its cancellation necessary — Court-fee on the declaratory relief only is payable. 1958 BLJR 190 (191).

(15) The other members of the joint Hindu Family can ask for a decree of declaration to the effect that the alienation made by the Manager representing himself as the sole owner of the property is null and void as against them, without asking for any consequential relief, such as setting aside the decree passed against the Manager in connection with such alienation. Court-fee on suit for such declaratory decree is to be paid under Art. 17(iii) of Schedule II and not under Section 7 (iv) (c) of the Court-fees Act. (1967) 69 Punj LR 445 (453) (DB). (AIR 1932 Lah 132. AIR 1936 Lah 166. AIR 1941 Lah 97, **Diss.**)

(16) Suit for declaration simpliciter — The fact that the claim would be incompetent for failure of plaintiff to seek further consequential relief which he was able to claim does not affect the question of Court-fee and he will be liable to pay Court-fee under Article 17 (iii) of Schedule 2 provided the relief asked is not a garb for real substantial or consequential relief intended to be claimed. AIR 1967 Madh Pra 221 (224, 230) = 1967 MPLJ 242 (DB).

(17) A suit by a minor member of Joint Hindu Family governed by Benaras School — Prayer that the sale of family property by his elder brother as karta was not binding on the family not being for legal necessity or benefit of the family — Alternative prayer that the sale is ineffective and void against plaintiff's share — Suit is for mere declaration and Court-fee payable is under Article 17 (iii) of Schedule 2 and not under Sec. 7 (iv) (c). AIR 1967 Madh

Schedule II, Article 17 (iii) — Note 1 (contd.)

Pra 221 (224, 227) = 1967 MPLJ 242 (DB).

(18) Memorandum of appeal against an order of apportionment of compensation under any law relating to acquisition of land for public purpose is governed by Section 8 read with Article 1, Schedule 1 and Article 17 (iii) of Schedule 2 does not apply. AIR 1961 Him Pra 30 (32).

Schedule II, Article 17 (iv) — Note 1

(1) Fixed fee of Rs. 10 for a suit to set aside an award irrespective of the value of the subject-matter involved. (1908) 35 Cal 202 (207) = 35 Ind App 22 (PC). (Awards may be of value of Rs. 10 or of value of Rs. 1,00,000.)

(2) The word "award" in this clause, applies to awards in arbitration proceedings. AIR 1924 Mad 84 (84) ** (1908) 35 Cal 202 (207) = 35 Ind App 22 (PC).

(3) Any judicial decision which is not a decree might be considered an award for the purpose of this clause. AIR 1941 Nag 243 (244) = ILR (1942) Nag 636. (Award by Registrar of Co-operative Societies is an award within this clause.)

(4) Suit for declaration that an award is ultra vires must be treated as one to set it aside under this clause. AIR 1924 Sind 105 (110) = 17 Sind LR 15 ** AIR 1941 Nag 243 (245) = ILR (1942) Nag 636.

(5) Where an award is enforceable as a decree this clause does not apply. 1957 MPLJ 46 (48) (Nag).

(6) One of the reliefs sought by the plaintiff was a declaration that the order of the Deputy Registrar directing the plaintiff to pay Rs. 1,271-8-0 to an Association with Rs. 50 as costs was null and void and was not binding on the plaintiff. It was held that the suit could not be described as a suit to set aside any award of the Registrar as there was no award by him. A suit of this kind was governed by Clause (4) (c) of Section 7. 1957 MPLJ 46 (48) (Nag). (AIR 1941 Nag 243, Not foll.)

(7) In an appeal from an award preferred to High Court under Section 54 of the Land Acquisition Act, 1894, where the claimant merely raised the question of title, it was held that Schedule 2, Article 17 (iii) or (iv) did not apply as the proceeding in which the award was given could not be described as a suit and that the provisions of Section 26 (a) of that Act did not make the proceeding a suit. AIR 1951 Pat 608 (Pr. 3).

Schedule II, Article 17 (v) — Note 1

(1) There can only be a suit for a declaration that an alleged adoption is invalid or never in fact took place, and not to set aside the adoption. (1886) 13 Cal 308 (319, 320) = 13 Ind App 84 (PC).

(2) A suit by adopted son for declaration that he is such and possession is not a suit for possession in which the question of title rises incidentally but is a declaratory suit for title first and for the consequential relief of possession. AIR 1923 Pat 100 (101) = 5 Pat L Jour 339 (DB).

(3) A suit for cancellation of a deed of adoption should be stamped, whether under Sch. II. Art. 17, Cl. (v) or under Section 7 (iv) (c), at Rs. 10 only. AIR 1937 Rang 400 (400).

(4) Defendant left in possession of immovable property left by his adoptive father under a solenama between him and plaintiff — Plaintiff seeking to set aside the solenama cannot frame the suit as for setting aside the adoption under this clause. (1874) 22 Suth WR 338 (340) (DB).

(5) Rule framed in Central Provinces under Section 9, Suits Valuation Act, that a declaratory suit in respect of adoption should be valued at Rupees four hundred and in cases where title to property is affected at the then value of such property for the purposes of that Act as well as this Act, though is inconsistent with this clause, has the force of law. AIR 1930 Nag 73 (85, 86) (DB) ** AIR 1949 Nag 263 (264) = ILR (1948) Nag 932 ** AIR 1930 Nag 20 (20) (DB) ** AIR 1920 Nag 233 (234). (Suit for declaration that defendant was never adopted falls under this rule — Court fee on the value of property to be paid.

(6) Under Article 17-A, Cl. (iii), Sch. I. of the Madras Amendment a fixed fee of fifteen rupees is payable when the plaint is presented to or the memorandum of appeal is against the decree of a District Munsif's Court or the City Civil Court. When the plaint is presented to or the memorandum of appeal is against the decree of a District Court or a Sub-Court, a fixed fee of one hundred rupees is payable if the value for purposes of jurisdiction is less than ten thousand rupees but a fixed fee of five hundred rupees is payable if it is ten thousand rupees or upwards. AIR 1935 Mad 279 (279) (DB).

(7) In valuing for purposes of jurisdiction, a suit for a declaration that an adoption is invalid, computation has to be made of the value of the interest that would be lost to the alleged adopted son if the adoption be declared invalid. AIR 1928 Mad 1294 (1295) = 52 Mad 340 ** (1883) 6 Mad 192 (196) (DB). (Valuation to be made of interest that will be acquired in a suit to declare adoption valid.)

(8) The calculation is to be made on the market-value of the property which is affected by the declaration being granted or refused. AIR 1935 Mad 279 (279) (DB) ** AIR 1928 Mad 1294 (1296) = 52 Mad 340.

Schedule II, Article 17 (v) — Note 1 (contd.)

(9) Suit for declaration that plaintiff's husband was adopted to one R — The subject-matter of the suit was the fact and validity of adoption — **Held,** that suit was for a declaration without consequential relief. AIR 1927 Mad 563 (563, 565) = 50 Mad 646 (DB) ** AIR 1925 Mad 1223 (1224) (DB). (Suit for setting aside adoption and alienation.)

(10) A suit for a declaration that a deed of adoption executed by a widow should not, after her death or re-marriage, affect the reversionary rights of the plaintiff is not a suit for "annulling an adoption" within the meaning of the rule framed by the Lahore High Court but one for a declaration that the adoption should not affect plaintiff's reversionary rights. AIR 1925 Lah 229 (230) = 5 Lah 440 (DB).

(11) The fee prescribed under Art. 17, Cl. (5) of Sch. 2 of Court-fees Act (as amended) in Bombay is not an ad valorem fee, and hence Section 8, Suits Valuation Act will not apply. AIR 1945 Bom 474 (475) (DB). (**Dissenting from** AIR 1944 Bom 316 (318).) Case prior to Bombay Act 36 of 1959.

SCHEDULE II, ARTICLE 17 (vi) — SYNOPSIS

1. **Scope.**
2. **Suit relating to public or private trusts.**
3. **Suit for removal of karnavan.**
4. **Suit for restitution of conjugal rights.**
5. **Appointment of receiver.**
6. **Suit under Section 77, Registration Act.**
7. **Suit for partition.**
8. **Proceedings under Hindu Marriage Act (1955).**
9. **Suits or appeals not capable of money valuation.**

1. Scope. (1) For the applicability of this clause the suit must be incapable of valuation in terms of money and must not be otherwise provided for by this Act. These conditions must co-exist. AIR 1943 Pat 433 (438) ** AIR 1957 Cal 651 (653) (DB) ** AIR 1935 Cal 338 (342, 343) (DB) ** (1928) 29 Pun LR 322 (327) ** (1912) 39 Cal 906 (911, 913) (DB).

(2) Where the subject-matter in dispute is capable of being estimated at a money value and has been provided in Section 7 (vi-A) (U. P.) and Section 7 (iv-A) (2) (U. P.), Art. 17 has no application. Since under Art. 17, the same court-fee is payable on a memorandum of appeal as on the plaint, it is impossible to apply the article to a memorandum of appeal if it was not applicable to the plaint as where the subject-matter of the suit could be estimated at a money value or if it was provided for in the Act. 1958 All WR (HC) 356 (357).

(3) Where a relief which would by itself have come under this clause is coupled with a declaration and is sued for as a consequential relief based on a declaratory decree, this clause will not apply to the suit but the suit will come under Section 7 (iv) (c). AIR 1949 Nag 347 (Pr. 8) = ILR (1949) Nag 195.

(4) Where an approximate valuation is possible this clause will not apply. AIR 1942 Mad 152 (153). (Decree granting certain sum but refusing first charge — Appeal against prayer in respect of first charge — Relief held capable of valuation — But see AIR 1958 Cal 453 which held such relief as incapable of valuation.) ** AIR 1958 Cal 675 (677) (DB). (Dispute in appeal with regard to status of appellant, namely whether he was displaced person under Displaced Persons (Debts Adjustment) Act — Subject-matter in appeal is incapable of money value — Case held fell under Art. 17 (vi) ** AIR 1954 All 188 (190). (Relief, in substance, combination of two reliefs i. e., relief for possession of land and relief for demolition — Former relief held was governed by Section 7 (v) (1) (c) and the latter by Art. 17 (vi) of Sch. 2.) ** AIR 1953 Mad 576 (Pr. 20). (An administration suit for division of the assets of a deceased person amongst his heirs should be valued under Art. 17-B. Sch. 2 of Court-fees Act.) ** AIR 1951 Orissa 183 (1) (Pr. 1) = ILR (1950) Cut 351. (The mere fact that the land is declared inalienable by the provision in any enactment does not render it incapable of valuation.) ** 1949 Trav-Co LR 95 (100. 101) (DB). (Decree for redemption with condition superadded — Appeal seeking to avoid condition — Court-fee payable is one under Art. 17 (vi). ** AIR 1941 Mad 313 (314) ** AIR 1935 Cal 338 (342. 343) (DB). (Restitution of conjugal rights can be valued.) ** AIR 1934 Cal 786 (787) (DB) ** AIR 1932 All 406 (407) = 54 All 608 ** AIR 1942 Mad 247 (249) = ILR (1942) Mad 455. (Administration suit for accounts and for divisions of assets of a Mohamedan lady amongst the heirs.) ** AIR 1935 Bom 111 (112) = 59 Bom 439. (Defendant appealing against decree imposing on him personal liability — Appeal falls under this clause.) ** AIR 1944 Mad 252 (253). (Subject matter of suit for specific performance of contract in exchange for immovable property is capable of valuation.) ** AIR 1940 Oudh 183 (184) = 15 Luck 321. (Subject-matter in dispute in appeal is to the manner in which decree is to be enforced — Valuation not possible.) ** AIR 1941 Lah 265 (267) (DB). (Suit for declaration that deed of relinquishment executed by manager of gurdwara void and for its cancellation — If cancella-

Schedule II, Article 17 (vi) — Note 1 (contd.)

tion the substantial relief, this clause applies.) ** AIR 1940 All 521 (523). (Suit by Mahomedan heir for partition — Widow setting up possession in lieu of dower in priority to heir's right to partition — Appeal by widow to retain possession should bear fixed fee.) ** AIR 1922 Nag 264 (265). (Suit for declaration that certain sum was settled as maintenance and for amendment of document to that effect — Suit held not under Art. 17 (vi) — Suit held fell under Section 7 (iv) (c).)

(4) A suit was brought for recovery of Rs. 6709 advanced on pledge of articles. The amount was decreed to be recovered by sale of articles but no personal decree was passed. Appeal by plaintiff was valued by him at Rs. 2250 and a personal decree was granted. There was a second appeal by the defendant on which he paid Rs. 10 under Sch. 2, Art. 17 (vi) on the ground that subject-matter of appeal was incapable of valuation — **Held**, that the value of appeal would be approximate amount which may remain unrealised after sale of articles. Unless defendant could show that articles were likely to fetch higher value, value placed by plaintiff should be considered proper in second appeal and defendant would be liable to pay 'ad valorem' court-fee thereon. 1955 Raj LW 35 (35).

(5) Suit by plaintiffs for reliefs (a) that it be declared that plaintiff No. 2 was agent of plaintiff No. 1 and (b) that property be taken from management of defendant and handed over to plaintiff No. 2 on behalf of plaintiff No. 1 — Relief (a) held should be valued under Sch. II. Art. 17 (iii) and relief (b) under Sch. II. Art. 17 (vi). AIR 1955 All 177 (Prs. 8, 9) (DB).

(6) Only question was whether the Municipal Council could exercise jurisdiction over this area and collect property-tax from the people living there — **Held**, that this right being incapable of being valued in terms of money, the suit was rightly valued under Art. 17-B (Mad). AIR 1955 Andhra 83 (Prs. 4, 5).

(7) A suit filed in a representative capacity on behalf of the citizens and rate payers of a municipality for a declaration that a resolution passed by a Municipal Council relating to a market was illegal, ultra vires and void clearly falls under Art. 17-B (Mad) of II. It cannot be said that in such a suit the subject-matter of the suit is the market and that court-fee should be paid under Art. 17A (i) of Sch. II. AIR 1954 Mad 284 (Prs. 1, 2, 3) = ILR (1954) Mad 32.

(8) A suit for declaration that certain villages are not 'estates' under the Madras Estates Land Act and that the Madras Act XXX of 1947 was not applicable to the lands in such villages would fall within Art. 17B (Mad) of Sch. II. AIR 1954 Mad 262 (Pr. 3) = ILR (1954) Mad 34.

(9) Though otherwise a suit might have fallen under this clause, where the plaintiff had himself stated the value of the relief, the suit must be treated as capable of valuation. AIR 1932 Pat 319 (321) ** ('84) 10 Cal 599 (603) (DB).

(10) Where the proceedings cannot be regarded as a suit, this article will not apply. (1896) 23 Cal 723 (730) (FB).

(11) Court-fee on petition under Indian and Colonial Divorce Jurisdiction Acts, 1926 and 1940 is payable under this article and not under Art. 20 or Art. 1 (d) of Sch. II. AIR 1946 Pat 401 (402) = 25 Pat 194.

[But see AIR 1935 All 791 (791) = 58 All 259.]

(12) Suit to reduce rate of maintenance awarded under decree is governed by this article. AIR 1945 Nag 264 (266) = ILR (1945) Nag 661 (DB). (See notes on S. 7 (ii) ** (1958) 6 Sau LR 529 (531, 532).

2. Suit relating to public or private trusts. — (1) A suit under Section 92 of the Civil Procedure Code is one falling under this clause irrespective of the actual reliefs asked for in the suit. (1910) 12 Cal L Jour 211 (214) (DB) ** (1896) 19 All 60 (63) (DB) ** (1899) 21 All 200 (203) (DB) ** AIR 1943 Oudh 186 (190) = 18 Luck 738 (DB) ** AIR 1924 Mad 882 (883) ** AIR 1925 Mad 722 (722) ** AIR 1941 Lah 97 (101) = ILR (1941) Lah 451 (FB).

[See however AIR 1937 Mad 591 (593) ** (1906) 28 All 112 (120) (DB).]

[But see AIR 1949 Cal 98 (100) = ILR (1945) 1 Cal 266.]

(2) Suit under Section 92, Civil P. C. — Some reliefs outside scope of S. 92 — Court-fees chargeable on these reliefs have to be paid — The question whether such a suit can be brought within the purview of Art. 17 (vi) depends on the allegations made and the reliefs claimed in the suit — Suit against trustees and legal representatives of a deceased trustee for damages to trust property and rendition of accounts — Damage claimed and balance after accounts valued by plaintiffs themselves — Relief claimed falling outside scope of Section 92 C. P. C. — No allegation of dishonesty and malversation — **Held**, the plaintiff must pay ad valorem court-fees on such relief under Section 7 (iv) (f). AIR 1964 Madh Pra 259 (261) = 1964 MPLJ 758.

(3) The principle underlying ad valorem court-fees is that the value of the action must mean the value to the plaintiff. (1908) 35 Cal 202 (207) = 35 Ind App 22 (PC).

(4) Suit against trustee to set aside

Schedule II, Article 17 (vi) — Note 2 (contd.)

trust deed whereby certain property had been made over to the trustee for the benefit of the trust — Ad valorem fee on value of property paid — Suit decreed — Appeal by trustee — **Held,** that though he had no personal interest in the suit he too must pay ad valorem fee on value of property. (1884) 10 Cal 380 (382).

(5) Suit for possession of lands against defendants as trustees and guardians — Prayer for specific sum of money as rents and profits of land with interest — Decree for possession directing ascertainment of profits later on — Appeal by defendants as regards the profits — Claim in appeal held could not be estimated in money value — Court-fee payable on appeal is Rs. 100 whether (Madras) Art. 17B or Art. 17A applies. AIR 1949 Mad 349 (Pr. 8) = ILR (1949) Mad 569.

(6) In the following cases not falling under Section 92 the facts of each case determined the court-fee payable:

(a) Temple as such has no market value and suit for recovery and possession of it falls under this clause. AIR 1924 Mad 19 (22) = 16 Mad 782 (FB) ** AIR 1953 Madh B 40 (Pr. 9) ** (1938) 40 Pun LR 113 (115). (**Held,** that in respect of other properties productive of income ad valorem court-fee was payable on the value thereof.) ** AIR 1929 Rang 134 (136) = 7 Rang 245 (FB) ** AIR 1938 Nag 481 (482).

(b) Suit by shebait for possession of trust properties including alienated properties — **Held,** suit did not fall under this clause but under Section 7 (v). AIR 1932 All 593 (595) = 54 All 869.

(bb) Suit for declaration that plaintiff was sebayet of idol and for injunction restraining defendants from interfering with plaintiff's possession of idol properties — For court-fee purposes suit falls within Art. 17 (vi). Sch. 2 Court fees Act. AIR 1966 Pat 441 (445) = 1966 BLJR 621.

(c) Suit for declaration that certain properties belonged to family deities and for removal of defendants as shebaits, for framing a scheme of management, injunction and accounts — Suit held fell under Section 7 (iv) (c). AIR 1941 Cal 509 (512) (DB).

(d) Prayer in suit by trust (temple) for declaration that property is debutter and for perpetual injunction — Latter relief held consequential falling under Section 7 (iv) (c) — This article held not applicable. AIR 1938 Cal 865 (865) = ILR (1938) 2 Cal 64 (DB).

(e) Suit for removal of muttawalli and appointment of new one — Prayer for recovery of amounts annually paid to descendants of Wakif — Claim for annual receipts capable of valuation and this article held not applicable. AIR 1942 Sind 160 (161) = ILR (1942) Kar 424.

(f) Suit for removal of muttawalli and appointment of plaintiff in his place falls under this clause. AIR 1938 Oudh 20 (21) (DB).

(g) Where the subject matter of the suit is the right to mutwalliship and the office does not carry any salary or any other material emoluments, it is not capable of monetary valuation and therefore the proper court-fee is the fixed fee under Art. 17 (vi). AIR 1952 Pat 336 (Pr. 6) = 27 Pat 494 (DB).

(h) Suit by newly appointed manager against expelled manager merely for the possession of the office falls under this clause. AIR 1939 Mad 776 (779).

(i) Suit between rival managers for right to manage trust property — Beneficial ownership of temple not denied — No question of possession under Section 7 (v) — Court-fee under this clause held sufficient. AIR 1944 All 279 (281) = ILR (1944) All 564 (DB) ** AIR 1949 Ajmer 23 (25).

(j) Suit by trustee or manager to remove defendant from such office and to recover possession of trust properties from him, would fail under Art. 17. Cl. 6. Sch. II — Right to management being subject-matter of suit. court-fee cannot be levied ad valorem on market value of property. AIR 1951 Trav-Co 51 (Pr. 4) = ILR (1953) Trav-Co 812 (DB) ** AIR 1954 Trav-Co 178 (Prs. 10, 29, 43) = ILR (1953) Trav-Co 1170 (FB) ** AIR 1957 Trav-Co 225 (226) = ILR (1956) Trav-Co 971. (Suit to remove defendant from management.)

(k) Suit by trustees for recovery of possession of dharamshala — Defendants alleged to have obtained possession wrongfully — Property under seal of Court in pending proceedings under Section 145 Criminal P. C. — Still suit is governed by Section 7 (v) (e) and not by Art. 17 (vi). AIR 1962 Punj 479 (480).

(l) Suit for declaration that the plaintiff is a mutawalli of a wakf Estate — Prayer for removal of defendant from mutawalliship and also for framing of the scheme — **Held,** the reliefs claimed besides

Schedule II, Article 17 (vi) — Note 2 (contd.)

declaration should be governed by Art. 17 (vi) of Sch. 2 of the Court-Fees Act. ILR (1962) 1 Cal 75 (81) (DB).

(7) Suit under S. 14 of the Religious Endowments Act, 1863 held was governed by this clause. ('88) 11 Mad 149n (149n) (DB).

(8) Suit for removal of trustees and for accounts — Relief for removal of is covered by Section 14 of Religious Endowments Act — Court-fee paid under Art. 17 (vi) on this relief is sufficient — Section 14, Religious Endowments Act, 1863 does not cover case of general prayer for accounts — Court-fee, held, was payable under Section 7 (iv) (b) and not by Sch. 2, Art. 17 (vi). AIR 1966 All 189 (190) = 1965 All LJ 890.

(9) Application to modify or set aside the decision of the Board of Commissioners under Section 84 of Madras Hindu Religious Endowments Act II of 1927 is governed by Art. 17 (i) of Madras Court-fees (Amendment) Act which is the same as clause (i) of this article and not this clause. AIR 1930 Mad 392 (393) = 53 Mad 266 (FB). (AIR 1929 Mad 52, **Overruled.)**

(10) Suit for possession of property intended to be dedicated — Mere intention not tantamount to dedication — Court-fee should be paid ad valorem. AIR 1938 Rang 303 (304).

(11) Madras High Court-fee Rules, 1925. do not exempt the payment of fees in respect of suits under Section 92, C. P. C. AIR 1927 Mad 940 (943).

3. Suit for removal of karnavan.— (1) Suit to remove karnavan of a Malabar Tarwad and appoint plaintiff in his stead is governed by this clause. (1888) 11 Mad 266 (268) (DB) ** (1882) 4 Mad 314 (314) (DB).

4. Suit for restitution of conjugal rights. — (1) A suit for restitution of conjugal rights will fall under Sch. II, Art. 17 (vi) as being a suit of which the subject-matter is not capable of being valued in terms of money. (1911) 33 All 767 (770).

[But see AIR 1935 Cal 338 (341, 343).]

5. Appointment of Receiver. — (1) A suit for the appointment of a Receiver will be liable only to a fixed court-fee of Rs. 10 under this clause. (1905) 27 All 406 (410) (DB) ** AIR 1946 All 392 (392, 393) = ILR (1946) All 455 (DB) ** AIR 1949 Pat 346 (Pr. 1) = 27 Pat 11 (DB). (Suit by reversionary heir for appointment of receiver of properties in possession of widow. AIR 1922 Pat 61, **Overruled.)**

(2) Where the appointment of the Receiver is asked for along with a declaration and as consequential on the declaration, the suit will come under Section 7 (iv) (c) and will be chargeable with an ad valorem court-fee according to the amount at which the plaintiff values the relief in his plaint. AIR 1917 Mad 134 (134).

(3) The plaintiff claiming to be the owner of suit holdings in the possession of defendants, claimed that the defendants were lessees under him and that they had executed lease deeds in his favour agreeing to pay fixed rates of rent. His only allegation was that the defendants had conspired together to claim the entire ownership in the lands and the crops in themselves and to cheat him of his lands and rents. He prayed for the appointment of a receiver for harvesting the crops, so that the rents stipulated for in the lease deeds might be safeguarded. He did not pray for the recovery of rents because they had not yet fallen due — **Held,** that the plaintiff ought, in the circumstances of this case, to pray for a declaration that he was the owner of the suit lands in question and that he had leased them out to the defendants, as his tenants, stipulating for the rents mentioned in the lease deeds, and then to pray for the appointment of a receiver to harvest the crops, as a consequential relief, since the defendants had conspired together to remove and appropriate the entire crops for themselves. In this view, he must pay court-fee under Section 7 (iv) (c) and not under Art. 17-B of Sch. II (Mad). AIR 1956 Mad 7 (Pr. 4) = ILR (1956) Mad 1378.

6. Suit under Section 77, Registration Act. — (1) A suit to compel the registration of a document under Section 77 of the Registration Act is governed by this clause. AIR 1924 Cal 600 (605) (DB) ** AIR 1952 Hyd 1 (Prs. 6, 7) = ILR (1952) Hyd 160 (DB). (Suit to have deed of disclaimer executed and registered.) 1895 Pun Re No. 21 p. 88 (88) (DB) ** (1882) 8 Cal 515 (516) ** (1908) 31 Mad 89 (91) (12 Mad L Jour 87, **impliedly overruled.)**

7. Suit for partition. — (1) Suit by purchaser for possession of his vendor's share in joint family property — Article 17 (vii) applies. AIR 1945 Bom 336 (337) = ILR (1945) Bom 729 (DB).

(2) Suit for partition of his share by person in joint possession — Relief of partition in such case tantamounts to change in the mode of joint enjoyment into separate enjoyment and is incapable of valuation — Art. 17 (vi) of Sch. II is applicable — Section 7 (iv) (b) not applicable. AIR 1968 Manipur 52 (53, 54) ** ILR (1968) 47 Pat 509 (510) ** AIR 1966 Him Pra 4 (7).

(3) Suit for partition by a coparcener who is in joint possession of the family property does not fall under Section 7 (v) but under Sch. II, Art. 17 (vii) (Bom. Amendment) as the value of a change

Schedule II, Article 17 (vi) — Note 7 (contd.)

in the mode of possession is not capable of being expressed in money. AIR 1947 Bom 259 (262, 263) (FB) ** AIR 1960 Andh Pra 313 (315).

(4) Suit for declaration that previous decree for partition was null and void and be set aside and for reopening of partition — Allegation in plaint showing that plaintiffs were parties to previous decree — Relief for setting aside decree and for fresh partition are consequential to main declaratory relief that decree was null and void — Section 7 (iv) (c) applies — Sch. 2, Art. 17 (iii) and (vi) not applicable. AIR 1965 Punj 1 (10, 13) = ILR (1964) 2 Punj 836 (FB).

(5) Suit for declaration of title to property by person in constructive possession — Partition of property claimed. It is not a suit for declaration with consequential relief — Proper Court-fee payable is according to Sch. 2. Art. 17 (vi). AIR 1962 Assam 137 (140) = ILR (1964) 14 Assam 453 (DB).

(6) Suit for partition and accounts of joint family property by coparcener ousted from possession — Right to share of the plaintiff in dispute — Court-fee under Art. 17 (vi) paid — Suit valued for jurisdictional purposes but not for court-fee purposes — **Held,** under S. 8 Court-fees Act valuation for jurisdiction was valuation for Court-fee — Plaintiff must pay ad valorem Court-fee under Section 7 (iv) (b) and not under Art. 17 (vi), Sch. 2. AIR 1967 Punj 389 (396, 397) = (1966) 68 Pun LR 54 (FB). (AIR 1930 Cal 686, **Not Foll.**; AIR 1941 Lah 97 (FB), Foll.) ** AIR 1959 Madh Pra 181 (182) = 1958 MPLJ 704.

(7) Partition suit — Plaintiff's incidental claim for declaration that previous compromise decree for partition was not binding — Previous decree void and not voidable — The previous decree being void a mere finding that decree was void sufficient and a declaration to that effect not necessary. — Ad valorem duty not necessary, — Court-fee paid under Art. 17 (vi), Sch. 2 was proper. AIR 1965 Pat 486 (489) = 1965 BLJR 538.

See also under S. 7 (iv) (b).

8. Proceeding under Hindu Marriage Act (1955). — (1) Hindu Marriage Act (1955), Section 28 — Proceeding under latter Act is suit, though initiated by application — Appeals against decree thereunder — Court-fee is payable under Sch. II, Art. 17 (vi) — Sch. II, Arts. 1 (f) and 11 are not applicable 1967 Jab LJ 712 (720). (AIR 1962 Pat 489, **Diss. from.**)

(2) Application under Section 13 (1) of Hindu Marriage Act, 1955 is not otherwise provided for by the Court-fees Act and therefore requires to be stamped as a mere petition under Art. 1 (b), Sch. 2 and not under Art. 17 (vi) of Sch. 2. AIR 1959 Pat 186 (187) = ILR 37 Pat 83 (DB).

(3) Application for divorce and damage under Sec. 13 of Hindu Marriage Act — Dismissal — Appeal from the order of dismissal cannot be treated as an appeal from original decree — The appeal is one contemplated by Art. 11, Sch. 2 and not by Art. 17 (vi) so far as relief of divorce is concerned — The claim for damages is not a claim flowing from the main relief — It must be treated as a money claim and for that relief ad valorem court-fee would be necessary. AIR 1962 Pat 489 (491) = ILR 41 Pat 757 (DB).

[But see 1967 Jab LJ 712 (716, 720). (AIR 1962 Pat 489 **Not Foll.**)]

9. Suits or appeals not capable of money valuation. — (1) Final decree in suit for accounts providing that if certain additional court-fee is not paid within certain time decree is to become null and void—Appeal by plaintiff claiming that condition attached to decree was void — Sch. II. Art. 17 (vi) applies and a fixed fee of Rs. 10 on memo of appeal is sufficient because relief claimed is not capable of money valuation and there is no other provision in Court-fees Act for such relief. ILR (1960) 10 Raj 60 (66).

(2) Suit for separate possession of share in joint property as contra-distinguished from joint family property — Plaintiff neither in actual or constructive possession — Section 7 (iv) (b) and Art. 17 (vi) do not apply — Court-fee payable is ad valorem under Section 7 (v). 1962 Raj LW 357 (359).

(3) Appeal against preliminary decree in suit for redemption — No dispute about right of redemption or principal amount — Appeal claiming change in directions to Commissioner — Relief incapable of valuation — Court-fee is payable under Sch. 2, Art. 17 (vi) and not under Section 7 (ix). AIR 1960 Madh Pra 292 (293) = 1960 MPLJ 886 (DB).

(4) Where all that the appellant decree-holder wants in the appeal from a money decree directing payment in instalments with a default clause and providing for interest, is to recover the whole decretal amount at once avoiding the instalments, the relief is not capable of being valued in money and the memorandum of appeal must be treated as under Art. 17 (vi). Sch. 2. AIR 1961 Raj 184 (185, 186) = 1960 Raj LW 539 (DB).

(5) Suit for injunction restraining defendant from taking steps to recover certain amount from plaintiff and interfering with plaintiff's possession of certain property — **Held,** suit fell under Art. 17 (vi), Sch. 2 read with Section 7 (iv) (d). AIR 1959 Madh Pra 253 (255) = 1959 MPLJ 388.

Schedule II, Article 17 (vi) — Note 9 (contd.)

(6) (as amended in Madras) — Art. 17-B has to be read as not to come in conflict with Art. 1 of Sch. 1. ILR (1967) 1 Ker 310 (312).

(7) (as amended in Madras) — "Where it is not possible to estimate at a money value the subject-matter in dispute" — Expression must be read as qualifying the words "plaint or memorandum of appeal" and not the word "suit" — Words "in every suit" have been interposed to make the article applicable only to memoranda of appeal in suits and not in other proceedings. ILR (1967) 1 Ker 310 (314).

(8) (as amended in Madras) — Fact that subject-matter in dispute in plaint was not capable of being valued in money is entirely irrelevant while fixing Court-fee on memorandum of appeal. ILR (1967) 1 Ker 310 (312). (AIR 1950 Mad 353 and (1953) 1 MLJ 135, **Dissent from.)**

Schedule II, Art. 17 (vii) — Note 1

(1) (as amended in U. P.) — Memorandum of appeal under Section 299, Succession Act against an order on a petition under Section 278 of that Act — Proceedings are not instituted by plaint nor can the appeal be said to arise out of any such suit — Art. 17 (vii) Sch. 2 does not apply—Court-fee is payable under Art. 1 (e) (5), Sch. 2 — Court-fee payable — Art. 1 (e) (5) applies. AIR 1963 All 153 (158, 159) = 1962 All LJ 1135 (FB). (ILR 35 All 448 **Overruled.)**

(2) (as amended in U. P.) Ad valorem fees under Sch. 1 — Suit for declaration and consequential relief — Appeal — Court-fees — Ad valorem fees payable only if value of the relief could be ascertained — Otherwise Court-fee is payable under Art. 17 (vii) of Sch. II to the Act. AIR 1968 All 94 (95).

Schedule II. Article 17-A (Orissa) — Note 1

(1) Column 3 of Art. 17-A (Orissa Amendment) cannot be read disjunctively from column 1. Art. 17-A does not contemplate that the jurisdictional value in column 3 will be something different from what is indicated in column 1. Therefore in a partition suit governed by Art. 17-A the memorandum of appeal is chargeable with the same Court-fee as that on the plaint, the jurisdictional value being the same. AIR 1969 Orissa 167 (168, 169) = 35 Cut LT 327.

(2) Proceedings under Section 295 of the Indian Succession Act even though become contentious cannot be treated as a suit for court-fee purposes and court-fee payable, on a memorandum of appeal from an order refusing to grant probate, is under Art. 11, Sch. 2 and not under Art. 17-A, Sch. 2. AIR 1967 Orissa 41 = 33 Cut LT 13 (DB) ** AIR 1969 Orissa 265 (265, 266) = 35 Cut LT 461.

(3) For the purpose of determining the appropriate provision of the Court-fees Act applicable to a suit, the frame of the suit is the criterion. Where the frame of the suit is for partition and separate allotment of properties alleged to be in joint possession, even though possession may be constructive. The application of Art. 17-A is attracted. AIR 1969 Orissa 265 (266) = 35 Cut LT 461.

(4) (Orissa) — Suit for partition of joint family property — Allegation of certain alienations being fraudulent — Plaintiff not a party to various alienations — Plaintiff was not bound to pray for setting aside the alienations — Deeds of alienations not acted upon — Proper court-fee is that for a pure suit for partition — Section 7 (iv) (c) does not apply. AIR 1962 Orissa 47 (48, 49) = ILR (1960) Cut 704.

(5) Partition suit — Alienations made by defendant set out as forming cause of action — Suit held for partition and not for declaration of title with consequential relief -- Fixed court-fee under Art. 17-A payable — Section 7 (iv) (c) does not apply. AIR 1963 Orissa 120 (121) = ILR (1963) Cut 206.

(6) Suit for declaration of title and possession after removal of structure by defendant put up on encroached land — Commission appointed by trial Court finding that land of plaintiff was encroached — Defendant cannot for the first time in second appeal raise point that plaintiff has not paid separate court-fee under Sch. 2, Art. 17-A for removal of structure. AIR 1965 Orissa 130 (131) = ILR (1964) Cut 886.

(7) (As amended by Orissa Act (5 of 1939) — Order refusing to grant probate of will — Appeal against such order is governed by Art. 11 and not by Art. 17-A, Sch. 2 which applies only to suits instituted on plaints or appeals arising out of such suits. AIR 1967 Orissa 41 (43, 44) = 33 Cut LT 13.

(8) Appeal against an order awarding compensation under Orissa Development of Industries etc. (Land Acquisition) Act 1948 comes within Section 8 Court-fees Act and the Court-fee should be paid ad valorem on the amount claimed. Art. 11 or Art. 17-A of Sch. 2 does not apply. ILR (1963) Cut 426 (430).

Schedule II, Article 17 (V-A) (West Bengal) — Note 1

(1) The distinction between Sch. II, Art. 17 (va) and Section 7 (vi-A) does not turn on the question who is the ostensible owner or whether the ostensible owner is a member of the family or a stranger, but on the question whether upon the averments in the plaint, the plaintiff is in possession of the properties of which he claims to be a co-

18. Application under section 326 of the Code of Civil Procedure.*	...	Ten rupees.

*See now the Arbitration Act, 1940 (10 of 1940), S. 20.

STATE AMENDMENTS

Andaman and Nicobar

For the entry in the first column *substitute* the entry "18. Application under section 20 of the Arbitration Act, 1940" and *insert* the words "Ten rupees" in the third column.

— Reg II of 1957 [1-8-1957]

Assam: Nagaland

For Art. 18 *substitute* the following:

"18. Application under section 14 or section 20 of the Indian Arbitration Act 1940, for a direction for filing an award or for an order for filing an agreement.	When presented to a Munsiff's Court	Fifteen rupees.
	When presented to any other Court	Fifty rupees."

—Assam Act 8 of 1963, S 2 (2) [1-4-1963]: Act 27 of 1962, S. 26 [w.e.f. 1-12-1963]

Bihar

(1) "Fifteen rupees" were *substituted* for "ten rupees" as proper fees shown against the article.

— Bihar and Orissa Act II of 1922 [21-8-1922]

(2) For surcharge *see* Bihar Act XXV of 1948; for text of this Act as amended, *see* Appendix I.

Delhi

Same as that of Punjab — *See* G. S R. 842, Gaz. Ind., 1959, Pt. II, S, 3 (i) p 1039, [w e f 1-8-1959.]

Madhya Pradesh

For Art. 18 *substitute* the following.

"18. Applications—

(a) Under section 14 or section 20 of the Arbitration Act 1940, for a direction for filing an award or for an order for filing an agreement.	When the amount or value of the property to which the award relates	
	(a) does not exceed rupees one thousand;	Fifteen rupees
	(b) exceeds rupees one thousand but does not exceed rupees five thousand;	Thirty-seven rupees and fifty paise.
	(c) exceeds rupees five thousand;	Seventy-five rupees.

Schedule II, Article 17 (v-A) (WB) — Note 1 (contd.)

sharer. If he is, Sch. II, Art. 17 (va) will apply. If he is not Section 7 (vi-A) will apply. AIR 1958 Cal 537 (538) (DB).

(2) The expression "to enforce a right to a share in any property" in cl. (va) means to enforce a right to a share in a property which stands in the names of others, including strangers. All that is necessary to attract the operation of this clause is that the plaintiff should seek to enforce a right to a share in that property on the ground that it is joint family property and that he is in possession. AIR 1958 Cal 537 (538) (DB).

(3) In order to bring a case under the second alternative of Clause (va) of Art. 17, three elements are necessary: (1) the suit must be to enforce a share in any property, (2) that property must be joint family property, (3) the plaintiff must be in possession of the property of which he claims to be a co-sharer. If these three conditions are satisfied it does not matter whether the partition suit involves a decision on the title of a stranger. AIR 1957 Cal 651 (653) (DB).

(4) **Partition suit — Stranger** impleaded as one of defendants — Suit involving construction of document in which stranger defendant, is interested — Determination not involving cancellation or setting aside of such document — Suit does not go out of purview of the clause. — Ad valorem Court-fee not necessary. AIR 1963 Cal 46 (48, 54, 56) = 66 Cal WN 828 (SB). (AIR 1951 Cal 410 and 1958 Cal LJ 262, **Overruled.**)

Schedule II, Article 18 — Note 1

(1) An application under Section 33, Arbitration Act, to set aside an award falls under Sch. II, Art. 1 (b) and not under this article (as amended in Madras). AIR 1946 Mad 104 (105).

(2) (U. P.) — Expression 'under the said Act' refers to award and not application for setting aside award. AIR 1962 All 75 (76, 77) = 1961 All LJ 559.

(3) Award filed in Court under Section 14 Arbitration Act — Objection that there was no reference and no award. **Held**, the objection was in the nature of a written statement falling within Section 19 (iii) and was not an application to set aside the award within Sch. 2, Art. 18 (1) and therefore no Court-fee was payable on such objection. AIR 1962 All 75 (77) = 1961 All LJ 559

(b) For opinion or advice or for discharge from a trust or for appointment of new trustees under sections 34, 72, 73 or 74 of the Indian Trusts Act, 1882 (II of 1882).	... ...	Twenty-five rupees.
(c) For the winding up of a company under the Companies Act, 1956 (I of 1956).	... ...	Twenty-five rupees.
(d) For the appointment or declaration of a person as guardian of the person or property or both of minors under the Guardians and Wards Act, 1890 (VIII of 1890).	... ...	Three rupees.

—See M. P. Act XII of 1966 S. 3 [1-4-1966].

Manipur and Tripura

Same as that of Assam — *See* G. S. Rs. 1119-1120, Gaz Ind., 1 7-1963, Pt. II, S. 3 (i) Ext, pp 501-531 [w. e. f. 15-7-1963.]

Orissa

(1) In Art. 18 for the entry in the first column the following entry was *substituted* :
"Application under paragraph 17 or paragraph 20 of the second schedule to the Code of Civil Procedure, 1908"

(2) In the third column for the words "ten rupees" the words "fifteen rupees" were *substituted*.
—Orissa Act V of 1939. [31-10-1939].

(3) For surcharge *see* Orissa Act XX of 1947; for text of the Act as amended, *see* Appendix I.

Pondicherry

Same as that of Andaman and Nicobar — *See* Act 26 of 1968, S. 3 & Sch. Pt. II [w.e.f. 18-12-1968.]

Punjab : Haryana Chandigarh

For Art. 18 *substitute* the following:

"18 Application under section 20 of the Indian Arbitration Act, 1940.	... ...	Thirteen rupees".

- Punj Act XIV of 1958 S. 4. [25 4 1958.] Act 31 of 1966, S. 88 [1-11 1966.]

Uttar Pradesh

For Art. 18 *substitute* the following :

"18. (i) Application under section 14 or section 20 of the Arbitration Act, 1940, or an application to set aside an award under the said Act.	(a) When the value of the subject-matter of the award does not exceed five thousand rupees :	Twenty rupees.
	(b) When such value exceeds five thousand rupees, but does not exceed ten thousand rupees;	One hundred rupees.
	(c) When such value exceeds ten thousand rupees;	Two hundred rupees.
(ii) Other applications under the Arbitration Act, 1940	... ...	Twenty rupees."

—U.P. Act. XLIV of 1958, S.4 (ix). [1-4-1959.]

West Bengal

For the words and figures "section 326 of the Code of Civil Procedure" *substitute* the words and figures "Paragraph 17 of the Second Schedule to the Code of Civil Procedure, 1908."
- Beng. Act XI of 1935. [5-5-1936]

Article 18A.

Andaman and Nicobar (U.T.)

After Art. 18, *insert* the following article .

"18A. Application under section 14 of the Arbitration Act, 1940, for a direction of filing an award and every memorandum of appeal under section 39 of that Act.	... ...	Fifteen rupees."

—Reg. II of 1957. [1-8-1957.]

Pondicherry

Same as that of Andaman and Nicobar—*see* Act 26 of 1968, S. 3 & Sch. Pt. II [w.e.f. 18-12-1968.]

West Bengal

After Art. 18 the following article was *inserted*, viz.,

"18A. Application under paragraph 20 of the second schedule to the Civil Procedure Code, 1908, to file an arbitration award, and memorandum of appeal from a decree passed under paragraph 21 of the said schedule. ... ... Fifteen rupees."

—Bengal Act VII of 1935. [2-5-1935.]

*[19. Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908.]	...	Ten rupees.

[*] *Substituted* by the Code of Civil Procedure (Act 5 of 1908), S. 155 and Sch. IV, for the original entry "Agreement under section 328 of the same Code."

STATE AMENDMENTS

Assam: Nagaland

In column three for the words "Ten rupees" *substitute* the words "Fifteen rupees."

—Assam Act 8 of 1963, S. 2 (2), [1-4-1963]: Act 27 of 1962, S. 26 [w.e.f. 1-12-1963].

Bihar

(1) "Fifteen rupees" were *substituted* for "ten rupees" as proper fees shown against the article.

—Bihar and Orissa Act II of 1922. [21-8-1922].

(2) For surcharge *see* Bihar Act XXV of 1948; for text of this Act as amended, *see* Appendix I.

Delhi

Same as that of Punjab

—*see* G. S. R. 842, Gaz. Ind, 1959, Pt. II, S. 3 (i), p. 1039 [w. e. f. 1-8-1959].

Madhya Pradesh

For Art. 19 the following article was *substituted* :

"19. agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure 1908, (V of 1908), O. 36 R. 1. ... ... Thirty rupees."

—M. P. Act XII of 1966, S. 3 [1-4-1966].

Manipur and Tripura

Same as that of Assam

—*See* G. S. R. S. 1119-1120 Gaz. Ind. 1-7-1963. Pt. II, S. 3 (i), Ext., pp. 501-531 [w.e.f. 15-7-1963.]

Orissa

(1) In the third column for the words "ten rupees" the words "fifteen rupees" were *substituted*.

—Orissa Act V of 1939. [31-10-1939]

(2) For surcharge *see* Orissa Act XX of 1947; for text of this Act as amended, *se* Appendix I.

Punjab: Haryana : Chandigarh

For "Ten rupees" in third column *substitute* "Thirteen rupees".

—Punj. Act XIV of 1958, S. 4. [25-4-1958]; Act 31 of 1966, S. 88. [1-11-1966]

Uttar Pradesh

For the words "ten" the third column the word "Twenty-two" was *substituted*.

U P. Act XLIV of 1958, S. 4 (x). [1-4-1959].

20. Every petition under the Indian Divorce Act, except petitions under section 44 of the same Act, and every memorandum of appeal under section 55 of the same Act.	...	Twenty rupees.

Schedule II, Article 20 — Note 1

(1) Petitioner in petition for dissolution of marriage claimed Rs. 500 as damages from co-respondent — Fee Rs. 20 prescribed by this Article held sufficient and no additional fee on claim for damages was leviable. AIR 1931 Lah 1 (1) = 12 Lah 266 (SB).

(2) Wife obtaining decree of divorce under Indian Divorce Act with provi-

STATE AMENDMENTS

Assam : Nagaland

Same as in Central Act.

—Assam Act 8 of 1963, S. 2 [1-4-1963] ; Act 27 of 1962, S. 26 [w e f 1-12-1963.]

Bihar

(1) After the words "memorandum of appeal" in the first column the words 'or of cross-objection" were *inserted* and thirty rupees" were *substituted* for "twenty rupees" as proper fees shown against the article —Bihar and Orissa Act II of 1922. [21-8-1922]

(2) For surcharge *see* Bihar Act XXV of 1948; for text of this Act as amended, *see* Appendix I.

Delhi

Same as that of Punjab —*See* G. S. R. 842, Gaz. Ind. 1959, Pt II, S. 3 (i), p. 1039 [1-8-1959]

Madhya Pradesh

"20. Every petition under the Indian Divorce Act, 1869 (IV of 1869), except petitions under section 44 of the same Act, and every memorandum of appeal under section 55 of the same Act.	Twenty rupees.
20A. Petitions or memorandum of appeal under the Special Marriage Act, 1954 (XLIII of 1954), or the Hindu Marriage Act 1955 (XXV of 1955).	Twenty rupees."

—M. P. Act XII of 1966, S. 3 [1-4-1966].

Manipur and Tripura

Same as that of Assam —*See* G. S. R. 1119-1120 Gaz Ind. 1-7-1963. Pt II S. 3 (i) Ext., pp. 501-531 [w.e.f. 15-7-1963.]

Orissa

(1) In the third column for the words "twenty rupees" the words "thirty rupees" were *substituted.* —Orissa Act V of 1939. [31-10-1939]

(2) For surcharge *see* Orissa Act XX of 1947 ; for text of this Act as amended, *see* Appendix I.

Punjab : Haryana : Chandigarh

For the words "Twenty rupees" in the third column *substitute* the words "Thirty nine rupees." —Punj Act XIV of 1958, S. 4 [25-4-1958] : Act 31 of 1966, S. 88 [1-11-1966]

Uttar Pradesh

For the word "twenty" in the third column the words "Thirty-seven rupees and fifty naye paise" were *substituted*,

—U. P. Act II of 1936 [2-4 1936] as amended by U. P. Act XX of 1958, S. 5 (xii)

STATE AMENDMENT

Articles 20-A and 20-B

West Bengal

After Art. 20 *insert* the following, namely :—

"20A. Every petition for restitution of conjugal rights, judicial separation, divorce or divorce by mutual consent under the Special Marriage Act, 1954 and every memorandum of appeal under section 39 of the same Act.	Five rupees
20B. Every petition for restitution of conjugal rights judicial separation or divorce under the Hindu Marriage Act, 1955, and every memorandum of appeal under section 28 of the same Act	Five rupees."

—W. B. Act 23 of 1959, S. 6

Schedule II, Article 20 — Note (contd.)

sion for alimony and taking out execution proceedings in default of payment of alimony — Appeal against order of attachment of salary of husband — This article applies and memorandum of appeal is chargeable with court-fee of Rs. 20. ('36-43) Tax Dec (Nag) 90 (91).

(3) Application under Section 16, Divorce Act, for making decree nisi absolute — Court-fee is chargeable under this article. AIR 1946 Oudh 76 (76) (DB). (U. P. Amendment.)

(4) Petition for divorce presented to High Court under Indian and Colonial Divorce Jurisdiction Act of 1926 — This article held not applicable. AIR 1935 All 791 (791) = 58 All 259 ** AIR 1946 Pat 401 (402) = 25 Pat 194. (Sch. II, Art. 17 (vi) applies.)

Schedule II, Article 20-A — Note 1

(1) (As substituted by Court-fees (M. P. Amendment) Act III of 1964) — Petitions under Hindu Marriage Act filed before Art. 20-A came into force — Art. 20-A is not applicable. 1967 Jab LJ 712 (714). (AIR 1956 Nag 281. Foll

21. Plaint or memorandum of appeal under the *Parsi Marriage and Divorce Act, 1865.	...	Twenty rupees.

*See now the Parsi Marriage and Divorce Act, 1936 (3 of 1936).

STATE AMENDMENTS

Assam : Nagaland

Same as in the Central Act.

—Assam Act 8 of 1963, S. 2 [1-4-63]; Act 27 of 1962, S. 26 [1-12-1963].

Bihar

(1) After the words "memorandum of appeal" in the first column the words "or of cross-objection" were *inserted* and in the third column "thirty rupees" were *substituted* for "twenty rupees" as proper fees shown against the article.

—Bihar and Orissa Act II of 1922. [21-8-1922.]

(2) For surcharge *see* Bihar Act XXV of 1948; for text of this Act as amended, *see* Appendix I.

Delhi

Same as that of Punjab — *See* G. S. R. 842, Gaz. Ind. 1959, Pt. II, S. 3 (i), p. 1039 [w. e. f. 1-8-1959.]

Madhya Pradesh

For the words "twenty rupees" in the third column *substitute* the words "twenty-six rupees and sixty paise." —M. P. Act XII of 1966, S. 3 [1-4-1966.]

Manipur and Tripura

Same as that of Assam—*See* G. S. Rs. 1119-1120, Gaz. Ind. 1-7-63, Pt. II, S. 3 (i), Ext., pp. 504-531 [w. e. f. 15-7-1963.]

Orissa

(1) In the third column for the words "twenty rupees" the words "thirty rupees" were *substituted*. —Orissa Act V of 1939. [31-11-1939.]

(2) For surcharge *see* Orissa Act XX of 1947; for text of this Act as amended, *see* Appendix I.

Punjab : Haryana : Chandigarh :

Substitute the following for Art. 21 :

"21. Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1936) (III of 1936);	...	Thirty-nine rupees."

—Punj. Act XIV of 1958, S. 4. [25-4-1958] : Act 31 of 1966, S. 88 [1-11-1966.]

Uttar Pradesh

Substitute the following for Art. 21 :

"21. Memorandum of appeal under the Parsi Marriage and Divorce Act, 1936.	...	Thirty seven rupees and fifty naye paise."

—U. P. Act XLIV of 1958, S. 5 (xi). [1-4-1959.]

STATE AMENDMENT

Article 21A

Uttar Pradesh

After Art. 21, *insert* the following :

"21A. Application, petition or Memorandum of Appeal under the Special Marriage Act, 1954, or the Hindu Marriage Act, 1955;	...	Thirty-seven rupees and fifty naye paise."

—U. P. Act, XLIV of 1958, S. 4 (xii). [1-4-1959.]
and IV of 1961, S. 4 (ii) [17-3-1961.]

STATE AMENDMENTS

Article 22

Delhi (U. T.)

Same as that of Punjab with the modification that for the words 'the Punjab Customary Law', words, "any customary law in force in the Union territory of Delhi" be *substituted* — G. S. R. 842, Gaz. Ind., 1959, Pt. II, S. 3 (i) [w. e. f. 1-8-1959.]

Schedule II, Article 21 — Note 1

(1) Art. 21, applies to plaints under the Bombay Hindu Divorce Act, 1947, but a petition under Section 13, Hindu Marriage Act, 1955, is not a plaint. That article can therefore, have no application. AIR 1958 Bom 425 (426) = ILR (1957) Bom 353 (DB).

Madhya Pradesh

Insert the following as new article :

"22. Memorandum of appeal presented to the State Government or a Forest Officer where such appeal is provided for by or under the Indian Forest Act, 1927 (XVI of 1927.)	...	Ten rupees.

—M. P. Act XII of 1966, S. 3 [1-4-1966.]

Punjab · Haryana : Chandigarh :

Add the following new article :

"22. Plaint or memorandum of appeal in a suit by a reversioner under the Punjab Customary Law for a declaration in respect of an alienation of ancestral land;	...	Nineteen rupees and fifty paise."

—Punj. Act XIV of 1958, S. 4. [25-4-1958] : Act 31 of 1966, S. 88 [1-11-1966.]

Uttar Pradesh

The following article was *substituted* for the new Art. 22 :

"22. Election petition questioning the election of any person.	(a) As a President, Vice-President or Adhyaksha, Upadhyaksha, Nagar Pramukha or Up Nagar Pramukha of a or Municipal Board, District Board, Zilla Parishad or Nagar Mahapalika or any other local body except those mentioned in clause (c) :	Two hundred rupees.
	(b) As a Sadasya, Vishishta Sadasya of a Nagar Mahapalika or as a member of a Municipal Board, District Board or Zilla Parishad or any other local body except those mentioned in cl. (d);	One hundred and fifty rupees.
	(c) As a President or Chairman of a Notified or Town Area Committee;	Fifty rupees.
	(d) As a member of a Notified or Town Area Committee;	Twenty-five rupees."

—U. P. Act XIV of 1963, S. 2 (d) [25-5-1963.]

West Bengal

After Article 21 the following article was *inserted* :

"22. Petition— (a) questioning the election of any person as a Municipal Commissioner when presented to a District Judge under S. 36 of the Bengal Municipal Act 1932; (b) questioning the election of any person as a member of a District Board, or Local Board when presented to a District Judge under S. 18B of the Bengal Local Self Government Act of 1885 to decide disputes relating to such elections.	...	Fifteen rupees."

—Bengal Acts VII of 1935. [2 5-1935] and III of 1941, S. 8. [15-5 1941.]

Schedule II, Article 22 (Punjab Amendment) — Note 1

(1) Suit by next heir to set aside alienation by female holder having customary life-interest in estate — Suit held not "in respect of alienation of ancestral land" within the meaning of this article and is governed by article (iii) Schedule II. AIR 1928 Lah 221 (223). (The term 'ancestral land" in Art. 22 means land in respect of which, in order to enable the plaintiff to succeed, it is necessary for him to prove that the land was ancestral; in other words, that it was held by the common ancestor himself and the last male owner.)

[See however AIR 1939 Lah 58 (59) = ILR (1938) Lah 450. (It is the allegation in the plaint that determines the fee — Where the allegation is that the land is ancestral and hence the widow cannot alienate it Art. 22 applies.)]

(2) Mortgage with possession — Subsequent mortgage on same conditions simply increasing amount secured does not constitute second alienation and stamp of Rs. 20 is sufficient. AIR 1933 Lah 382 (383).

Schedule II, Article 22 (Uttar Pradesh Amendment) — Note 1

(1) The Article does not apply to an election petition questioning the election of the President of a municipal board, even though as soon as the President is elected he becomes the member of a local board. AIR 1957 All 729 (731) (DB).

STATE AMENDMENTS

Articles 23, 24 & 25

Delhi

Articles 24 and 25 are the same as in Punjab : for Art. 23 *substitute* the following namely

"23. Application or Memorandum of Appeal under the Delhi Rent Control Act, 1958 — Thirteen rupees."

—*See* G. S. R. 842, Gaz. Ind., 1959, Pt. II, S. 3 (i), p. 1039 [w. e. f. 1 8. 1959.]

Punjab : Haryana : Chandigarh :

After Art. 22 (Punjab), *insert* the following articles, namely,—

"23. Application or memorandum of appeal for relief under the Punjab Urban Rent Restriction Ordinance;	....	Thirteen rupees.
"24. Claims for money (whether secured or unsecured) or a claim to set off made against such claim or counter claims under the Banking Companies Act, 1949.	(a) Where the amount does not exceed Rs. 2,500	Nineteen rupees fifty naye paise.
	(b) Where the amount exceeds Rs. 2,500 but does not exceed Rs. 10,000	Thirty-nine rupees.
	(c) Where the amount exceeds Rs. 10,000	Sixty-five rupees.
"25. Memorandum of Appeal from an order or decision passed under the provisions of section 45B of the Banking Companies Act, 1949.	(a) Where the amount exceeds Rs. 5,000 but does not exceed Rs. 10,000	Seventy-eight rupees.
	(b) Where the amount exceeds Rs. 10,000	One hundred and thirty rupees."

—Punj. Act XIV of 1958, S. 4. [25-4-1958.] : Act 31 of 1966, S. 88 [1-11-1966.]

SCHEDULE III

(*See* section 19 I.)

FORM OF VALUATION (TO BE USED WITH SUCH MODIFICATIONS, IF ANY, AS MAY BE NECESSARY)

*IN THE COURT OF

***Re** Probate of the Will* (*or administration of the property and credits of* *deceased.*)

I. solemnly affirm / make oath

and say that I am the executor (or one of the executors or one of the next of kin) of , deceased, and that I have truly set forth in Annexure A to this affidavit all the property and credits of which the above-named deceased died possessed or was entitled to at the time of his death, and which have come or are likely to come, to my hands.

2. I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct.

3. I further say that the said assets, exclusive only of such lastmentioned items, but inclusive of all rents, interest, dividends and increased value since the date of the death of the said deceased, are under the value of

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*This Schedule was *inserted* by the Court-fees Amendment Act, 1899 (11 of 1899), S. 3. The original Sch. III was *repealed* by the Repealing Act, 1870 (14 of 1870)

ANNEXURE A

VALUATION OF THE MOVABLE AND IMMOVABLE PROPERTY OF , DECEASED.

	Rs.	A.	P.
Cash in the house and at the banks, household goods, wearing-apparel, books, plate, jewels. etc. *(State estimated value according to best of Executor's or Administrator's belief.)*			
Property in Government securities transferable at the Public Debt Office. *(State description, and value at the price of the day; also the interest separately, calculating it to the time of making the application.)*			
Immovable property consisting of . . . . *(State description, giving, in the case of houses, the assessed value, if any and the number of years' assessment the market-value is estimated at, and, in the case of land, the area the market-value and all rents that have accrued.)*			
Leasehold property . . . . *(If the deceased held any leases for years determinable, state the number of years' purchase the profits rents are estimated to be worth and the value of such, inserting separately arrears due at the date of death and all rents received or due since that date to the time of making the application.)*			
Property in public companies . . . . *(State the particulars and the value calculated at the price of the day; also the interest separately, calculating it to the time of making the application.)*			
Policy of insurance upon life, money out on mortgage and other securities, such as bonds, mortgages, bills, notes and other securities for money. *(State the amount of the whole; also the interest separately, calculating it to the time of making the application.)*			
Book debts. . . . . *(Other than bad.)*			
Stock in trade . . . . *(State the estimated value, if any.)*			
Other property not comprised under the foregoing heads . . . . *(State the estimated value, if any.)*			
TOTAL .			
Deduct amount shown in Annexure B not subject to duty			
NET TOTAL .			

ANNEXURE B

SCHEDULE OF DEBTS, ETC.

	Rs.	A.	P.
Amount of debts due and owing from the deceased, payable by law out of the estate.			
Amount of funeral expenses			
Amount of mortgage incumbrances . . .			
Property held in trust not beneficially or with general power to confer a beneficial interest.			
Other property not subject to duty			
TOTAL .			

STATE AMENDMENTS

Madhya Pradesh

In Sch. III, for the letters "a. p." with separate columns *substitute* the letters "N. P." with a single column.—M. P. Act 15 of 1958, S. 2. [3-7-1958].

Uttar Pradesh

In Annexures "A" and "B" to Sch. III, for the two columns meant for "a" and "p" *substitute* one column headed "nP."—U. P. Act 20 of 1958, S. 6.

APPENDIX I

THE BIHAR ENTERTAINMENTS DUTY, COURT-FEES AND STAMP (SURCHARGE AMENDMENT) ACT, 1948

(BIHAR ACT 25 OF 1948)

[As amended by Bih. Acts 9 of 1953 and 14 of 1958].

[*1st April, 1948.*]

* * * * *

It is hereby enacted as follows.

1. *Short title and commencement.* —(1) This Act may be called the Bihar Entertainments Duty, Court-Fees and Stamp (Surchage Amendment) Act, 1948.

(2) It shall come into force on the first day of April, 1948.

* * * * * *

PART II

Amendments of the Court-fees Act, 1870, ... in their application to the state of Bihar.,

4. *Enhancement of court-fees.* — Notwithstanding anything contained in the Court-fees Act, 1870, as amended from time to time in its application to the State of Bihar fees leviable under the said Act shall be increased in each case by a surcharge at the rates specified in the First Schedule annexed hereto.

* * * * * *

6. *Application of the Court-fees Act, 1870* — The provisions of the Court-fees Act, 1870, ... as amended aforesaid, save in so far as they are inconsistent with anything contained in this Part, shall apply to this Act.

PART III

REPEAL

7. *Repeal.* — . . . The Bihar Court-fees (War Surcharge Amendment) Act, 1943, ... are hereby repealed.

FIRST SCHEDULE

(*See* section 4)

Rates of Surcharge on Court-fees leviable under the Court-fees Act, 1870, as amended from time to time in its application to the State of Bihar.

	Rates of surcharge.
1. On every whole rupee	... 50 N. P.
2. (a) a fraction of a rupee up to and including 25 N. P.	... 15 N. P.
(b) On a fraction of a rupee exceeding 25 N. P. but not exceeding 50 N. P.	... 25 N. P.
(c) On a fraction of a rupee exceeding 50 N. P. but not exceeding 75 N. P.	... 40 N. P.
(d) On a fraction exceeding 75 N. P. but less than 100 N. P.	... 50 N. P.

Explanation. — On a court-fee of Rs. 20-40 N. P., the surcharge will be (20 x 50 N. P.) +25 N. P., namely, Rs. 10-25 N. P. and the total court-fee leviable will be Rs. 30-65 N. P."

THE ORISSA COURT-FEES (SURCHARGE) AMENDMENT ACT, 1947

(Orissa Act 20 of 1947)

[As amended by Orissa Act 17 of 1958.]

[*12th July 1947.*]

An Act to amend the Court-fees Act 1870 in its application to the State of Orissa.

Whereas the Orissa Court-fees (Surcharge Amendment) Act, 1945 (Orissa Act 4 of 1945), an Act to enhance the fees payable under the Court-fees Act, 1870 (7 of 1870) in its application to the State of Orissa will expire on the 22nd April, 1948 :

And whereas it is expedient to re-enact the provisions of the said Act :

It is hereby enacted as follows :—

1. *Short title extent, commencement, and duration.* — *(1)* This Act may be called the Orissa Court-fees (Surcharge Amendment) Act, 1947.

(2) It extends to the whole of the State of Orissa.

(3) It shall come into force at once.

2. *Enhancement of Court-fees.* — Notwithstanding anything contained in the Court-fees Act 1870 (hereinafter called the principal Act), in its application to Orissa, all fees leviable under the principal Act shall be increased by a surcharge at the rates specified in the Schedule annexed hereto.

3. *Application of the principal Act.* — The provisions of the principal Act, save in so far as they are inconsistent with anything herein contained, shall apply to this Act.

4. *Repeal of Orissa Act 4 of 1945.* — The Orissa Court-fees (Surcharge Amendment) Act, 1945 is hereby repealed.

THE SCHEDULE

(*See* Section 2.)

Rates of surcharge on fees leviable under the Court-fees Act, 1870, in its application to Orissa—

	Rates of surcharge
1. On every whole rupee	Fifty naye paise per rupee.
2. (a) On a fraction of a rupee up to and including 25 naye paise	Ten naye paise.
(b) On a fraction exceeding 25 naye paise, but not exceeding 50 naye paise	Twety-five naye paise.
(c) On a fraction exceeding 50 naye paise, but not exceeding seventy-five naye paise	Thirty-five naye paise.
(d) On a fraction exceeding seventy-five naye paise but less than 100 naye paise	Fifty naye paise,

Illustration. On a court-fees of Rs. 20.35 the surcharge will be (20 x 50) + 25 naye paise i. e., Rs. 10.25 and the total court-fee chargeable will be Rs. 30.60."

APPENDIX II

[THE] ANDHRA COURT-FEES AND SUITS VALUATION ACT, 1956

(ANDHRA ACT VII OF 1956)

(The Act printed here is as amended by Andhra Pradesh Acts, IV of 1958 and XVII of 1958)

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[THE] ANDHRA COURT-FEES AND SUITS VALUATION ACT, 1956

(ANDHRA ACT VII OF 1956)

[22nd March, 1956.]

An Act to amend and consolidate the law relating to court-fees and valuation of suits in the State of Andhra Pradesh.

Whereas it is necessary and expedient to amend and consolidate the law relating to court-fees and valuation of suits in the State of Andhra Pradesh.

Be it enacted in the Seventh Year of the Republic of India as follows:

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Andhra Court-fees and Suits Valuation Act, 1956.

°[(2) It extends to the whole of the State of Andhra Pradesh.]

(3) It shall come into force on such date as the State Government may, by notification† in the Andhra Gazette, appoint.

[°] See Andh. Pra. Act IV of 1958, S. 2.

[†] This Act came into force on 1-5-1956—Notifn. G.O. Ms. No. 1070, Home (Courts V), 28-4-1956—Andhra Gaz., Pt. II, Extra, dated 29-4-1956.

2. Application of Act.—(1) The provisions of this Act shall not apply to documents presented or to be presented before an officer serving under the Central Government.

(2) The provisions of this Act relating to the levy of fee shall be subject to the provisions of any other law relating to the levy of fee in respect of proceedings under such law.

3. Definitions.—In this Act, unless the context otherwise requires,—

(i) "appeal" includes a cross-objection;

(ii) "Court" means any Civil, Revenue or Criminal Court and includes a Tribunal or other authority having jurisdiction under any special or local law to decide questions affecting the rights of parties;

(iii) "prescribed" means prescribed by rules made under this Act; and

(iv) expressions used and not defined in this Act or in the Madras General Clauses Act, 1891 (Madras Act I of 1891), but defined in the Code of Civil Procedure, 1908 (Central Act V of 1908), shall have the meanings respectively assigned to them in the said Code.

CHAPTER II

LIABILITY TO PAY FEE

4. Levy of fee in Courts and public offices.—No document which is chargeable with fee under this Act shall—

(i) be filed, exhibited or recorded in, or be acted on or furnished by, any Court including the High Court, or

(ii) be filed, exhibited or recorded in any public office, or be acted on or furnished by any public officer, except on payment of the fee chargeable in respect of such document under this Act:

Section 2 — Note 1

(1) Under sub-section (2), the law relating to the levy of fee should be in respect of proceedings under such law i.e., the same law under which the fee is levied. Sub-section (2) does not save rule made by High Court for payment of Court-fee on writ applications. AIR 1957 Andh Pra 123 (127) = 1957 Andh LT 403 (DB).

Section 4 — Note 1

(1) Where the revision petitioner has to file a certified copy of judgment it will have to be duly stamped unless the

Provided that a document in respect of which the proper fee has not been paid may be filed or exhibited in a Criminal Court if the Court deems it necessary in the interests of justice to do so.

5. Collection of proper fee on documents.—When a document on which the whole or any part of the fee payable under this Act has not been paid is produced or received in any Court or public office, the Court or the head of the office may, at any time direct the person by whom such fee is payable to pay the fee or part thereof, as the case may be, within such time as may be fixed; and upon such payment, the document shall be dealt with as if the full fee had been paid in the first instance.

6. Multifarious suits.—(1) In any suit in which separate and distinct reliefs based on the same cause of action are sought, the plaint shall be chargeable with a fee on the aggregate value of the reliefs:

Provided that if a relief sought is only ancillary to the main relief, the plaint shall be chargeable only on the value of the main relief.

(2) Where more reliefs than one based on the same cause of action are sought in the alternative in any suit, the plaint shall be chargeable with the highest of the fees leviable on the reliefs.

(3) (a) Where a suit is based on two or more distinct and different causes of action and separate reliefs are sought in respect thereof, either alternatively or cumulatively, the plaint shall be chargeable with the aggregate amount of the fees that would be chargeable on the plaints under this Act if separate suits were instituted in respect of the several causes of action:

Provided that, where the causes of action in respect of reliefs claimed alternatively against the same person arise out of the same transaction, the plaint shall be chargeable only with the highest of the fees chargeable on them.

(b) Nothing in this sub-section shall be deemed to affect any power conferred upon a Court by Rule 6 of Order II in the First Schedule to the Code of Civil Procedure, 1908 (Central Act V of 1908).

(4) The provisions of this section shall apply mutatis mutandis to memoranda of appeals, applications, petitions and written statements.

Explanation.—For the purpose of this section, a suit for possession of immovable property and for mesne profits therefrom shall be deemed to be based on the same cause of action.

7. Determination of market value.—Save as otherwise provided, where the fee payable under this Act depends on the market value of any property, such value shall be determined as on the date of presentation of the plaint.

8. Set-off or counter-claim.—A written statement pleading a set-off or counter-claim shall be chargeable with fee in the same manner as a plaint.

Section 4 — Note 1 (contd.)

Court chooses to apply proviso to Sec. 4 to such a copy. AIR 1966 Andh Pra 137 (139) = 1966 Cri LJ 512 = (1966) 1 Andh WR 196.

Section 6 — Note 1

(1) Where 'A' a surety for the judgment debtors paid the sum to the decree-holder and sued the judgment-debtors for the sum and prayed for sale of properties mortaged under five different mortgages executed to secure that sum as collateral securities, it was held that the cause of action was the claim for money secured and the different mortgages did not constitute different causes of action and the plaintiff was therefore not bound to pay separate court-fee on each of the mortgages as constituting different causes of action. (1963) 1 Andh WR 195 (201).

(2) Suit to recover money due under several policies — Cause of action for each policy is separate and distinct — Court-fee is payable under Section 6 (3) on amount due under each policy valued separately and not on the aggregate amount. AIR 1963 Andh Pra 63 (65) = (1962) 2 Andh WR 15.

9. Documents falling under two or more descriptions.—A document falling within two or more descriptions in this Act shall, where the fees chargeable thereunder are different, be chargeable only with the highest of such fees:

Provided that, where one of such descriptions is special and another general, the fee chargeable shall be the fee appropriate to the special description.

CHAPTER III

DETERMINATION OF FEE

10. Statement of particulars of subject-matter of suit and plaintiff's valuation thereof.—In every suit in which the fee payable under this Act on the plaint depends on the market value of the subject-matter of the suit, the plaintiff shall file with the plaint, a statement in the prescribed form, of particulars of the subject-matter of the suit and his valuation thereof unless such particulars and the valuation are contained in the plaint

11. Decision as to proper fee.—(1) (a) In every suit the Court shall, before ordering the plaint to be registered, decide on the allegations contained in the plaint and on the materials furnished by the plaintiff the proper fee payable thereon.

(b) The decision of the Court under clause (a) regarding the proper fee payable shall be subject to review from time to time as occasion requires.

(2) Any defendant may plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before the hearing of the suit as contemplated by O. 18 in the First Schedule to the Code of Civil Procedure, 1908 (Central Act 5 of 1908). If the Court decides that the subject-matter of the suit is not properly valued or that the fee paid is not sufficient, the Court shall fix a date before which the subject-matter of the suit shall be valued in accordance with the Court's decision and the deficit fee shall be paid.. If within the time allowed, the subject-matter of the suit is not valued in accordance with the Court's decision or if the deficit fee is not paid, the plaint shall be rejected and the Court shall pass such order as it deems just regarding costs of the suit.

(3) (a) A Court of Appeal, in which an appeal is filed, may, either of its own motion or on the application of any party, consider the correctness of any order passed by the lower Court regarding the fee payable on the plaint or written statement or in any other proceeding in the lower Court and determine the proper fee payable thereon.

Explanation.—The power exercisable by a Court of Appeal under this clause shall be exercisable even if the appeal relates only to a part of the subject-matter of the suit.

Section 9 — Note 1

(1) Assuming that a memorandum of appeal under Cl. 15, Letters Patent is covered by Section 49 and Article 3 the fee chargeable under Article 3, sub-rule (iii) (A) (2) (b) has to be paid by virtue of Section 9 of the Court-fees Act. 1961 Andh LT 650 (652) = (1961) 2 Andh WR 113 (DB).

Section 11 — Note 1

(1) Finality as regards court-fee — Suit filed after Andhra Pradesh came into force — Valuation given in plaint found proper by trial Court — Question can be re-opened subsequently. AIR 1962 Andh Pra 90.

(2) Section 11 of the Court-fees Act does not empower the Court to direct the plaintiff, in suits governed by Sections 32 and 33 of the Act to amend the estimate given in the plaint and pay court-fee on the value of the share so amended. AIR 1962 Andh Pra 449 (451, 452) = (1962) 1 Andh LT 348.

(3) Where a final decree is passed and the plaintiff is directed to pay additional court-fee on the amount of mesne profits as ascertained the result of failure to pay the additional court-fee is that the execution of the decree cannot proceed unless the Court-fee is paid. ILR (1963) Andh Pra 560 (564).

contd

(b) If the Court of Appeal decides that the fee paid in the lower Court is not sufficient, the Court shall require the party liable to pay the deficit fee within such time as may be fixed by it.

(c) If the deficit fee is not paid within the time fixed and the default is in respect of a relief which has been dismissed by the lower Court and which the appellant seeks in appeal, the appeal shall be dismissed, but if the default is in respect of a relief which has been decreed by the lower Court, the deficit fee shall be recoverable as if it were an arrear of land revenue.

(d) If the fee paid in the lower Court is in excess of the proper fee, the Court shall direct the refund of the excess to the party who is entitled to it.

(4) Any question relating to the value for the purpose of determining the jurisdiction of Courts shall be heard and decided before the hearing of the suit as contemplated by Order 18 in the First Schedule to the Code of Civil Procedure, 1908 (Central Act 5 of 1908).

12. **Relinquishment of portion of claim.**—A plaintiff who has been required to pay additional fee may relinquish a part of his claim and apply to have the plaint so amended that the fee paid is sufficient for the claim made in the plaint as amended. The Court may allow such application on such terms as it considers just, the Court may permit the plaintiff at any later stage of the suit to add to the claim the part so relinquished on payment of the additional fee.

13. **Fee payable on written statements.**—Where fee is payable under this Act on a written statement filed by a defendant the provisions of Section 11 shall apply to the determination and levy of the fee payable on such written statement, the defendant concerned being regarded for the said purpose as the plaintiff and the plaintiff or the co-defendant or the third party against whom the claim is made being regarded as the defendant.

14. **Fee payable on appeals, etc.**—The provisions of Sections 10 to 12 relating to the determination and levy of fee on plaints in suits shall apply mutatis mutandis to the determination and levy of fee in respect of a memorandum of appeal, cross-objection or other proceeding in second appeal or in an appeal under the Letters Patent.

15. **Fee payable on petitions, applications, etc.**—The provisions of Sections 10 to 12 shall apply to the determination and levy of fee in respect of petitions, applications and other proceedings in Courts in the same way as they apply to the determination and levy of fee on plaints in suits.

16. **Court-fee Examiners.**—(1) The High Court may depute officers to be designated Court-fee Examiners to inspect the records of subordinate Courts with a view to examine the correctness of the valuation of subject-matter and sufficiency of fee in respect of proceedings in such Courts, and orders, if any, passed by the Courts in relation thereto.

(2) Questions relating to valuation of subject-matter and sufficiency of fee in respect of proceedings in a Court raised in reports submitted by such Court-fee Examiners shall be heard and decided by such Courts.

17. **Inquiry and commission.**—For the purpose of deciding whether the subject-matter of a suit or other proceeding has been properly valued or whether the fee paid is sufficient the Court may hold such inquiry as it considers necessary and may, if it thinks fit issue a commission to any person directing him to make such local or other investigation as may be necessary and to report thereon to the Court.

18. **Notice to the State Government.**—In any inquiry relating to the fee payable on a plaint, written statement, petition, memorandum of appeal or other document, or to the valuation of the subject-matter of the claim to which the

plaint, written statement, petition, memorandum of appeal or other document relates, in so far as such valuation affects the fee payable, the Court may, if it considers it just or necessary to do so, give notice to the State Government, and where such notice is given, the State Government shall be deemed to be a party to the suit or other proceeding as regards the determination of any question in the enquiry aforesaid and the Court's decision on such question shall, where it passes a decree or final order in such suit or proceeding, form part of such decree or final order.

CHAPTER IV

COMPUTATION OF FEE

19. **Fee how computed.**—The fee payable under this Act shall be computed in accordance with the provisions of this Chapter, Chapter VI, Chapter VIII and Schedules I and II.

20. **Suits for money.**—In a suit for money (including a suit for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically, fee shall be computed on the amount claimed.

21. **Suits for immovable property.**—Subject to the other provisions of this Act, in a suit relating to immovable property, fee shall be computed on three-fourths of the market value of the property.

22. **Suits for maintenance and annuities.**—In the suits hereinafter mentioned, fee shall be computed as follows :—

(a) in a suit for maintenance, on the amount claimed to be payable for one year;

(b) in a suit for enhancement or reduction of maintenance, on the amount by which the annual maintenance is sought to be enhanced or reduced;

(c) in a suit for annuities or other sums payable periodically, on five times the amount claimed to be payable for one year :

Provided that, where the annuity is payable for less than five years, the fee shall be computed on the aggregate of the sums payable.

23. **Suits for movable property.**—(1) In a suit for movable property other than documents of title, fee shall be computed—

(a) where the subject-matter has a market value, on such value; or

(b) where the subject-matter has no market value, on the amount at which the relief sought is valued in the plaint or at which such relief is valued by the Court, whichever is higher.

Section 19 — Note 1

(1) The words 'this Act" in the expression "Court fee payable under this Act" in Section 19 include not only the sections of the Act but also the Schedules of the Act. AIR 1957 Andh Pra 123 (126) = 1957 Andh LT 403 (DB).

Section 20 — Note 1

(1) Money decree — Nature of the suit is not changed — Court fee payable is ad valorem. (1960) 2 Andh WR 372 (375).

Section 22 — Note 1

(1) Merely because none of the provisions of Sections 20 to 46 have no application to a suit containing relief prayed for in appeal it cannot be held that the Court fee on a memo of appeal is payable under the resudiary provision under Section 47 of the Act even though the memo of appeal contemplates a value for the subject matter in dispute. AIR 1968 AP 239 (246) = (1968) 2 Andh WR 301 (FB).

Section 23 — Note 1

(1) The shares of a limited company fall within the definition of "document of title". When the pledged movables are documents of title Section 23 (2) (b) of the Act will be applicable. AIR 1964 Andh Pra 201 (204, 205) = (1963) 1 Andh LT 452.

(2) Merely because none of the provisions of Sections 20 to 46 of the Act do

(2) (a) In a suit for possession of documents of title, fee shall be computed on one-fourth of the amount or of the market value of the property secured by the document where the plaintiff's title to the money or the property secured by the document is denied:

Provided that where such denial relates only to a portion of the amount or property, fee shall be computed on one-fourth of such portion of the amount or on one-fourth of the market value of such portion of the property.

(b) In a suit for possession of documents of title, where the plaintiff's title to the money or the property secured by the document is not denied, fee shall be computed on the amount at which the relief sought is valued in the plaint or at which such relief is valued by the Court, whichever is higher.

Explanation.—The expression "document of title" means a document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, in any property.

24. Suits for declaration.—In a suit for a declaration with or without consequential relief, not falling under Section 25—

(a) where the prayer is for a declaration and for possession of the property to which the declaration relates, fee shall be computed on the market value of the movable property or three fourths of the market value of the immovable property or on rupees three hundred, whichever is higher;

b) where the prayer is for a declaration and for consequential injunction and the relief sought is with reference to any immovable property, fee shall be computed on one-half of the market value of the property or on rupees three hundred, whichever is higher;

c) where the prayer relates to the plaintiff's exclusive right to use, sell, print or exhibit any mark, name, book, picture, design or other things and is based on an infringement of such exclusive right, fee shall be computed on the amount at which the relief sought is valued in the

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Section 23 — Note 1 (contd.)

not apply to a suit containing a relief prayed for in appeal, it cannot be held that the Court-fee on a memo of appeal is payable under Section 47 of the Act even though the memo contemplates a value for the subject-matter in dispute. AIR 1968 Andh Pra 239 (246) = (1968) 2 Andh WR 301 (FB).

Section 24 — Note 1

(1) If the relief asked for is one of declaration then Section 24 applies though incidentally the relief of injunction is also asked for. (1968) 1 Andh WR 305 (307).

(2) Suit for declaration and possession of land — Suit returned for presentation to proper Court — Passing of Andhra Court Fees and Suits Valuation Act, 1956 before representation of plaint — Court-fee payable on representation in proper Court is according to Section 24 (9) of the Act of 1956. AIR 1963 Andh Pra 68 (69) = (1962) 1 Andh LT 461.

(3) Suit for declaration by a mutawalli for declaration in respect of property belonging to a Darga and injunction against defendant who are not trustees — Suit falls under Section 24 (b) of the Court-fee Act. (1965) 2 Andh LT 353 = (1965) 2 Andh WR 374 (375).

(4) To bring case under Clause (b) declaratory decree must be with respect to immoveable property — Suit for decree for money — Case cames under Clause (d). (1968) 1 Andh WR 305 (307).

(5) Section 24 (d) does not lay down any basis for valuation. It does not furnish any guidance either to the plaintiff or to the Court in valuing the declaratory relief. In the absence of any rules in this respect the Court should exercise its discretion judicially and in so doing it should value the relief on a reasonable basis which can be the advantage to be derived by the plaintiff by the relief he seeks. (1965) 1 Andh LT 50 = (1965) 1 Andh WR 138 (141). ((1960) 2 Andh WR 434 (435), **Dissented from.**) ** (1968) 2 Andh LT 54 (55) ** 1960 Andh LT 258 (261) = (1960) 1 Andh WR 350 ** (1960) 1 Andh WR 106 (108) = 1960 Andh LT 53 ** (1960) 1 Andh WR 350 (352) = 1960 Andh LT 258.

(6) The discretion should be exercised judicially and in exercising it the Court would do well to take into consideration the previous state of the law applicable to such a case and also the context in which clause (d) stands. (1960) 2 Andh WR 434 (435) = 1960 Andh LT 991.

plaint or at which such relief is valued by the Court, whichever is higher;

(d) in other cases, whether the subject-matter of the suit is capable of valuation or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or at which such relief is valued by the Court, whichever is higher

25. Adoption suits.—In a suit for a declaration involving a question as to the factum or validity of an adoption, fee shall be computed on one-half of the market value of the movable and immovable property involved in, or affected by, such declaration or on rupees five hundred whichever is higher.

26. Suits for injunction.—In a suit for injunction—

(a) where the relief sought relates to any immovable property, and where the plaintiff's title to the property is denied, fee shall be computed on one-half of the market value of the property or on rupees two hundred, whichever is higher

(b) where the relief sought relates to the plaintiff's exclusive right to use, sell, print or exhibit any mark, name, book, picture, design or other thing and is based on an infringement of such exclusive right, fee shall be computed on the amount at which the relief sought is valued in the plaint or at which such relief is valued by the Court, whichever is higher;

(c) in any other case, whether the subject-matter of the suit has a market value or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or at which such relief is valued by the Court, whichever is higher.

Section 24 — Note 1 (contd.)

(7) In a suit for declaration cancelling the notification of the Government declaring a certain village as a zamindari estate the plaintiff has to pay court-fee under Section 24 (d) of the Andhra Court-fees Act as the clause covers all cases of declaration with or without consequential relief not covered by Cls. (a) and (b) and whether the subject matter is or is not capable of valuation. AIR 1963 Andh Pra 25 (26, 27) = (1962) 2 Andh LT 4.

(8) Suit for declaration that the order of collector was illegal and without jurisdiction — Subject matter of suit capable of being valued or not — Section 24 (d) is attracted. (1968) 1 Andh WR 296 (298).

(9) Merely because none of the provisions of Sections 20 to 46 have no application to a suit containing relief prayed for in appeal, it cannot be held that the Court-fee on a memo of appeal is payable under the residuary provision under Section 47 of the Act even though the memo of appeal contemplates a value for the subject matter in dispute. AIR 1968 Andh Pra 239 (246) = (1968) 2 Andh WR 301 (FB).

(10) Suit on mortgage — Defendants 3 and 4 added as puisne mortgagees and defendant 5 added having a mortgage prior to the plaintiff over a certain item in plaintiff's mortgage — Decree directing payment to defendants 3 and 4 after plaintiff's claim was satisfied — Further direction that if they wanted to proceed against property over which defendant 5 had a charge they should pay him first — Appeal against this direction — The relief is for a declaration to avoid the need to pay defendant 5 — Relief falls under Section 24 (d) read with Section 49 and Court-fee has to be paid under Sch. 1, Art. 1. (1968) 2 Andh WR 104 (108, 111) = (1968) 1 Andh LT 290.

Section 26 — Note 1

(1) The fact that before decreeing a suit for injunction the Court may have to go into the question of plaintiff's right or title to the property does not make a suit for injunction one for a declaration or one other than for injunction. The Court-fee payable is therefore, under Section 26 (c) and not under Section 27. (1966) 2 Andh WR 106 (107) = (1966) 2 Andh LT 167.

(2) A suit for perpetual injunction restraining the defendant from interfering with plaintiffs possession and management of the property is to be valued in accordance with Section 26 (a) of the Act. (1965) 2 Andh WR 217 (219).

(3) Suit for injunction restraining defendant from interfering with possession of land — Value of subject-matter in suit shall not be less than half the value of the property calculated under Rule 2 of Andhra Rules. (1958) 2 Andh WR 486 = ILR (1958) Andh Pra 519 (523). (Case before the Act 1959.)

27. Suits relating to trust property.—(1) In a suit for possession or joint possession of trust property or for a declaration, with or without consequential relief, between trustees or rival claimants to the office of trustee or between a trustee and a person who has ceased to be a trustee, fee shall be computed on one-fifth of the market value of the property subject to a maximum fee of rupees two hundred or where the property has no market value, on rupees one thousand.

(2) Where the property has no market value, value for the purpose of determining the jurisdiction of Courts shall be the amount stated in the plaint.

Explanation.—For the purpose of this section, property comprised in a Hindu, Muslim or other religious or charitable endowment shall be deemed to be trust property and the manager of any such property shall be deemed to be the trustee thereof.

28. Suits for possession under the Specific Relief Act, 1877.—In a suit for possession of immovable property under Section 9 of the Specific Relief Act, 1877 (Central Act 1 of 1877),* fee shall be computed on one-half of the market value of the property or on rupees two hundred, whichever is higher.

[*] Now see Specific Relief Act, 1963 (47 of 1963) (1-3-1964).

29. Suits for possession not otherwise provided for.—In a suit for possession of immovable property not otherwise provided for, fee shall be computed on three-fourths of the market value of the property or on rupees three hundred, whichever is higher.

30. Suits relating to easements.—In a suit relating to an easement by the dominant or the servient owner, fee shall be computed on the amount at which the relief sought is valued in the plaint or at which such relief is valued by the Court, whichever is higher;

Section 27 — Note 1

(1) Merely because none of the provisions of Sections 20 to 46 of the Act do not apply to a suit containing a relief prayed for in appeal it cannot be held that the Court fee on a memo of appeal is payable under Section 47 of the Act even though the memo of appeal contemplates a value for the subject matter in dispute. AIR 1968 Andh Pra 239 (246) = (1968) 2 Andh WR 301 (FB).

(2) Suit for permanent injunction cannot be considered as suit for declaration within the meaning of Section 27 (1) only because before decreeing the suit the Court may have to go into the question of the plaintiff's right or title to the property. (1966) 2 Andh WR 106 (107) = (1966) 2 Andh LT 167.

(3) Where the Court-fee is payable at a fixed rate the value for jurisdiction has to be at $^3/_4$th of the market value of course subject to the provisions of Section 27 which provides for the contingency where even market value could not be fixed). (1959) 2 Andh WR 238 (239, 240).

(4) Section 27 deals with declaration with or without relief regarding trust property between trustees or rival claimants to the office of trustee or between a trustee and a person who has ceased to be a trustee. Mutawalli of Darga or Mosque cannot be held to be a trustee. A suit for declaration by a mutawalli does not fall under Section 27. (1965) 2 Andh WR 374 (375) = (1965) 2 Andh LT 353.

Section 28 — Note 1

(1) Merely because none of the provisions of Sections 20 to 46 of the Act have any application to a suit containing a relief prayed for in appeal it cannot be held that a Court-fee on a memo of appeal is payable under the residuary provision under Section 47 of the Act even though the memo of appeal contemplates a value for the subject matter in dispute. AIR 1968 Andh Pra 239 (246) = (1968) 2 Andh WR 301 (FB).

Section 29 — Note 1

(1) Merely because none of the provisions of Sections 20 to 46 of the Act have any application to a suit containing a relief prayed for in appeal it cannot be held that Court-fee on a memo of appeal is payable under the residuary provision under Section 47 of the Act even though the memo of appeal contemplates a value for the subject matter in dispute. AIR 1968 Andh Pra 239 (246) = (1968) 2 Andh WR 301 (FB).

(2) Suit for specific performance of an agreement of sale and for possession — Suit falls under Section 39 and not under Section 29 because the relief of possession is a part of the specific performance of a contract for sale — Separate Court-fee for the relief of possession need not be paid even though the subsequent vendee is also impleaded as party to the suit. Separate Court-fee for the relief of possession need not be paid. (1967) 2 Andh WR 117 (117).

Provided that, where compensation is claimed in addition to the relief relating to such easement, fee shall be paid on the amount claimed as compensation in addition to the fee payable on the relief relating to the easement.

31. Suits relating to mortgages.—(1) In a suit to recover the money due on a mortgage, whether the sale of the mortgaged property is prayed for or not, fee shall be computed on the amount claimed.

(2) If the holder of a prior mortgage or charge impleaded as a defendant in such a suit prays in his written statement for the determination of the amount due on his mortgage or charge and for a direction in the decree for the payment of such amount to him, fee shall be payable on the written statement computed on the amount claimed :

Provided that, where the holder of the prior mortgage or charge has paid a fee in any other proceeding on the claim to which his written statement relates, credit shall be given for the fee paid by him in such other proceeding.

(3) Where, in such a suit, the mortgaged property is sold and the holder of a prior or subsequent mortgage or charge applies for payment to him out of the sale proceeds, of the amount due on his mortgage or charge, such holder of the prior or subsequent mortgage or charge shall pay on his application a fee computed on the amount claimed by him :

Provided that, where the holder of a prior or subsequent mortgage or charge is a party to the suit in which the sale was held and has paid fee on the written statement filed by him in the suit, no fee shall be payable by him on the application for payment out of the sale proceeds :

Provided further that, where the holder of a prior or subsequent mortgage or charge, not being a party to the suit in which the sale is held, has paid a fee in any other proceeding on the claim to which his application relates, credit shall be given for the fee paid by him in such other proceeding.

(4) In a suit by a co-mortgagee, fee shall be computed on the amount claimed on the entire mortgage :

Provided that, where any other co-mortgagee impleaded as defendant in such suit claims on the entire mortgage a sum larger than that claimed in the plaint the difference between the fee computed on the entire sum claimed in such defendant's written statement and the fee computed on the entire sum claimed in the plaint shall be payable on the written statement.

(5) (a) In a suit by a sub-mortgagee to recover the amount claimed on the sub-mortgage by sale of the mortgagee's interest in the mortgaged property, fee shall be computed on the amount claimed under the sub-mortgage.

(b) In a suit by a sub-mortgagee, if the prayer is for the sale of the property mortgaged to the original mortgagee and the original mortgagor is also impleaded as a defendant, fee shall be computed on the entire amount claimed on the original mortgage which is sub-mortgaged to him.

(6) Where the holder of a prior or subsequent mortgage or charge is impleaded in a suit by a co-mortgagee to which sub-section (4) applies, or in a suit by a sub-mortgagee to which sub-section (5) applies, the provisions of sub-sections (2) and (3) shall apply mutatis mutandis to a written statement or an application filed by such holder of mortgage or charge.

(7) Where the original mortgagee who is impleaded in a suit to which the provisions of sub-section (5) (b) apply claims on the mortgage sub-mortgaged by

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Section 31 — Note 1

(1) Loan secured on basis of transfer of shares of limited company — Ownership in the shares not transferred but possession of the shares transferred — The transaction is a pledge and not a mortgage — Court-fee payable in a suit for redemption of pledge will not be under Section 31 (8) but under Section 23 (1) of the Act. AIR 1964 Andh Pra 201 (205, 206) = (1963) 1 Andh LT 452.

him a larger amount than is claimed in the plaint, the provisions of sub-section (4) shall apply mutatis mutandis to the written statement of such original mortgagee.

(8) In a suit against a mortgagee for redemption of a mortgage, fee shall be computed on the amount due on the mortgage as stated in the plaint or on one fourth of the principal amount secured under the mortgage, whichever is higher:

Provided that where the amount due on the mortgage is found to be more than the amount on which fee has been paid by the plaintiff, no decree shall be passed until the deficit fee is paid:

Provided further that, in the case of any usufructuary or anomalous mortgagee, if the plaintiff prays for redemption as well as for accounts of surplus profits, fee shall be levied separately on the relief for accounts as in a suit for accounts.

(9) In a suit by a mortgagee to foreclose the mortgage or, in the case of a mortgage by conditional sale, to have the sale declared absolute, fee shall be computed on the amount claimed in the plaint.

32. Suits for accounts.—(1) In a suit for accounts, fee shall be computed on the amount estimated in the plaint.

(2) Where the amount payable to the plaintiff as ascertained in the suit is in excess of the amount as estimated in the plaint, no decree directing payment of the amount as so ascertained shall be passed until the difference between the fee actually paid and the fee that would have been payable had the suit comprised the whole of the amount so ascertained, is paid.

(3) Where in any such suit it is found that any amount is payable to the defendant, no decree shall be passed in his favour until he pays the fee due on the amount.

(4) Where or not a decree is passed under sub-section (2) or sub-section (3), the fee payable under either of the said sub-sections shall be recoverable as if it were an arrear of land revenue.

33. Suits for dissolution of partnership.—(1) In a suit for dissolution of partnership and accounts or for accounts of dissolved partnership, fee shall be computed on the value of the plaintiff's share in the partnership as estimated by the plaintiff.

(2) If the value of the plaintiff's share as ascertained in the suit exceeds the value as estimated in the plaint, no decree, or where there has been a preliminary decree, no final decree shall be passed in favour of the plaintiff, no payment shall be made out of the assets of the partnership and no property shall be allotted towards the plaintiff's share, until the difference between the fee actually paid and the fee that would have been payable had the suit comprised the whole of the value so ascertained, is paid.

(3) No final decree shall be passed in favour of a defendant, no payment shall be made out of the assets of the partnership and no property shall be allotted towards his share in any such suit until the fee computed on the amount or value of his share of the assets of the partnership is paid.

Section 32 — Note 1

(1) Under Ss. 32 (1) and 33 (1) it is for the plaintiff to estimate the relief he asked for and it is not open to the Court to direct the plaintiff to amend the valuation and pay higher Court-fee. AIR 1962 Andh Pra 449 (451, 452) = (1962) 1 Andh LT 348.

(2) Section does not envisage passing of another judgment after deficit Court-fee is paid — Direction to pass final decree after deficit Court-fee is paid is not judgment. AIR 1968 Andh Pra 138 (140).

Section 33 — Note 1

(1) Under Section 33 (1) the plaintiff is entitled to estimate the value of his share in the partnership — Such an estimate may be right or wrong and may be excessive or inadequate. It is not open to the Court to consider whether that estimate is bona fide or mala fide. (1960)

(4) Whether or not a decree is passed payment made or property allotted under sub-section (2) or sub-section (3), the fee payable under either of the said sub-sections shall be recoverable as if it were an arrear of land revenue.

34. **Partition suits.**—(1) In a suit for partition and separate possession of a share of joint family property or of property owned, jointly or in common, by a plaintiff who has been excluded from possession of such property, fee shall be computed on the market value of the movable property or three-fourths of the market value of the immovable property included in the plaintiff's share.

(2) In a suit for partition and separate possession of joint family property or property owned, jointly or in common, by a plaintiff who is in joint possession of such property, fee shall be paid at the following rates:

When the plaint is presented to—

(i) a District Munsif's Court—	Rupees fifty.
(ii) a Subordinate Judge's Court or a District Court. —	Rupees one hundred if the value of plaintiff's share is less than Rupees 10,000. Rupees two hundred if the value is not less than Rs. 10,000.

(3) Where, in a suit falling under sub-section (1) or sub-section (2), the plaintiff or the defendant seeks also cancellation of decree or other document of the nature specified in Section 37, separate fee shall be payable on the relief of cancellation in the manner specified in that section.

35. **Suits for joint possession.**—In a suit for joint possession of joint family property or of property owned, jointly or in common, by a plaintiff who has been excluded from possession, fee shall be computed on the market value of the movable property or three-fourths of the market value of the immovable property included in the plaintiff's share.

36. **Administration suits.**—(1) In a suit for the administration of an estate fee shall be levied on the plaint at the rates specified in Section 47.

(2) Where any amount or share or part of the assets of the estate is found due to the plaintiff, and the fee computed on the amount or the market value of such share or part of the assets exceeds the fee paid on the plaint, no payment shall be made and no decree directing payment of money or confirming title to such share or part of the assets shall be passed until the difference between the fee actually paid and the fee computed on the amount or value of such share or part of such assets is paid.

(3) No payment shall be made and no decree directing payment of money or confirming title to any share or part of the assets of the estate shall be passed in favour of a defendant in a suit for administration until the fee computed on the amount or value of such share or part of such assets is paid by such defendant.

(4) In computing the fee payable by a plaintiff or by a defendant under sub-section (2) or sub-section (3) credit shall be given for the fee, if any, paid by

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Section 33 — Note 1 (contd.)

2 Andh WR 393 (393, 394) = 1960 Andh LT 1087.

(2) Suit for accounts of dissolved partnership — Valuation by plaintiff — Power of Court to direct plaintiff to amend valuation — Section 11 whether applicable. AIR 1962 Andh Pra 449 = (1962) 1 Andh LT 348.

Section 34 — Note 1

(1) Purchaser of an undivided interest who is in possession need not pay ad valorem Court-fee under Section 7 (v) Court Fees Act (Central Act of 1870) on his memo of appeal from a decision on a suit for partition — Court-fee paid under Article 17-B (Madras) on memo of appeal was held adequate. ILR (1963) 1 An Pra 830 (832) = AIR 1960 Andh Pra 313 (315) = 1960 Andh LT 180. (Case before the Andhra Court-fees Act, 1956.)

(2) The memorandum of appeal is not defective inasmuch as no ad valorem court-fee is paid separately in regard to the claim as to costs. AIR 1962 Andh Pra 397 (398) = (1962) 1 Andh WR 203.

such plaintiff or by such defendant in any other proceeding in respect of the claim on the basis of which such amount or share or part of the assets of the estate becomes due to such plaintiff or to such defendant.

(5) Whether or not payment is made or decree passed under sub-sec. (2) or sub-section (3), the fee payable under either of the said sub-sections shall be recoverable as if it were an arrear of land revenue.

37. Suits for cancellation of decrees, etc.—(1) In a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject-matter of the suit, and such value shall be deemed to be—

(a) if the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed:

(b) if a part of the decree or other document is sought to be cancelled, such part of the amount or of the value of the property.

(2) If the decree or other document is such that the liability under it cannot be split up and the relief claimed relates only to a particular item of property belonging to the plaintiff or to the plaintiff's share in any such property, fee shall be computed on the value of such property or share or on the amount of the decree, whichever is less.

Explanation.—A suit to set aside an award shall be deemed to be a suit for cancellation of a decree within the meaning of this section.

38. Suits to set aside attachment, etc.—(1) In a suit to set aside an attachment by a Civil or Revenue Court of any movable or immovable property or of any interest therein or of any interest in revenue, or to set aside an order passed on an application made to set aside the attachment, fee shall be computed on the amount for which the property was attached or on one-fourth of the market value of the property attached, whichever is less.

(2) In a suit to set aside any other summary decision or order of a Civil or Revenue Court, if the subject-matter of the suit has a market value, fee shall be computed on one-fourth of such value, and in other cases, fee shall be payable at the rates specified in S. 47.

Explanation.—For the purpose of this section, the Registrar of Co-operative Societies shall be deemed to be a Civil Court.

Section 37 — Note 1

(1) Suit by creditor of the defendant for cancellation of the deed of settlement executed between the defendant and his father — The creditors not being a party to the settlement deed could not ask for cancellation of the deed Section 37 Court-fees Act did not apply but S. 24 (d) applied. 1960 Andh LT 258 (259) = (1960) 1 Andh WR 350.

(2) Suit for dissolution of partnership and for accounts— Court-fees paid under Section 37 — Subsequently plaintiff filed an application for amendment of plaint by adding three reliefs — Cancellation of (1) dissolution of partnership (2) Release deed and (3) Power of Attorney as being void and illegal — No separate court-fee need be paid on those reliefs. (1967) 2 Andh WR 49 (52).

(3) Suit for cancellation of deed of exchange — Plaintiff claiming property in Schedule 'A' and willing to surrender property in Schedule B in his possession — Plaintiff has to pay Court-fee on the full value of the property in Schedule 'A' and not only on the difference between the value of the two properties. AIR 1959 Andh Pra 495 (496).

Section 38 — Note 1

(1) Original suit filed under the old Act — Claim proceedings under Order 21, R. 58 started after the Act came into force — Claim suit under O. 21, Rule 63 filed when the new Act had come into force — Claim suit decreed — Appeal against the decree in claim suit — Claim suit under Order 21, Rule 63 cannot be called to be a continuation of the original suit. The appeal arising out of a suit has to be valued according to the new Act Section 38 (1). (1966) 2 Andh WR 469 (471).

(2) Where the suit is one under O. 21, Rule 63 Civil Procedure Code, praying

39. Suits for specific performance.—In a suit for specific performance, with or without possession, fee shall be payable—

(a) in the case of a contract of sale, computed on the amount of the consideration;

(b) in the case of a contract of mortgage, computed on the amount agreed to be secured by the mortgage;

(c) in the case of a contract of lease, computed on the aggregate amount of the penalty or premium, if any, and of the average of the annual rent agreed to be paid;

(d) in the case of a contract of exchange, computed on the amount of the consideration, or as the case may be, on the market value of the movable property or three-fourths of the market value of the immovable property sought to be taken in exchange;

(e) in other cases, where the consideration for the promise sought to be enforced has a market value, computed on the market value of the movable property or three-fourths of the market value of the immovable property or where such consideration has no market value, at the rate specified in Section 47.

40. Suits between landlord and tenant.—(1) In the following suits between landlord and tenant, namely :—

(a) for the delivery by a tenant of the counter-part of a lease or for acceptance of patta in exchange for a muchilika;

(b) for the enhancement of rent;

(c) for the delivery by a landlord of a lease or for obtaining a patta in exchange for a muchilika;

Section 38 — Note 1 (contd.)

for a declaration that the property in dispute is not liable to be sold in execution of the decree and for a prepetual injunction, the proper court-fee is that prescribed by Clause (1) of Article 17 of Schedule II of the Court-fee Act. 1958 Andh LT 764 (766). (Case under the old Act.)

(3) Merely because Sections 38 (2) and 39 (e) refer to Section 47 for the determination of Court-fee in cases where the market value cannot be ascertained it does not follow that Section 47 deals with the subject matter of disputes which are incapable of valuation. AIR 1968 Andh Pra 239 = (1968) 2 Andh WR 301 (FB).

Section 39 — Note 1

(1) Where in a suit for specific performance of a contract of sale of land measuring 5 acres, the contract with regard to 0.80 cent was performed and the trial Court decreed the suit in respect of 4.18 acres of land and the defendent appealed, it was held that the appellant was liable to pay Court-fee on the value of 4.18 acres of land and not on the value of 5 acres. The court-fee need be paid on the relief of costs also. ILR (1963) Andh Pra 927 = (1963) 1 Andh WR 118 (120).

(2) Suit for specific performance of a family arrangement — Consideration for agreements of compromise can be valued at the value of property which was the subject matter of the dispute in the deed, — The case falls under Section 39 and not under Section 47 of the Act. (1965) 1 Andh WR 138 (140) = (1965) 1 Andh LT 50 (DB).

(3) Specific performance of an agreement of sale and for possession — Suit falls under Section 39 — Fact that possession asked for against subsequent vendor does not affect the position as the relief of possession is only a part of the specific performance. (1967) 2 Andh WR 117 (119) ** AIR 1966 Andh Pra 110 (111) = (1965) 1 Andh LT 229.

(4) Under Section 39 (e) when it is provided that where the consideration has no market value Court-fee has to be computed as specified in Section 47 it is only dealing with the enforcement of the consideration for the promise relating to the property, which may or may not have any value in the market but nonetheless which can be valued in money. AIR 1968 Andh Pra 239 (247) = (1968) 2 Andh WR 301 (FB).

(5) Merely because Sections 38 (2) and 39 (e) refer to Section 47 for the determination of Court-fee in cases where the market value cannot be ascertained it does not follow that Section 47 deals with the subject matter of disputes which are incapable of valuation. AIR 1968 Andh Pra 239 = (1968) 2 Andh WR 301 (FB).

(d) for the recovery of possession of immovable property from which a tenant has been illegally ejected by the landlord;

(e) for establishing or challenging a right of occupancy;

fee shall be levied on the amount of rent for the immovable property to which the suit relates, payable for the year next before the date of presenting the plaint.

(2) In a suit for recovery of immovable property from a tenant including a tenant holding over, fee shall be computed on the premium, if any, and on the rent payable for the year next before the date of presenting the plaint.

Explanation.—Rent includes also damages for use and occupation payable by a tenant holding over.

(3) In an appeal from a suit to contest a distraint under sub-section (1) or sub-section (2) of Section 95 of the Madras Estates Land Act, 1908 (Madras Act 1 of 1908), or to contest the right of sale under Section 112 of that Act, fee shall be charged on the amount of the arrears for which the distraint has been made or the sale is proposed to be held.

41. Suits for mesne profits.—(1) In a suit for mesne profits or for immovable property and mesne profits therefrom, fee shall, in respect of mesne profits, be computed on the amount claimed as mesne profits. If the profits ascertained to be due to the plaintiff are in excess of the profits as claimed, no decree shall be passed until the difference between the fee actually paid and the fee that would have been payable had the suit comprised the whole of the profits so ascertained is paid.

(2) Where a decree directs an enquiry as to the mesne profits which have accrued on the property, whether prior or subsequent to the institution of the suit, no final decree shall be passed until the difference between the fee actually paid and the fee that would have been payable had the suit comprised the whole of the profits accrued due till the date of such decree is paid.

(3) Where, for a period subsequent to the date of the decree or final decree, such decree or final decree directs payment of mesne profits at a specified rate, such decree or final decree shall not be executed until the fee computed on the amount claimed in execution is paid.

(4) Whether or not a decree is passed under sub-section (1) or sub-section (2) or executed under sub-section (3), the fee payable under any of the said sub-sections shall be recoverable as if it were an arrear of land revenue.

42. Suits under the Madras Survey and Boundaries Act, 1923.—In a suit under Section 14 of the Madras Survey and Boundaries Act, 1923 (Madras Act VIII of 1923) fee shall be computed on one-half of the market value of the property affected by the determination of the boundary or on rupees three hundred, whichever is higher.

43. Suits to alter or cancel entry in a register.—In a suit to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates, the fee payable shall be fifteen rupees.

44. Suits relating to public matters.—In a suit for relief under Section 14 of the Religious Endowments Act, 1863 (Central Act XX of 1863), or under Section 91 or Section 92 of the Code of Civil Procedure, 1908 (Central Act V of 1908), the fee payable shall be fifty rupees.

Section 41 — Note 1

(1) Decree for possession — Direction under Order 20, Rule 12 for ascertainment of future mesne profits — Defendant ordered to deposit certain amount as part of future mesne profits — Amount deposited accordingly and was withdrawn by decree-holder — Suit not governed by Andhra Court Fees Act but by Court Fees Act (1870) as amended in Madras — Decree-holder need not pay Court-fee on the amount withdrawn under Section 11 of that Act as mesne profits were yet to be ascertained. AIR 1962 Andh Pra 372 (373).

45. Interpleader suits.—(1) In an interpleader suit, fee shall be payable on the plaint at the rates specified in Section 47.

(2) Where issues are framed regarding contentions of the claimants, fee shall be computed on the amount of the debt or the money or the market value of the movable property or three-fourths of the market value of the immovable property, which forms the subject-matter of the suit. In levying such fee, credit shall be given for the fee paid on the plaint; and the balance of the fee shall be paid in equal shares by the claimants who claim the debt or the sum of money or the property adversely to each other.

(3) Value for the purpose of determining the jurisdiction of Courts shall be the amount of the debt, or the sum of money or the market value of the movable property or three-fourths of the market value of the immovable property to which the suit relates.

46. Third party proceedings.—In third party proceedings, fee shall be levied on one-half of the value of the contribution or indemnity claimed against a third party or against a co-defendant if a claim is made against him;

Provided that, if the suit against the defendant who has filed the third party notice is dismissed, wholly or in part, he shall be entitled to a refund of the whole or a proportionate part of the fee paid by him.

Explanation.—The provisions of this section shall also apply to counter-claims made in third party proceedings.

47. Suits not otherwise provided for.—In suits not otherwise provided for, fee shall be payable at the following rates :—

When the amount or value of the subject-matter in dispute—

(i) is less than Rs. 3,000	Rupees fifty.
(ii) is not less than Rs. 3,000, but does not exceed Rs. 5,000.	Rupees one hundred.
(iii) exceeds Rs. 5,000 but does not exceed Rupees 10,000.	Rupees two hundred.
(iv) exceeds Rs. 10,000.	Rupees three hundred.

48. Fee on memorandum of appeal against order relating to compensation.—The fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of property for public purposes shall be computed on the difference between the amount awarded and the amount claimed by the appellant.

Section 47 — Note 1

(1) Suit for specific performance of a family arrangement — Consideration for agreements of compromise can be valued at the value of the property which was the subject matter of the dispute in the deed — Case falls under Section 39 and not under Section 47 of the Act. (1965) 1 Andh WR 138 (140) = (1965) 1 Andh LT 50 (DB).

(2) Order rejecting the plaint under Order 7, Rule 11 (a) and (d) — Appeal against the order — No Court-fee need be paid on the appeal since there is no provision in the Act. AIR 1968 Andh Pra 239 = (1968) 2 Andh WR 301 (FB). (Per Kumarayya J. contra.)

(3) Merely because Article 17-B of Schedule II of Madras Court Fees Act corresponds to Section 47 of the Andhra Court Fees Act it would not follow that all suits for declaration which were previously valued under Article 17-B have perforce to be valued under Section 47 of the Act — Substance of the relief prayed for in the plaint should be looked to determine the class under which the suit falls. AIR 1963 Andh Pra 25 (27) = (1962) 2 Andh LT 4.

Section 48 — Note 1

(1) Award under Section 26 of Land Acquisition Act is an 'order' within the meaning of Section 48 of Andhra Court Fees Act — An appeal against such award — Court-fee payable on memorandum of appeal is on the difference between the amount awarded and amount claimed. AIR 1964 Andh Pra 216 (222) = (1964) 1 Andh WR 185 (DB). (**Overruled** on another point in AIR 1970 AP 139.)

(2) Grant of interest under Section 34 of the Land Acquisition Act — Cross objections to claim such interest — Interest is not included in compensation

49. Appeals.—The fee payable in an appeal shall be the same as the fee that would be payable in the Court of first instance on the subject-matter of the appeal :

Provided that, in levying fee on a memorandum of appeal against a final decree by a person whose appeal against the preliminary decree passed by the Court of first instance or by the Court of appeal is pending, credit shall be given for the fee paid by such person in the appeal against the preliminary decree.

Explanation (1) — Whether the appeal is against the refusal of a relief or against the grant of the relief, the fee payable in the appeal shall be the same as the fee that would be payable on the relief in the Court of first instance.

Explanation (2) — Costs shall not be deemed to form part of the subject-matter of the appeal except where such costs form themselves the subject-matter of the appeal or relief is claimed as regards costs on grounds additional to, or independent of, the relief claimed regarding the main subject-matter in the suit.

Explanation (3) — In claims which include the award of interest subsequent to the institution of the suit, the interest accrued during the pendency of the suit till the date of decree shall be deemed to be part of the subject-matter of the appeal except where such interest is relinquished.

Explanation (4) — Where the relief prayed for in the appeal is different from the relief prayed for or refused in the Court of first instance, the fee payable in the appeal shall be the fee that would be payable in the Court of first instance on the relief prayed for in the appeal.

Explanation (5) — Where the market value of the subject-matter of the appeal has to be ascertained for the purpose of computing or determining the fee payable, such market value shall be ascertained as on the date of presentation of the plaint.

Section 48 — Note 1 (contd.)
and hence Court-fee need not be paid on it. AIR 1969 Andh Pra 55 (59) = (1968) 2 Andh LT 148 (FB).

(3) Solatium as awarded under S. 23 is not part of award within meaning of Section 26 — Appeal to High Court — No court-fee is payable on difference of solatium as a result of increase in compensation awarded by Court and that awarded by Collector. AIR 1970 Andh Pra 139 (140). (AIR 1964 Andh Pra 216, **Overruled;** AIR 1930 Mad 45, **Dissented from.)**

Section 49 — Note 1

(1) The Andhra Court Fees Act (1956) was extended to Telangana area with effect from 1-4-1958 — Section 49 will not therefore, apply to suits or appeals instituted in that area before that date. AIR 1960 Andh Pra 319 (319) = 1960 Andh LT 210.

(2) The provision in Section 49 is a general provision while Article 3, Sch. 2 is a special provision dealing with appeals against certain types of orders — An appeal from an order in a miscellaneous civil proceeding filed before High Court under Clause (15), Letters Patent falls under Article 3, Schedule 2 and not under Section 49. (1961) 1 Andh LT 650 = (1961) 2 Andh WR 113 (115) (DB).

(3) An appeal against an award under Section 26 of Land Acquisition Act is an appeal against an order within Section 48 of the Court Fees Act, Section 49 of the Act does not apply to such appeals. AIR 1964 Andh Pra 216 (222) = (1964) 1 Andh WR 185 (DB).

(4) Appeal against final decree filed while appeal against preliminary decree pending before court — Case comes within Proviso to Sec. 49 and credit must be given for the court-fee already paid by appellant — Appeal preferred against preliminary decree. (1967) 1 Andh WR 369 (370).

(5) Order rejecting plaint under O. 7, Rule 11 (a) — Appeal against such order — Article 3 of Sch. II of the Act — Not applicable to such cases — No court-fee is payable on memorandum of appeal in such cases. AIR 1968 Andh Pra 239 (266) = (1968) 2 Andh WR 301 (FB).

(6) Decree for partition and direction for ascertainment of mesne profits — No specific provision in the Andhra Court Fees Act — Explanation 1, Section 49 cannot be applied on analogy — No court-fee is payable with respect to the direction regarding enquiry into mesne profits. (1965) 2 Andh WR 124 (125) = (1965) 2 Andh LT 185.

CHAPTER V

VALUATION OF SUITS

50. Suits not otherwise provided for.—(1) If no specific provision is made in this Act or in any other law regarding the value of any suit for the purpose of determining the jurisdiction of Courts, value for that purpose and value for the purpose of computing the fee payable under this Act shall be the same.

(2) In a suit where fee is payable under this Act at a fixed rate, the value for the purpose of determining the jurisdiction of Courts shall be the market value of the movable property or three-fourths of the market value of the immovable property or, where it is not possible to estimate it at a money value the amount stated in the plaint.

51. Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes.—(1) Notwithstanding anything contained in Section 99 of the Code of Civil Procedure, 1908 (Central Act 5 of 1908) an objection that, by reason of the over-valuation or under-valuation of a suit or appeal, a Court of first instance or lower appellate Court, which

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Section 49 — Note 1 (contd.)

(7) Under Section 49 the court-fee payable in appeal is the same as payable in the Court of first instance. Appeal against an order of rejection of plaint and also claiming decree on findings reached by trial Court on other issues as well — Memorandum. AIR 1968 Andh Pra 239 (242) = (1968) 2 Andh WR 301 (FB).

(8) Where in an appeal the costs themselves form the subject matter of the appeal the court-fee has got to be paid on the relief of costs. (1963) 1 Andh WR 118 (120) = ILR (1963) Andh Pra 927.

(9) Interest granted under Section 34 of the Land Acquisition Act does not form part of the compensation awarded under the Act. In an appeal from such award no court-fee on the amount of interest need be paid. Section 49 does not apply to such an appeal. AIR 1969 Andh Pra 55 = (1968) 2 Andh LT 148 (FB).

(10) In accordance with Explanation 3 to Section 49 the appellant should pay court-fee on the interest accrued from the date of the institution of the suit till the date of the decree and not till the date of filing an appeal. (1965) 2 Andh LT 199 = (1965) 2 Andh WR 466 (467).

(11) Under Explanation 3 of Section 49 when the appeal raises a controversy as to interest pendente lite, interest accrued from the date of the suit until the date of the decree appealed from has to be included in the valuation of the appeal whether the appeal is preferred by the plaintiff or the defendant. (1966) 1 Andh WR 149 (152) (DB).

(12) Second appeal relating only to accounting for a portion of the period for which accounts were claimed in the plaint — Second appeal by defendants — Defendant appellants paid court-fee on the valuation of the accounting period which was the subject matter of appeal at the rate adopted by the plaintiff in the suit — Court-fee paid was held sufficient in conformity with Explanation 4 to Section 49. (1963) 1 Andh LT 203 = (1963) 1 Andh WR 158 (161).

(13) Order determining mesne profits made by insolvency Court under Secs. 4 and 5 of the Insolvency Act — Mesne profits determined — Decree by Insolvency Court — Appeal from decree — Had the decree not been passed the Court-fee paid under Schedule 2, Article 3 (i) would have been adequate — Passing of the decree not necessary — Section 49 was not attracted — Court-fee paid under Sch. 2, Article 3 (i) held adequate. (1968) 1 Andh WR 312 (314).

Section 50 — Note 1

(1) The value that has been specifically mentioned in Section 50 (1) is that adopted for computing the court-fee payable under the Act. Therefore the value for jurisdiction in the case of immovable property in a partition suit shall be that computed at $^{3}/_{4}$ of the market value. (1959) 2 Andh WR 238 (239).

(2) Appeal from an order rejecting plaint — Appeal incapable of valuation — Section 50 (2) cannot be invoked to make Section 47 applicable to such cases. AIR 1968 Andh Pra 239 (247) = (1968) 2 Andh WR 301 (FB).

(3) Where it is clear that the value of the subject matter for determining the jurisdiction has to be assessed according to the mode prescribed in suits valuation Act any departure therefrom cannot be permitted in law. AIR 1966 Andh Pra 66 (69) = (1965) 2 Andh LT 106 (DB).

(4) In a case governed by Section 50 (1) the value of the subject matter for determining the jurisdiction shall be the same and not different from the value of the subject matter for computing court-fee. Section 50 (1) does not refer to the market value at all as Section 50 (2). AIR 1966 Andh Pra 66 (69) = (1965) 2 Andh LT 106 (DB).

had no jurisdiction with respect to the suit or appeal, exercised jurisdiction with respect thereto shall not be entertained by an appellate Court, unless—

(a) such objection was taken in the Court of first instance at or before the hearing at which issues were first framed or in the lower appellate Court in the memorandum of appeal to that Court, or

(b) the appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or under-valued and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) Where such objection was taken in the manner mentioned in clause (a) of sub-section (1), but the appellate Court is not satisfied as to both the matters mentioned in clause (b) of that sub-section, it shall, if it has before it the materials necessary for the determination of the other grounds of appeal to itself, dispose of the appeal as if there had been no defect of jurisdiction in the Court of first instance or lower appellate Court.

(3) Where such objection was taken in that manner and the appellate Court is satisfied as to both those matters, it shall, if those materials are not before it, proceed to deal with the appeal or remand the suit or appeal for disposal in accordance with the directions of the appellate Court.

(4) The provisions of this section with respect to an appellate Court shall, so far as may be, apply to a Court exercising revisional jurisdiction under any law for the time being in force.

CHAPTER VI

PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION

52. Application for probate or letters of administration.—(1) Every application for the grant of probate or letters of administration shall be accompanied by a valuation of the estate in duplicate in the Form set forth in Part 1 of Schedule III.

(2) On receipt of such application, the Court shall send a copy thereof and of the valuation to the Collector of the district in which the estate is situated, or if the estate is situated in more than one district to the Collector of the district in which the portion of the estate, the aggregate value of which is the highest, is situated.

53. Levy of fee.—(1) The fee chargeable for the grant of probate or letters of administration shall be calculated at the rate or rates specified in the Article 6 of Schedule I—

(a) where the application is made within one year of the date of death of the deceased, on the market value of the estate on such date; or

(b) where the application is made after the expiry of one year from such date, on the market value of the estate on the date of application:

Section 52 — Note 1

(1) Application for probate of a will to be effective throughout India — Court directing the applicant to deposit into Court court-fee on valuation of property as required under Sections 52 and 53 even before an order for grant of probate was made — The Court has no jurisdiction to give such direction at that stage. Sections 52 and 53 do not warrant such a procedure at all. (1968) 1 Andh WR 370 (373).

Section 53 — Note 1

(1) Application for probate of a will to be effective throughout India — Court directing the applicant to deposit into Court court-fee on valuation of property as required under Sections 52 and 53 even before an order for grant of probate was made — The Cout has no jurisdiction to give such direction at that stage. Sections 52 and 53 do not warrant such a procedure at all. (1968) 1 Andh WR 370 (373).

Provided that no fee shall be leviable under this Chapter on any property held in trust not beneficially or with general power to confer a beneficial interest.

Explanation.—Any member of a joint Hindu family governed by the Mitakshara Law who applies for probate or letters of administration in respect of the estate of a deceased member of the joint family shall pay a fee on the value of the share in the joint property which the deceased would have received if a partition of the property had been made immediately before his death.

(2) For the purpose of the computation of fee—

(a) the value of the items mentioned in Annexure B to Part I of Schedule III shall be deducted from the value of the estate:

Provided that when an application is made for probate or letters of administration in respect of only part of an estate, no debt, no expenses connected with any funeral rites or ceremonies and no mortgage encumbrance on any part of the estate other than that in respect of which the application is made shall be deducted:

Provided further that when, after the grant of a certificate under Part X of the Indian Succession Act, 1925 (Central Act 39 of 1925), regarding any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable for the latter grant shall be reduced by the amount of the fee paid for the former grant;

(b) the power of appointment which the deceased had over any property or which was created under a will shall be taken into account, the value being taken to be the value of the property forming the subject-matter of the power.

54. **Grant of probate.**—(1) The grant of probate or letters of administration shall not be delayed by reason of the reference to the Collector under sub-section (2) of Section 52; but the Court shall not grant probate or letters of administration unless it is satisfied that the fee chargeable under this Act has been paid on the basis of the net value of the estate as furnished in the valuation accompanying the application or in the amended valuation filed under sub-section (3) of Section 56.

(2) Notwithstanding anything contained in sub-section (1), the Court may, without the payment of the proper fee, grant probate or letters of administration to the Administrator-General in his official capacity on his giving an undertaking to the satisfaction of the Court that the said fee will be paid within such time as may be fixed by the Court.

55. **Relief in cases of several grants.**—(1) Whenever a grant of probate or letters of administration has been made in respect of the whole of the property belonging to an estate and the full fee payable under this Act in respect of the application for such grant has been paid thereon, no fee shall be payable when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

(2) Whenever such grant has been made in respect of any property forming part of an estate, the amount of fee actually paid under this Act for such grant shall be deducted when a like grant is made in respect of the property belonging to the same estate identical with or including the property to which the former grant relates.

Section 54 — Note 1

(1) From the provisions in Section 54 and S. 56 it is seen that the fee prescribed by Article 6, Sch. 1 has to be paid only after the Court orders the grant of probate and before they are actually granted. (1968) 1 Andh WR 370 (373).

56. Inquiry by the Collector.—(1) The Collector to whom a copy of the application and of the valuation has been sent under sub-section (2) of Section 52, shall examine the same and may make or cause to be made by any officer subordinate to him such inquiry, if any, as he thinks fit as to the correctness of the valuation or where a part only of the property is situated in his district, of the valuation of that part, and may require the Collector of any other district in which any part of the property is situated to furnish him with the correct valuation thereof.

(2) Any Collector required under sub-section (1) to furnish the correct valuation of any property shall comply with the requisition after making or causing to be made by any officer subordinate to him such inquiry, if any, as he thinks fit.

(3) If the Collector is of opinion that the applicant has underestimated the value of the property of the deceased, he may, if he thinks fit, require the attendance of the applicant, either in person or by his agent, and take evidence and inquire into the matter in such manner as he may think fit, and if he is still of opinion that the value of the property has been underestimated, may require the applicant to amend the valuation, and, if the application for probate or letters of administration is pending in Court, to file a copy of the amended valuation in such Court.

(4) If, in any such case, the probate or letters of administration has or have been granted and the applicant amends the valuation to the satisfaction of the Collector and the Collector finds that the fee payable according to the true value of the estate has not been paid in full, he shall proceed under sub-section (4) of Section 58, and if the fee paid is in excess of that payable according to the true value of the estate, the excess fee shall be refunded to the applicant.

(5) (a) If the applicant does not amend the valuation to the satisfaction of the Collector, the Collector shall move the Court to which the application for probate or letters of administration was made for holding an inquiry into the true value of the property.

(b) The Collector shall not move the Court under clause (a) after the expiry of six months from the date on which the inventory required by Section 317 of the Indian Succession Act, 1925 (Central Act 39 of 1925), is exhibited.

57. Application to Court and powers of Court.—(1) The Court shall, when moved by the Collector under sub-section (5) of Section 56, hold or cause to be held by any Court or officer subordinate to it an inquiry as to the true value at which the estate of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry.

(2) For the purposes of any such inquiry the Court, or any Court or officer subordinate to it authorised by the Court to hold the inquiry, may examine the applicant on oath either in person or by commission, and may take such further evidence as may be produced to prove the true value of the estate, and where the inquiry has been entrusted to a Subordinate Court or officer, such Court or officer shall return to the Court the evidence taken and report the result of the inquiry and such report and the evidence so taken shall be evidence in the proceedings.

(3) The Court on the completion of the inquiry or on receipt of the report referred to in sub-section (2), as the case may be, shall record a finding as to the true value at which the estate should have been estimated and such finding shall be final.

(4) The Court may make such order as to the costs of the inquiry as it thinks fit.

Section 56 — Note 1

(1) From the provisions in Section 54 and Section 56 it is seen that the fee prescribed by Article 6, Schedule I has to be paid only after the Court orders the grant of probate and before they are actually granted. (1968) 1 Andh WR 370 (373).

58. Provision for cases where insufficient fee has been paid.—(1) Where insufficient fee has been paid on any probate or letters of administration on account of any mistake or of want of knowledge at the time that some particular part of the estate belonged to the deceased, if any executor or administrator, acting under such probate or letters, applies to the Collector in the Form set forth in Part II of Schedule III and pays within six months of the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, the difference between the fee which ought to have been paid in the first instance on such probate or letters and the fee actually paid, the Collector shall, if satisfied that insufficient fee was paid in the first instance on account of a mistake and without any intention to defraud or to delay the payment of the proper fee, cause the probate or letters to be duly stamped.

(2) If, in a case falling under sub-section (1), the executor or administrator does not, within the six months referred to in that sub-section, pay the deficit fee, he shall forfeit a sum equal to five times the deficit fee.

(3) If on application being made under sub-section (1) the Collector is satisfied that the application was not made within six months of the discovery of the mistake or of further effects not included in the original valuation or that the payment of insufficient fee in the first instance was not due to a bona fide mistake, he shall cause the probate or letters to be duly stamped on payment of the deficit fee together with a penalty not exceeding five times such fee.

(4) If, after the grant of probate or letters of administration of an estate, it is found by the Collector that a fee less than that payable according to the true value of the estate has been paid, he shall cause the probate or letters to be properly stamped on payment of the deficit fee, and if he is satisfied that the original undervaluation was not bona fide, he shall levy in addition a penalty not exceeding five times the deficit fee.

(5) The Board of Revenue may remit the whole or any part of the amount forfeited under sub-section (2) or of any penalty under sub-section (3) or sub-section (4).

59. Administrator to give proper security before letters are stamped.—Where insufficient fee has been paid in the first instance on letters of administration, the Collector shall not cause the same to be duly stamped in the manner aforesaid unless the administrator has given such security to the Court granting the letters of administration as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had then been ascertained.

60. Relief when fee has been paid in excess.—(1) If, at any time after the grant of the probate or letters of administration of an estate, it is discovered that fee has been paid in excess of what was payable according to the true value of the estate, the executor or administrator, as the case may be, may apply for a refund to the Collector to whom a copy of the valuation of the estate was sent under sub-section (2) of Section 52. The application shall be accompanied by an amended valuation in the Form set forth in Part II of Schedule III together with the probate or letters of administration upon which a refund is sought.

(2) If the Collector is satisfied that the amended valuation is correct, he shall—

- (i) endorse a certificate on the stamped probate or letters of administration to the effect that so much of the fee represented by the stamp or stamps used has been refunded; and
- (ii) refund the difference between the fee originally paid and that which should have been paid:

Provided that no refund shall be granted under this section unless the application for refund is made within three years of the date of the grant of the probate or letters of administration or within such further period as the Collector may allow:

Provided further that if, by reason of any legal proceedings, the debts due from the deceased have not been ascertained and paid or his effects have not been recovered and made available and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said period of three years, the Collector may allow such further time for making the claim as may appear to him to be reasonable under the circumstances.

(3) If the Collector refuses to grant a refund, the executor or administrator, as the case may be, may apply to the Board of Revenue for an order of refund. An application for such refund shall be accompanied by an amended valuation in the Form set forth in Part II, Schedule III.

61. Recovery of penalties, etc.—Any fee found to be payable by an applicant for probate or letters of administration or by an executor or administrator, or any costs under sub-section (4) of Section 57 or any penalty or forfeiture payable by any such executor or administrator may on the certificate of the Board of Revenue, be recovered from the executor or administrator as if it were an arrear of land revenue.

62. Powers of Board of Revenue.—The powers and duties of the Collector under this Chapter shall be subject to the control of the Board of Revenue.

CHAPTER VII

REFUNDS AND REMISSIONS

63. Refund in cases of rejection of plaint, etc., for delay.—(1) Where a plaint or memorandum of appeal is rejected on the ground of delay in its representation or where the fee paid on a plaint or memorandum of appeal is insufficient and the deficit fee is not paid within the time allowed by the Court, or the delay in payment of the deficit fee is not condoned, and the plaint or Memorandum of appeal is consequently rejected, the Court may, in its discretion, direct the refund of the plaintiff or the appellant, of the fee, either in whole or in part, paid on the plaint or memorandum of appeal which was rejected.

(2) Where a memorandum of appeal is rejected on the ground that it was not presented within the time allowed by the law of limitation, one-half of the fee shall be refunded.

64. Refund in cases of Remand.—(1) Where a plaint or memorandum of appeal rejected by the lower Court is ordered to be received, or where a suit is remanded in appeal for a fresh decision by the lower Court, the Court making the order or remanding the appeal may direct the refund to the appellant of the full amount of fee paid on the memorandum of appeal; and, if the remand is on second appeal, also on the memorandum of appeal in the first appellate Court and, if the remand is in Letters Patent Appeal, also on the memorandum of second appeal and memorandum of appeal in the first appellate Court.

(2) Where an appeal is remanded in Second Appeal or Letters Patent Appeal for a fresh decision by the lower appellate Court, the High Court remanding the appeal may direct the refund to the appellant of the full amount of fee paid on

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Section 63 — Note 1

(1) Court has no inherent power to sanction refund of court-fee apart from matters mentioned in Sections 63 to 66 of Andhra Courts-fees and Suits Valuation Act. AIR 1965 Andh Pra 395 (397) = (1965) 1 Andh WR 262 (DB).

Section 64 — Note 1

(1) (Per Division Bench) — Section 64 cannot govern tax revision cases. There is no provision in Madras General Sales Tax Act for refund of Court-fee in revision cases. The High Court cannot also make an order for refund under its inherent powers in such cases. AIR 1961 Andh Pra 86 (96, 97) = 1960 Andh LT 802 (FB) ** AIR 1965 Andh Pra 395 (397) ** (1965) 1 Andh WR 262 (DB).

the memorandum of Second Appeal if the remand is in Second Appeal, and of the full amount of fee paid on the Memorandum of Second Appeal and the Memorandum of Letters Patent Appeal if the remand is in Letters Patent Appeal:

Provided that no refund shall be ordered if the remand was due to the fault of the party who would otherwise be entitled to a refund:

Provided further that, if the order of remand does not cover the whole of the subject-matter of the suit, the refund shall not extend to more than so much fee as would have been originally payable on that part of the subject-matter in respect whereof the suit has been remanded.

65. Refund in cases of review.—Where an application for review of judgment is admitted on the ground of some mistake or error apparent on the face of the record and on rehearing, the Court reverses or modifies its former decision on that ground, it shall direct refund to the applicant of so much of the fee paid on the application as exceeds the fee payable on any other application to such Court under Article 11 (g) and (u) of Schedule II.

66. Refund of fee paid by mistake or inadvertence.—The fee paid by mistake or inadvertence shall be ordered to be refunded.

67. Exemption of certain documents.—Nothing contained in this Act shall render the following documents chargeable with any fee:—

(i) memorandum of appearance filed by advocates or pleaders when appearing for persons proceeded against in criminal cases;

(ii) application or petition to a Collector or other officer making a settlement of land revenue, or to the Board of Revenue relating to matters connected with the assessment of land, or with the ascertainment of rights thereto or interest therein, if presented previous to the final confirmation of such settlement;

(iii) application for supply of water belonging to Government for irrigation;

(iv) application for leave to extend cultivation or to relinquish land, when presented to an officer of land revenue by a person holding, under a direct engagement with Government, land of which revenue is settled but not permanently;

(v) application for service of notice of relinquishment of land or of enhancement of rent;

(vi) written authority to an agent to distrain;

(vii) first application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to give evidence or to produce a document or for the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court;

(viii) bail bonds in criminal cases other than bail bonds in village courts, recognizances to prosecute or give evidence and recognizances for personal appearance or otherwise;

Section 66 — Note 1

(1) Section 66 has nothing to do with a mistake in the selection of remedy but relates only to cases where mistake has been committed in payment of court-fee i.e., where payment is made though it is not due or where the court-fee has been paid in excess. (1957) 1 Andh WR 167 (168).

Section 67 — Note 1

(1) There is nothing in Section 66 which limits it to prisoners detained in prison on conviction. Even under trial prisoners who are confined can avail of this exception. No court-fee is therefore payable on an application under Article 226 made by a detenu in prison. (1967) 1 Andh WR 263 = (1967) 2 Andh LT 28.

(2) Revision petition by complainant against dismissal of complaint—Memo of appearance on his behalf is chargeable with Court-fee under Art. 16 — Exemption under Section 67 (1) not available. AIR 1968 Andh Pra 239 (239) = (1965) 2 Andh LT 223 (DB).

(ix) petition, application, charge or information respecting any offence when presented, made or laid to or before a police officer, or to or before the heads of villages or the village police;

(x) petition by a prisoner or other person in duress or under restraint of any Court or its officer;

(xi) complaint of a public servant as defined in the Indian Penal Code (Central Act 45 of 1860) or an officer of the State Railway relating to matters arising out of, or in connexion with, the discharge of his official duty;

(xii) application for the payment of money due by the Government to the applicant, other than an application for refund of lapsed deposit made six months after the date on which the amount lapsed to the Government;

(xiii) petition of appeal against any municipal tax;

(xiv) application for compensation under any law for the time being in force relating to the acquisition of property for public purposes;

(xv) petition or appeal by a Government servant or a servant of the Court of Wards when presented to any superior officer or Government against orders of dismissal, reduction or suspension; copies of such orders filed with such appeals, and applications for obtaining such copies.

68. Power to reduce or remit fees.—The State Government may, by notification in the Andhra Gazette, reduce or remit, in the whole or in any part of the territory of this State, or any of the fees chargeable under this Act, and may, in like manner, cancel or vary such notification.

CHAPTER VIII

MISCELLANEOUS

69. Collection of fees by stamps.—All fees chargeable under this Act shall be collected in stamps.

70. Stamps to be impressed or adhesive.—The stamps used to denote any fee chargeable under this Act shall be impressed or adhesive or partly impressed and partly adhesive, as the State Government may, by notification in the Andhra Gazette, from time to time, direct.

71. Amended document.—Where any document which ought to bear a stamp under this Act is amended merely for correcting a mistake and making it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

72. Cancellation of stamp.—(1) No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

(2) The officer appointed from time to time by the Court or the head of the office shall, on receiving any such document, effect forthwith such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be destroyed.

Section 68 — Note 1

(1) Suit presented at Madras returned for re-presentation in proper Court — Suit represented in Andhra State Court after Andhra Court Fees Act 1956 had come in force — Court-fee stamps purchased in Madras were admitted at the time of re-presentation. AIR 1962 Andh Pra 65 (68) = 1961 Andh LT 705.

Section 69 — Note 1

(1) Section 69 does not contain a provision that the stamps should be purchased within the territory of the State. AIR 1962 Andh Pra 65 = 1961 Andh LT 705.

73. Deduction to be made.—Where allowance is made in this Act for damaged or spoiled stamps, or where fee already paid is directed to be refunded to any person by an order of Court, the Collector may, on the application of the person concerned, pay to him the amount of fee or where damaged or spoiled stamps are produced, he may, after satisfying himself about their genuineness, give in lieu thereof the same amount or value in stamps of the same or any other description, or if the applicant so desires, the same amount or value in money provided that in all cases where money is paid in cash, a deduction shall be made of six naye paise for each rupee or fraction thereof. No such deduction shall, however, be made where refund is claimed in respect of any fee paid in pursuance of an order of Court which has been varied or reversed in appeal.

74. Penalty.—Any person appointed to sell stamps, who disobeys any rule made under this Act, and any person not so appointed, who sells or offers for sale any stamps, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

75. Power of High Court to make rules.—(1) The High Court may make rules to provide for or regulate all or any of the following matters, namely:—

- (a) the fees chargeable for serving and executing processes issued by the High Court in its appellate jurisdiction and by the Civil and Criminal Courts subordinate thereto;
- (b) the remuneration of persons employed by the Courts mentioned in clause (a) in the service or execution of processes;
- (c) the fixing by District and Sessions Judges and District Magistrate of the number of process-servers necessary to be employed for the service and execution of processes issued from their respective Courts and the Courts subordinate thereto;
- (d) the display in each Court of a table in English and in the local language or languages showing the fees payable for the service and execution of processes.

(2) All rules made under sub-section (1) shall be subject to confirmation by the State Government with or without modification and on such confirmation they shall be published in the Andhra Gazette and shall thereupon have effect as if enacted in this Act.

76. Power of Board of Revenue to make rules.—(1) The Board of Revenue may, with the previous sanction of the State Government, make rules consistent with this Act to provide for or regulate all or any of the following matters. namely:—

- (a) the fees chargeable for serving and executing processes issued by the Board of Revenue and by the Revenue Courts;
- (b) the remuneration of persons employed for the service and execution of such processes;
- (c) the fixing by Collectors of the number of persons necessary to be employed for the service and execution of such processes ;
- (d) the guidance of Collectors in the exercise of their powers under Chapter VI;
- (e) the supply of stamps to be used under this Act;
- (f) the number of stamps to be used for denoting any fee chargeable under this Act;
- (g) the keeping of accounts of all stamps used under this Act;
- (h) the circumstances in which stamps may be held to be damaged or spoiled;

(i) the circumstances in which, the manner in which, and the authorities by which, allowance for used, damaged or spoiled stamps may be made;

(j) the regulation of the sale of stamps to be used under this Act, the persons by whom alone such stamps, may be sold and the duties and remuneration of such persons;

Provided that, in the case of stamps used in the High Court, such rules shall be made with the concurrence of the Chief Justice.

(2) All rules made under this section shall be published in the Andhra Gazette and on such publication, shall have effect as if enacted in this Act.

77. Power of Government to make rules.—(1) The State Government may, by notification in the Andhra Gazette, make rules to carry out generally the purposes of this Act.

(2) All notifications and rules made under this section shall, as soon as may be, after they are made, be placed on the table of the Legislative Assembly for fifteen days, and shall be subject to such modification, whether by way of repeal or amendment, as the Legislative Assembly may make during the session in which they are so laid.

78. Continuance in force of existing rules.—Until rules are framed under Sections 75, 76 and 77 and until notifications are issued under Section 68, the rules and notifications now in force in respect of matters referred to in those sections, shall, in so far as they are not inconsistent with this Act, continue in force.

79. Repeal and saving.—(1) The Court-fees Act, 1870 (Central Act 7 of 1870), in its application to the State of Andhra and in relation to the fees and

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Section 77 — Note 1

(1) In the absence of rules framed under this section the Court can use its discretion in valuing the suits falling under Section 24 (d). 1960 Andh LT 258 (261) = (1960) 1 Andh WR 350.

Section 79 — Note 1

(1) Andhra Court Fees and Suits Valuation Act which came into force on 1-5-1956 cannot be given retrospective operation in view of saving clause in Section 79 of the Act. AIR 1962 Andh Pra 372 (374).

(2) Writ of certiorari proceeding arising out of a proceeding pending in the inferior Court at the time of coming into force of the Act of 1956 — Section 79 (2) attracted — Court-fee is to be paid under the old law. (1960) Andh LT 186 (187).

[See however AIR 1958 Andh Pra 267 (269) = (1957) 2 Andh WR 349. (A writ petition is not the continuation of the original proceeding. It is an independent proceeding unconnected with the merits of the lis; Therefore provisions of Sec. 79 (2) have no application to a writ proceeding.)]

(3) Original suit before the commencement of the Act of 1956 — Claim application under Order 21, Rule 58 filed before the Act of 1956 allowed after the Act came in force — Suit under Order 21, Rule 63 to set aside claim order filed after the commencement of the Act of 1956 — **Held,** the suit under Order 21, Rule 63 to set aside the claim order was in the nature of appeal as against the claim proceedings and the provisions of the Old Act applied. (1959) 2 Andh WR 330 (331) = 1959 Andh LT 782.

(4) Original suit filed before the Act of 1956 came into force — Claim application under Order 21, Rule 58 filed after the Act came into force — Claim suit under Order 21, Rule 63 — Decree — Appeal against — Claim suit under O. 21, Rule 63 cannot be called to be a continuation of original suit — Appeal arising out of suit under Order 21, Rule 63 has to be valued under the Act of 1956. (1966) 2 An WR 469 (471).

(5) Suit presented in Madras City Civil Court returned for presentation to proper Court on 29-11-1957 — Suit represented in Andhra Pradesh Court on 7-12-1957 when Andhra Court Fees Act had come into force — Though the Central Court Fees Act as amended in Madras was repealed by Andhra Act, the plaintiff was given credit for the court-fee paid in the Madras Court. AIR 1962 Andhra Pra 65 (67, 68, 69) = 1961 Andh LT 705.

(6) Telangana area formed part of Andhra State on 1-11-1956 — The laws prevailing in that territory were preserved under States Reorganisation Act till competent Legislatures made adaptations — Hyderabad Court Fees Act continued to apply till adaptations — Writ petition for mandamus arising out of Telangana area — Hyderabad Court Fees Act will apply and not Andhra Pradesh Court Fees and Suits Valuation Act — Schedule 2 Serial No. 1 (d) applied. AIR 1957 Andh Pra 123 (128) = 1957 Andh LT 403 (DB).

stamps other than fees and stamps relating to documents presented or to be presented before an officer serving under the Central Government and the Suits Valuation Act, 1887 (Central Act 7 of 1887), in its application to the State of Andhra are hereby repealed.

(2) All suits and proceedings instituted before the commencement of this Act and all proceedings by way of appeal, revision or otherwise arising therefrom, whether instituted before or after such commencement, shall, notwithstanding the repeal of the Court-fees Act, 1870 (Central Act 7 of 1870), and the Suits Valuation Act, 1887 (Central Act 7 of 1887), be governed by the provisions of the said Acts and the rules made thereunder.

SCHEDULE I

(See Section 19)

Ad Valorem fees

Article (1)	*Particulars* (2)	*Proper fee* (3)
1.	*(a)* Plaint or written statement pleading a set-off or counter-claim in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter does not exceed five hundred rupees if the suit is actually filed and tried as a small cause suit—	
	When the amount or value of the subject-matter in dispute—	
	(i) does not exceed one hundred rupees, for every five rupees or part thereof.	Forty paise.
	(ii) exceeds one hundred rupees, but does not exceed five hundred rupees, for every ten rupees or part thereof, in excess of one hundred rupees—	Eighty paise.
	(b) Plaint or written statement pleading a set-off or counter-claim in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter exceeds five hundred rupees but does not exceed one thousand rupees –	
	When the amount or value of the subject-matter in dispute—	
	(i) does not exceed one hundred rupees, for every five rupees or part thereof.	Sixty paise.
	(ii) exceeds one hundred rupees, but does not exceed one thousand rupees, for every ten rupees or part thereof, in excess of one hundred rupeees.	One rupee and ten paise.
	(c) Plaint or written statement pleading a set-off or counter-claim or memorandum of appeal presented to any Court—	
	When the amount or value of the subject-matter in dispute—	
	(i) does not exceed one hundred rupees, for every five rupees or part thereof.	Sixty paise.

Sch. 1, Art. I — Note 1

(1) Plaint rejected under Order 7, Rule 11 — Order of rejection is decree within Section 2 (2), Civil Procedure Code — Appeal from the order is an appeal from a decree — Subject matter in suit is the subject matter in appeal — Ad valorem Court-fee on the valuation adopted by the plaintiff on the plaint should be paid. Schedule 2, Article 3 does not apply. (1968) 1 Andh WN 367 (369) = (1968) 1 Andh LT 387.

(2) Rejection of plaint under Order 7, Rule 11 (b) and (c), Civil Procedure Code — Memorandum of appeal — Appeal relating to the grounds of rejection and not to the merits of the suit — Court-fee payable is under Schedule 1, Article 1 (c) as the subject matter would be the value representing the difference in the court-fee demanded and that paid. AIR 1968 AP 239 (266) = (1968) 2 Andh WR 301 (FB).

(3) Application for probate to have effect throughout India — Caveat entered and application for probate registered as suit — Court-fee is to be paid under Schedule 1, Article 1 on the market value of the estate minus the fee already paid under Sch. 2, Article 11 (k) (i). (1968) 1 An WR 370 (372).

Article (1)	*Particulars* (2)	*Proper fee* (3)
	(ii) exceeds one hundred rupees, but does not exceed one thousand rupees, for every ten rupees or part thereof, in excess of one hundred rupees.	One rupee and ten paise.
	(iii) exceeds one thousand rupees, but does not exceed ten thousand rupees, for every one hundred rupees or part thereof, in excess of one thousand rupees.	Seven rupees and fifty paise.
	(iv) exceeds ten thousand rupees, but does not exceed twenty thousand rupees, for every five hundred rupees or part thereof, in excess of ten thousand rupees.	Thirty rupees.
	(v) exceeds twenty thousand rupees, but does not exceed thirty thousand rupees, for every one thousand rupees or part thereof, in excess of twenty thousand rupees.	Forty rupees.
	(vi) exceeds thirty thousand rupees, but does not exceed fifty thousand rupees, for every two thousand rupees or part thereof, in excess of thirty thousand rupees.	Sixty rupees.
	(vii) exceeds fifty thousand rupees, but does not exceed one lakh rupees, for every four thousand rupees or part thereof in excess of fifty thousand rupees.	Eighty rupees
	(viii) exceeds one lakh rupees, for every ten thousand rupees or part thereof, in excess of one lakh rupees.	One hundred rupees.
2.	*(a)* Application under section 26 of the Provincial Insolvency Act, 1920, or under section 95 of the Code of Civil Produre, 1908.	Five rupees.
	(b) Appeal against order on an application falling under clause *(a)*.	Five rupees.
3.	*(a)* Petition under section 53 or 54 of the Provincial Insolvency Act, 1920.	Five rupees.
	(b) Appeal against order on a petition falling under clause *(a)* whether by the Official Receiver or by the unsuccessful party.	Five rupees.
4.	Memorandum of appeal against order in proceedings under the Indian Succession Act, 1925.	An amount of one-half the scale of fee specified in article 1 on the amount or value of the subject-matter.
5.	Application for review of judgment.	One-half of the fee payable on the plaint or memorandum of appeal comprising the relief sought in the application for review.
6.	Probate of a will or letters of administration with or without will annexed —	
	When the amount or value of the estate in respect of which the grant of probate or letters is made exceeds one thousand rupees, but does not exceed five thousand rupees.	Two per centum on such amount or value
	When such amount or value exceeds five thousand rupees, but does not exceed fifty thousand rupees.	Three per centum on such amount or value.
	When such amount or value exceeds fifty thousand rupees, but does not exceed one lakh rupees.	Four per centum on such amount or value
	When such amount or value exceeds one lakh rupees.	Five per centum on such amount or value.

Sch. I, Art. 6 — Note 1

(1) A fee prescribed by Article 6, Schedule 1 has to be paid only after the Court orders the grant of probate or letters of administration and before they are actually granted (1968) 1 Andh WR 370 (373).

Article. (1)	Particulars. (2)	Proper fee. (3)
7.	Certificate under the Indian Succession Act, 1925— Where the amount or value of the debt or security or the gregate amount or value of the debts and securities specified the certificate—	
	(i) does not exceed five thousand rupees.	Two per centum on such amount or value.
	(ii) exceeds five thousand rupees, but does not exceed twenty-five thousand rupees.	Three per centum on such amount or value.
	(iii) exceeds twenty-five thousand rupees, but does not exceed fifty thousand rupees.	Four per centum on such amount or value.
	(iv) exceeds fifty thousand rupees, but does not exceed one lakh rupees.	Five per centum on such amount or value.
	(v) exceeds one lakh rupees.	Six per centum on such amount or value.

Explanation I. — Where a certificate is extended under section 376 of the Indian Succession Act, 1925, fee shall be computed on the amount for which a certificate is sought to be extended and the amount for which a certificate or certificates has or have already been issued at one and a half times the rates specified above, credit being given for the fee already paid.

Explanation II.—The amount of a debt includes interest on the day on which the inclusion of the debt in the certificate is applied for so far as such amount can be ascertained.

Explanation III. — *(a)* Where any power with respect to a security specified in a certificate for the receiving of interest or dividends on or for the negotiation or transfer of the security, or for both purposes, is conferred.

(b) Where no such power is conferred,

in either of the cases mentioned above, the value of the security is its market value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.

SCHEDULE II

Article. (1)	Particulars. (2)	Proper fee. (3)
1.	*(i)* Petition in a suit under the Converts'Marriage Dissolution Act, 1866.	Ten rupees.
	(ii) Petition, plaint or memorandum of appeal when presented to a Court under the Dissolution of Muslim Marriages Act, 1939.	Ten rupees.
	(iii) Petition under the Indian Divorce Act, excluding petitions under section 44 of that Act, and every memorandum of appeal under section 55 of that Act.	Thirty rupees.
	(iv) Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1936, or a counter-claim made under section 37 of that Act.	Thirty rupees.
	(v) Plaint or memorandum of appeal in a suit under the Indian Colonial Divorce Jurisdiction Act, 1926.	Fifty rupees.
	(vi) Petition or memorandum of appeal under Special Marriage Act, 1954.	Thirty rupees.
	(vii) Petition or memorandum of appeal under the Hindu Marriage Act, 1955.	Ten rupees.

Explanation. — If, in a suit falling under any of these clauses, there is a specific claim for damages, separate fee at the rates specified in Article 1 of Schedule 1 shall be charged on the amount of damages claimed.

2.	Undertaking under section 49 of the Indian Divorce Act, 1869.	One rupee.

Article (1)	*Particulars* (2)	*Proper fee* (3)
3.	Memorandum of appeal from an order inclusive of an order determining any question under section 47 or section 144 of the Code of Civil Procedure, 1908, and not otherwise provided for when presented—	
	(i) to any Court other than the High Court or to any Executive Officer other than the Board of Revenue or Chief Executive Authority.	Three rupees.
	(ii) to the Board of Revenue or Chief Executive Authority ...	Five rupees.
	(iii) to the High Court—	
	(A) From an order other than an order under the Madras Agriculturists' Relief Act, 1938—	
	Where the order was passed by a Subordinate Court or other authority—	
	(a) If the order relates to a suit or proceeding, the value of which exceeds one thousand rupees;	Ten rupees.
	(b) in any other case.	Five rupees.
	(2) Where the appeal is under clause 15 of the Letters Patent—	
	(a) From an order passed in exercise of appellate jurisdiction;	Ten rupees.
	(b) in any other case	One hundred rupees.
	(3) Where the appeal is under section 45-B of the Banking Companies Act, 1949.	One hundred rupees.
	(B) From an order under the Madras Agriculturists' Relief Act, 1938;	Two rupees.
	iv) to the Government in pursuance of a statutory right to appeal for which no court-fee is leviable, under any enactment.	Five rupees.

Sch. II, Art. 3 — Note 1

(1) Appeal under Clause 15, Letters Patent — Proper court-fee — Fees prescribed by Article 3 (iii) (A) (2) (b) to be paid. 1961 Andh LT 650 = (1961) 2 Andh WR 113 (115).

(2) Article not discriminatory and obnoxious to Article 14. (1961) 1 Andh LT 650 = (1961) 2 An WR 113 (116).

(3) Suit for recovery of legacy against a ward declared under Orissa Court of Wards Act — Issues on merits found in favour of plaintiff — Suit dismissed for want of notice to the authority concerned under Sections 52 and 53, Orissa Act — Appeal not only against order rejecting plaint but claiming decree on the findings reached by trial Court on other issues — Court-fee payable is under Schedule 1, Article 1 (c) and not under Sch. 2, Article 3 (iii). AIR 1968 AP 239 (265, 266, 270) = (1968) 2 Andh WR 301 (FB).

(4) Applicability — Order rejecting a plaint under O. 7, Rule 11, Civil P. C. not covered. AIR 1968 Andh Pra 239 (266) = (1968) 2 Andh WR 301 (FB).

(5) Plaint rejected under Order 7, Rule 11 — Order is a decree under Section 2 (2) Civil P. C. — Appeal from such order is an appeal from a decree — Subject matter in appeal is the same as in the suit — Section 2, Article 3 does not apply — Court-fee must be paid ad valorem on the valuation of the plaint adoped by the plaintiff. (1968 1 Andh WR 367 (369) = (1968) 1 Andh LT 387.

(6) An order determining mesne profits made by Insolvency Court under Section 4 and Section 5 of Insolvency Act — Decree by Insolvency Court — Appeal from the order under Section 75 of the Act — Court-fee paid under Section 2 Article 3 (i) of Andhra Court-fees Act held adequate though the Insolvency Court had passed a decree — S. 49 not attracted. (1968) 1 Andh WR 312 (314).

(7) An application under Section 439 of Indian Companies Act, 1956 falls directly within the ambit of Sch. 2. Article 3 (iii) A. 2 (b), Letters Patent Appeal against the order directing liquidation — Article 3, Schedule 2 is attracted as it is the specific provision relating to Letters Patent appeal while Section 49 is a general provision bearing upon all appeals. Court-fee is payable under Sch. 2, Article 3 (iii) A, 2 (b). (1963) 2 Andh WR 124 (125).

Article (1)	*Particulars* (2)	*Proper fee* (3)
4.	Memorandum of appeal under section 39 of the Arbitration Act, 1940, where the appeal is from an order of a District Munsif's Court or an order of a superior Court in a case where—	
	(a) the value for jurisdiction does not exceed Rs. 2,000; ...	Fifteen rupees.
	(b) such value exceeds Rs. 2,000, but does not exceed Rs. 5,000.	Twenty-five rupees
	(c) such value exceeds Rs. 5,000, but does not exceed Rs. 20,000.	One hundred rupees.
	(d) such value exceeds Rs. 20,000.	Two hundred rupees.
5.	Copy or translation of a judgment or order not being a decree or having the force of a decree—	
	When such judgment or order is passed by any Civil Court other than the High Court or by the Presiding Officer of any Revenue Court or Office or by any other Court or judicial or executive authority.	One rupee.
	When such judgment or order is passed by the High Court.	Two rupees.
.	Copy or translation of a judgment or order of a Criminal Court.	One rupee.
	Copy of a decree or order having the force of a decree —	
	When such decree or order is made by any Court other than the High Court —	
	(a) If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees;	One rupee.
	(b) if such amount or value exceeds fifty rupees; ...	Two rupees.
	When such decree or order is made by the High Court. ...	Five rupees.
8.	Copy of any document liable to stamp duty under the Indian Stamp Act, 1899. when substituted by any party to a suit or proceeding in place of the original withdrawn—	
	(a) When the stamp duty chargeable on the original does not exceed fifty naye paise;	The amount of the duty chargeable on the original.
	(b) in any other case	One rupee.
9.	Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act or copy of any account statement, report or the like taken out of any Court or officer of any public Officer—	
	For every three hundred and sixty words or fraction of three hundred and sixty words.	One rupee.
10.	*(a)* Application or petition presented to any officer of land revenue by any person holding temporarily settled land under direct engagement with Government and when the subject-matter of the application or petition relates exclusively to such engagement.	One rupee.
	(b) Application or petition presented to any officer of land revenue relating to the grant of land on darkhast.	One rupee.
	(c) Application to a Collector for lease of land for agricultural or non-agricultural purposes.	One rupee.
	(d) Application or petition presented to any Executive Officer under any Act for the time being in force for the conservancy or improvement of any place if the application or petition relates solely to such conservancy or improvement.	One rupee.

Sch. II, Art. 4 — Note 1

(1). Proceedings under S. 14 of Arbitration Act — Court overruling objection and proceeding to make award the rule of the Court — Appeal against the order refusing to set aside award — Appeal competent under S. 39 and not under Sec. 17 read with S. 96, Civil P. C. — Proper Court-fee payable is under Article 4, Sch. 2 of the Andhra Court Fees and Suits Valuation Act. AIR 1962 Andh Pra 492 (494) = (1962) 2 Andh WR 469 (DB).

(2) An application to file an award and pass a decree on it — Court-fee payable on the application is ad valorem under Article 4, Sch. 2. AIR 1962 Andh Pra 492 (496) = (1962) 2 Andh WR 469 (DB).

Article (1)	*Particulars* (2)	*Proper fee* (3)
	(e) Application or petition presented to any board or Executive Officer for a copy or translation of any order passed by such board or Officer or of any other document on record in such office.	One rupee.
	(f) Application to a Forest Officer by a forest contractor for extension of the period of lease –	
	(i) if the value of the subject-matter of the lease is Rs. 5,000 or less ;	Five rupees.
	(ii) if such value exceeds Rs. 5 000 for every Rs. 1,000 or part thereof, in excess of Rs. 5 000.	One rupee.
	(g) Application for attestation of private documents intended to be used outside India.	One rupee.
	(h) Application for lapsed deposit presented after six months after the date on which the amount lapsed to the Government –	
	(i) when the amount or deposit does not exceed Rs. 1,000;	One rupee.
	(ii) when it exceeds Rs. 1,000.	Two rupees
	(i) Application or petition presented to the Government and not otherwise provided for –	
	(i) which involves the exercise or non-exercise of power conferred by law or rule having the force of law,	Two rupees.
	(ii) in other case	One rupee.
	(j) Application or petition presented to the Board of Revenue or Chief Executive Authority and not otherwise provided for –	
	(i) which involves the exercise or non-exercise of power conferred by law or rule having the force of law;	Two rupees.
	(ii) in other cases	One rupee.
	k) Application or petitition not falling under clause (i) or (j) and presented to a public officer or in a public office and not otherwise provided for	One rupee.
11.	*(a)* Application or petition presented to any Court for a copy or translation of any judgment, decree or any proceeding of, or order passed by, such Court or of any other document on record in such Court.	Twenty-five naye paise.
	(b) Application or petition presented to any Civil Court other than a Principal Civil Court of Original Jurisdiction or to any Court of Small Causes constituted under the Provincial Small Cause Courts Act, 1887, or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than Rs. 50.	Twenty-five naye paise.
	(c) Application to any Court that records may be called from another Court, when the Court grants the application and is of opinion that the transmission of such records involves the use of the post.	One rupee in addition to the fee leviable on the application.

Sch. II, Art. 11 — Note 1

(1) Application for probate to have effect throughout India — Caveat not entered — Court-fee is payable under Section 2, Article 17 (k) (i). (1968) 1 Andh WR 370 (371).

(2) An application containing objections to the filing of an award under the Arbitration Act has to be in writing accompanied by Court-fee paid under Section 2, Article 11 (m) of Andhra Court-fees Act, 1956. AIR 1960 Andh Pra 576 (578) = 1960 Andh LT 88.

(3) Article 11 (q) applies only to orders passed by Small Cause Courts which are not decrees. (1965) 2 Andh WR 149 (151) = ILR (1966) Andh Pra 1057.

(4) Writ petition by detenues — Court-fee under Sch. 2. Article 11 (s) not required — There is nothing in Sec. 67 which limits it to prisoners detained in prison on conviction. (1967) 2 Andh LT 28 (30) = (1967) 1 Andh WR 263.

(5) It is apparent from a reading of Article 11 (s) that the word 'writ' in that Article does not refer to a writ of mandamus, quo warranto, certiorari or prohibition alone. It is a word having a wider import, which includes an order or direction in the nature of a writ or which sub-serves the purpose of a writ. The intention of the Legislature was that remedies under Article 226 were intended to be covered by Article 11 (s) of the Court-fees Act. (1969) 2 Andh WR 473 (474).

(6) All petitions under Article 226 of the Constitution asking for relief in the nature of writ or order or direction fall under Sch. 2, Article 11 (s) and not under Sch. 2, Article 11 (u). (1964) 2 Andh WR 290 (292).

(7) An appeal from a decree of Small Cause Courts falls under Article 11 (u), Sch. 2: (1965) 2 Andh WR 149 (151) = ILR (1966) Andh Pra 1057.

Article (1)	*Particulars* (2)	*Proper fee* (3)
	(d) Application for permission to deposit revenue or rent either in the office of the Collector or in the Court	One rupee.
	(e) Application or petition presented to a Court for determination of the amount of compensation to be paid by a landlord to his tenant.	One rupee.
	(f) A written complaint or charge of any offence other than an offence for which a Police Officer, may under the Code of Criminal Procedure 1898, arrest without warrant and present to any Criminal Court and an oral complaint of any such offence reduced to writing under the Code of Criminal Procedure, 1898.	Two rupees.
	(g) Application or petition presented to any Court, or to any Magistrate in his executive capacity and not otherwise provided for in this Act.	One rupee.
	(h) Application for arrest or attachment before judgment or for temporary injunction—	
	(i) when presented to a Civil Court or Revenue Court other than the High Court in relation to any suit or proceeding—	
	(1) if the value of the subject-matter is less than Rs. 50;	One rupee.
	(2) if the value is Rs. 50 and above;	Two rupees.
	(ii) when presented to the High Court ...	Five rupees.
	(i) Application or petition under section 47 and Order XXI, rules 58 and 90 of the Code of Civil Procedure, 1908	
	(i) when filed in a Revenue Court or a District Munsif's Court;	One rupee.
	(ii) whed filed in a Subordinate Judge's Court or a District Court;	Two rupees.
	(iii) when filed in the High Court	Five rupees.
	(j) Application or petition under sections 34, 72, 73 and 74 of the Indian Trusts Act, 1882,	Five rupees.
	(k) *(i)* Application for probate or letters of administration to have effect throughout India.	Twenty-five rupees.
	(ii) Application for probate or letters of administration not falling under clause *(i)* –	
	(1) if the value of the estate does not exceed Rs. 1000;	One rupee.
	(2) if the value exceeds Rs. 1 000;	Five rupees.
	Provided that if a caveat is entered and the application is registered as a suit one-half the scale of fee specified in Article I of Schedule I on the market value of the estate less the fee already paid on the application shall be levied	
	(l) Original petitions not otherwise provided for when filed in—	
	(i) a District Munsif's Court –	
	(1) under the Madras Village Courts Act, 1883;	One rupee.
	(2) in other cases	Three rupees.
	(ii) a Subordinate Judge's Court or a District Court; ...	Five rupees.
	(iii) the High Court	Twenty rupees.
	(m) Application to set aside an award under the Arbitration Act. 1940 -	
	(i) when presented to a District Munsif's Court —	
	(1) if the value of the subject matter of the award does not exceed Rs. 2,000; –	Ten rupees.
	(2) if such value exceeds Rs. 2 000	Twenty rupees.
	(ii) when presented to a Subordinate Judge's Court, a District Court or the High Court –	
	(1) if such value does not exceed Rs. 10,000;	One hundred rupees.
	(2) if such value exceeds Rs. 10,000, but does not exceed Rs. 25,000;	Two hundred rupees.
	(3) if such value exceeds Rs. 25 000. ...	Three hundred rupees.
	(n) Application under section 14 or section 20 of the Arbitration Act 1940, for a direction for filing an award or for an order for filing an agreement and application for enforcing foreign awards —	
	(i) when presented to a District Munsif's Court;	Fifteen rupees.

Article (1)	*Particulars* (2)	*Proper fee* (3)
	(ii) when presented to a Subordinate Judge's Court, a District Court or the High Court -	
	(1) if the value of the subject-matter of the award does not exceed Rs. 5 000;	Fifteen rupees.
	(2) if such value exceeds Rs. 5 000, but does not exceed Rs 10,000;	One hundred rupees.
	(3) if such value exceeds Rs. 10,000; ...	Two hundred and fifty rupees.
	(o) Petition to the High Court for the admission of an Advocate, Attorney or Vakil.	Twenty rupees.
	(p) Application presented to the High Court under section 24 of the Press (Objectionable Matter) Act, 1951	Fifty rupees.
	(q) Revision petition presented to the High Court under section 115 of the Code of Civil Procedure, 1908, under section 25 of the Provincial Small Cause Courts Act, 1887, or under the provisions of any other Act, arising out of a suit or proceeding—	
	(i) if the value of the suit or proceeding to which the order sought to be revised relates does not exceed Rs. 1,000;	Five rupees.
	(ii) if such value exceeds Rs 1,000	Ten rupees.
	(r) Petition under sections 153, 166 and 221 of the Indian Companies Act, 1913 in connection with the winding up of a company.	Two hundred rupees.
	(s) Petition to the High Court under Article 226 of the Constitution for a writ other than the writ of Habeas Corpus or a petition under Article 227 of the Constitution.	One hundred rupees.
	(t) Application under section 45 of the Specific Relief Act, 1877.	One hundred rupees.
	(u) Application or petition presented to the High Court and not otherwise specifically provided for.	Two rupees.
	(v) Election petition questioning the election of a person in respect of—	
	(i) the office of member of a panchayat;	Twenty-five rupees.
	(ii) the office of president of a panchayat;	Fifty rupees.
	(iii) the office of member of a municipal council or a district board;	One hundred rupees.
	(iv) the office of chairman of a municipality or president of a district board.	Two hundred rupees.
	(w) Application under section 145 of the Code of Criminal Procedure 1898.	Five rupees.
12.	Application for leave to sue as a pauper	One rupee.
13.	Application for leave to appeal as a pauper -	
	(i) when presented to a District Court or a Subordinate Judge's Court;	One rupee.
	(ii) when presented to the High Court	Two rupees.
14.	*(i)* Bail bond or other instrument of obligation when filed in village Courts.	One rupee.
	(ii) Bail bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1898 or the Code of Civil Procedure, 1908 and not otherwise provided for in this Act.	One rupee.
15.	Every copy of power-of-attorney when filed in any suit or proceeding.	One rupee.
16.	Mukhtarnama, Vakalatnama or any paper signed by an advocate signifying or intimating that he is retained for a party— when presented—	
	(i) to any Court other than the High Court or to any Collector or Magistrate or other executive officer;	Two rupees.
	(ii) to the Board of Revenue or a Chief Executive Authority;	Three rupees.
	(iii) to the High Court	Five rupees.
	(iv) to the Government	Five rupees.

Sch. II, Art. 16 — Note 1

(1) Revision petition by a complainant — Memorandum of appearance filed on his behalf — Not exempt from payment of Court-fee — Court-fee is chargeable under Sch. 2, Article 16. AIR 1966 Andh Pra 239 (239, 240) = (1965) 2 Andh LT 223 (DB).

Article (1)	*Particulars* (2)	*Proper fee* (3)
17.	Agreement in writing staring a question for the opinion of the Court under the Code of Civil Procedure, 1908 –	
	(*i*) when presented to a District Munsif's Court	Fifteen rupees.
	(*ii*) in any other case	One hundred rupees.
18.	Caveat	Ten rupees.

SCHEDULE III

Part I

(*See* sections 52 and 53).

Form of Valuation (to be used with such modifications, if any, as may be necessary) of Estate

IN THE COURT OF
Re : Probate of the Will of
of the Estate (or administration
), Deceased.

1. I (A. B.) solemnly affirm/make oath and say that I am the executor (or one of the executors or one of the next of kin) of deceased, and that I have truly set forth in Annexure A to this Form of Valuation all the estate of which the abovenamed deceased died possessed or to which he was entitled at the time of his death, and which has come, or is likely to come, to my hands.

2. I further say that I have also truly set forth in Annexure B to this Form of Valuation all the items which I am by law allowed to deduct.

3. I further declare that the said estate exclusive only of the last mentioned items ________ *was on the date of the death of the said deceased* ________ under the value of *is

4. I, (A. B.) further declare that what is stated in this Form of Valuatoin is true to the best of my information and belief

(Signed) A. B.________

ANNEXURE A

	Rs. P
Valuation of the movable and immovable property of deceased.	
Cash in hand and at the bank, household goods, wearing apparel, books, plate, jewels, and the like. *(State estimated value according to best of Executor's or administrator's belief).*	
Property in Government securities transferable at the Public Debt Office. *(State description and value on the date of the death of the deceased or on the date of the application as the case may be).*	
Immovable property, consisting of ... ... *(State description and market value on the date of the death of deceased or on the date of the application, as the case may be).*	
Leasehold property ... ... *(If the deceased held any leases for years determinable, state the period of the lease and the estimated amount of rent inserting separately arrears due on the date of the death or on the date of the application as the case may be).*	
Property in public companies... ... ... *(State the particulars and the value calculated at the price on the date of death or on the date of the application as the case may be).*	
Policies of insurance upon life, money out on mortgages and securities such as bonds, bills, notes and other securities for money. *(State the amount of the whole on the date of the death or on the date of the application as the case may be).*	
Debts ... ... *(Other than bad debts).*	
Stock in trade ... ... *(State the estimated value, if any).*	
Other property not comprised under the foregoing heads. *(State the estimated value, if any).*	
Total ...	Rs. P.
Deduct items shown in Annexure B in the manner provided in sub-section (2) of section 53	
Net Value of the Estate ...	

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*This Form to be used where the application is made after one year from the date of death.

ANNEXURE B

Schedule of Debts, etc.

	Rs.	p.
Amount of debts due and owing from the deceased, legally payable out of the estate		
Amount of expenses connected with funeral rites and ceremonies ...		
Amount of mortgage and incumbrances		
Property held in trust not beneficially or with general power to confer beneficial interest		
Other property not subject to duty		
Total ...		

PART II

Amended Form of Valuation of Estate.

(*See* sections 58 and 60).

IN THE COURT OF

Re : Probate of the Will (or Administration of the Estate of Deceased.)

1. I (A. B.) am the executor (or one of the executors or one of the next of kin, *as the case may be*) of

2. Probate was (*or* letters of administration were) granted to me on

3. It has now been discovered that the net value of the estate on which court-fee was paid was not correctly ascertained.

4. I have now truly set forth in Annexure A to this amended Form of Valuation all the estate of the deceased at the date of his death / the application for probate (or letters of administration which has come or is likely to come to my hands.

5. I further have now truly set forth in Annexure B all the items which I am by law allowed to deduct.

6. I further declare that the said estate, exclusive only of the last-mentioned, items at the date of the death of the deceased was / this application is under the value of

7. I (A. B.) further declare that what is stated in this amended Form of Valuation is true to the best of my information and belief.

(Signed) A. B.

ANNEXURE A

Amended Valuation of the Estate of Deceased

	Valuation on which court-fee was paid.	*Increase.*	*Decrease.*	*Valuation as now amended.*
Total ...				

Deduct items shown in Annexure B in the manner provided in sub-section (2) of section 53,

Amended net value of estate ...

ANNEXURE B

Amended Schedule of Debts, etc.

	Valuation on which court-fee was paid,	*Increase.*	*Decrease.*	*Valuation as now amended.*
Total ...				

[THE] BOMBAY COURT-FEES ACT, 1959

(BOM. ACT XXXVI OF 1959)

[Act printed here is as amended in Maharashtra and Gujarat till 30-9-1969]

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[THE] BOMBAY COURT-FEES ACT, 1959

(BOM. ACT No. XXXVI of 1959)

(As applicable in Maharashtra and Gujarat)

[16th June 1950.]

An Act to consolidate and amend the law relating to fees taken in the Court and public offices and fees taken in respect of certain matters in the State of Bombay, other than fees falling under Entries 77 and 96 of List I in the Seventh Schedule to the Constitution of India.

Whereas it is expedient to consolidate and amend the law relating to fees taken in the Courts and public offices and fees taken in respect of certain matters in the State of Bombay, other than fees falling under Entries 77 and 96 of List I in the Seventh Schedule to the Constitution of India; It is hereby enacted in the Tenth Year of the Republic of India as follows:—

CHAPTER I
PRELIMINARY

1. Short title, extent, commencement and application.—(1) This Act may be called THE BOMBAY COURT-FEES ACT, 1959.

(2) It extends to the whole of the State of †[Maharashtra].

(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.*

(4) The provisions of this Act shall not apply to fees or stamps relating to documents presented or to be presented before any officer serving under the Central Government.

(5) In the absence of any specific provisions to the contrary, nothing in this Act shall affect any special law now in force relating to fees taken in the Courts and public offices.

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[*] This Act came into force on 1st day of August 1959—Notifn. No. CFA. 1056-II (a) dated 15-7-1959 published in Bombay Government Gazette, 1959, Pt. IV-B, page 891.

[†] Substituted for 'Bombay' by Maha. A. L. O., 1960, Pr. 3 and Schedule.

Gujarat

In its application to the State of Gujarat, in S. 1 (2), for "State of Bombay", the words "State of Gujarat" are substituted—Guj. A. L. O., 1960, Pr. 3 and Sch. (1-5-1960).

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "Chief Controlling Revenue Authority" means such officer as the State Government may by notification in the Official Gazette appoint in this behalf for the whole or any part of the [°][State of Maharashtra;]

(b) "Collector" includes any officer authorised by the Chief Controlling Revenue Authority to perform the functions of a Collector under this Act.

(c) "Plaint" includes a written statement pleading a set-off or counter claim.

[°] Substituted for 'State of Bombay' by Maha. A. L. O., Pr. 3 and Schedule.

Gujarat

In its application to the State of Gujarat, in S. 2 (a), for the "State of Bombay", the words "State of Gujarat" are substituted—Guj. A. L. O., 1960, Pr. 3 and Sch. (1-5-1960).

CHAPTER II

FEES IN THE HIGH COURT AND IN THE COURT OF SMALL CAUSES AT BOMBAY

3. **Levy of fees in High Court on its original side.**—The fees payable for the time being to the clerks and officers (other than the Sheriffs and attorneys) of the High Court;

or chargeable in that Court under No. 10 of the first, and Nos. 11, 14, 17, 20 and 21 of the Second Schedule to this Act annexed;

Levy of fees in Bombay Small Cause Court.—and the fees for the time being chargeable in the Court of Small Causes at Bombay and its office,

shall be collected in manner hereinafter appearing.

Gujarat

In its application to the State of Gujarat,—

(i) in the heading below Chapter II, after the words "High Court", insert the words "and in the Court of Small Causes at Ahmedabad";

(ii) in Section 3, after second paragraph, insert the following paragraph:—

"and the fees for the time being chargeable in the Court of Small Causes of Ahmedabad and its office";

(iii) in the marginal note of Section 3, after the words "original side", insert the words "and in the Court of Small Causes at Ahmedabad." and omit the second marginal note.—Guj. Act 29 of 1962, Ss. 2, 3 (6-9-1962).

4. **Procedure in case of difference as to necessity or amount of fee.**—(1) When any difference arises between the Officer whose duty it is to see that any fee is paid under this Chapter, and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in the High Court, be referred to the taxing officer, whose decision thereon shall be final subject to revision, on an application, made within sixty days from the date of the decision, by the suitor or attorney or such officer as may be appointed in this behalf by the State Government, by the Chief Justice or by such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf. The Chief Justice shall declare who shall be taxing officer, within the meaning of this sub-section.

Section 2 — Note 1

(1) Plaint is a statement in writing of the cause of action in a suit. A third party notice is not included in the definition of plaint given in Clause (e) in Section 2 of the Act. AIR 1966 Bom 126 (127) = 67 Bom LR 644 (DB).

(2) When any such difference arises in the Court of Small Causes of Bombay, the question shall be referred to the Clerk of the Court, whose decision thereon shall be final, subject to revision, on an application, made within sixty days from the date of the decision by the party concerned or such officer as may be appointed in this behalf by the State Government, by the Chief Judge of the Small Cause Court, or by such Judge of that Court as the Chief Judge shall appoint either generally or specially in this behalf.

Gujarat

In its application to the State of Gujarat, sub-section (2) which was omitted by Guj. A. L. O., 1960, and inserted by Guj. Act 29 of 1962, S. 4 is practically the same as in Maharashtra with this difference that for the words "of Bombay, the question shall be referred to the Clerk of the Court", words "of Ahmedabad, the question shall be referred to the Registrar" are substituted and for the words "by the Chief Judge of Small Cause Court", words "by the Chief Judge of the said Court of Small Causes" are there—Guj. Act 29 of 1962, S. 4 (6-9-1962).

CHAPTER III

COMPUTATION OF FEES

5. **Fees on documents filed, etc., in Courts or in public offices.**—(1) No document of any of the kinds specified as chargeable in the first or second Schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there has been paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

(2) When any difference arises between the officer whose duty it is to see that any fee is paid under this Act and any suitor or his pleader, as to the necessity of paying a fee or the amount thereof, the question shall, when the question arises in the High Court, be referred to the taxing officer whose decision thereon shall be final, subject to revision, on an application, made within sixty days from the date of the decision, by the suitor or his pleader or such officer as may be appointed in this behalf by the State Government, by the Chief Justice or by such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.

(3) When any such difference arises in the City Civil Court, Bombay, the question shall be referred to the Registrar of the City Civil Court whose decision shall be final, subject to revision, on an application, made within sixty days from the date of the decision, by the party concerned or such officer as may be appoint-

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Section 5 — Note 1

(1) Third party notice will attract duty under Section 5 (1) of the Act if it can be said to be a document of any kind specified in Schedule 1 or 2 of the Act. Third party notice is not a plaint or an application to the Court attracting duty but a praecipe addressed to the prothonotary of the High Court and accompanying the third party notice is liable to Court fee as an application. AIR 1966 Bom 126 (127) = 67 Bom LR 644.

(2) The effect of Sections 5, 6 and 49 read together is that all documents presented after the new Act came into force are to be charged under the new Act — Suit filed before the new Act came into force — Appeal filed after the new Act came into force — Computation of the claim involved in appeal should be made in accordance with the provisions of new Act. AIR 1963 Guj 40 (44, 45) = (1963) 4 Guj LR 317 (DB).

(3) Prima facie a public officer who receives or furnishes documents chargeable in fees decides the question of sufficiency of the fee in respect of the document. Section 5 does not confer on a Court of law or even on any other public officer to consider the question of insufficiency of fees paid in respect of chargeable documents once received or furnished by a public officer. AIR 1967 Bom 224 (226) = 68 Bom LR 555. (Reference by Collector under Section 18 of Land Acquisition Act — Court has no jurisdiction to decide sufficiency of Court-fee stamp on reference application received by collector.)

(4) Section 5 has no retrospective effect. (1961) 63 Bom LR 667 = 1961 Nag LJ 436 (442) (DB).

ed in this behalf by the State Government, by the Principal Judge or such other Judge of the said Court as the Principal Judge shall appoint either generally or specially in this behalf.

(4) When such difference arises in any other Court, the question shall be referred to the final decision of the Judge presiding over such Court.

(5) Nothing in this section shall affect the provisions of the Presidency Small Cause Courts Act, 1882, in its application to the State of Bombay.

Gujarat

In sub-sections (3) and (5) which were omitted by Guj. A. L. O., 1960, were re-inserted in the same words as in Maharashtra except that for the words "in the City Civil Court, Bombay", the words "in the Ahmedabad City Civil Court" are to be read and in sub-section (5), for 'Bombay', the word 'Gujarat' has to be substituted.—Guj. Act 29 of 1962, S. 5 (6-9-1962).

6. **Computation of fees payable in certain suits.**—The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—

For moneys.—(i) In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically)—according to the amount claimed;

For maintenance and annuities.—(ii) In suits for maintenance (with or without a prayer for the creation of a charge), and for annuities or other sums payable periodically according to the value of the subject-matter of the suit and such value shall be deemed to be, in the case of a suit for maintenance, the amount claimed to be payable for one year and in any other case, ten times such amount:

Provided that if in a suit for maintenance the plaintiff obtained decree for maintenance, the defendant shall be liable to make good the deficit, if any, between the fee payable on ten times the amount awarded for one year and the fee already paid by the plaintiff; and the amount of such deficit shall, without prejudice to any other mode of recovery, be recoverable as an arrear of land revenue;

For other movable property having a market value.—(iii) In suits for movable property other than money, where the subject-matter has a market-value—according to such value at the date of presenting the plaint;

Against recovery of any money due as a tax, etc.—(iv) (a) In suits for declaration to obtain adjudication against recovery of money from the plaintiff, whether the recovery is as land revenue or arrears of land revenue or tax or duty or cess or fee or fine or penalty or under any decree or order of a Court or any certificate or award other than under the Arbitration Act, 1940.

Section 6 — Note 1

(1) The combined effect of Sections 5, 6 and 49 when read together would be that all documents presented after the Act are to be charged under the new Act. AIR 1963 Guj 40 (45) = (1963) 4 Guj LR 317 (DB).

(2) The suit for declaration to fall under the clause must be one in which the question of ownership or title was in question. AIR 1965 Guj 204 (207) = (1965) 6 Guj LR 44 (DB).

(3) It is only in cases where a suit is filed for a declaration of the nature of tenancy on any relief founded on it that Clause (d) of sub-section (iv) of Sec. 6 comes into operation. It does not apply where a declaration of a mere tenancy is sought. AIR 1963 Bom 235 (235) = 64 Bom LR 765.

(4) Plaintiff claiming right to continue in uninterrupted possession of suit land and right to challenge any sale in contravention of rights conferred on him under Bombay Tenancy and Agricultural Lands Act — Rights claimed by plaintiffs are incapable of monetary evaluation — Provisions of Section 6 (iv) (j) and not (d) apply. (1969) 71 Bom LR 582 (584).

(5) Suit, not for a declaration but for injunction only — Section 6 (iv) (d) has no application. AIR 1969 Bom 423 (426) = 71 Bom LR 340.

(6) Suit for declaration of title with a relief of possession — Valuation for

or in any other manner—one-fourth of ad valorem fee leviable on the amount sought to be recovered according to the scale prescribed under Article 1 of Schedule I with a minimum fee of fifteen rupees:

Provided that when in addition any consequential relief other than possession is sought, the amount of fee shall be one-half of ad valorem fee on the amount sought to be recovered:

Provided further that when the consequential reliefs also sought include a relief for possession, the amount of fee shall be the full ad valorem fee on the amount sought to be recovered;

Similar claim in respect of movable property.—(b) In suits for declaration similar to those falling under sub-paragraph (a) in respect of movable property —one-fourth of ad valorem fee leviable on the value of the movable property subject to the minimum fee as under sub-paragraph (a):

Section 6 — Note 1 (contd.)
purposes of Court-fee — Section 6 of Bombay Court Fees Act corresponds to Section 7 (iv) (c) of Court Fees Act (1870), but whole arrangement is substantially altered—Court is not bound to accept valuation put by plaintiff in view of the Section 6 (iv) (d). (1968) 9 Guj LR 194 (198, 199) = ILR (1968) Guj 99 (DB).

(7) Where the plaintiffs file a suit for a declaration that certain sale effected by defendant in favour of defendant 2 was void and ineffective and for an injunction restraining defendants from proceeding further with the completion of the alleged sale, the suit falls under Section 7 (iv) (c). The suit cannot be regarded as one falling under Schedule 2, Article 17 (iv) to set aside an alienation. Nor does it fall under Schedule 2, Article 17 (vii). AIR 1959 Bom 517 (519) = 60 Bom LR 587 (DB). (Case under old Act.)

(8) Suit for declaration that the deed of assignment executed by defendant is void against the plaintiff — Not susceptible to monetary valuation and is governed by Section 6 (iv) (j) of the Act as the subject-matter of the suit is not the property comprised in the deed but declaration only. AIR 1969 Bom 66 (69) = 70 Bom LR 359.

(9) Suit for injunction — Court on construction of plaint coming to the conclusion that it was really a suit for possession — Suit should not be dismissed because Court-fee on relief of injunction only was paid — Court can direct the plaintiff to pay as in a suit for possession. AIR 1966 Bom 113 (115) = 67 Bom LR 452 (DB).

(10) Suit for declaration that plaintiff is benamidar having no interest in suit transactions — Suit dismissed — Suit falls under Section 6 (iv) (j) — Appeal — Court-fee payable on memorandum of appeal — Claim of plaintiff not susceptible to money value — Special provisions in Section 6 (iv) (j) of the Bombay Court Fees Act prevail against Sch. 1, Article 1 of Court-fees Act (1870). AIR 1966 Guj 159 (162) = (1965) 6 Guj LR 855 (DB).

(11) Suit for recovery of possession of mortgaged property from mortgagee — In view of general principles of construction general Clause (v) must apply to all cases except those falling within Clause (x). AIR 1969 Bom 395 (396) = 71 Bom LR 279 (DB).

(12) Market value of the property means the value of the property which a willing purchaser would pay to a willing seller for the property on the day the suit is filed. AIR 1966 Bom 113 (115) = 67 Bom LR 452.

(13) Suit for declaration, injunction, partition of immovable joint family property — Suit falls under Section 7 (iv) (b) and (c) and not under Section 7 (v) or Article 17 (vii) of Schedule II of Court-fees Act. AIR 1963 Guj 291 (298) = (1963) 4 Guj LR 1022. (Case under old Act.)

(14) Suit for injunction — Prayer for asking defendants to discontinue attachment -- Prayer is equivalent to prayer for setting aside attachment — Suit falls under Section 6 (ix). AIR 1969 Bom 423 (427) = 71 Bom LR 340.

(15) Suit for recovery of possession of mortgaged property from mortgagee — Covered by Clause (x) — Even if technically the suit may not be a redemption suit under Section 62, T. P. Act, for purposes of Court-fees Act it does not make any distinction between a suit for possession simpliciter from mortgagee on ground that the mortgage is satisfied and a suit for redemption as such. AIR 1969 Bom 395 (396) = 71 Bom LR 279 (DB).

(16) Appeal from a decree for redemption by defendant — Defendant-appellant claiming right to remain in possession as tenant — The appeal falls under Section 6 (xii) (d) of the Act as if the landlord had filed a suit for recovery of possession and the defendant was defending the suit, since the right of redemption was not in dispute. AIR 1963 Bom 235 (236) = 64 Bom LR 765.

Provided that when in addition any consequential relief other than possession is sought, the amount of fee shall be one-half of ad valorem fee leviable on the value of such property:

Provided further that when the consequential reliefs also sought include a relief for possession, the amount of fee shall be the full ad valorem fee leviable on such value;

For status with monetary attribute.—(c) In suits for declaration of the status of plaintiff, to which remuneration, honorarium, grant, salary, income, allowance or return is attached, one-fourth of ad valorem fee leviable on the emoluments or return for one year:

Provided that when in addition any consequential relief other than possession is sought, the amount of fee shall be one-half of ad valorem fee on such emoluments or value of return:

Provided further that when the consequential reliefs also sought include a relief for possession, the amount of fee shall be the full ad valorem fee on such emoluments or value of return;

For ownership etc., of immovable property etc.—(d) In suits for declaration in respect of ownership, or nature of tenancy, title, tenure, right, lease, freedom or exemption from, or non-liability to attachment with or without sale or other attributes, of immovable property, such as a declaration that certain land is personal property of the Ruler of any former Indian State or public trust property or property of any class or community—one-fourth of ad valorem fee leviable for a suit for possession on the basis of title of the subject-matter, subject to a minimum fee of eighteen rupees and seventy-five naye paise:

Provided that if the question is of attachment with or without sale the amount of fee shall be the ad valorem fee according to the value of the property sought to be protected from attachment with or without sale or the fee of fifteen rupees, whichever is less:

Provided further that, where the defendant is or claims under or through a limited owner, the amount of fee shall be one-sixth of such ad valorem fee, subject to the minimum fee specified above:

Provided also that in any of the cases falling under this clause except its first proviso, when in addition any consequential relief other than possession is sought the amount of fee shall be one-half of ad valorem fee and when the consequential reliefs also sought include a relief for possession the amount of fee shall be the full ad valorem fee;

Declaration for easements etc.—(e) In suits for declaration of easement or right to benefits arising out of immovable property, with or without an injunction or other consequential relief, the amount of fee shall be as shown in the Table below :—

Table

Area 1	Fee 2
(a) The area within the limits of the Municipal Corporations of Greater Bombay, *[*] Poona and Nagpur.	One-eighth of the *ad valorem* fee leviable for a suit for possession of the servient tenement or the dominant tenement, whichever is less, subject to a minimum fee of fifteen rupees.
(b) Areas within the limits of Municipalities of Sholapur, Kolhapur, *[* *] Nasik, Thana, Dhulia, Jalgaon, Kalyan, *[* *] Akola, Amravati, Aurangabad and Jalna.	One-twelfth of the *ad valorem* fee leviable for a suit for possession of the servient tenement or the dominant tenement, whichever is less, subject to a minimum fee of fifteen rupees.
(c) Any other area in the State of *[Maharashtra].	Ffteen rupees.

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[*] In entry (a) "Ahmedabad;" in entry (b), "Surat, Baroda," and "Rajkot, Bhavanagar, Jamnagar" omitted and in entry (c), for 'Bombay' word 'Maharashtra' substituted by Maha. A. L. O., 1960.

Gujarat

In its application to the State of Gujarat, in the table below sub-clause (e) of clause (iv) in column 1—

(i) in entry (a) for "Municipal Corporations of Greater Bombay, Ahmedabad, Poona and Nagpur" substitute "Municipal Corporation of Ahmedabad;"

(ii) in entry (b) omit 'Sholapur,' 'Kolhapur,' 'Nasik,' 'Thana,' 'Dhulia,' 'Jalgaon,' 'Kalyan,' 'Akola,' 'Amraoti,' 'Aurangabad and Jalna;"

(iii) in entry (c), for "State of Bombay" substitute "State of Gujarat." — Guj. A. L. O. 1960, S. 3 and Schedule (1-5-1960).

For other status without monetary attribute.—(f) In suits for declaration of status to which no direct monetary attribute is attached such as a declaration that the plaintiff is a married husband or wife of the defendant or divorced husband or wife of the defendant or a declaration about legitimacy of children or about citizenship rights or about an adoption—thirty rupees.

Provided that where injunction or other consequential relief is also sought in such case, the amount of fee shall be fifty rupees;

For charge on property.—(g) In suits for declaration of a charge in favour of the plaintiff on movable or immovable property—one-half of ad valorem fee payable on the charge amount.

Provided that where injunction or other consequential relief is also sought in such cases, the amount of fee shall be the full ad valorem fee payable on the charge amount;

For periodical money returns.—(h) In suits for declaration in respect of periodical charge or money return in favour of or against the plaintiff—One-half of ad valorem fee payable on the charge for 5 years if the charge is annual and on the charge for one year if the period of the charge is less than one year;

*[**For voidance of sale, contract for sale, etc.**—(ha) In suits for declaration that any sale, or contract for sale, or termination of contract of sale, of any moveable or immoveable property is void—one-fourth of ad valorem fee leviable on the value of the property;

(hb) In suits for declaration that any proceedings for compulsory acquisition of any moveable or immoveable property are void—one-fourth of ad valorem fee leviable on the value of the property.]

[*] Inserted by the Maha. Act IX of 1970, S. 4 (a) (16-3-70).

For accounts.—(i) In suits for accounts—according to the amount at which the relief sought is valued in the plaint or memorandum of appeal, subject to the provisions of Section 8, and subject to a minimum fee of twenty rupees;

For other declarations.—(j) In suits where declaration is sought, with or without injunction or other consequential relief and the subject-matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act — *[ad valorem fee payable, as if the amount or value of the subject-matter was three hundred rupees;] — In all suits under clauses (a) to (i), the plaintiff shall state the amount at which he values the relief sought, with the reasons for the valuation;

[*] Substituted for 'thirty-rupees' by Maha. Act IX of 1970, S. 4 (b) (16-3-70).

For possession of lands, houses and gardens.—(v) In suits for the possession of lands, houses and gardens—according to the value of the subject-matter, and such value shall be deemed to be, where the subject-matter is a house or garden—according to the market value of the house or garden and where the subject-matter is land, and—

(a) where the land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government—a sum equal to twelve and a half times the survey assessment;

(b) where the land is held on a permanent settlement or on a settlement for any period exceeding thirty years, and pays the full assessment to Government—a sum equal to twenty times the survey assessment; and

(c) where the whole or any part of the annual survey assessment is remitted—a sum computed under sub-paragraph (a) or sub-paragraph (b), as the case may be, in addition to twenty times the assessment, or the portion of assessment, so remitted;

To enforce a right of pre-emption.—(vi) In suits to enforce a right of pre-emption — according to the value (computed in accordance with paragraph (v) of this section) of the land, house or garden in respect of which the right is claimed;

For share in joint property.—(vii) In suit for partition and separate possession of a share of joint family property or of joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property whether or not the plaintiff is in actual or constructive possession of the property of which he claims to be a coparcener or co-owner—according to the value of the share in respect of which the suit is instituted;

Explanation.—For the purposes of this paragraph, if the property in which a share is claimed consists of or includes any land assessed to land revenue for the purpose of agriculture, the value of such land shall be deemed to be the value as determined under paragraph (v) of this section;

For interest of assignee of land revenue.—(viii) In suits for the interest of an assignee of land revenue,—fifteen times his net profits as such for the year next before the date of presenting the plaint;

To set aside an attachment.—(ix) In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for which the land or interest was attached:

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest;

To redeem.—(x) In suits against a mortgagee for the recovery of the property mortgaged, and in suit by a mortgagee to foreclose the mortgage,

To foreclose.—or, when the mortgage is made by conditional sale, to have the sale declared absolute—

according to the principal money expressed to be secured by the instrument of mortgage;

For specific performance.—(xi) In suits for specific performance—

(a) of a contract of sale—according to the amount of consideration.

(b) of a contract of mortgage—according to the amount agreed to be secured,

(c) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term,

(d) of an award—according to the amount or value of the property in dispute;

Between landlord and tenant.—(xii) In the following suits between landlord and tenant:—

(a) for the delivery by a tenant of the counterpart of a lease,

(b) to enhance the rent of a tenant having a right of occupancy,

(c) for the delivery by a landlord of a lease,

(d) for the recovery of immovable property from a tenant, including a tenant holding over after the determination of a tenancy,

(e) to contest a notice of ejectment,

(f) to recover the occupancy of immovable property from which a tenant has been illegally ejected by the landlord, and

(g) for abatement of rent—

according to the amount of the rent of the immovable property to which the suit refers, payable for the year next before the date of presenting the plaint.

7. Fee on memorandum of appeal against order or award relating to compensation in certain cases.—(1) The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

(2) The amount of fee payable under this Act on a memorandum of appeal against an award of a Claims Tribunal preferred under Section 110-D of the Motor Vehicles Act, 1939, shall be computed as follows:

(i) If such appeal is preferred by the insurer or owner of the motor vehicle — the full ad valorem fee leviable on the amount at which the relief is valued in the memorandum of appeal according to the scale prescribed under Article 1 of Schedule I;

(ii) If such appeal is preferred by any other person—one-half of ad valorem fee leviable on the amount at which the relief is valued in the memorandum of appeal according to the said scale:

Provided that if such person succeeds in the appeal, he shall be liable to make good the deficit, if any, between the full ad valorem fee payable on the relief awarded in the appeal according to the said scale and the fee already paid by him; and the amount of such deficit shall, without prejudice to any other mode of recovery, be recoverable as an arrear of land revenue.

8. Inquiry as to valuation of suits.—If the Court is of opinion that the subject-matter of any suit has been wrongly valued or if an application is made to the Court for the revision of any valuation made, the Court may revise the valuation and determine the correct valuation and may hold such inquiry as it thinks fit for such purpose.

9. Investigation to ascertain proper valuation.—(1) For the purpose of the inquiry under Section 8 the Court may depute, or issue a commission to any suitable person to make such local or other investigation as may be necessary and to report thereon to the Court. Such report and any evidence recorded by such person shall be evidence in inquiry.

(2) The Court may, from time to time, direct such party to the suit as it thinks fit to deposit such sum as the Court thinks reasonable as the costs of the

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Section 7 — Note 1

(1) The expressions 'amount awarded' and 'amount claimed' in Section 7 (1) of Bombay Court Fees Act do not include interest awarded or interest claimed. AIR 1965 Guj 212 (213) = (1964) 5 Guj LR 862 (DB).

(2) Appeal against the order awarding compensation under Land Acquisition Act — Court-fee is to be paid on the difference between the amount of compensation awarded and the amount of compensation claimed in appeal. AIR 1967 Guj 182 (183) = (1966) 7 Guj LR 689.

Section 8 — Note 1

(1) The section enables a Court whenever a question of valuation of the subject-matter of the suit is raised to decide the same. The manner of enquiry is left to the Court. AIR 1966 Bom 113 (115) = 67 Bom LR 452 (DB).

(2) Suit for declaration and injunction that a sale deed effected by 1st defendant in favour of defendant 2 was illegal, ineffective and void and for injunction — Valuation put by plaintiff not shown to be wrong — The Court is incompetent to revise it under Sec. 8-A of the Court Fees Act 1870 as amended by Bombay Act 12 of 1954. AIR 1959 Bom 517 (519) = 60 Bom LR 587 (DB). (Case under old law.)

inquiry, and if the costs are not deposited within such time as the Court shall fix, may, notwithstanding anything contained in any other Act, reject the plaint or as the case may be, the appeal, if such party is the plaintiff or the appellant and in any other case, may recover the costs as a public demand:

Provided that when any plaint or appeal is rejected under this section the, court-fee already paid shall not be liable to be refunded.

10. Power of persons making inquiry under Sections 8 and 9.—(1) The Court, when making an inquiry under Section 8 and any person making an investigation, under Section 9 shall have respectively for the purposes of such inquiry or investigation, the powers vested in a Court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:

(a) enforcing the attendance of any person and examining him on oath or affirmation;

(b) compelling the production of documents or material objects;

(c) issuing commissions for the examination of witnesses;

(d) taking or receiving evidence on affidavits.

(2) An inquiry or investigation referred to in sub-section (1) shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code.

11. Costs of inquiry as to valuation and refund of excess fee.—If in the result of an inquiry under Section 8 the Court finds that the subject-matter of the suit has been under-valued, the Court may order the party responsible for the undervaluation to pay all or any part of the costs of the inquiry.

If in the result of such inquiry the Court finds that the subject-matter of the suit has not been undervalued the Court may, in its discretion, order that all or any part of such costs shall be paid by Government or by any party to the suit at whose instance the inquiry has been undertaken and if any amount exceeding the proper amount of fee has been paid shall refund the excess amount so paid.

12. Appointment of inspecting officers and recovery in cases reported by them.—(1) The State Government may appoint generally, or in any case, or for any specified class of cases in any local area, one or more officers to be called inspecting officers.

(2) The inspecting officer may, subject to the control of the Court concerned examine the records of any case which is pending or has been disposed of, with a view to finding out whether proper fees have been paid therein.

(3) If on such examination, the inspecting officer finds that the fee payable under this Act on any document filed, exhibited or recorded in such case has not been paid or has been insufficiently paid, he shall report the fact to the presiding officer of the Court.

(4) Such presiding officer after satisfying himself of the correctness of such report, shall record a provisional finding that the proper fee has not been paid and determine the amount of the fee payable and such further sum as he thinks reasonable as the costs of the inquiry and the person from whom the fee, or the difference thereof, if any, and the costs shall be recoverable.

(5) After recording a finding under sub-section (4), the presiding officer shall issue a notice to the person referred to in that sub-section to show cause why he should not be ordered to pay the fee and the costs determined hereunder, and, if sufficient cause is not shown, the presiding officer shall confirm the finding and make an order requiring such person to pay the proper fee and the costs before a specified date.

(6) If such person fails to pay the fee and the costs in accordance with the provisions of sub-section (5), they shall, on the certificate of such presiding officer, be recoverable as an arrear of land revenue.

13. Taxing of court-fees and their recovery in suits for mesne profits or account.—(1) In a suit for the recovery of possession of immovable property and mesne profits or for mesne profits or for an account, the difference, if any, between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount found due shall, on delivery of judgment, be taxed by the Court and shall be leviable from the plaintiff and if not paid by him within thirty days from the date of the judgment be recoverable according to the law and under the rules for the time being in force for the recovery of arrears of land revenue.

(2) The Court shall send a copy of the decree passed in such suit to the Collector.

(3) No decree for mesne profits passed in any such suit by the Court shall be executed, until a certificate to the effect that such difference is paid or recovered, signed by the Court which passed the decree or by the Collector who recovered the amount, is produced along with the application for such execution.

Explanation.—For the purpose of this section, "plaintiff" includes any party to a suit to whom any profits or amount are or is found to be due.

14. Decision of questions as to valuation.—(1) Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this Chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum as the case may be, is filed, and such decision shall be final as between the parties to the suit.

(2) But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided.

15. Refund of fee paid on memorandum of appeal.—If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, 1908, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in Rule 23 of Order 41 in the first Schedule to the same Code for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorising him to receive back from the Collector the full amount of fee paid on the memorandum of appeal:

Provided that if, in the case of a remand in appeal the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

16. Refund of fee on application for review of judgment.—Where an application for review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.

17. Refund where Court reverses or modifies its former decision on ground of mistake.—Where an application for a review of judgment is admitted, and where, on the rehearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorizing him to receive back from the Collector so much of the

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Section 13 — Note 1

(1) "Amount found due on delivery of judgment" — Words do not apply to amount paid before delivery of judgment and not stated in judgment to be due. 10 Guj LR 640 (640).

fee paid on the application as exceeds the fee payable on any other application to such Court under the second Schedule to this Act, No. 1, clause (c) or cl. (f).

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

*[**17-A. Period of limitation for refund of fees under Section 15, 16 or 17.**—Where a certificate is granted to any person under Section 15, 16 or 17, no fee thereunder shall be refunded, unless such person presents it to the Collector, or such other authority as may be prescribed by rules, for encashment, within two years from the date of issue of the certificate by the Court.]

[*] Inserted by Maha. Act 18 of 1966, S. 2 (16-6-1966).

18. **Multifarious suits.**—Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.

Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, 1908, Schedule I, Order 2, Rule 6.

19. Written examinations of complainants.—When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which police officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of the Code of Criminal Procedure, 1898, the complainant shall pay a fee of one rupee unless the Court thinks fit to remit such payment.

20. *[(1)] **Exemption of certain documents.**—Nothing contained in this Act shall render the following documents chargeable with any fee:—

(i) Power-of-attorney to institute or defend a suit when executed by a member of any of the Armed Forces of the Union not in civil employment.

(ii) Application for certified copies of documents or for any other purpose in the course of a criminal proceeding presented by or on behalf of the State Government to a criminal Court.

(iii) Written statements called for by the Court after the first hearing of a suit.

(iv) Probate of a will, letters of administration, and, save as regards debts and securities, a certificate under Bombay Regulation VIII of 1827† or any corresponding law in force, where the amount or value of the property in respect of which the probate or letters or certificates shall be granted does not exceed one thousand rupees.

(v) Application or petition to a Collector or other officer making a settlement of land revenue, or to a Board of Revenue, or a Commissioner of Revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interest therein, if presented, previous to the final confirmation of such settlement.

(vi) Application relating to a supply for irrigation of water belonging to Government.

(vii) Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land revenue by a person holding, under direct engagement with Government, land of which the revenue is settled, but not permanently.

(viii) Application for service of notice of relinquishment of land or of enhancement of rent.

(ix) Written authority to an agent to distrain.

(x) Petition, application, charge or information respecting any offence when presented, made or laid to or before a Police Officer, or to or before the Heads of Villages or the Village Police.

(xi) Petition by a prisoner, or other person in duress or under restraint of any Court or its Officer.

(xii) Complaint of a public servant (as defined in the Indian Penal Code), a municipal Officer, or an officer or servant of a Railway Company.

(xiii) Application for the payment of money due by Government to the applicant.

(xiv) Petition of appeal against any municipal tax.

(xv) Applications for compensation under any law for the time being in force relating to the acquisition of property for public purposes other than those chargeable under Article 15 of Schedule I.

*[(2) Nothing contained in this Act shall render an application to the Court under Section 543 of the Companies Act, 1956, chargeable with any fees:

Provided that, if the applicant succeeds, the person, director, managing agent, Secretary and treasurer, manager, liquidator or officer of the company concerned against whom an order is made by the Court under that section, shall be liable to pay the fee leviable on a plaint in a suit for the same relief as is ordered by the Court; and the amount of such fee shall, without prejudice to any other mode of recovery, be recoverable as an arrear of land revenue.]

[*] Original Section 20 was renumbered as sub-section (1) and sub-section (2) was added by Bombay Court-fees (Amendment) Act (18 of 1960), Section 2 (15-11-1960).

[†] Administration of Estates Regulation.

Gujarat

In its application to State of Gujarat, Section 20 will be as before its amendment in Maharashtra.

CHAPTER IV

PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION

21. Relief where too high a court-fee has been paid.—Where any person on applying for the probate of a will or letters of administration has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a court-fee thereon, if, within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Chief Controlling Revenue Authority for the local area in which the probate or letters have or has been granted, and delivers to such Authority a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation, and if such Authority is satisfied that a greater fee was paid on the probate or letters than the law required, the said Authority may—

(a) cancel the stamp on the probate or letters if such stamp has not been already cancelled;

(b) substitute another stamp for denoting the court-fee which should have been paid thereon; and

(c) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

22. Relief when debts due from a deceased person have been paid out of his estate.—Whenever it is proved to the satisfaction of such Authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act, such Authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority may allow such further time for making the claim as may appear to be reasonable under the circumstances.

23. **Relief in case of several grants.**—Whenever a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

24. **Probates declared valid as to trust property though not covered by court-fee.**—The probate of the will or the letters of administration of the effects of any person deceased heretobefore or hereafter granted shall be deemed valid and available by his executors or administrators for recovering, transferring or assigning any movable or immovable property whereof or whereto the deceased was possessed or entitled either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court-fee was paid on such probate or letters of administration.

25. **Provision for case where too low a court-fee has been paid on probates, etc.**—Where any person on applying for probate or letters of administration has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a court-fee thereon, the Chief Controlling Revenue Authority for the local area in which the probate or letters has or have been granted may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of the grant, of five times, or, if it or they is or are produced after one year from such date, of twenty times, such proper court-fee, without any deduction of the court-fee originally paid on such probate or letters:

Provided that if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court-fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper court-fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

26. Administrator to give proper security before letters stamped under Section 25.—In case of letters of administration on which too low a court-fee has been paid at first, the said Authority shall not cause the same to be fully stamped in a manner aforesaid until the administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained.

27. Executors, etc., not paying full court-fee on probates, etc., within six months after discovery of underpayment.—Where too low a court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not, within six months after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, apply to the said Authority and pay what is wanting to make up the court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees per cent on the amount of the sum wanting to make up the proper court-fee.

28. Notice of applications for probate or letters of administration to be given to Revenue authorities, and procedure thereon.—(1) Where an application for probate or letters of administration is made to any Court other than the High Court, the Court shall cause notice of the application to be given to the Collector.

(2) Where such an application as aforesaid is made to the High Court, the High Court shall cause notice of the application to be given to the Chief Controlling Revenue Authority.

(3) The Collector within the local limits of whose revenue jurisdiction the property of the deceased or any part thereof is, may at any time inspect or cause to be inspected, and take or cause to be taken copies of, the record of any case in which application for probate or letters of administration has been made; and if on such inspection or otherwise, he is of opinion that the petitioner has underestimated the value of the property of the deceased, the Collector shall forward his report, giving therein his reasons for his opinion and his estimate of the true valuation, to the Prothonotary of the High Court or the Court, as the case may be, serving at the same time a copy of his report on the petitioner.

(4) If within thirty days from the date of receipt of the copy of the Collector's report served on him under sub-section (3), the petitioner does not file in Court his objections to the Collector's valuation, the Court shall make an order amending the petitioner's valuation in accordance with the report of the Collector.

(5) If within the aforesaid period the petitioner files in Court his objection, the Court shall hold, or cause to be held, an inquiry in accordance with the provisions of Ss. 9, 10 and 11 as if the application were a suit, and shall record a finding as to the true value as near as may be, at which the property of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry.

(6) The finding of the Court recorded under sub-section (5) shall be final, but shall not bar the entertainment and disposal by the Chief Controlling Revenue Authority of any application under Section 25.

(7) The State Government may make rules for the guidance of Collectors in the exercise of the powers conferred by sub-section (3).

29. Payment of court-fee in respect of probate and letters of administration.—(1) No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the Third Schedule, and the Court is satisfied that the fee mentioned in No. 10 of the First Schedule has been paid on such valuation.

(2) The grant of probate or letters of administration shall not be delayed by reason of any report made by the Collector under Section 28, sub-section (3).

30. **Recovery of penalties, etc.**—(1) Any excess fee found to be payable on an inquiry held under Section 28, and any penalty or forfeiture under Section 27 may, on the certificate of the Chief Controlling Revenue Authority, be recovered from the executor or administrator as if it were an arrear of land revenue by any Collector

(2) The Chief Controlling Revenue Authority may remit the whole or any part of any such penalty or forfeiture as aforesaid or any part of any penalty under Section 25 or of any court-fee under Section 25 in excess of the full court-fee which ought to have been paid.

31. **Sections 5 and 40 not to apply to probates or letters of administration.**—Nothing in Section 5 or Section 40 shall apply to probates or letters of administration.

CHAPTER V

PROCESS FEES

32. **Rules as to cost of processes.**—The High Court shall make rules as to the following matters:—

(i) the fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil and Revenue Courts established within the local limits of such jurisdiction;

(ii) the fees chargeable for serving and executing processes issued by the Criminal Courts, established within such limits in the case of offences other than offences for which police officers may arrest without a warrant; and

(iii) the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may from time to time alter and add to the rules so made.

Confirmation and publication of rules.—All such rules, alterations and additions shall, after being confirmed by the State Government, be published in the Official Gazette, and shall thereupon have the force of law.

33. **Tables of process-fees.**—A table in the English and regional languages, showing the fees chargeable for such service and execution shall be exposed to view in a conspicuous part of each Court.

34. **Number of peons in District and subordinate Courts.**—Subject to rules to be made by the High Court and approved by the State Government, every District Judge, the Principal Judge of the Bombay City Civil Court and every Magistrate of a District shall fix, and may from time to time alter the number of peons necessary to be employed for the service and execution of processes issued out of his Court, and each of the Courts subordinate thereto;

Number of peons in mofussil Small Cause Courts.—and for the purposes of this section, every Court of Small Causes established under the Provincial Small Cause Courts Act, 1887, shall be deemed to be subordinate to the Court of the District Judge.

Gujarat

In its application to the State of Gujarat, in Section 34, after the words "every District **Judge," insert the words** "the **Principal Judge of the Ahmedabad City** Civil Court".—**Guj. Act 29 of 1962, S. 6 (6-9-1962).**

35. Number of peons in Revenue Courts.—Subject to rules to be framed by the Chief Controlling Revenue Authority and approved by the State Government, every officer performing the functions of a Collector of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him

CHAPTER VI

OF THE MODE OF LEVYING FEES

36. Rate of fee in force on date of presentation of document to be applicable.—All fees shall be charged and collected under this Act at the rate in force on the date on which the document chargeable to court-fee is or was presented.

37. Collection of fees by stamps.—All fees referred to in Section 3 or chargeable under this Act shall be collected by stamps.

38. Stamps to be impressed or adhesive.—The stamps used to denote any fees chargeable under this Act shall be impressed or adhesive or partly impressed or partly adhesive, as the State Government may, by notification in the Official Gazette from time to time, direct.

39. Rules for supply, number, renewal and keeping accounts of stamps.—The State Government may, from time to time, make rules for regulating—

(a) the supply of stamps to be used under this Act,

(b) the number of stamps to be used for denoting any fee chargeable under this Act,

(c) the renewal of damaged or spoiled stamps, and

(d) the keeping accounts of all stamps used under this Act:

Provided that in the case of stamps used under Section 3 in the High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

All such rules shall be published in the Official Gazette, and shall thereupon have the force of law.

40. Stamping documents inadvertently received.—No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.

But, if any such document is through mistake or inadvertence received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of the High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; and, on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

41. Amended document.—Where any such document is amended in order merely to correct a mistake and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

Section 36 — Note 1

(1) The provision of the section by itself is not sufficient to indicate a necessary intention to affect the vested rights even in the matter of rates charged. (1961) 63 Bom LR 667 = 1961 NLJ 436 (443).

Section 40 — Note 1

(1) Question of sufficiency of stamps for document received by public officer is to be finally decided by public officer alone — The Court before which the documents have come has no authority to decide the question — If the Court of law thinks the document insufficiently stamped it should refer it back to the public officer for the purpose. AIR 1967 Bom 224 (226, 227) = 68 Bom LR 555. (Reference by collector under Section 18 Land Acquisition Act — Court to which reference is made has no power to decide sufficiency of Court-fee stamp on the reference application received by collector.)

(2) An application to the collector for making a reference to a Court of law under Section 18 of Land Acquisition Act — Application insufficiently stamped — The defect does not render the application inherently invalid — Defect can be cured under Section 40. AIR 1967 Bom 224 (227) = 68 Bom LR 555.

[See however AIR 1967 Guj 154 (187) = (1966) 7 Guj LR 879 (DB). (Application without proper stamp is no application at all.)]

42. Cancellation of stamp.—No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Such officer as the Court or the head of office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figurehead so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

CHAPTER VII
MISCELLANEOUS

43. Repayment of fee in certain circumstances.—(1) When any suit in a Court *[or any proceeding instituted by presenting a petition to a Court under the Hindu Marriage Act, 1955,] is settled by agreement of parties before any evidence is recorded, or any appeal or cross-objection is settled by agreement of parties before it is called on for effective hearing by the Court, half the amount of the fee paid by the plaintiff, *[petitioner], appellant, or respondent on the plaint, *[petition,] appeal or cross-objection, as the case may be, shall be repaid to him by the Court:

Provided that no such fee shall be repaid if the amount of fee paid does not exceed five rupees or the claim for repayment is not made within one year from the date on which the suit, *[proceeding,] appeal or cross-objection was settled by agreement.

Section 43 — Note 1

(1) Effective hearing means hearing relating to merits of appeal and consists of Court applying its mind to merits of case. AIR 1967 Bom 411 (412) = 69 Bom LR 184 (DB).

(2) Appeal withdrawn long before the new Act came into force — Application for refund made after the new Act, 1959 came in force — Section 43 of the Act or notification thereunder does not apply — No provision for refund on appeals in the old Act — No refund allowed. AIR 1961 Guj 31 (33) = (1960) 1 Guj LR 193 ** (1962) 40 Mys LJ 263 (267) (DB).

(3) Suit compromised after framing of issue or recording of evidence — Plaintiff is not entitled to refund of Court-fees. AIR 1960 Mys 215 (216) = 38 Mys LJ 171. (Case under old law.)

(4) In cases of suits allowed to be filed in forma pauperis it is not necessary for the application of Section 31, Court-fees Act 1870 (as amended by Bombay Act 12 of 1954) that the Court-fee should be paid before the settlement of issues or recording of evidence but that it should be recovered from the plaintiff. AIR 1962 Bom 23 (27) = 63 Bom LR 307. (Case under old Act.)

(5) Neither the section, S. 31 of Act 1870 as amended by Act 22 of 1954 nor the Notification No. 1123/7, dated 26th March, 1954 issued by the Bombay Government indicate that an application for the repayment of the specified portion of the institution fee is necessary. ('58) 60 Bom LR 869 (872). (Even assuming that such an application by the plaintiff is necessary an application made some days after the suit actually reached hearing and was dismissed is not incompetent.)

(6) After an application for refund of Court Fee is made ordinarily, it would not be necessary to record any oral evidence, to prove that the suit was got dismissed but a satisfactory affidavit setting out all the necessary material facts would be sufficient. It may become necessary in exceptional cases, that the contents of the affidavit may call for the taking of oral evidence to satisfy the Court that the dismissal of a suit for want of prosecution was got or brought about or procured by the plaintiffs deliberately and intentionally. (1958) 60 Bom LR 869 (872). (Case under Section 31 of the Court-fees Act (1870 as amended in Bombay in 1954.)

(7) Looking to the phraseology of Item 3 of the schedule annexed to the notification No. 1123/7, dated 26-3-1954 issued by the Bombay Government under Section 31. (2) it is clear that the item applies only to cases of intentionally bringing about a dismissal. The plaintiff would be entitled to obtain refund of the institution fee as the language of the notification does not warrant its application being confined to cases of dismissal of suits for non-prosecution brought about by the active conduct of the plaintiff but also to cases dismissed by passive conduct by not appearing at the hearing. (1958) 60 Bom LR 869 (872). (Case under Court-fees Act 1870, as amended in Bombay in 1954, Sec. 31)

(2) The State Government may, from time to time, by order,† provide for repayment to the plaintiffs, *[petitioners,] appellants or respondents of any part of the fee paid by them on plaints, *[petitions], appeals or cross-objections, in suits, *[proceedings] or appeals disposed of under such circumstances, and subject to such conditions as may be specified in the order.

Explanation.—For the purpose of this section, effective hearing shall exclude the dates when the appeal is merely adjourned without being heard or argued.

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* Inserted by Maharashtra Act 33 of 1967, Section 2 (w.e.f. 13-12-1967).

† (i) Notification No. CFA-1056-III.—In exercise of the powers conferred by sub-section (2) of Section 43 of the Bombay Court-fees Act, 1959 (Bom. XXXVI of 1959) and in supersession of Government Order, Home Department, No. 1123/7, dated the 26th March 1954 and of all other orders issued in this behalf, the Government of Bombay is pleased to direct that the part of the institution fee as specified in col. 2 of the Schedule hereto annexed shall be repaid to the plaintiff by the High Court of Bombay in the suits disposed of by it under the circumstances specified in col. 1 of the said Schedule.

SCHEDULE.

	1	2
1.	In Summary Suit under Order 37 in the First Schedule to the Code of Civil Procedure, 1908, where leave to defend is refused or where the defendant does not appear.	Two-thirds.
2.	Suit the claim in which is admitted but only time or instalment for payment is asked for.	Two-thirds,
3.	Suit which is got dismissed by a plaintiff for want of prosecution before the settlement of issues or recording of any evidence.	Two-thirds.
4.	Suit which is withdrawn unconditionally by the plaintiff (before the settlement of issues or recording of any evidence) as settled out of Court.	Two-thirds.
5.	Suit in which the plaint is rejected without issuing summons to the defendant as not disclosing any cause of action or as barred by the Law of Limitation.	Three fourths.
6.	Suit in which judgment is given on admission under rule 6 of Order 12 in the First Schedule to the Code of Civil Procedure 1908 before the settlement of issues or recording of any evidence.	Two thirds of the amount of institution fee of the claim admitted.

Notfn. No CFA-1056-III– In exercise of the powers conferred by sub-section *(2)* of section 43 of the Bombay Court-fees Act, 1959 (Bom XXXVI of 1959) and in supersession of Government Notification, Home Department, No 1123/7, dated the 1st August, 1955 and of all other orders issued in this behalf, the Government of Bombay hereby directs that in any suit disposed of by a District Court, a subordinate Civil Court constituted under the Bombay Civil Courts Act 1869 (XIV of 1869), or a Court of Small Causes constituted under the Provincial Small Cause Courts Act, 1887 (IX of 1887), as the case may be, in the circumstances specified in column 1 of the Schedule hereto annexed, the part of the institution fee as specified against it in column 2 of the Schedule shall be repaid to the plaintiff by such Court.

SCHEDULE.

	1	2
1.	Suit the claim in which is admitted but only time or instalment for payment is asked for.	Two thirds.
2.	Suit which is got dismissed by a plaintiff for want of prosecution before settlement of issues or recording of any evidence.	Two thirds.
3.	Suit which is withdrawn unconditionally by the plaintiff (before the settlement of issues or recording of any evidence) as settled out of Court.	Two-thirds.
4.	Suit in which the plaint is rejected without issuing summons to the defendant as not disclosing any cause of action, or as barred by Law of Limitation	Three-fourths.
5.	Suit in which judgment is given on admission under rule 6 of Order 12 in the First Schedule to the Code of Civil Procedure, 1908, before the settlement of issues or recording of any evidence.	Two-thirds of the amount of institution fee of the claim admitted,

(Bom Govt. Gazette of 6-8-1959 Pt IV-A. pp. 177-79)

(ii) For similar notification regarding City Civil Court, Bombay, *see* Maha. Gaz., 6 3-1969, Pt. IV-B, p. 504,

44. Admission in criminal cases of documents for which proper fee has not been paid.—Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in Section 5 shall be deemed to prohibit such filing or exhibition.

45. Sale of stamps.—(1) The State Government may, from time to time, make rules for regulating the sale of stamps to be used under this Act, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

(2) All such rules shall be published in the Official Gazette and shall thereupon have the force of law.

(3) Any person appointed to sell stamps who disobeys any rule made under this section, and any person not so appointed who sells or offers for sale any stamp, shall, on conviction, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

46. Power to reduce or remit fees.—The State Government may, from time to time, by notification in the Official Gazette, reduce or remit, in the whole or in any part of the territories under its administration all or any of the fees mentioned in the First and Second Schedules to this Act annexed, and may in like manner cancel or vary such order.

47. Saving of fees to certain officers of High Court.—Nothing in Chapters II and VI of this Act applies to the fees which any officer of the High Court is allowed to receive in addition to a fixed salary.

[*][47-A. **Use of former State stamps permissible for certain period to be notified.**—During the period commencing on the 1st day of May 1960 and ending the 31st day of March 1962 and such further period as the State Government may by notification in the Official Gazette specify and notwithstanding anything contained in this Act or the rules made thereunder, any stamp issued by the Government of Bombay before the 1st day of May 1960 may also be used in the State for the purposes of this Act as if it were duly issued by the Government of Maharashtra.]

[*] Inserted by Maharashtra A. L. O. 1960 (1-5-1960).

Gujarat:

In its application to the State of Gujarat, Section **47-A** inserted is the same as in Maharashtra with this difference that, for the words "Government of Maharashtra", words "Government of Gujarat" are to be read.—Guj. A. L. O., 1960 (1-5-1960).

48. Saving as to stamp duties.—Nothing in this Act shall be deemed to affect the stamp duties chargeable under any other law for the time being in force relating to stamp duties.

49. Repeal and saving.—(1) On the commencement of this Act, the laws specified in col. 3 of Schedule IV hereto annexed shall be repealed in the manner and to the extent specified in col. 4 thereof:

Section 46 — Note 1

(1) Collector or Special Officer acting under Section 18 of Land Acquisition Act not a Civil Court—Gujarat Government notification No. CFA 1061/3529 D/- 13-9-63 issued under S. 46 applied only to documents filed in Civil Courts or Criminal Courts—Remittance on application filed under Section 18, Land Acquisition Act could not be claimed — Subsequent notification dated 14-6-1965 amending earlier notification and making it applicable to applications before Land Acquisition Officer — Remittance on such application can now be claimed — Notification dt/- 14-6-1965 not retrospective. AIR 1967 Guj 154 (158) = (1966) 7 Guj LR 879 (DB).

Section 49 — Note 1

(1) Right to continue appeal under the law relating to Court fees which governed the said right at the date when the suit was filed not taken away expressly or by implication by new law —

Provided that such repeal shall not affect the previous operation of any of the laws so repealed and anything done or any action taken (including any appointment, notification, order, rule, form, application, reference, notice, report or certificate made or issued) under any such law shall in so far as it is not inconsistent with provisions of this Act, be deemed to have been done or taken under the corresponding provision of this Act and shall continue to be in force accordingly, unless and until superseded by anything done or any action taken under this Act:

Provided further that all the fees shall be charged and collected under this Act at the rate in force on the date on which the document chargeable to court-fee is or was presented.

(2) (a) All stamps in denominations of annas four or multiples thereof shall be deemed to be stamps of the value of twenty-five naye paise or, as the case may be, multiples thereof and valid accordingly.

(b) If any person is possessed of a stamp or stamps in any denominations, other than denominations of annas four or multiples thereof, and such stamp or stamps has or have not been spoiled, the Collector shall repay to such person the value of such stamp or stamps in money calculated in accordance with the provisions of sub-section (2) of Section 14 of the Indian Coinage Act, 1906, upon such person delivering up, within six months from the commencement of this Act, such stamp or stamps to the Collector.

50. Amendment of Suits Valuation Acts.—On the commencement of this Act, the laws specified in col. 3 of Schedule V hereto annexed shall be amended in the manner and to the extent specified in col. 4 thereof.

51. No stamp duty payable where court-fee paid in suit for partition.—Notwithstanding anything contained in the Bombay Stamp Act, 1958 where court-fee is paid in a suit for partition in accordance with the provisions of clause (vii) of Section 6 of this Act, no stamp duty shall be payable on a final order for effecting a partition passed by any Revenue Authority or any Civil Court under Article 46 in Schedule I to the Bombay Stamp Act, 1958.

52. Rules made by Government to be laid before State Legislature.—All rules made by the State Government under this Act shall be laid before each House of the State Legislature as soon as may be after they are made and shall be subject to such modifications as the State Legislature may make during the session in which they are so laid or the session immediately following.

Section 49 = Note 1 (contd.)
The old law continues to govern the right of appeal — The provisions of Chapter III and Section 36 do not affect such right. 1961 Nag LJ 436 (439, 442, 443) = 63 Bom LR 667.

(2) The first part of the proviso saves the vested rights brought in existence by the previous operation of the repealed law. (1961) 63 Bom LR 667 = 1961 NLJ 436 (445) (DB).

(3) The meaning and effect of the two provisos is that in suits instituted before the coming into force of the new Act the computation of the claim involved in the suit will be in accordance with the provisions of the repealed Act throughout all stages of the suit including final appeal while the rates of Court fees which will be chargeable on the documents filed after the commencement of the new Act will be according to the rates prescribed in the new Act. 1961 NLJ 436 (445) = 63 Bom LR 667 (DB) ** AIR 1963 Guj 40 (45) = (1963) 4 Guj LR 317 (DB) ** AIR 1962 Bom 106 (120, 121) = 63 Bom LR 834 (DB). (The Act is retrospective only with reference to the rates of Court-fees to be charged but. it is not retrospective with regard to the computation of the claim.) ** AIR 1961 Guj 144 (148, 149) = (1962) 2 Guj LR 227 (FB). (1960 Guj LR 208, **Overruled.**)

(4) An application under Section 433 of the Companies Act filed before the Act 36 of 1956 — Appeal from an order refusing to wind up company filed after the Act 36 of 1956 came into force — Appeal is governed by the Court-fees Act 1870 as amended in Bombay by Act 12 of 1954 which was in force at the time of making the application. AIR 1966 Mys 150 (151) = (1965) 1 Mys LJ 557 (DB). (Case under old Act.)

SCHEDULE I.

Ad valorem fees.

Number. 1	... 2	Proper fee. 3
1. Plaint or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to any Civil or Revenue Court.	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Fifty naye paise.
	When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees.	Fifty naye paise.
	When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees.	One rupee.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees.	Six rupees and twenty-fiv naye paise.
	When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees.	Twenty rupees.
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees.	Thirty-five rupees.

Schedule I, Article 1 — Note 1

(1) The amount of pendente lite interest decreed is not to be included in the "amount or value of the subject-matter in dispute in appeal" for the purposes of Article 1, Schedule I of the Act unless the appellant specifically challenges the correctness of the decree for the amount of interest pendente lite independently of the claim to set aside that decree. **AIR 1964 SC 457 (460, 461) = (1964) 5 SCR 230 = 66 Bom LR 254.**

(2) Money decree with future interest from date of suit till realisation — Appeal against decree — Court-fee on amount of interest not payable because it is not the matter of right that the plaintiff can claim. AIR 1962 Bom 52 (53) = 63 Bom LR 689.

(3) Suit for declaration that the dead of assignment executed by defendant is void against the plaintiff — Subject-matter of suit is declaration and not the property comprised in the deed — Suit is not one not otherwise provided for — Schedule I, Article 1 does not apply. AIR 1969 Bom 66 (69) = 70 Bom LR 359.

(4) Suit for declaration that plaintiff is benamidar of defendant and has no interest in suit transactions — Suit dismissed — Appeal — Court-fee payable on the memorandum — The suit was clearly covered by Section 6 (iv) (j) which came into force when the appeal was filed — Special provision in Sec. 6 (iv) (j) of Bombay Court-fees Act (1959) prevails against Schedule I, Article 1 of Court-fees which is a general provision. AIR 1966 Guj 159 (161, 162) = (1965) 6 Guj LR 855 (DB).

(5) Appeal from an order refusing to wind up company — Appeal does not fall under Schedule I, Article 1. AIR 1966 Mys 150 (152) = (1965) 1 Mys LJ 557 (DB). (Case under Act of 1870 as amended by Bombay Act 12 of 1954.)

Number. 1	2	Proper fee 3
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in exces of twenty thousand rupees, up to thirty thousand rupees.	Forty-five rupees.
	When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof in excess of thirty thousand rupees, up to fifty thousand rupees.	Sixty rupees.
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees, up to one lakh of rupees.	Eighty rupees.
	When such amount or value exceeds one lakh of rupees, for every ten thousand rupees or part thereof in excess of one lakh of rupees. *[Provided that, the maximum fee leviable on a plaint or memorandum of appeal or of cross-objection shall be fifteen thousand rupees.]	One hundred rupees.

*Inserted by Mana. Act 18 of 1960, S. 3 (a) [15-11-1960] : *Inserted* in Gujarat by Act 15 of 1965, S. 2 [w. e. f. 1-9-1965.]

2. Plaint in a suit for possession under the Specific Relief Act, 1877, section 9		A fee of one half the amount prescribed in the scale under Article 1.
3. Plaint, application or petition (including memorandum of appeal), to set aside or modifiy any award otherwise than under the Arbitration Act, 1940.		A fee on the amount or value of the award sought to be set aside or modified, according to the scale prescribed under Article 1.
4. Plaint, application or petition (including memorandum of appeal) which is capable of being treated as a suit, to set aside a decree or order having the force of a decree.	...	The same fee as is leviable on a plaint in a suit to obtain the relief granted in the decree or order, as the case may be.
5. Plaint in a suit, application or petition (including	...	A fee on the extent of the value of alienation to be

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Schedule 1, Article 4 — Note 1

(1) From the language of Schedule I, Article 4 it is clear that the Court Fees Act makes a distinction between a plaint and an application or petition presented to a Court. AIR 1966 Bom 126 (131) = 67 Bom LR 644 (DB).

Schedule I, Article 5 — Note 1

(1) Suit for partition and declaration that the mortgage in respect of a portion of property was not binding on the plaintiff — Decree in favour of plaintiff — Plaintiff not parties to the mortgage in question — Suit was not for setting aside alienation — Article 5, Schedule I did not apply. AIR 1965 Guj 204 (206, 207) = (1965) 6 Guj LR 44 (DB).

(2) Suit for partition and declaration that the mortgage in respect of a portion of property was not binding on the plaintiff — Decree in favour of plaintiff → Appeal against — Subject-matter of appeal not capable of being estimated in money value — No other provision in the Act — Provisions of Article 23 (f) of Schedule 2 applied. AIR 1965 Guj 204 (207) = (1965) 6 Guj LR 44 (DB).

Number. 1	... 2	Proper fee 3
memorandum of appeal), to set aside alienation to which the plaintiff, applicant or appellant, as the case may be, was a party either directly or through a legal guardian other than *de facto* or *ad hoc* guardian, manager or partner or Court.		set aside according to the scale prescribed under Article 1.
6. Plaint in a suit (including memorandum of appeal) for possession between the guardian and ward, trustee and beneficiary, principal and agent, wife and husband, executor or administrator and beneficiary receiver and owner of property and between persons having fiduciary relationship.	...	A fee of one one-half of the amount prescribed in the scale under Article 1.
7. Any other plaint, application or petition (including memorandum of appeal) to obtain substantive relief capable of being valued in terms of monetary gain or prevention of monetary loss, including cases where an application or petition is either treated as a plaint or is described as the mode of obtaining the relief as aforesaid.	...	A fee on the amount of the monetary gain or loss to be prevented, according to the scale prescribed under Article 1.
8. Application for review of judgment if presented on or after the ninetieth day from the date of the decree.	...	The fee leviable on the plaint or memorandum of appeal.
9. Application for review of judgment if presented before the ninetieth day from the date of the decree.	...	One half of the fee leviable on the plaint or memorandum of appeal.
10. Probate of a will or letters of administration with or without will annexed.	When the amount or value of the property in respect of which the grant of probate or letters made exceeds one thousand rupees, on the part of the amount or value in excess of one thousand rupees, up to ten thousand rupees.	Two and a half per centum.

Schedule I, Article 7 — Note 1

(1) Praecipe accompanying third party notice is liable to Court-fee as an application made to Court to obtain relief specified in the third party notice. Court-fee is payable under Schedule I, Article 7. AIR 1966 Bom 126 (132) = 67 Bom LR 344 (DB).

(2) Suit under Section 53, T. P. Act for a declaration that the deed of assignment executed by defendant is void against plaintiff — Subject-matter of the suit is declaration and not the property comprised in the deed — Suit is not one not otherwise provided for — Article 7, Schedule I does not apply. AIR 1969 Bom 66 (69) = 70 Bom LR 359.

Number 1	... 2	Proper fee. 3
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds ten thousand rupees, on the part of the amount or value in excess of ten thousand rupees, up to fifty thousand rupees.	Three and three quarters per centum.
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds fifty thousand rupees, on the part of the amount or value in excess of fifty thousand rupees, up to one lakh of rupees.	Five per centum.
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one lakh of rupees on the part of the amount or value in excess of one lakh of rupees, up to two lakhs rupees.	Five and five-eighths per centum.
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two lakhs of rupees, on the part of the amount or value in excess of two lakhs of rupees, up to two lakhs and fifty thousand rupees.	Six and a quarter per centum.
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two lakhs and fifty thousand rupees, on the part of the amount or value in excess of two lakhs and fifty thousand rupees up to three lakhs of rupees.	Six and seven eighths per centum.
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds three lakhs of rupees, on the part of the amount or value in excess of three lakhs of rupees, up to four lakhs of rupees.	Seven and a half per centum.
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds four lakhs of rupees, on the part of the amount or value in excess of four lakhs of rupees up to five lakhs of rupees.	Eight and one eighth per centum.
	When the amount or value of the property in respect of which the grant of probate	Eight and three quarters per centum.

Number. 1	2	Proper fee. 3
	or letters is made exceeds five lakhs of rupees, on the part of the amount or value in excess of five lakhs of rupees. Provided that when, after the grant of a certificate under Part X of the Indian Succession Act, 1925, or under Bombay Regulation VIII of 1827 or any corresponding law for the time being in force, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.	
11 Certificate under Part X of the Indian Succession Act, 1925.		The fee leviable in the case of probate (Article 10) on the amount or value of any debt or security specified in the certificate under section 374 of the Act, and one and a half times this fee on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act. *Note* — (1) The amount, of a debt is its amount, including interest on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained. (2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act; and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.
12. Certificate under Bombay Regulation VIII of 1827 or under any corresponding law in force.		The fee leviable in the case of a probate (Article 10) on the amount or value of the property in respect of which the certificate is granted.

Number. 1	... 2	Proper fee. 3
13. Plaint presented with an originating summons under the Rules of the High Court of Bombay (Original Side), 1957.		The fee leviable on a plaint in a suit for the same relief, subject to a minimum fee of thirty rupees.
14. *[* * *	* *	*]

*Deleted by Bombay Court-fees (Amendment) Act (Maha. Act 18 of 1960), S. 3 (b) [15-11-1960.]

Gujarat

There is no specific direction in Gujarat A. L O. about deletion of this Article It would therefore seem that this Article continues to be in force there still. Repealed Article is as follows

"14. Application to the Court under section 543 of the Companies Act, 1956.		The fee leviable on a plaint in a suit for the same relief."
*[15 Application to the Collector for a reference to the Court under section 18 of the Land Acquisition Act, 1894, in its application to the Bombay area or the Vidarbha region of the State of Maharashtra or section 14 of the Land Acquisition Act (Hyd. IX of 1309 Fasli) in its application to the Hyderabad area of that State, as the case may be.]	...	One half of *ad valorem* fee on the difference, if any, between the amount awarded by the Collector and the amount claimed by the applicant, according to the scale prescribed under Article 1 to Schedule I, subject of a minimum fee of fifteen rupees.

*As amended by Mah. A.L.O. 1960

Gujarat

In its application to the State of Gujarat, in Schedule I, Art. 15, in column 1, (before amendment by Mah. A. L. O. 1960.)

(1) For "pre-Re-organisation State of Bombay excluding the transferred territories" *substitute* "Bombay area";

(2) Omit "or Vidarbha region";
(3) For "State of Bombay" *substitute* ' State of Gujarat";
(4) Omit from "or section 14" to "Hyderabad area of that State ".

—Guj. A. L. O., 1960, Pr. 3 and Sch. [1 5 1960.]

16. Application or petition made by any assessee to the High Court under section 66 of the Indian Income-tax Act, 1922.		One half of *ad valorem* fee leviable on the amount in dispute †[(namely, the difference between the amount of tax actually assessed and the amount of tax admitted by the assessee as payable by him)] subject to the minimum fee of fifty rupees.

† *Substituteed* by Bombay Court-fees (Amendment) Act (18 of 1960), S. 2 [15 11-1960]

Schedule I, Article 16

(1) Levy imposed by Schedule I, Article 16 of the Act is neither a tax nor a fee in the strict sense of the term and is within the competence of the State Legislature under Schedule 7, List 2, Entry 3. AIR 1962 Bom 106 (114) = 63 Bom LR 834 (DB).

(2) Article is not discriminatory and does not offend Art. 14. AIR 1962 Bom 106 (155) = 63 Bom LR 834 (DB).

(3) Application by an assessee under Section 66, Income Tax Act after the new Act came into force — Assessment proceedings commenced under the old law — Article 16, Schedule I will not apply — Schedule 2, Article 1 (d) of old Act will apply because Article 16, Schedule 1 changes the classification of the item and shifts it from schedule of fixed fee to schedule of ad valorem fee. AIR 1962 Bom 106 (120, 121) = 63 Bom LR 834 (DB).

(4) The word assessed relates to the stage of assessment i.e., when the amount of assessment is particularised and the precise amount of fee is fixed. The proper meaning of the Article is that ad valorem Court fee is leviable on the amount of tax in dispute and not on any other amount. AIR 1961 Guj 144 (150, 151) = (1961) 2 Guj LR 227 (FB).

Number. 1	... 2	Proper fee. 3
17. Application or petition made by any person (other than the Collector or the Commissioner) to the High Court under any provision of the sales tax law for the time being in force in any part of the State of Bombay.	...	One half of *ad valorem* fee leviable on the amount in dispute ‡[(namely, the difference between the amount actually of tax assessed and the amount of tax admitted by the assessee as payable by him)], subject to the minimum fee of fifty rupees.

‡ *Substituted* by Bombay Court-fees (Amendment) Act (18 of 1960). S. 2 [15-11-1960.]

Arts. 16-17

Gujarat

Prior to amendment made in these two Articles, in Maharashtra, words in brackets, in col. 3 were, "(namely, the difference between the amount actually assessed and the amount admitted by the assessee as assessable.)"

These two articles do not seem to have been amended in Gujarat so far.

Table of rates of ad valorem *fees leviable on the institution of suits.*

When the amount or value of the subject-matter exceeds	But does not exceed	Proper fee	When the amount or value of the subject-matter exceeds	But does not exceed	Proper fee
Rs.	Rs.	Rs. nP.	Rs.	Rs.	Rs. nP.
...	5	0 50	310	320	32 00
5	10	1 00	320	330	33 00
10	15	1 50	330	340	34 00
15	20	2 00	340	350	35 00
20	25	2 50	350	360	36 00
25	30	3 00	360	370	37 00
30	35	3 50	370	380	38 00
35	40	4 00	380	390	39 00
40	45	4 50	390	400	40 00
45	50	5 00	400	410	41 00
50	55	5 50	410	420	42 00
55	60	6 00	420	430	43 00
60	65	6 50	430	440	44 00
65	70	7 00	440	450	45 00
70	75	7 50	450	460	46 00
75	80	8 00	460	470	47 00
80	85	8 50	470	480	48 00
85	90	9 00	480	490	49 00
90	95	9 50	490	500	50 00
95	100	10 00	500	510	51 00
100	110	11 00	510	520	52 00
110	120	12 00	520	530	53 00
120	130	13 00	530	540	54 00
130	140	14 00	540	550	55 00
140	150	15 00	550	560	56 00
150	160	16 00	560	570	57 00
160	170	17 00	570	580	58 00
170	180	18 00	580	590	59 00
180	190	19 00	590	600	60 00
190	200	20 00	600	610	61 00
200	210	21 00	610	620	62 00
210	220	22 00	620	630	63 00
220	230	23 00	630	640	64 00
230	240	24 00	640	650	65 00
240	250	25 00	650	660	66 00
250	260	26 00	660	670	67 00
260	270	27 00	670	680	68 00
270	280	28 00	680	690	69 00
280	290	29 00	690	700	70 00
290	300	30 00	700	710	71 00
300	310	31 00	710	720	72 00

Rs.	Rs.	Rs.	nP
720	730	73	00
730	740	74	00
740	750	75	00
750	760	76	00
760	770	77	00
770	780	78	00
780	790	79	00
790	800	80	00
800	810	81	00
810	820	82	00
820	830	83	00
830	840	84	00
840	850	85	00
850	860	86	00
860	870	87	00
870	880	88	00
880	890	89	00
890	900	90	00
900	910	91	00
910	920	92	00
920	930	93	00
930	940	94	00
940	950	95	00
950	960	96	00
960	970	97	00
970	980	98	00
980	990	99	00
990	1,000	100	00
1,000	1,100	106	25
1,100	1,200	112	50
1,200	1,300	118	75
1,300	1,400	125	00
1,400	1,500	131	25
1,500	1,600	137	50
1,600	1,700	143	75
1,700	1,800	150	00
1,800	1,900	156	25
1,900	2,000	162	50
2,000	2,100	168	75
2,100	2,200	175	00
2,200	2,300	181	25
2,300	2,400	187	50
2,400	2,500	193	75
2,500	2,600	200	00
2,600	2,700	206	25
2,700	2,800	212	50
2,800	2,900	218	75
2,900	3,000	225	00
3,000	3,100	231	25
3,100	3,200	237	50
3,200	3,300	243	75
3,300	3,400	250	00
3,400	3 500	256	25
3,500	3,600	262	50
3,600	3,700	268	75
3,700	3,800	275	00
3,800	3,900	281	25
3,900	4,000	287	50
4,000	4,100	293	75
4,100	4 200	300	00
4,200	4,300	306	25
4,300	4,400	312	50
4,400	4,500	318	75
4,500	4,600	325	00
4,600	4,700	331	25
4,700	4,800	337	50
4,800	4,900	343	75
4,900	5,000	350	00
5,000	5 250	370	00
5,250	5,500	390	00

Rs.	Rs.	Rs.	Pn.
5,500	5,750	410	00
5,750	6,000	430	00
6,000	6,250	450	00
6,250	6,500	470	00
6,500	6,750	490	00
6,750	7,000	510	00
7 000	7,250	530	00
7,250	7,500	550	00
7,500	7,750	570	00
7,750	8,000	590	00
8,000	8,250	610	00
8,250	8,500	630	00
8 500	8,750	650	00
8,750	9,000	670	00
9,000	9,250	690	00
9,250	9,500	710	00
9,500	9,750	730	00
9,750	10,000	750	00
10 000	10,500	785	00
10 500	11,000	820	00
11,000	11,500	855	00
11,500	12,000	890	00
12,000	12,500	925	00
12,500	13,000	960	00
13,000	13,500	995	00
13,500	14,000	1 030	00
14.000	14,500	1,065	00
14,500	15,000	1 100	00
15,000	15,500	1,135	00
15,500	16,000	1.170	00
16,000	16,500	1,205	00
16,500	17,000	1,240	00
17,000	17,500	1,275	00
17 500	18 000	1,310	00
18,000	18,500	1,345	00
18,500	19,000	1,380	00
19,000	19,500	1,415	00
19,500	20 000	1,450	00
20.000	21 000	1,495	00
21,000	22,000	1,540	00
22,000	23,000	1,585	00
23,000	24,000	1,630	00
24 000	25,000	1,675	00
25,000	26,000	1,720	00
26,000	27,000	1,765	00
27,000	28,000	1,810	00
28,000	29,000	1,855	00
29 000	30 000	1,900	00
30,000	32,000	1,960	00
32,000	34 000	2,020	00
34,000	36,000	2,080	00
36,000	38,000	2,140	00
38,000	40 000	2,200	00
40 000	42,000	22,60	00
42,000	44,000	2,320	00
44,000	46,000	2,380	00
46,000	48.000	2,440	00
48,000	50.000	2,500	00

and the fee increases at the rate of Rs 80 for every Rs. 5,000 or part thereof, up to Rs. 1,00,000 *[and over Rs. 1,00,000 at the rate of Rs. 100 for every Rs. 10,000 or part thereof, upto a maximum of Rs. 15,000, for example :]

Rs.	Rs.	nP.
1,00,000	3,300	00
2 00 000	4,300	00
3,00,000	5,300	00
4,00,000	6.300	00
5,00,000	7,300	00

Rs.	Rs. nP.	Rs.	Rs. nP.
6,00,000	8,300 00	11,00,000	13,300 00
7,00,000	9,300 00	12,00,000	14,300 00
8,00,000	10,300 00	*[12,70,000	15,000 00
9,00,000	11,300 00	13,00,000	15,000 00
10,00,000	12,300 00	15,00,000	15,000 00]

* *Substituted* by Maha. Act 18 of 1960, S. 3 [15-11-1960.]

Gujarat

In the table of *ad valorem* fees, for the words, figures and letters, as ***inserted*** by Maha. Act 18 of 1960, S. 3, *substitute* the following "and over Rs. 1,00,000, at the rate of Rs. 100 for every Rs. 10,000 or part thereof, upto a maximum of Rs 15,000, for example: —" And for the last three entries *substitute* "Rs. 12,70,000 or more 15,00,000"

—Guj. Act 15 of 1965, S. 2 (b) [w. e. f. 1-9-1965.]

SCHEDULE II

Fixed fees

Number 1	... 2	Proper fee 3
1. Application or petition	*(a)* When presented to any officer of the Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings ; or when presented to any officer of land-revenue by any person holding temporarily settled land under direct engagement with Government and when the subject-matter of the application or petition relates exclusively to such engagement ; or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement ; or when presented to any Civil Court other than a principal Civil Court of original jurisdiction; or to any Court of Small Causes constituted under the Provincial Small Cause Courts Act, 1887, or to a Collector or other officer of revenue or to a public officer in relation to any suit or case in which the amount of value of the	Twenty naye paise.

Schedule 2, Article 1 — Note 1

(1) Praecipe accompanying third party notice is liable to Court-fee as an application made to the Court to obtain relief specified in the third party notice. Court fee is payable under Article 7, Schedule I and not under Article 1, Schedule 2, sub-clause (iii) in Clause (f). AIR 1966 Bom 126 (132) = 67 Bom LR 644 (DB).

(2) Article 16, Schedule I does not discriminate between persons who ask for relief only for mandamus and whose case falls under Schedule 2, Article 1 (f) and those who apply under Section 66 (2) of the Income Tax Act. AIR 1961 Guj 144 (150) = (1961) 2 Guj LR 227 (FB). (1960 Guj LR 208, Overruled.)

Number.	...	Proper fee
1	2	3
	subject-matter is less than fifty rupees, not being an application for assistance under section 86 of the Bombay Land Revenue Code, 1879 or under any corresponding law for the time being in force; or when presented to any Civil, criminal or Revenue Court, or any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or Officer, or of any other document on record in such Court or office.	
	(b) When presented to a Collector or other officer of revenue for assistance under section 86 of the Bombay Land Revenue Code, 1879 or under any corresponding law for the time being in force.	Thirty-five *naye paise.*
	(c) When containing a complaint or charge of any offence and presented to any Criminal Court ; or when presented to a Civil, Criminal or Revenue Court or to a Collector or any Revenue Officer or to a public officer having jurisdictton equal or subordinate to a Collector, or to any Magistrate in his executive capacity and not otherwise provided for by this Act ; or to deposit in Court revenue or rent ; or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant	Sixty-five *naye paise.*
	(d) When presented to any competent authority for the purpose of obtaining a certificate of domicile.	One rupee.
	(e) When presented to a Chief Controlling Revenue or Executive Authority, or to a Commissioner of Revenue or to any chief officer charged with the executive Administration of a division and not otherwise provided for by this Act.	Two rupees fifty *naye paise*
	(f) When presented to the High Court —	
	(i) under section 45 of the Specific Relief Act, 1877	Fifty rupees.

Number 1	... 2	Proper fee 3
	or for directions, orders or writs under Article 226 of the Constitution for any purpose other than the enforcement of the fundamental rights conferred by Part III thereof;	
	(ii) for directions, orders or or writs under Article 226 for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for the exercise of its jurisdiction under Art. 227 thereof;	Twenty rupees
	(iii) in any other case not otherwise provided for by this Act;	Five rupees.
2. Revision application when presented to the High Court under section 25 of the Provincial Small Cause Courts Act, 1887 or section 115 of the Code of Civil Prodedure, 1908.	...	Ten rupees.
3. Application to any Civil Court that records may be called for from another Court.	When the Court grants the application and is of opinion that the transmission of such records involves the use of the post.	Two rupees in addition to any fee levied on the application under clause *(a)*, clause *(c)* or clause *(f)* of Article 1 of this schedule.
4. First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document, or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.	...	Fifty *naye paise.*
5. Application for leave to sue as a pauper.	...	One rupee.
6. Application for leave to appeal as a pauper.	*(a)* When presented to a District Court.	Two rupees.
	(b) When presented to a Commissioner or the High Court.	Five rupees.
7. Plaint or memorandum of appeal in a suit to obtain possession under the Mamlatdars' Courts Act, 1906.		One rupee.
8. Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.	...	One rupee.
9. Bail bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Pro-	...	One rupee twenty-five *naye paise.*

Number 1	... 2	Proper fee 3
cedure, 1898, other than section 109 or 110 thereof; or under the Code of Civil Procedure, 1908, and not otherwise provided for by this Act.		
10. Bail-bonds in criminal cases, recognizance to prosecute and recognizances for personal appearance or otherwise.	...	Twenty-five *naye paise.*
11. Undertaking under section 49 of the Indian Divorce Act, 1869.	...	One rupee twenty-five *naye paise.*
12. Mukhatarnama or vakalatnama.	When presented for the conduct of any one case *(a)* to any Civil or Criminal Court other than the High Court, or to any Revenue Court, or to any Collector or Magistrate or other executive officer;	Two rupees.
	(b) to the High Court.	Three rupees.

Gujarat.
In its application to the State of Gujarat, for Article 12, *substitute* the following :—

"12. Mukhatarnama or wakalatnama.	When presented for the conduct of any one case— *(a)* to any Civil or Criminal Court other than a District Court or Court of Session or the High Court, or to any Revenue Court or to any Collector or Magistrate or other executive officer;	One rupee.
	(b) to a District Court or Court of Session;	Two rupees.
	(c) to the High Court.	Four rupees.

—Guj. Act 37 of 1961, S. 2 [w. e. f. 1-4-1962].

13. Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree, and is presented—	*(a)* to any Civil Court other than the High Court, or to any Revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority;	One rupee.
	(b) to the Chief Controlling Executive or Revenue Authority;	Two rupees and fifty *naye paise.*

Schedule 2, Article 11 — Note 1

(1) An appeal from an order refusing to wind up company — Appeal is governed by Schedule 2, Article 11 of the Court Fees Act 1870 as amended by Bombay Act 12 of 1954. AIR 1966 Mysore 150 (152) = (1965) 1 Mys LJ 557 (DB). (Case under the Act of 1870 as amended by Bombay Act 12 of 1954.)

Schedule 2, Article 12 — Note 1

(1) Authority appointed under Sec. 20 (1) of the Minimum Wages Act is not a Civil or Criminal Court or executive officer within the meaning of Sch. II, Article 12 in view of Section 20 (7) of that Act. AIR 1967 Bom 223 (224) = 68 Bom LR 933 (DB).

Schedule 2, Article 13 — Note 1

(1) Appeal against order refusing to wind-up company — Court-fee — Such order has not the force of decree — Article 17 (vii), Schedule 2 does not apply since that article refers to a suit. AIR 1966 Mys 150 (152) = (1965) 1 Mys LJ 557 (DB). (Case under old Act.)

Number. 1	... 2	Proper fee. 3
14. *Caveat.*	*(c)* to the High Court.	Five rupees.
	When the amount or value of the property involved does not exceed two thousand rupees.	Ten rupees.
	When the amount or value of the property involved exceeds two thousand rupees.	Twelve rupees fifty *naye paise.*
15. Application for permission to cut timber in Government forests, or otherwise relating to such forests	...	Fifty *naye paise.*
16. Memorandum of appeal presented to —		
(a) the State Government.	...	Five rupees.
(b) any Forest Officer, where such appeal is provided for by or under the Indian Forest Act, 1927 or any corresponding law in force.	...	One rupee.
17. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866.	...	Thirty seven rupees fifty *naye paise.*
18. Application —		
(a) under section 20 of the Arbitration Act, 1940;	...	Fifteen rupees.
(b) for probate or letters of administration or for revocation thereof under the Indian Succession Act, 1925; *(c)* for a certificate under Part X of the Indian Succession Act, 1925, or Bombay Regulation VIII of 1827 or any corresponding law for the time being in force;	When the amount or value of the estate does not exceed two thousand rupees.	Two rupees fifty naye paise.
	When it exceeds two thousand rupees, but does not exceed five thousand rupees.	Six rupees twenty-five naye paise.
	When it exceeds five thousand rupees.	Twelve rupees fifty naye paise.
(d) for opinion or advice or for discharge from a Trust, or for appointment of new Trustees under section 34, 72, 73 or 74 of the Indian Trusts Act, 1882;	...	Twelve rupees fifty naye paise.

Schedule 2, Article 16 — Note 1

(1) Appeal against order refusing to wind up company — It has not the force of a decree — Court-fee chargeable is under Schedule 2, Article 11 as amended by Bombay Act 12 of 1954 — Schedule 1, Article 1, or Schedule 2, Article 1 (d) which deal with application and petitions and not appeals does not apply to such a case. AIR 1966 Mys 150 (152) = (1965) 1 Mys LJ 557 (DB). (Case under old Act.)

(2) Application under Section 66 of Income Tax Act after the new Act came into force — The assessment proceedings initiated before the new Act — Application continues to be governed by Schedule 2, Article 1 (d) of the old Act and not by Schedule 1, Article 16 of the new Act. AIR 1962 Bom 106 (121) = 63 Bom LR 834 (DB).

Schedule 2, Article 17 — Note 1

(1) Money decree with future interest till date of realisation from date of suit — Appeal from the decree — Court-fee on amount of interest not payable — Schedule 2, Article 17, Clause (6) does not apply because it cannot be said that the amount is not ascertainable. AIR 1962 Bom 52 (53) = 63 Bom LR 689.

Number. 1	... 2	Proper fee. 3
(e) under rule 58 of Order XXI of the Code of Civil Procedure, 1908, regarding a claim to attached property.	When the amount or value of the property exceeds five hundred rupees.	Twelve rupees fifty naye paise.
19. Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908.	...	Twenty-five rupees.
20. Every petition under the Indian Divorce Act, 1869, except petitions under section 44 of that Act and every memorandum of appeal under section 55 of that Act.	...	Thirty seven rupees fifty naye paise.
21. Plaint, application, petition, or memorandum of appeal under the Parsi Marriage and Divorce Act, 1936, the Special Marriage Act, 1954 or the Hindu Marriage Act, 1955.	...	Thirty-seven rupees fifty naye paise.
Provided that where in addition to divorce damages are claimed.		A fee as above plus a fee on the amount of damages claimed according to the scale prescribed under Article 1 of Schedule I.
22. Petition under the Indian Christian Marriage Act, 1872, sections 45 and 48.	...	Two rupees.
23. Plaint, petition or application (including memorandum of appeal) which is capable of being treated as a suit —	...	
(a) for annulment of marriage;	...	Thirty-seven rupees fifty naye paise.
(b) for dissolution of marriage;	...	Thirty-seven rupees fifty naye paise.
(c) in suit for custody of minor;	...	Eighteen rupees seventy five naye paise.
(d) for restitution of conjugal rights;	...	Thirty seven rupees fifty naye paise.
(e) for judicial separation;	...	Thirty-seven rupees fifty naye paise.
(f) in or to any Civil Court not otherwise provided for and the subject-matter of which is not capable of being estimated in money value.	...	*[Ad valorem fee payable, as if the amount or value of the subject matter was three-hundred rupees.]

******Substituted* for 'thirty rupees' by Maha. Act IX of 1970, S. 5. D/-16-3-1970.

Schedule 2, Article 21 — Note 1

(1) No provision in Hindu Marriage Act for joinder of claim for damages against the adulterer in a petition for divorce against the wife under Hindu Marriage Act — Provision in Schedule 2, Article 21 of Court Fees Act for payment of Court-fee on damages in addition to divorce — The provision in Court Fees Act cannot widen the scope of the Hindu Marriage Act. AIR 1963 Guj 152 (153) = (1963) 4 Guj LR 514.

Schedule 2, Article 23 — Note 1

(1) Suit by plaintiff for declaration that the mortgage security of the defendant does not affect the share of the plaintiff — Decree in plaintiff's favour — Appeal by defendant — Subject-matter in appeal is the security of the mortgagee — Not capable of being estimated in money value — Appeal falls under Schedule 2, Article 23 — Section 6 (d) will not apply. AIR 1965 Guj 204 (207) = (1965) 6 Guj LR 44 (DB).

Number. 1	... 2	Proper fee. 3
24. Copy or translation of a judgment or order not being or having the force of, a decree.	When such judgment or order is given or made by any Civil Court other than the High Court, or by any Revenue Court.	One rupee.
	When such judgment or order is given or made by the High Court.	Two rupees.
25. Copy of a decree or order having the force of a decree.	When such decree or order is made by any Civil Court other than the District Court or High Court, or by any Revenue Court;	Two rupees.
	When such decree or order is made by the District Court;	Three rupees.
	When such decree or order is made by the High Court.	Six rupees.
26. Copy of any document (including power of attorney) liable to stamp-duty under the Bombay Stamp Act, 1958 or the Indian Stamp Act, 1899 or any corresponding law in force, as the case may be, when left by any party to a suit or proceeding in place of the original withdrawn.	*(a)* When the stamp duty chargeable on the original does not exceed one rupee.	The amount of the duty chargeable on the original.
	(b) In any other case.	One rupee twenty-five naye paise.
27. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report or the like, taken out of any Civil or Criminal or Revenue Court or office, or from the Office of any Chief Officer charged with the executive administration of a division.	For every three hundred and sixty words or fraction of three hundred and sixty words.	Sixty five naye paise.
28. Application made under the Bombay Money-lenders Act, 1946 or under any corresponding law in force.	...	Two rupees.
29. Application presented to any Registration Officer for search of registration records.	...	One rupee.
30. Appeal or application to the Registrar under section 72 or 73, as the case may be, of the Indian Registration Act, 1908.	...	One rupee.
31. Application for a licence under sub-clause *(i)* of	...	One rupee.

Schedule 2, Article 28 — Note 1

(1) Order under Section 24, Bombay Money Lenders Act granting or refusing to grant instalments for payment of decretal amount — Order is not one under Section 47, Civil P. C. but is a decree within meaning of second part of Section 2 (2), Civil P. C. and is appealable — Court-fee on appeal is under Schedule 2, Article 17 (vii) of Court-fees Act, as it is not possible to estimate in money value the subject matter in dispute. (Bombay Amendment). AIR 1960 Bom 334 (337) = 61 Bom LR 1591.

Number 1	2	Proper fee 3
clause *(w)* of sub-section *(1)* of section 33 of the Bombay Police Act. 1951 or any corresponding law in force.		
32. Application or appeal to the Regional or State Transport Authority or the State Government under Chapter IV of the Motor Vehicles Act, 1939.	...	Five rupees.
33. Election petition questioning the election of a person in respect of the office		
(a) of *Sarpanch* or *Upa-Sarpanch* or member of a *Panchayat*	...	Ten rupees.
(b) of councillor or member of a Municipality, District Local Board or such other Local Authority;	...	Fifty rupees.
(c) of Mayor or Deputy Mayor or councillor of a municipal Corporation (of Greater Bombay, *[*] Poona and Nagpur) or President. Vice President. Chairman or Vice Chairman of any local Authority referred to in clause *(b)*	...	One hundred rupees.

* *Omitted* by Maha. A. L. O. 1960

Gujarat

In its application to the State of Gujarat, in Schedule II, Article 33, Column 1, in Cl (c), *omit* "Greater Bombay" and "Poona and Nagpur."

—Guj. A. L. O. 1960, S. 2 and Sch. [1.5.1960].

Number 1	2	Proper fee 3
34. Application or petition to the Court under sections 391, 439 or 522 of the Companies Act, 1956.	...	Fifty rupees.
Any other application or petition to the Court for judicial action or relief under the said Act, not otherwise provided for under this Act,	...	Ten rupees.
35. Application—		
(a) for order of arrest or attachment before judgment or for temporary injunction;	...	Two rupees. fifty naye paise.
(b) for compensation for arrest or attachment before judgment or in respect of temporary injunction obtained on insufficient grounds;	...	Two rupees fifty naye paise.

Schedule 2, Article 34 — Note 1

(2) Appeal against order refusing to wind-up company — Court-fee — Such order has not the force of decree — Article 18 (e), Schedule 2 Court Fees Act is inapplicable since it refers only to an application. AIR 1966 Mys 150 (152) = (1965) 1 Mys LJ 557.

Number 1	... 2	Proper fee 3
(c) for the appointment of a receiver in a case in which the applicant has no present right of possession of the property in dispute;	...	Five rupees,
(d) for setting aside decree passed ex parte or for review of order dismissing suit for default.	...	One rupee.
36. Appeal or application to the Co-operative Tribunal.	...	Five rupees.
37. Application made by a party to the Magistrate under section 145 of the Code of Criminal Procedure, 1898.	...	One rupee.
38. *[* * * * *]		

* *Omitted* by Bom. Act 18 of 1966, S. 3 [16-6-1966].

SCHEDULE III — (*See* section 29.)

Form of valuation (to be used with such modifications, if any, as may be necessary).

IN THE COURT OF

Re : Probate of the Will of (or Administration of
the propety and credits of ,) deceased.

1. I solemnly affirm. / make oath

and say that I am the executor (or one of the executors or one of the next of-kin of ... ... deceased, and that I have truly set forth in Annexure A to this affidavit all the Property and credit of which the abovenamed deceased died possessed or was entitled to at the time of his death, and which have come, or are likely to come to my hands.

2. I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct,

3. I further say that the said assets, exclusive only of such last mentioned items but inclusive of all rents, interest, dividends and increased values since the date of the death of the said deceased, are under the value of

ANNEXURE A

VALUATION OF THE MOVABLE AND IMMOVABLE PROPERTY OF DECEASED.

Rs. nP.

Cash in the house and at the banks, household goods, wearing apparel, books, plates, jewels, etc. ... ...

(State estimated value according to best of Executor's or Administrator's belief.)

Property in Government securities transferable at the Public Debt Office.

(State description, and value at the price of the day: also the interest separately, calculating it to the time of making the application.)

Immovable property consisting of ... ...

(State description, giving, in the case of houses the assessed value, if any, and the number of years' assessment the market-value is estimated at, and in the case of land, the area, the market-value and all rents that have accrued).

Leasehold property ... ...

(If the deceased held any leases for years determinable, state the number of years' purchase the profit rents are estimated to be worth and the value of such, inserting separately arrears due at the date of death and all rents received or due since that date to the time of making the application.)

Property in public companies ... ...

(State the particulars and the value calculated at the price of the day; also the interest separately, calculating it to the time of making the application).

	Rs.	nP.
Policy of insurance upon life, money out on mortgage and other securities, such as bonds, mortgages, bills, notes and other securities for money ... *(State the amount of the whole; also the interest separately, calculating it to time of making the application).*		
Book-debts *(other than bad).*		
Stock in trade ... ... *(State the estimated value, if any).*		
Other property not comprised under the foregoing heads ... ... *(State the estimated value, if any).*		
Total ...		
Deduct amount shown in Annexure B not subject to duty ..		
Net total ...		

ANNEXURE B

SCHEDULE OF DEBITS, ETC.

	Rs.	nP.
Amount of debts due and owing from the deceased, payable by law out of the estate		
Amount of funeral expenses		
Amount of mortgage encumbrances		
Property held in trust not beneficially or with general power to confer a beneficial interest		
Other property not subject to duty		
Total ...		

SCHEDULE IV — (*See* section 49.)

Laws repealed.

Year 1	Number 2	Law 3	Extent of repeal 4
1870	VII	The Court-fees Act, 1870, in its application to the pre-Reorganisation State of Bombay, excluding the transferred territories and to the Vidarbha region and the Kutch area of the State of Bombay.	The whole, in so far as it relates to Entries 3 and 66 of List II and Entry 47 of List III, in the Seventh Schedule to the Constitution of India.
1870	VII	The Court-fees Act, 1870, as modified and applied to the Saurashtra area of the State of Bombay by the State of Saurashtra (Application of Central and Bombay Acts) Ordinance, 1948.	The whole, in so far as it relates to Entries 3 and 66 of List II and Entry 47 of List III in the Seventh Schedule to the Constitution of India.
1324 Fasli	VI	The Hyderabad Court-fees Act, in its application to the Hyderabad area of the State of Bombay.	The whole, in so far as it relates to Entries 3 and 66 of List II and Entry 47 of List III in the Seventh Schedule to the Constitution of India.
1932	II	The Bombay Finance Act, 1932.	Section 2A and Part III containing sections 12, 13 and 14.

SCHEDULE V

(*See* section 50.)

Laws amended.

Year 1	Number 2	Law 3	Extent of amendment 4
1887	VII	The Suits Valuation Act, 1887, in its application to the pre-Reorganisation State of Bombay, excluding the transferred territories and to the Vidarbha Region and the	In section 9, the words and figures "of the Court-fees Act, 1870 and" shall be deleted.

1	2	3	4
		Kutch area of the State of Bombay.	
1887	VII	The Suits Valuation Act, 1887, as modified and applied to the Saurashtra area of the State of Bombay by the State of Saurashtra (Application of Central and Bombay Acts) Ordinance, 1948.	In section 9, the words and figures "of the Court-fees Act, 1870, and" shall be deleted.

[THE] HIMACHAL PRADESH COURT-FEES ACT, 1968

(H. P. ACT 8 OF 1968)

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[THE] HIMACHAL PRADESH COURT-FEES ACT, 1968

An Act to levy court-fees in the Union Territory of Himachal Pradesh.

Be it enacted by the Legislative Assembly of Himachal Pradesh in the Nineteenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called THE HIMACHAL PRADESH COURT-FEES ACT, 1968.

(2) It extends to the whole of the Union Territory of Himachal Pradesh.

(3) It shall come into force at once.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "High Court" means the High Court of Delhi;

(b) "Official Gazette" means the Rajpatra, Himachal Pradesh;

(c) "State Government" means the Lieutenant Governor of the Union Territory of Himachal Pradesh.

CHAPTER II

FEES IN THE HIGH COURT

3. Levy of fees in the High Court.—The fees payable for the time being to the clerks and officers of the High Court or chargeable in that Court under No. 9 of the First, and Nos. 7, 10, 11, 16 and 17 of the Second Schedule to this Act annexed shall be collected in the manner hereinafter appearing.

4. Fees on documents filed, etc., in the High Court in its ordinary and extraordinary jurisdiction.—No document of any of the kinds specified in the First or Second Schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, the High Court in any case coming before such Court,—

(a) in the exercise of its ordinary or extraordinary original civil jurisdiction; or

(b) in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence; or

(c) in the exercise of its jurisdiction as a Court of reference or revision; or

(d) in the exercise of its jurisdiction to issue directions, orders or writs under the Constitution of India; or

(e) in the exercise of its jurisdiction in any other manner;

unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

5. Procedure in case of difference as to necessity or amount of fee.—(1) When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter and any suit or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in the High Court, be referred to the Taxing Officer, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of the High Court or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.

(2) The Chief Justice of the High Court shall declare who shall be the Taxing Officer for the purpose of sub-section (1).

CHAPTER III

FEES IN OTHER COURTS AND IN PUBLIC OFFICES

6. Fees on documents filed, etc., in mofussil Courts or in public offices.—Except in the High Court, no document of any of the kinds specified as chargeable in the First or Second Schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document.

7. Computation of fees payable in certain suits.—The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—

for money;

(i) In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically)—according to the amount claimed;

for maintenance and annuities;

(ii) (a) In suits for maintenance and annuities or other sums payable periodically—according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year;

(b) In suits for reduction or enhancement of maintenance and annuities or other sums payable, periodically—according to the value of the subject-matter of the suit and such value shall be deemed to be ten times the amount sought to be reduced or enhanced for one year;

for other movable property having a market-value;

(iii) In suits for movable property other than money, where the subject-matter has a market-value—according to such value at the date of presenting the plaint;

(iv) In suits—

for movable property of no market-value;

(a) for movable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title;

to enforce a right to share in joint family property;

(b) to enforce the right to share in any property on the ground that it is joint family property;

for a declaratory decree and consequential relief;

(c) to obtain a declaratory decree or order, where consequential relief is prayed;

for an injunction;

(d) to obtain an injunction;

for easements;

(e) for a right to some benefit (not herein otherwise provided for) to arise out of land; and

for accounts;

(f) for accounts;

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal;

In all such suits the plaintiff shall state the amount at which he values the relief sought:

Provided that the minimum court-fee in each case shall be thirteen rupees:

Provided further that in suit coming under sub-clause (c), in cases where the relief sought is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by paragraph (v) of this section;

For possession of land, houses and gardens;

(v) In suits for the possession of land, houses and gardens—according to the value of the subject-matter and such value shall be deemed to be—
where the subject-matter is land, and—

(a) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government;

or forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue.

and such revenue is permanently settled—ten times the revenue so payable;

(b) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government or forms part of such estate and is recorded as aforesaid; and such revenue is settled, but not permanently—ten times the revenue so payable;

(c) where the land pays no such revenue, or has been partially exempted from such payment,

or is charged with any fixed payment in lieu of such revenue;

and net profits have arisen from the land during the year next before the date of presenting the plaint—fifteen times such net profits, but where no such net profits have arisen therefrom—the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood;

(d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above mentioned—the market-value of the land;

Explanation.—The word "estate", as used, in this paragraph, means any land subject to the payment of revenue, for which the proprietor or a farmer or ryot shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue;

for houses and gardens;

(e) where the subject-matter is house or garden—according to the market-value of the house or garden;

enforce a right of pre-emption;

(vi) In suits to enforce a right of pre-emption—according to the value (computed in accordance with paragraph (v) of this section) of the land, house or garden in respect of which the right is claimed;

for interest of assignee of land revenue;

(vii) In suits for the interest of an assignee of land revenue—fifteen times his net profits as such for the year next before the date of presenting the plaint;

to set aside an attachment;

(viii) In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for which the land or interest was attached:

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest;

to redeem;

(ix) In suits against a mortgagee for the recovery of the property mortgaged—according to half the principal money expressed to be secured by the instrument of mortgage:

to foreclose;

and in suits by mortgagee to foreclose the mortgage, or, where the mortgage is made by conditional sale, to have the sale declared absolute—according to the principal money expressed to be secured by the instrument of mortgage;

for specific performance;

(x) In suits for specific performance,—

(a) of a contract of sale—according to the amount of the consideration;

(b) of a contract of mortgage—according to the amount agreed to be secured;

(c) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term;

(d) of an award—according to the amount or value of the property in dispute;

between landlord and tenant;

(xi) In the following suits between landlord and tenant:—

(a) for the delivery by tenant of the counterpart of a lease;

(b) to enhance the rent of a tenant having a right of occupancy;

(c) for the delivery by a landlord of a lease;

(d) for the recovery of immovable property from a tenant, including a tenant holding over after the determination of a tenancy;

(e) to contest a notice of ejectment;

(f) to recover the occupancy of immovable property from which a tenant has been illegally ejected by the landlord; and

(g) for abatement of rent—according to the amount of the rent of the immovable property to which the suit refers payable for the year next before the date of presenting the plaint.

8. Fee on memorandum of appeal against order relating to compensation.— The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes, shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

9. Power to ascertain net profits or market-value.—If the Court sees reason to think that the annual net profits or the market-value of any such land, house or garden as is mentioned in Section 7, paragraphs (v) and (vi), have or has been wrongly estimated, the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

10. Procedure where net profits or market-value wrongly estimated.—(1) If in the result of any such investigation the Court finds that the net profits or market value have or has been wrongly estimated, the Court, if the estimation has been excessive, may in its discretion refund the excess paid as such fee but, if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market-value or net profits been rightly estimated.

(2) In such case the suit shall be stayed until the additional fee is paid and if the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

11. Procedure in suits for mesne profits or account when amount decreed exceeds amount claimed.—(1) In suits for mesne profits or for immovable property and mesne profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff value the relief sought, the decree shall not be drawn up until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer.

(2) Where the amount of mesne profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decre shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid and if the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

12. Decision of questions as to valuation.—(1) Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this Chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.

(2) But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of sub-section (2) of Section 10 shall apply.

13. Refund of fee paid on memorandum of appeal.—If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, 1908, is ordered to be received, or if a suit is remanded in appeal under Order XLI, Rule 23, of the First Schedule to that Code for a second decision by the lower Court, the appellate Court shall grant to the appellant a certificate, authorising him to receive back from the Collector the full amount of fee paid on the memorandum of appeal:

Provided that if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorise the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

14. Refund of fee paid on application for review of judgment.—Where an application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate authorising him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.

15. Refund where Court reverses or modifies its former decision on ground of mistake.—Where an application for a review of judgment is admitted, and where, on the rehearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorising him to receive back from the Collector so much of the fee paid on the application as exceeds the fee payable on any other application to such Court under the Second Schedule to this Act, No. 1, clause (b) or clause (d).

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

16. Multifarious suits.—Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.

Nothing in the former part of this section shall be deemed to affect the power conferred by Order II, Rules 6, of the First Schedule to the Code of Civil Procedure, 1908.

17. Written examinations of complainants.—When the first or only examination of person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which police officers may arrest without a warrant and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of the Code of Criminal Procedure, 1898 the complainant shall pay a fee of one rupee and twenty-five paise, unless the Court thinks fit to remit such payment.

18. Exemption of certain documents.—Nothing contained in this Act shall render the following documents chargeable with any fee :—

(i) Power-of-attorney to institute or defend a suit when executed by a member of any of the Armed Forces of the Union not in Civil employment.

(ii) Written statements called for by the Court after the first hearing of a suit.

(iii) Probate of a Will and letters of administration, where the amount or value of the property in respect of which the probate or letters shall be granted does not exceed thousand rupees.

(iv) Application or petition to a Collector or other Officer making a settlement of land-revenue, or to a Board of Revenue, or a Commissioner of Revenue, relating to matters connected with the assessment of land, or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such settlement.

Application relating to a supply for irrigation of water belonging to Government.

(vi) Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land revenue by a person holding, under direct engagement with Government, land of which the revenue is settled, but not permanently.

(vii) Application for services of notice of relinquishment of land or of enhancement of rent.

(viii) Written authority to an agent to distrain.

(ix) First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document, or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.

(x) Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.

(xi) Petition, application, charge or information respecting any offence, when presented, made or laid to or before a police officer.

(xii) Petition by a prisoner, or other person in duress or under restraint of any Court or its officers.

(xiii) Compaint of a public servant as defined in the Indian Penal Code, 1860, a municipal officer, or an officer or servant of a Railway Company.

(xiv) Application for permission to cut timber in Government forests, or otherwise relating to such forests.

(xv) Application for the payment of money due by Government to the applicant.

(xvi) Petition of appeal against any municipal tax.

(xvii) Applications for compensation under any law for the time being in force relating to the acquisition of property for public purposes.

(xviii) Petitions under the Indian Christian Marriage Act, 1872, Ss. 45 and 48.

CHAPTER IV

PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION

19. Relief where too high a court-fee has been paid.—Where any person on applying for the probate of a Will or letters of administration has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a court-fee thereon, if within six months after the true value of the property has been ascertained, such person,—

(a) produces the probate or letters to the Chief Controlling Revenue Authority for the local area in which the probate or letters has or have been granted;

(b) delivers to such Authority a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation, and

(c) if such Authority is satisfied that a greater fee was paid on the probate or letters than the law required,

the said Authority may—

(a) cancel the stamp on the probate or letters, if such stamp has not been already cancelled;

(b) substitute another stamp for denoting the court-fee which should have been paid thereon; and

c) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

20. Relief where debts due from a deceased person have been paid out of his estate.—Whenever it is proved to the satisfaction of the Authority referred to in Section 19 that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less court-fee to be paid on the probate or letters of administation granted in respect of such estate than has been actually paid thereon under this Act, such Authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority, may allow such further time for making the claim as may appear to be reasonable under the circumstances.

21. Relief in case of several grants.—(1) Whenever a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

(2) Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

22. Probates declared valid as to trust property though not covered by court-fees.—The probate of the Will, or the letters of administration of the effects of any person deceased heretofore or hereafter granted shall be deemed valid and available by his executors or administrators for recovering, transferring or assigning any movable or immovable property whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court-fee was paid on such probate or letters of administration.

23. Provision for case where too low a court-fee has been paid on probates, etc.—Where any person on applying for probate or letters of administration has estimated the estate of the deceased to be of less value than the same has afterward proved to be, and has in consequence paid too low a court-fee thereon, the Chief Controlling Revenue Authority for the local area in which the probate or letters has or have been granted may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of the grant, of five times, or if it or they is or are produced after one year from such date, of twenty times, such proper court-fee, without any deduction of the court-fee originally paid on such probate or letters:

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court-fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper court-fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

24. Administrator to give proper security before letters stamped under Section 23.—In case of letters of administration on which too low a court-fee has been paid at first, the said Authority shall not cause the same to be duly stamped in the manner referred to in Section 23 until the Administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained.

25. Executors, etc., not paying full court-fee on probates etc., within six months after discovery of under payment.—Where too low a court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or acting under such probate or letters does not, within six months after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, apply to the said Authority and pay what is wanting to make up the Court fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees per cent, on the amount of the sum wanting to make up the proper court-fee.

26. Notice of applications for probate or letters of administration to be given to Revenue Authorities and procedure thereon.—(1) Where an application for probate or letters of administration is made to any Court other than the High Court, the Court shall cause notice of the application to be given to the Collector.

(2) Where such an application as aforesaid is made to the High Court, that Court shall cause notice of the application to be given to the Chief Controlling Revenue Authority.

(3) The Collector within the local limits of whose revenue jurisdiction the property of the deceased or any part thereof, is, may at any time inspect or cause to be inspected, and take or cause to be taken copies of, the record of any case in which application for probate or letters of administration has been made, and if, on such inspection or otherwise, he is of opinion that the petitioner has under-estimated the value of the property of the deceased, the Collector, may, if he thinks fit, require the attendance of the petitioner (either in person or by agent) and take evidence and inquire into the matter in such manner as he may think fit, and if he is still of opinion that the value of the property has been under-estimated, may require the petitioner to amend the valuation.

(4) If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court before which the application for probate or letters of administration was made, to hold an inquiry into the true value of the property :

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required by Section 317 of the Indian Succession Act, 1925.

(5) The Court, when so moved as aforesaid, shall hold, or cause to be held, an inquiry accordingly, and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated and the Collector shall be deemed to be a party to the inquiry.

(6) For the purposes of any inquiry under sub-section (5), the Court or any person authorised by the Court to hold the inquiry may examine the petitioner for probate or letters of administration on oath (whether in person or by commission), and may take such further evidence as may be produced to prove the true value of the property and such person shall return to the Court the evidence taken by him and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceeding, and the Court may record a finding in accordance with the report, unless it is satisfied that it is erroneous.

(7) The finding of the Court recorded under sub-sec. (5) shall be final, but shall not bar the entertainment and disposal by the Chief Controlling Revenue Authority of any application under Section 23.

(8) The State Government may make rules for the guidance of Collectors in the exercise of the powers conferred by sub-section (3).

27. Payment of court-fee in respect of probates and latters of administration.—(1) No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the Third Schedule, and the Court is satisfied that the fee mentioned in No. 9 of the First Schedule has been paid on such valuation.

(2) The grant of probate or letters of administration shall not be delayed by reason of any motion made by the Collector under sub-section (4) of Section 26.

28. Recovery of penalties etc.—(1) Any excess fee found to be payable on an inquiry held under sub-section (6) of Section 26 and any penalty or forfeiture under Section 25 may, on the certificate of the Chief Controlling Revenue Authority, be recovered from the executor or administrator as if it were an arrear of land-revenue by any Collector.

(2) The Chief Controlling Revenue Authority may remit the whole or any part of any such penalty or forefeiture as aforesaid, or any part of any penalty under Section 23 or of any court-fee under Section 23 in excess of the full court-fee which ought to have been paid.

29. Sections 6 and 37 not to apply to Probates or letters of administration.—Nothing in Section 6 or Section 37 shall apply to probates or letters of administration.

CHAPTER V

PROCESS FEES

30. Rules as to costs of process.—(1) The High Court shall, as soon as may be, make rules as to the following matters, namely :—

(a) the fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil Courts established within the local limits of such jurisdiction;

(b) the fees chargeable for serving and executing processes issued by the Criminal Courts established within such limits in the case of offences other than offences for which police officers may arrest without a warrant; and

(c) the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

(2) The High Court may from time to time alter or add to the rules made under sub-section (1).

(3) All rules made under sub-section (1) and all alterations and additions made under sub-section (2) shall, after being confirmed by the State Government, be published in the Official Gazette, and shall thereupon have the force of law.

(4) Until any rules are made and published under this section, the fees leviable immediately before the commencement of this Act for serving and executing processes continue to be levied, and shall be deemed to be fees leviable under this Act.

31. Exemption for certain processes.—(1) Notwithstanding anything contained in Section 30 or in the rules made thereunder, no fees shall be charged for serving and executing processes on behalf of—

(a) the prosecution in any criminal proceedings taken on information presented or complaint made by a public officer acting in his official capacity; and

(b) a liquidator or an arbitrator appointed under the provisions of the Himachal Pradesh Co-operative Societies Act, 1956.

(2) The State Government may by notification in the Official Gazette determine what persons shall be deemed to be public officers for the purpose of sub-section (1).

32. Tables of process fees.—A table in the English and Vernacular languages, showing the fees chargeable for serving and executing processes shall be exposed to view in a conspicuous part of each Court.

33. Number of peons in District and Subordinate Courts.—(1) Subject to such rules as may be made by the High Court, and approved by the State Government every District Judge and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto.

(2) For the purposes of this section, every Court of Small Causes established under Section 5 of the Provincial Small Cause Courts Act, 1887 shall be deemed to be subordinate to the Court of the District Judge.

CHAPTER VI

OF THE MODE OF LEVYING FEES

34. Collection of fees by stampes.—All fees referred to in Section 3 or chargeable under this Act shall be collected by stamps:

Provided that if the presiding Judge or the Head of the Office as the case may be or in the case of the High Court, any Judge of such Court, may if he is satisfied that court-fee stamps are not available with the Stamp Vendor on the date of filing of the document to be stamped, order that the court-fees be collected in cash in any Government treasury and the receipt or challan therefor shall be duly given by the officer-in-charge thereof; and any such receipt or challan may be used for the purposes of this Act and the rules thereunder, as if the receipt or challan were a stamp duly issued under this Act by the State Government for the amount paid.

35. Stamps to be impressed or adhesive.—The stamps used to denote any fees chargeable under this Act shall be impressed, or adhesive, or partly impressed and partly adhesive, as the State Government may, by notification in the Official Gazette, from time to time direct.

36. Rules for supply, number, renewal and keeping accounts of stamps.—(1) The State Government may from time to time, make rules for regulating—

(a) the supply of stamps to be used under this Act;

(b) the number of stamps to be used for denoting any fee chargeable under this Act,

(c) the renewal of damaged or spoiled stamps; and

(d) the keeping accounts of all stamps used under this Act;

Provided that, in the case of stamps used under Section 3 in the High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

(2) All rules made under sub-section (1) shall be published in the Official Gazette, and shall thereupon have the force of law.

37. Stamping documents inadvertently received.—No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped, but if any such document is through mistake or inadvertence received, filed or used in any Court or office, without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of the High Court, any Judge of such Court may, if he thinks fit, order that such document be stamped as he may direct; and, on such document being stamped accordingly, the same and every proceeding relating thereto shall be as valid as if it had been properly stamped in the first instance.

38. Amended document.—Where any such document is amended in order merely to correct a mistake and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

39. Cancellation of stamp.—(1) No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

(2) Such officer as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

CHAPTER VII

MISCELLANEOUS

40. Admission in criminal cases of documents for which proper fee has not been paid.—Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in Section 4 or Section 6 shall be deemed to prohibit such filing or exhibition.

41. Sale of stamps.—(1) The State Government may from time to time make rules for regulating the sale of stamps to be used under this Act, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

(2) All such rules shall be published in the Official Gazette, and shall thereupon have the force of law.

(3) Any person appointed to sell stamps who disobeys any rule made under this section, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

42. Power to reduce or remit fees.—The State Government may, from time to time by notification in the Official Gazette, reduce or remit, in the whole or in any part of the Union territory of Himachal Pradesh, all or any of the fees mentioned in the First and Second Schedules to this Act annexed, and may in like manner cancel or vary such order.

43. Saving of fees to certain officers of the High Court.—Nothing in Chapters II and VI of this Act shall apply to the fees which any officer of the High Court is allowed to receive in addition to a fixed salary.

44. Repeal and savings.—The Court-fees Act, 1870 as extended to the Union territory of Himachal Pradesh by the notification of the Government of India in the Ministry of Home Affairs No. GSR-517 (F4/4/63-UTL-651,) dated 18th March, 1964 and the Court-fees Act, 1870 as in force in the territories transferred to that Union territory under Section 5 of the Punjab Reorganisation Act, 1966 are hereby repealed:

Provided that such repeal shall not affect—

(a) the previous operation of the said Acts or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the said Acts; or

(c) any penalty, forfeiture or punishment, incurred in respect of any offence committed against the said Acts; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid:

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the said Acts had not been repealed.

45. Levy of fees in certain suits etc., instituted before the commencement of this Act.—(1) Notwithstanding anything contained in the Acts repealed under Section 44, fees shall be levied in suits or other proceedings instituted on or after the 1st day of May, 1967 and pending immediately before the commencement of this Act in the High Court by virtue, and in the exercise, of its ordinary original civil jurisdiction as if this Act had been in force on the respective dates on which any such proceedings were instituted.

(2) Any fees levied in respect of suits or other proceedings instituted before the High Court by virtue, and in the exercise, of its ordinary original civil jurisdiction on or after the 1st day of May, 1967 and disposed of before the commencement of this Act shall be deemed to have been levied in accordance with law.

THE FIRST SCHEDULE

(See Section 3)

Ad Valorem Fees

Numbet 1	2	Proper Fee 3
1. Plaint, written statement pleading a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to any Civil or Revenue Court except those mentioned in section 3.	When the amount or value of the subject -matter in dispute does not exceed five rupees.	Fifty paise.
	When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees, upto one hundred rupees.	Fifty paise.
	When such amount or value exceeds one hundred rupees, but does not exceed five hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to five hundred rupees.	One rupee.
	When such amount or value exceeds five hundred rupees, for every ten rupees, or part thereof, up to one thousand rupees.	One rupee Fifty paise.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees or part thereof, in excess of one thousand rupees, up to five thousand rupees.	Twelve rupees twenty paise.
	When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees up to ten thousand rupees.	Twenty four rupees forty paise.
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees.	Thirty six rupees fifty paise.
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees.	Forty-eight rupees eighty paise.

Number		Proper Fee
1	2	3
	When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees up to fifty thousand rupees.	Forty-eight rupees eighty paise.
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees.	Forty eight rupees eighty paise.
2. Plaint in a suit for possession under the Specific Relief Act, 1963 (47 of 1963), section 6.	...	A fee of one-half the amount prescribed in the foregoing scale.
3. Application for review of judgment, if presented on or after the ninetieth day from the date of the decree.	...	The fee leviable on the plaint or memorandum of appeal.
4. Application for review of judgment, if presented before the ninetieth day from the date of the decree.	...	One half of the fee leviable on the plaint or memoerandum of appeal.
5. Copy of translation of judgment or order not being, or having the force of a decree.	When such judgment or order is passed by any Civil Court other than the High Court or by the presiding officer of any Revenue Court or office, or by any other Judicial or Executive Authority.	One rupee twenty-five paise.
	When such judgment or order is passed by the High Court.	Two rupees sixty paise.
6. Copy of a decree or order having the force of a decree.	When such decree or order is made by any Civil Court other than the High Court or by any Revenue Court.	Two rupees sixty five paise.
	When such decree or order is made by the High Court.	Five rupees twenty-five paise.
7. Copy of any document liable to stamp duty under the Indian Stamp Act, 1899 (2 of 1899).	(a) When the stamp duty chargeable on the original does not exceed seventy-five paise.	The amount of the duty chargeable on the original.
When left by any party to a suit or proceeding in place of the original withdrawn, provided such copy is not subject to any duty under the Indian Stamp Act, 1899 (2 of 1899).	(b) In any other case.	One rupee.
8. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report or the like taken out of any Civil or Criminal or Revenue Court or Office, or from the office of any Chief Officer charged with the executive administration of a Division.	For every three hundred and sixty words or fraction of three hundred and sixty words.	Sixty-five paise.
9. Probate of a will or letters of administration with or without will annexed.	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, but does not exceed ten thousand rupees.	Two and one half per centum on such amount or value.

Number		Proper Fee
1	2	3
	When such amount or value exceeds ten thousand rupees but does not exceed fifty thousand rupees.	Three and one quarter per centum on such amount or value
	When such amount or value exceeds fifty thousand rupees;	Four per centum on such amount or value.
	Provided that when after the grant of a certificate under Part X of the Indian Succession Act, 1925 (39 of 1925) or under the Regulation of the Bombay Code No. 8 of 1827 in respect of any property included in any estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.	
10 Certificate under Part X of the Indian Succession Act, 1925 (39 of 1925).	In any case.	Two and one half per centum on the amount or value of any debt or security specified in the certificate under section 374 of the Act, and four per centum on the amount or value of any debt or security to which the certificate is extended under S. 376 of the Act. Notes — (1) The amount of a debt is its amount including interest, on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertaied (2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act, and, where such a power has been so conferred whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of, the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained

Number 1	2	Proper Fee 3
11. Application to the High Court for the exercise of its jurisdiction under paragraph 35 of the Himachal Pradesh, (Courts) Order, 1948 or to the Court of the Financial Commissioner, Himachal Pradesh, for the exercise of its revisional jurisdiction under S. 118 of the Himchal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 (15 of 1954).)	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees. When such amount or value exceeds twenty-five rupees.	Two rupees sixty-five paise. The fee leviable on memorandum of appeal.

TABLE OF RATES OF AD VALOREM FEES LEVIABLE ON THE INSTITUTION OF SUITS.

When the amount or value of the subject-matter exceeds. (1)	But does not exceed. (2)	Proper fee. (3)	When the amount or value of the subject-matter exceeds. (1)	But does not exceed. (2)	Proper fee. (3)
Rs.	Rs.	Rs. P.	Rs.	Rs.	Rs. P.
—	5	0 50	290	300	30 00
5	10	1 00	300	310	31 00
10	15	1 50	310	320	32 00
15	20	2 00	320	330	33 00
20	25	2 50	330	340	34 00
25	30	3 00	340	350	35 00
30	35	3 50	350	360	36 00
35	40	4 00	360	370	37 00
40	45	4 50	370	380	38 00
45	50	5 00	380	390	39 00
50	55	5 55	390	400	40 00
55	60	6 00	400	410	41 00
60	65	6 50	410	420	42 00
65	70	7 00	420	430	43 00
70	75	7 50	430	440	44 00
75	80	8 00	440	450	45 00
80	85	8 50	450	460	46 00
85	90	9 00	460	470	47 00
90	95	9 50	470	480	48 00
95	100	10 00	480	490	49 00
100	110	11 00	490	500	50 00
110	120	12 00	500	510	76 50
120	130	13 00	510	520	78 00
130	140	14 00	520	530	79 00
140	150	15 00	530	540	81 00
150	160	16 00	540	550	82 50
160	170	17 00	550	560	84 00
170	180	18 00	560	570	85 50
180	190	19 00	570	580	87 00
190	200	20 00	580	590	88 50
200	210	21 00	590	600	90 00
210	220	22 00	600	610	91 50
220	230	23 00	610	620	93 00
230	240	24 00	620	630	94 50
240	250	25 00	630	640	96 00
250	260	26 00	640	650	97 50
260	270	27 00	650	660	99 00
270	280	28 00	660	670	100 50
280	290	29 00	670	680	102 00

(1)	(2)	(3)		(1)	(2)	(3)	
Rs.	Rs.	Rs.	P.	Rs.	Rs.	Rs.	P.
680	690	103	50	4,600	4,700	601	40
690	700	105	00	4,700	4,800	613	60
700	710	106	50	4,800	4,900	625	80
710	720	108	00	4,900	5,000	638	00
720	730	109	50	5,000	5,250	662	40
730	740	111	00	5,250	5,500	686	80
740	750	112	50	5,500	5,750	711	20
750	760	114	00	5,750	6,000	735	60
760	770	115	50	6,000	6,250	760	00
770	780	117	00	6,250	6,500	784	40
780	790	118	50	6,500	6,750	808	80
790	800	120	00	6,750	7,000	833	20
800	810	121	50	7,000	7,250	857	60
810	820	123	00	7,250	7,500	882	00
820	830	124	50	7,500	7,750	906	40
830	840	126	00	7,750	8,000	930	80
840	850	127	50	8,000	8,250	955	20
850	860	129	00	8,250	8,500	979	60
860	870	130	50	8,500	8,750	1,004	00
870	880	132	00	8,750	9,000	1,028	40
880	890	133	50	9,000	9,250	1,052	80
890	900	135	00	9,250	9,500	1,077	20
900	910	136	50	9,500	9,750	1,101	60
910	920	138	00	9,750	10,000	1,126	00
920	930	139	50	10,000	10,500	1,162	50
930	940	141	00	10,500	11,000	1,199	00
940	950	142	50	11,000	11,500	1,235	50
950	960	144	00	11,500	12,000	1,272	00
960	970	145	50	12,000	12,500	1,308	50
970	980	147	00	12,500	13,000	1,345	00
980	990	148	50	13,000	13,500	1,381	50
990	1,000	150	00	13,500	14,000	1,418	00
1,000	1,100	162	20	14,000	14,500	1,454	50
1,100	1,200	174	40	14,500	15,000	1,491	00
1,200	1,300	186	60	15,000	15,500	1,527	50
1,300	1,400	198	80	15,500	16,000	1,564	00
1,400	1,500	211	00	16,000	16,500	1,600	50
1,500	1,600	223	20	16,500	17,000	1,637	00
1,600	1,700	235	40	17,000	17,500	1,673	50
1,700	1,800	247	60	17,500	18,000	1,710	00
1,800	1,900	259	80	18,000	18,500	1,746	50
1,900	2,000	272	00	18,500	19,000	1,783	00
2,000	2,100	284	20	19,000	19,500	1,819	50
2,100	2,200	296	40	19,500	20,000	1,856	00
2,200	2,300	308	60	20,000	21,000	1,904	80
2,300	2,400	320	80	21,000	22,000	1,953	60
2,400	2,500	333	00	22,000	23,000	2,002	40
2,500	2,600	345	20	23,000	24,000	2,051	20
2,600	2,700	357	40	24,000	25,000	2,100	00
2,700	2,800	369	60	25,000	26,000	2,148	80
2,800	2,900	381	80	26,000	27,000	2,197	60
2,900	3,000	394	00	27,000	28,000	2,246	40
3,000	3,100	406	20	28,000	29,000	2,295	20
3,100	3,200	418	40	29,000	30,000	2,344	00
3,200	3,300	430	60	30,000	32,000	2,392	80
3,300	3,400	442	80	32,000	34,000	2,441	06
3,490	3,500	455	00	34,000	36,000	2,490	40
3,500	3,600	467	20	36,000	38,000	2,539	20
3,600	3,700	479	40	38,000	40,000	2,588	00
3,700	3,800	491	60	40,000	42,000	2,636	80
3,800	3,900	503	80	42,000	44,000	2,685	60
3,900	4,000	516	00	44,000	46,000	2,734	40
4,000	4,100	528	20	46,000	48,000	2,783	20
4,100	4,200	540	40	48,000	50,000	2,832	00
4,200	4,300	552	60	50,000	55,000	2,880	80
4,300	4,400	564	80	55,000	60,000	2,929	60
4,400	4,500	577	00	60,000	65,000	2,978	40
4,500	4,600	589	20	65,000	70,000	3,027	20

(1) Rs.	(2) Rs.	(3) Rs.	P.
70,000	75,000	3,076	00
75,000	80,000	3,124	80
80,000	85,000	3,173	60
85,000	90,000	3,222	40
90,000	95,000	3,271	20
95,000	1,00,000	3,320	00
1,00,000	1,05,000	3,368	80
1,05,000	1,10,000	3,417	60
1,10,000	1,15,000	3,466	40
1,15,000	1,20,000	3,515	20
1,20,000	1,25,000	3,564	00
1,25,000	1,30,000	3,612	80
1,30,000	1,35,000	3,661	60
1,35,000	1,40,000	3,710	40
1,40,000	1,45,000	3,759	20
1,45,000	1,50,000	3,808	00
1,50,000	1,55,000	3,856	80
1,55,000	1,60,000	3,905	60
1,60,000	1,65,000	3,954	40
1,65,000	1,70,000	4,003	20
1,70,000	1,75,000	4,052	00
1,75,000	1,80,000	4,100	80
1,80,000	1,85,000	4,149	60
1,85,000	1,90,000	4,198	40
1,90,000	1,95,000	4,247	20
1,95,000	2,00,000	4,296	00
2,00,000	2,05,000	4,344	80
2,05,000	2,10,000	4,393	60
2,10,000	2,15,000	4,442	40
2,15,000	2,20,000	4,491	20
2,20,000	2,25,000	4,540	00
2,25,000	2,30,000	4,588	80
2,30,000	2,35,000	4,637	60
2,35,000	2,40,000	4,686	40
2,40,000	2,45,000	4,735	20
2,45,000	2,50,000	4,784	00
2,50,000	2,55,000	4,832	80
2,55,000	2,60,000	4,881	60
2,60,000	2,65,000	4,930	40
2,65,000	2,70,000	4,979	20
2,70,000	2,75,000	5,028	00
2,75,000	2,80,000	5,076	80
2,80,000	2,85,000	5,125	60
2,85,000	2,90,000	5,174	40
2,90,000	2,95,000	5,223	20
2,95,000	3,00,000	5,272	00
3,00,000	3,05,000	5,320	80
3,05,000	3,10,000	5,369	60
3,10,000	3,15,000	5,418	40
3,15,600	3,20,000	5,467	20
3,20,000	3,25,000	5,516	00
3,25,000	3,30,000	5,564	80
3,30,000	3,35,000	5,613	60
3,35,000	3,40,000	5,662	40
3,40,000	3,45,000	5,711	20
3,45,000	3,50,000	5,760	00
3,50,000	3,55,000	5,808	80
3,55,000	3,60,000	5,857	60
3,60,000	3,65,000	5,906	40
3,65,000	3,70,000	5,955	20
3,70,000	3,75,000	6,004	00
3,75,000	3,80,000	6,052	80
3,80,000	3,85,000	6,101	60
3,85,000	3,90,000	6,150	40
3,90,000	3,95,000	6,199	20
3,95,000	4,00,000	6,248	00

And when the amount or value of the subject-matter exceeds Rs. 4,00,000 (four lacs) the proper fee leviable shall be Rs. 6,248. (Six thousand two hundred and fourty-eight) plus forty-eight rupees eighty paise for each five thousand rupees or part thereof, in excess of Rs. 4,00,000 (four lacs).

THE SECOND SCHEDULE

(See Section 8)

Fixed Fees

Number 1	2	Proper fee 3
1. Application or petition.	(a) When presented to any Officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government and when the subject-matter of such application relates exclusively to those dealings; or when presented to any Officer of Land Revenue by any person holding temporarily settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement; or, when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement; or when presented to any Civil Court other than a principal Civil Court of original jurisdiction or to any Court of Small Causes established under section 5 of the Provincial Small Cause Courts Act, 1887 (9 of 1887), or to a Collector or other officer of Revenue in relation to any suit	Forty paise

Number 1	... 2	Proper fee 3
	or case in which the amount or value of the subject-matter is less than fifty rupees; or when presented to any Civil, Criminal or Revenue Court, or to any Board or Executive Officer for the purpose of obtaining a copy or translation of any judgment, decree, or order passed by such Court, Board or Officer, or of any other document on record in such Court or Office.	
	(b) When containing a complaint or charge of any offence other than an offence for which police officers may under the Code of Criminal Procedure, 1898 (5 of 1898), arrest without warrant, and presented to any Criminal Court; or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any Revenue Officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act; or to deposit in Court revenue or rent; or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant.	One rupee twenty-five paise.
	(c) When presented to a Chief Controlling Revenue or Executive Authority, or to a Commissioner of Revenue or Circuit, or to any Chief Officer charged with the Executive Administration of a Division and not otherwise provided for by this Act.	
	(d) When presented to the High Court –	
	(i) under the Companies Act, 1956 (1 of 1956) for winding up a company;	Rupees two hundred and sixty.
	(ii) under the same Act for taking some other judicial action;	Thirteen rupees.
	(iii) under Article 226 of the Constitution of India other than petitions for habeas corpus and petitions arising out of criminal proceedings;	Fifty rupees.
	(iv) in all other cases	Two rupees sixty-five paise.
2. Application to any Civil Court that records may be called for from another Court.	When the Court grants the application and is of opinion that the transmission of such records involves the use of the posts.	One rupee in addition to any fee levied on the application under – Clause (a), Clause (b) or Clause (d) of Article 1 of this Schedule.
3. Application for leave to sue as pauper.		One rupee twenty-five paise.
4. Application for leave to appeal as a pauper.	(a) When presented to a District Court.	One rupee twenty five paise.
	(b) When presented to a Commissioner or the High Court,	Two rupees sixty-five paise.
5. Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.		One rupee twenty-five paise.

Number 1	... 2	Preper fee 3
6. Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure 1898 (5 of 1898), or the Code of Civil Procedure, 1908 (5 of 1908) and not otherwise provided for by this Act.		Sixty-five paise.
7. Undertaking under section 49 of the Indian Divorce Act, 1869 (4 of 1869).		One rupee twenty-five paise.
8. Mukhtarnama or Wakalatnama.	When presented for the conduct of any one case –	
	(a) to any Civil or Criminal Court other than the High Court, or to any Collector or Magistrate, or other Executive officer except such as are mentioned in clauses (b) and (c) of this Number;	One rupee twenty-five paise.
	(b) to a Commissioner of Revenue, Circuit or Customs or to any officer charged with the Executive Administration of a Division not being the Chief Revenue or Executive Authority;	One rupee twenty-five paise.
	(c) to the High Court Board of Revenue, or other Chief Controlling Revenue or Executive Authority.	Two rupees sixty-five paise.
9. Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree, and is presented.	(a) to any Civil Court other than High Court or to any Revenue Court Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority;	One rupee twenty-five paise.
	(b) to the High Court or Chief Controlling Executive or Revenue Authority.	Five rupees twenty-five paise.
10. Caveat.	...	Six rupees fifty paise.
11. Petition in a suit under the Converts Marriage Dissolution Act, 1866 (21 of 1866).	...	Six rupees fifty paise.
12. Every petition or application or memorandum or appeal under the Special Marriage Act, 1954 (43 of 1954) or the Hindu Marriage Act 1955 (25 of 1955).	...	Nineteen rupees fifty paise.
13. Plaint or memorandum of appeal in each of the following suits :– (i) to alter or set aside a sum-		

Number 1	2	Proper fee 3
mary decision or order of any of the Civil Court not established or of any Revenue Court; (ii) to alter or cancel any entry in a register of the names of the proprietors of revenue paying estates; (iii) to obtain a declaratory decree where no consequential relief is prayed; (iv) to set aside an award. (v) to set aside an adoption; (vi) Every other suit where it is not possible to estimate at a money value the subject matter in dispute and which is not otherwise provided for by this Act.		Nineteen rupees fifty paise,
14. Application under section 20 of the Indian Arbitration Act 1940 (10 of 1940)		Thirteen rupees.
15. Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908 (5 of 1908).		Thirteen rupees
16. Every petition under the Indian Divorce Act, 1899 (4 of 1899) except petitions under section 44 of the same Act, and every memorandum of appeal under section 55 of the same Act.		Thirty-nine rupees.
17. Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1936 (3 of 1936).		Thirty-nine rupees.
18. Plaint or memorandum of appeal		Nineteen rupees fifty paise.

Number 1	… 2	Proper fee 3
in a suit by a reversioner under the Himachal Pradesh Customary Law for declaration in respect of an alienation of ancestral land,		Thirteen rupees.
19. Application or memorandum of appeal for relief under the East Punjab Urban Act, 1949 (3 of 1949) as in force in Himachal Pradesh.		
20. Claims for money (whether secured or unsecured) or a claim to set off made against such claims or counter-claims under the Banking Regulation Act, 1949 (Act, 10 of 1949).	(a) Where the amount does not exceed Rs. 2,500.	Nineteen rupees fifty paise.
	(b) Where the amount exceeds Rs. 2,500 but does not exceed Rs. 10,000.	Thirty-nine rupees.
	(c) Where the amount exceeds Rs. 10,000.	Sixty-five rupees.
21. Memorandum of appeal from an order or decision passed under the provisions of section 45-B of the Banking Regulation Act, 1949 (Act 10 of 1949),	(a) Where the amount exceeds Rs. 5,000 but does not exceed Rs. 10,000.	Seventy eight rupees.
	(b) Where the amount exceeds Rs. 10,000.	One hundred and thirty rupees.

THE THIRD SCHEDULE

(See Section 27)

FORM OF VALUATION (TO BE USED WITH SUCH MODIFICATIONS, IF ANY, AS MAY BE NECESSARY)

IN THE COURT OF

Re-probate of the Will of……………………………(or administration of the, property and credits of……………………………) deceased.

I Solemnly affirm / make oath

and say that I am the executor (or one of the executors or one of the next-of-kin) of deceased, and that I have truly set forth in Annexure 'A' to this affidavit all the property and credits of which the above named deceased died possessed or was entitled to at the time of his death, and which have come, or are likely to come, to my hands.

2. I further say that I have also truly set forth in Annexure 'B' all the items I am by law allowed to deduct.

3. I further say that the said assets, exclusive only of such last-mentioned items but inclusive of all rents, interests, dividends and increased values since the date of the death of the said deceased, are under the value of –

ANNEXURE "A"

VALUATION OF THE MOVABLE AND IMMOVABLE PROPERTY OF ... ... DECEASED Rs. P.

Cash in the house and at the banks, household goods, wearing apparel, books, plate, jewels, etc.
(State estimated value according to best of Executor's or Administrator's belief.)

Property in Government securities transferable at the Public Debt Office.
(State description and value at the price of the day; also the interest separately, calculating it to the time of making the application).

Immovable property consisting of .. ..
(State description, giving in the case of houses, the assessed value if any, and the number of years assessment, the market-value is estimated at, and, in the case of land, the area, the market-value and all rents that have accrued).

Lease-hold property ... ...
(If the deceased held any leases for years, determinable, state the number of year's purchase the profit rents are estimated to be worth and the value of such, inserting separately arrears due at the date of death and all rents received or due since that date to the time of making the application).

Property in Public Companies—
(State the particulars and the value calculated at the price of the day, also the interest separately, calculating it to the time of making the application.)

Policy of insurance upon life, money out on mortgage and other securities such as bonds, mortgages, bills, notes and other securities for money.
(State the amount of the whole; also the interest separately, calculating it to the time of making the application).

Book debts ... ...
(Other than bad.)

Stock in trade ... ...
(State the estimated value, if any).

Other property not comprised under the foregoing heads.
(State the estimated, value, if any).

Deduct amount shown in Annexure 'B' not subject to duty

Net Total.

ANNEXURE "B"

SCHEDULE OF DEBTS, ETC.

Rs. P.

Amount of debts due/and owing from the deceased, payable by law out of the estate... ... ...

Amount of funeral expenses ... ...

Amount of mortgage incumbrances ... ...

Property held in trust not beneficially or with general power to confer a beneficial interest.

Other property not subject to duty ... ...

Total

[THE] JAMMU AND KASHMIR COURT-FEES ACT, 1977

(J. AND K. ACT VII OF 1977 SMT.)

[Act Printed here is as on 1956.]

SECTIONS

CHAPTER I

PRELIMINARY

1. Short title and extent.
2. Chief Controlling Revenue Authority.
3. Collector.

CHAPTER II

FEES IN THE HIGH COURT

4. Fees in documents filed in the High Court.
5. Procedure in case of difference as to necessity or amount of court-fee.

CHAPTER III

FEES IN OTHER COURTS AND IN PUBLIC OFFICES

6. Fees on documents filed, etc., in mufassil Courts or in public offices.

7. Computation of fees payable in certain suits —
   - i. for money;
   - ii. for maintenance and annuities;
   - iii. for other moveable property having a market-value;
   - iv. (a) for moveable property of no market-value;
     - (b) to enforce a right to share in joint family property;
     - (c) for a declaratory decree and consequential relief;
     - (d) for an injunction
     - (e) for easements;
     - (f) for accounts
   - v. for possession of land, houses and gardens
     - (a) for houses and gardens.
   - vi. to enforce a right of pre-emption
   - vii. for interest of assignee of land revenue
   - viii. to set aside an attachment;
   - ix. to redeem;
     - to foreclose;
   - x. for specific performance;
   - xi. between landlord and tenant.

8. Fee on memorandum of appeal against order relating to compensation.

9. Power to ascertain net profits or market-value.

10. Procedure where net profits or market-value wrongly estimated.

11. Procedure in suits for mesne profits or account when amount decreed exceeds amount claimed.

12. Decision of questions as to valuation.

13. Refund of fee paid on memorandum of appeal.

14. Refund of fee on application for review of judgment.

15. Refund where Court reverses or modifies its former decision on ground of mistake.

16. [Repealed.]

17. Multifarious suits.

18. Written examinations of complainants.

19. Exemption of certain documents.

CHAPTER III-A

PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION

19-A. Relief where too high a court-fee has been paid.

19-B. Relief where debts due from a deceased person have been paid out of his estate.

19-C. Relief in case of several grants.

19-D. Probates declared valid as to trust-property though not covered by Court-fee.

19-E. Provision for case where too low a Court-fee has been paid on probate, etc.

19-F. Administrator to give proper security before letters stamped under S. 19-E.

19-G. Executors etc, not paying full Court-fee on probates, etc. within six months after discovery of under payment.

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[THE] COURT-FEES ACT, 1977 SVT. (1920 A. D.)

(Jammu and Kashmir Act No. VII of 1977)

Sanctioned by His Highness the Maharaja Sahaib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September, 1920 and State Council Resolution No. I dated 8th April 1925, Notification No. 14-L/81. This Act was Originally published in Government Gazette dated 16th Chet, 1977.]

[Am. J. K. Act 5 of 1958.]

CHAPTER I

PRELIMINARY

1. **Short title and extent.**—(i) This Act may be called THE COURT-FEES ACT No. VII of Samvat 1977.

(ii) It extends to the whole State of Jammu and Kashmir.

2. **Chief Controlling Revenue Authority.**—The Revenue Minister or a Minister for the time being in charge of the Revenue Administration of the State shall be the "Chief Controlling Revenue Authority" for the purposes of administration of Court-fees laws.

3. **Collector.**—In this Act, unless there is anything repugnant in the subject or context, "Collector" shall mean the Deputy Commissioner of a District.

CHAPTER II

FEES IN THE HIGH COURT

4. **Fees in documents filed in High Court.**—No document of any of the kinds specified in the First or Second Schedule to the Court-fees Act No. 7 of 1977 annexed, as chargeable with fees shall be filed, exhibited or recorded in, or shall be received or furnished by the High Court in any case coming before it. in the exercise of its extraordinary original civil jurisdiction;

or in the exercise of its extraordinary original criminal jurisdiction.

or in the exercise of its ordinary original civil jurisdiction.

or in the exercise of its jurisdiction as regards appeal from the judgment passed under ordinary original civil jurisdiction of the High Court;

or in the exercise of its powers as a Court of appeal from Courts subject to its superintendence;

or in the exercise of its jurisdiction as a Court of reference or revision;
unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document.

5. **Procedure in case of difference as to necessity or amount of court-fee.**—It shall be the duty of the Registrar of the High Court to see that proper fee is paid under this Chapter. If any difference arises between the said officer and any suitor or counsel as to the necessity of paying a fee or the amount thereof, the question shall be referred to the said Registrar and his decision shall be final. When, however, the question is in the opinion of the Registrar one of general importance, he shall refer it for the final decision of the Chief Justice or such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.

CHAPTER III

FEES IN OTHER COURTS AND IN PUBLIC OFFICES

6. Fees on documents filed, etc., in mufassil Courts or in public offices.—No document of any of the kinds specified as chargeable in the First or Second Schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document.

7. Computation of fees payable in certain suits.—The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—

(i) for money;

In suits for money (including suits for damages or compensation, or arrears of maintenance of annuities, or of other sums payable periodically)—according to the amount claimed;

(ii) for maintenance and annuities;

In suit for maintenance and annuities or other sums payable periodically—according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year;

(iii) for other moveable property having a market value;

In suits for movable property other than money, where the subject-matter has a market-value—according to such value at the date of presenting the plaint;

(iv) In suits—

(a) for moveable property of no market-value;

for moveable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title;

(b) to enforce a right to share in joint family property;

to enforce the right to share in any property on the ground that it is joint family property, (this does not apply to a suit for partition by metes and bounds);

(c) for a declaratory decree and consequential relief;

to obtain a declaratory decree or order, where consequential relief is prayed;

(d) for an injunction;

to obtain an injunction.

(e) for easements;

for a right to some benefit (not herein otherwise provided for) to arise out of land, and

(f) for accounts;

for accounts—

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values the relief sought.

Section 7 — Note 1

(1) Party conceding that Cl. (v) (d) of Sec. 7 Court-Fees Act would apply — Such concession not binding on the party conceding — The Court should determine the Court-fee payable. AIR 1963 J & K 55 (55).

(2) The words "shall have been separately assessed with revenue" in Exp. to Section 7 (v) are wider enough to include those lands which were assessed to land revenue even before the institution of the suit though at the time of the suit the land ceases to be assessed to land revenue. AIR 1963 J & K 55 (56).

(3) Where there is a clear indication in the plaint that the land is a part of an estate paying revenue to Government which is supported by documentary evidence. Section 7 (v) (b) Court Fees Act will apply. AIR 1963 J & K 55 (56).

(4) Court-Fees Act does not make any difference between lands within and beyond Municipal limits. AIR 1963 J & K 55 (56).

(v) for possession of lands, houses and gardens;

In suits for the possession of land, houses and gardens—according to the value of the subject-matter; and such value shall be deemed to be—

where the subject-matter is land, and—

(a) [Omitted.]

(b) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government or forms part of such estate and is recorded as separately assessed with such revenue;—eight times the revenue so payable,

(c) where the land pays no such revenue, or has been partially exempted from such payment, is a Jagir or a Dharmarth property or is charged with any fixed payment in lieu of such revenue,

and net profits have arisen from the land during the year next before the date of presenting the plaint—

fifteen times such net profit:

but where no such net profits have arisen therefrom—

the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood;

(d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed, the market-value of the land:

Explanation.—The word "estate", as used in this paragraph, means any land subject to the payment of revenue for which the proprietor or farmer or raiyat shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue;

(e) for houses and gardens;

where the subject-matter is a house or garden—according to the market-value of the house or garden;

(vi) to enforce a right of pre-emption;

In suits to enforce a right of pre-emption—according to the value (computed in accordance with paragraph v of this section) of the land, house or garden in respect of which the right is claimed;

(vii) for interest of assignee of land revenue;

In suits for the interest of an assignee of land revenue—fifteen times his net profits as such for the year next before the date of presenting the plaint;

In suits for Haq-i-Lambardari, maqaddami or a similar right—eight times the income of the Haq or right;

(viii) to set aside an attachment;

In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for which the land or interest was attached:

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest;

(ix) to redeem;

In suits against a mortgagee for the recovery of the property mortgaged;

to foreclose;

and in suits by a mortgagee to foreclose the mortgage, or where the mortgage is made by conditional sale, to have the sale declared absolute—according to the principal money expressed to be secured by the instrument of mortgage;

(x) for specific performance;

In suits for specific performance—

(a) of a contract of sale—according to the amount of the consideration;

(b) of a contract of mortgage—according to the amount agreed to be secured;

(c) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term;

(d) of an award—according to the amount or value of the property in dispute;

(xi) Between landlord and tenant;

In the following suits between landlord and tenant:—

(a) for the delivery by a tenant of the counterpart of a lease,

(b) to enhance the rent of a tenant having a right of occupancy,

(c) for the delivery by a landlord of a lease,

(cc) for the recovery of immoveable property from a tenant including a tenant holding over after the determination of a tenancy,

(d) to contest a notice of ejectment,

(e) to recover the occupancy of immoveable property from which tenant has been illegally ejected by the landlord, and

(f) for abatement of rent—

according to the amount of the rent of the immoveable property to which the suit refers, payable for the year next before the date of presenting the plaint.

8. **Fee on memorandum of appeal against order relating to compensation.**—The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

9. **Power to ascertain net profits or market-value.**—If the Court sees reason to think that the annual net profits or the market-value of any such land, house or garden as is mentioned in Sec. 7, paragraphs 5 and 6, have or has been wrongly estimated, the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

10. **Procedure where net profits or market-value wrongly estimated.**—(i) If in the result of any such investigation the Court finds that the market-value has been wrongly estimated, the Court, if the estimation has been excessive, may in its discretion refund the excess paid as such fee; but if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market-value or net profits been rightly estimated.

(ii) In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

11. **Procedure in suits for mesne profits or account when amount decreed exceeds amount claimed.**—In suits for mesne profits or for immovable property and mesne profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer.

Where the amount of mesne profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed:

Provided that, in suits under the Agriculturists' Relief Act, 1983, the decree shall be executed to the extent of the amount of the instalments which have become due on payment of the additional court-fee, if any, which is found payable when calculated on the amount for which execution is sought.

12. Decision of questions as to valuation.—(i) Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this Chapter, on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.

(ii) But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided and the provisions of Section 10, paragraph (ii), shall apply.

13. Refund of fee paid on memorandum of appeal.—If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in Order XLI, Rule 23 of the same Code for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorising him to receive back from the Collector the full amount of fee paid on the memorandum of appeal:

Provided that if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorise the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

14. Refund of fee on application for review of judgment.—Where an application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate authorising him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.

15. Refund where Court reverses or modifies its former decision on ground of mistake.—Where an application for a review of judgment is admitted, and where, on the rehearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorising him to receive back from the Collector so much of the fee paid on the application as exceeds the fee payable on any other application to such Court under the Second Schedule to this Act No. 1, clause (b) or clause (d).

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

16. [Omitted.]

17. Multifarious suits.—Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.

Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, Order II, Rule 6.

18. **Written examination of complainants.**—When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which the police officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act is reduced to writing under the provisions of the Code of Criminal Procedure, the complainant shall pay a fee of one rupee, unless the Court thinks fit to remit such payment.

19. **Exemption of certain documents.**—Nothing contained in this Act shall render the following documents chargeable with any fee:—

(i) Power-of-attorney to institute or defend a suit when executed by an officer, warrant officer, non-commissioned officer or private of the Government's army not in civil employment.

(ii) [Omitted.]

(iii) Written statements called for by the Court after the first hearing of a suit.

(iv) to (vii) [Omitted.]

(viii) Probate of a will, letters of administration, where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed one thousand rupees.

(ix) Application or petition to a Collector or other officer making a settlement of land revenue or to the Revenue Minister, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such settlement.

(ix-a) Applications, appeals to the Income-tax Department in proceedings relating to assessment of income-tax or objections thereto.

(x) Application relating to a supply for irrigation of water belonging to Government.

(xi) Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land revenue by a person holding, under direct engagement with Government, land of which the revenue is settled, but not permanently.

(xii) Application for service of notice of relinquishment of land or of enhancement of rent.

(xiii) Written authority to an agent to distrain.

(xiv) First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce document, or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.

(xv) Bail bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.

(xvi) Petition, application, charge or information respecting any offence when presented, made or laid to or before a Police Officer.

(xvi-a) Petition in a criminal case in which the Police may arrest without warrant.

(xvi-b) Copy to which Article 9 of the First Schedule of this Act applies furnished to an accused person in a warrant case.

(xvii) Petition by a prisoner, or other person in duress or under restraint of any Court or its officers.

(xviii) Complaint of a public servant (as defined in the Ranbir Dand Bidhi) a Municipal Officer, or of an official acting under Birds and Animals Game Protection Rules for breach of such rules.

(xix) Application for permission to cut timber in Government forests, or otherwise relating to such forests.

(xx) Application for the payment of money due by Government to the applicant.

(xxi) [Omitted.]

(xxii) Application for compensation under any law for the time being in force relating to the acquisition of property for public purposes.

(xxiii) [Omitted.]

CHAPTER III-A

PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION

19-A. Relief where too high a court-fee has been paid.—Where any person on applying for the probate of a will or letters of administration has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a court-fee thereon, if, within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Revenue Minister,

and delivers to such authority a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation,

and if such authority is satisfied that a greater fee was paid on the probate or letters than the law required,

the said authority may—

(a) cancel the stamp on the probate or letter if such stamp has not been already cancelled;

(b) substitute another stamp for denoting the court-fee which should have been paid thereon; and

(c) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

19-B. Relief where debts due from a deceased person have been paid out of his estate.—Whenever it is proved to the satisfaction of such authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act,

such authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceedings, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said authority may allow such further time for making the claim as may appear to be reasonable under the circumstances.

19-C. Relief in case of several grants.—Whenever a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

19-D. Probates declared valid as to trust property though not covered by court-fee.—The probate of the will or the letters of administration of the effects of any person deceased heretofore or hereafter granted shall be deemed valid and available by his executors or administrators for recovering, transferring or assigning any movable or immovable property whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court-fee was paid on such probate or letters of administration.

19-E. Provision for case where too low a court-fee has been paid on probate, etc.—Where any person on applying for probate or letters of administration has estimated the estate of the deceased to be of less value than the same has afterwards proved to be and has in consequence paid too low a court-fee thereon, the Revenue Minister may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of the grant, of five times, or if it or they is or are produced after one year from such date, of twenty times, such proper court-fee without any deduction of the court-fee originally paid on such probate or letters:

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court-fee was at first paid on the probate or letters and if the said authority is satisfied that such fee was paid in consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased and without any intention of fraud or to delay the payment of the proper court-fee, the said authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

19-F. Administrator to give proper security before letters stamped under Section 19-E.—In case of letters of administration on which too low a court-fee has been paid at first, the said authority shall not cause the same to be duly stamped in manner aforesaid until the administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained.

19-G. Executors, etc., not paying full court-fee on probates, etc., within six months after discovery of underpayment.—Where too low a court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not within six months after the discovery of the mistake or of any effect not known at the time to have belonged to the deceased, apply to the said authority and pay what is wanting to make up the court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees per cent on the amount of the sum wanting to make up the proper court-fee.

19-H. Notice of applications for probate or letters of administration to be given to Revenue authorities, and procedure thereon.—(1) Where an application for probate or letters of administration is made to any Court other than the High Court, the Court shall cause notice of the application to be given to the Collector.

(2) Where such an application as aforesaid is made to the High Court, the High Court shall cause notice of the application to be given to the Revenue Minister.

(3) The Collector within the local limits of whose revenue jurisdiction the property of the deceased or any part thereof is, may at any time inspect or cause to be inspected, and take or cause to be taken copies of, the record of any case in which application for probate or letters of administration has been made; and if, on such inspection or otherwise, he is of opinion that the petitioner has underestimated the value of the property of the deceased, the Collector may, if he thinks fit, require the attendance of the petitioner (either in person or by agent) and take evidence and inquire into the matter in such manner as he may think fit, and, if he is still of opinion that the value of the property has been underestimated, may require the petitioner to amend the valuation.

(4) If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court before which the application for probate or letters of administration was made, to hold an inquiry into the true value of the property:

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required by Section 98 of the Probate and Administration Act.

(5) The Court, when so moved as aforesaid, shall hold, or cause to be held an inquiry accordingly, and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry.

(6) For the purposes of any such inquiry, the Court or person authorised by the Court to hold the inquiry may examine the petitioner for probate or letters of administration on oath (whether in person or by commission) and may take such further evidence as may be produced to prove the true value of the property. The person authorised as aforesaid to hold the inquiry shall return to the Court the evidence taken by him and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceeding, and the Court may record a finding in accordance with the report, unless it is satisfied that it is erroneous.

(7) The finding of the Court recorded under sub-section (5) shall be final, but shall not bar the entertainment and disposal by the Revenue Minister of any application under Section 19-E.

(8) The Government may make rules for the guidance of Collectors in the exercise of the powers conferred by sub-section (3).

19-I. Payment of court-fees in respect of probates and letters of administration.—(1) No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the Third Schedule, and the Court is satisfied that the fee mentioned in No. 11 of the First Schedule has been paid on such valuation.

(2) The grant of probate or letters of administration shall not be delayed by reason of any motion made by the Collector under Section 19-H, sub-section (4).

19-J. Recovery of penalties, etc.—(1) Any excess fee found to be payable on an inquiry held under Section 19-H, sub-section (6), and any penalty or forfeiture under Section 19-G may, on the certificate of the Revenue Minister, be recovered from the executor or administrator as if it were an arrear of land revenue by any Collector in any part of the State.

(2) The Revenue Minister may remit the whole or any part of any such penalty or forfeiture as aforesaid, or any part of any penalty under Section 19-E or of any court-fee under Section 19-E, in excess of the full court-fee which ought to have been paid.

19-K. Sections 6 and 28 not to apply to probates or letters of administration.—Nothing in Section 6 or Section 28 shall apply to probates or letters of administration.

CHAPTER IV

PROCESS FEES

20. Rules as to costs of processes.—The High Court shall, as soon as may be, make rules as to the following matters:—

(i) the fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil Courts established within the local limits of such jurisdiction;

(ii) the fees chargeable for serving and executing processes issued by the Criminal Court established within such limits in the case of offences other than offences for which Police officers may arrest without a warrant; and

(iii) the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may from time to time alter and add to the rules so made.

Confirmation and publication of rules

All such rules, alterations and additions shall, after being confirmed by the Government, be published in the Government Gazette, and shall thereupon have the force of law.

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

21. Tables of process-fees.—A table in the English and vernacular languages, showing the fees chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

22. Number of peons in District and subordinate Courts.—Subject to rules to be made by the High Court and approved by the Government,

every District Judge and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto.

Number of peons in Small Cause Court

and for the purposes of this section, every Court of Small Causes shall be deemed to be subordinate to the Court of the District Judge.

23. Number of peons in Revenue Court.—Subject to rules to be framed by the Revenue Minister and approved by the Government, every officer performing the functions of a Collector of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him.

24. [Omitted.]

CHAPTER V

OF THE MODE OF LEVYING FEES

25. Collection of fees by stamps.—All fees referred to in Section 3 or chargeable under this Act shall be collected by stamps.

26. Stamps to be impressed or adhesive.—The stamps used to denote any fees chargeable under this Act shall be impressed or adhesive or partly impressed and partly adhesive, as the Government may, by notification in the Government Gazette, from time to time direct.

27. Rules for supply, number, renewal and keeping accounts of stamp.—The Government may, from time to time, make rules for regulating—

(a) the supply of stamps to be used under this Act,

(b) the number of stamps to be used for denoting any fee chargeable under this Act,

(c) the renewal of damaged or spoiled stamps and

(d) the keeping accounts of all stamps used under this Act.

All such rules shall be published in the Government Gazette, and shall thereupon have the force of law.

28. Stamping document inadvertently received.—No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.

But, if any such document is through mistake or inadvertence received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of the High Court, Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; and, on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

29. Amended document.—Where any such document is amended in order merely, to correct a mistake and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

30. Cancellation of stamps.—No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Such officer as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figurehead so as to leave the amount designated on the stamp untouched and the part removed by punching shall be burnt or otherwise destroyed.

CHAPTER VI

MISCELLANEOUS

31. Repayment of fees paid on applications to Criminal Courts.—(i) Whenever an application or petition containing a complaint or charge of an offence, other than an offence for which Police officers may arrest without warrant, is presented to a Criminal Court, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee, paid on such application or petition.

(ii) In the case mentioned in Section 18, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee, if any, paid by the latter for the examination.

(iii) When the complainant has paid fees for serving processes in either of the cases mentioned in the first and second paragraphs of this section, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay such fees to the complainant.

(iv) All fees ordered to be repaid under this section may be recovered as if they were fines imposed by the Court.

32. [Omitted.]

33. Admission in criminal cases of documents for which proper fee has not been paid.—Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in S. 6 shall be deemed to prohibit such filing or exhibition.

34. Sale of stamps.—(1) The Government may from time to time make rules for regulating the sale of stamps to be used under this Act, under a licence on payment of fee to be prescribed, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

(2) All such rules shall be published in the Government Gazette, and shall thereupon have the force of law.

(3) Any person appointed to sell stamps who disobeys any rule made under this section, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

35. Power to reduce or remit fees.—The Government may, from time to time by notification in the Government Gazette reduce or remit in the whole or in any part of the State, all or any of the fees mentioned in the First and Second Schedules to this Act annexed,

and may in like manner cancel or vary such order.

The enactments mentioned in the schedule given below are repealed to the extent specified therein.

SCHEDULE

Number and year.	Title.	Extent of Repeal.
Council Resolution No. 11 of 1901.	Dharmarth Department.	The whole.
Council Resolution No. 8 of 1902.	Exemption from payment of Court and Process Fee and stamp duty.	
Resolution No. 31 of 1892.	Exemption from payment of court-fee and stamp duty in case of Municipalities.	The whole.

SCHEDULE I

Ad valorem fees

Number.		Proper fee.
1. Plaint— Written statement pleading a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to any Civil or Revenue Court.	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Six annas.
	When such amount or value exceeds five rupees, but does not exceed five hundred rupees, for every five rupees or part thereof in excess of five rupees up to one hundred rupees.	Six annas.
	When such amount or value exceeds one hundred rupees, but does not exceed five hundred rupees, for every ten rupees or part thereof in excess of one hundred rupees up to five hundred rupees.	Twelve annas.
	When such amount or value exceeds five hundred rupees, for every ten rupees or part thereof up to one thousand rupees.	One rupee two annas.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees or part thereof in excess of one thousand rupees up to five thousand rupees.	Seven rupees eight annas.
	When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees or part thereof in excess of five thousand rupees up to ten thousand rupees.	Fifteen rupees.

Number.		Proper fee.
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees or part thereof in excess of ten thousand rupees up to twenty thousand rupees.	Twenty-two rupees eight annas.
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees or part thereof in excess of twenty thousand rupees up to thirty thousand rupees.	Thirty rupees.
	When such amount or value exceeds thirty thousand rupees, for every two thousand rupees or part thereof, in excess of thirty thousand rupees up to fifty thousand rupees.	Thirty rupees.
	When such amount or value exceeds fifty thousand rupees for every five thousand rupees or part thereof in excess of fifty thousand rupees.	Thirty rupees.
2. Plaint in a suit for possession under (the Specific Relief Act, section 9.) 3. [*Omitted.*]	... ...	A fee of one half the amount prescribed in the foregoing scale.
4. Application for review of judgment, if presented on or after the ninetieth day from the date of the decree.	... ...	The fee leviable on the plaint or memorandum of appeal.
5. Application for review of judgment, if presented before the ninetieth day from the date of the decree.	... ...	One-half of the fee leviable on the plaint or memorandum of appeal.
6. Copy of translation of a judgment or order not being or having the force of a decree.	(a)—If the amount or value of the subject-matter is fifty or less than fifty rupees.	Four annas.
	(b)—If such amount or value exceeds fifty rupees.	Eight annas.
7. Copy of a decree or order having the force of a decree.	(a)—If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees.	Eight annas.
	(b)—If such amount or value exceeds fifty rupees.	One rupee.
	When such decree or order is made by the High Court.	Four rupees.
8. Copy of any document liable to stamp duty under the State Stamp Act, when left by any party to a suit or proceeding in place of the original withdrawn.	(a)—When the stamp duty chargeable on the original does not exceed eight annas.	The amount of the duty chargeable on the original.
	(b)—In any other case.	Eight annas.
9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report or the like taken out of any Civil or Criminal or Revenue Court or office.		Twelve annas.

Number.		Proper fee
10. [*Omitted.*]		
11. Probate of a will or letters of administration with or without will annexed.	If the amount or value of the property in respect of which the grant of probate or letter is made exceeds one thousand rupees, but does not exceed ten thousand rupees.	Two per cent. on such amount or value.
	When such amount or value exceeds ten thousand rupees but does not exceed fifty thousand rupees.	Two and one-half per cent. on such amount or value.
	When such amount or value exceeds fifty thousand rupees. Provided that when after the grant of a Certificate under the Succession Certificate Act in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.	Three per cent. on such amount or value.
12. Certificate under the Succession Certificate Act.	In any case.	Two per centum on the amount or value of any debt or security specified in the certificate under section 8 of the Act and three per centum of any amount or value on the debt or security to which the certificate is extended under section 10 of the Act. Note.— The amount of a debt is its amount, including interest on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained.
13. Application to the High Court for revisional jurisdiction under section 115 of the Code of Civil Procedure.	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees.	Two rupees.
	When such amount or value exceeds twenty-five rupees.	The fee leviable on a memorandum of appeal
13-A. Application under the Agriculturists' Relief Act to the High Court for revisional jurisdiction under section 115 of the Civil Procedure Code.	In all cases.	Two rupees.
14. [*Omitted.*]		
15. [*Omitted.*]		

SCHEDULE I.

Table of rates of ad valorem fees leviable on the institution of suits.

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee.			When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee.		
Rs.	Rs.	Rs.	A.	P.	Rs,	Rs.	Rs.	A.	P.
...	5	0	6	0	460	470	35	4	0
5	10	0	12	0	470	480	36	0	0
10	15	1	2	0	480	490	36	12	0
15	20	1	8	0	490	500	37	8	0
20	25	1	14	0	500	510	57	6	0
25	30	2	4	0	510	520	58	8	0
30	35	2	10	0	520	530	59	10	0
35	40	3	0	0	530	540	60	12	0
40	45	3	6	0	540	550	61	14	0
45	50	3	12	0	550	560	63	0	0
50	55	4	2	0	560	570	64	2	0
55	60	4	8	0	570	580	65	4	0
60	65	4	14	0	580	590	66	6	0
65	70	5	4	0	590	600	67	8	0
70	75	5	10	0	600	610	68	10	0
75	80	6	0	0	610	620	69	12	0
80	85	6	6	0	620	630	70	14	0
85	90	6	12	0	630	640	72	0	0
90	95	7	2	0	640	650	73	2	0
95	100	7	8	0	650	660	74	4	0
100	110	8	4	0	660	670	75	6	0
110	120	9	0	0	670	680	76	8	0
120	130	9	12	0	680	690	77	10	0
130	140	10	8	0	690	700	78	12	0
140	150	11	4	0	700	710	79	14	0
150	160	12	0	0	710	720	81	0	0
160	170	12	12	0	720	730	82	2	0
170	180	13	8	0	730	740	83	4	0
180	190	14	4	0	740	750	84	6	0
190	200	15	0	0	750	760	85	8	0
200	210	15	12	0	760	770	86	10	0
210	220	16	8	0	770	780	87	12	0
220	230	17	4	0	780	790	88	14	0
230	240	18	0	0	790	800	90	0	0
240	250	18	12	0	800	810	91	2	0
250	260	19	8	0	810	820	92	4	0
260	270	20	4	0	820	830	93	6	0
270	280	21	0	0	830	840	94	8	0
280	290	21	12	0	840	850	95	10	0
290	300	22	8	0	850	860	96	12	0
300	310	23	4	0	860	870	97	14	0
310	320	24	0	0	870	880	99	0	0
320	330	24	12	0	880	890	100	2	0
330	340	25	8	0	890	900	101	4	0
340	350	26	4	0	900	910	102	6	0
350	360	27	0	0	910	920	103	8	0
360	370	27	12	0	920	930	104	10	0
370	380	28	8	0	930	940	105	12	0
380	390	29	4	0	940	950	106	14	0
390	400	30	0	0	950	960	108	0	0
400	410	30	12	0	960	970	109	2	0
410	420	31	8	0	970	980	110	4	0
420	430	32	4	0	980	990	111	6	0
430	440	33	0	0	990	1,000	112	8	0
440	450	33	12	0	1,000	1,100	120	0	0
450	460	34	8	0	1,100	1,200	127	8	0

Rs.	Rs.	Rs.	A.	P.	Rs.	Rs,	Rs.	A.	P.
1,200	1,300	135	0	0	15,500	16,000	982	8	0
1,300	1,400	142	8	0	16,000	16,500	1,005	0	0
1,400	1,500	150	0	0	16,500	17,000	1,027	8	0
1,500	1,600	157	8	0	17,000	17,500	1,050	0	0
1,600	1,700	165	0	0	17,500	18,000	1,072	8	0
1,700	1,800	172	8	0	18,000	18,500	1,095	0	0
1,800	1,900	180	0	0	18,500	19,000	1,117	8	0
1,900	2,000	187	8	0	19,000	19,500	1,140	0	0
2,000	2,100	195	0	0	19,500	20,000	1,162	8	0
2,100	2,200	202	8	0	20,000	21,000	1,192	8	0
2,200	2,300	210	0	0	21,000	22,000	1,222	8	0
2,300	2,400	217	8	0	22,000	23,000	1,252	8	0
2.400	2,500	225	0	0	23,000	24,000	1,282	8	0
2,500	2,600	232	8	0	24,000	25,000	1,312	8	0
2,600	2,700	240	0	0	25,000	26,000	1,342	8	0
2,700	2,800	247	0	0	26,000	27,000	1,372	8	0
2,800	2,900	255	0	0	27,000	28,000	1,402	8	0
2,900	3,000	262	8	0	28,000	29,000	1,432	8	0
3,000	3,100	270	0	0	29,000	30,000	1,462	8	0
3,100	3,200	277	8	0	30,000	32,000	1,492	8	0
3.200	3,300	285	0	0	32,000	34,000	1,522	8	0
3,300	3,400	292	8	0	34,000	36,000	1,552	8	0
3,400	3,500	300	0	0	36,000	38,000	1,582	8	0
3,500	3,600	307	[illegible]	[illegible]	38,000	40,000	1,612	8	0
3,600	3,700	315	[illegible]	[illegible]	40,000	42,000	1,642	8	0
3,700	3,800	322	8	0	42,000	44,000	1,672	8	0
3,800	3,900	330	0	0	44,000	46,000	1,702	8	0
3,900	4,000	337	8	0	46,000	48,000	1,732	8	0
4,000	4,100	345	0	0	48,000	50,000	1,762	8	0
4,100	4,200	352	8	0	50,000	55,000	1,792	8	0
4,200	4,300	360	0	0	55,000	60,000	1,822	8	0
4,300	4,400	367	8	0	60,000	65,000	1,852	8	0
4,400	4,500	375	0	0	65,000	70,000	1,882	8	0
4.500	4,600	382	8	0	70,000	75,000	1,912	8	0
4,600	4,700	390	0	0	75,000	80,000	1,942	8	0
4,700	4,800	397	8	0	80,000	85,000	1,972	8	0
4,800	4,900	405	0	0	85,000	90,000	2,002	8	0
4,900	5,000	412	8	0	90,000	95,000	2,032	8	0
5,000	5,250	427	8	0	95,000	1,00,000	2,062	8	0
5,250	5,500	442	8	0	1,00,000	1,05,000	2,092	8	0
5,500	5,750	457	8	0	1,05,000	1,10,000	2,122	8	0
5,750	6,000	422	8	0	1,10,000	1,15,000	2,152	8	0
6,000	6,250	487	8	0	1,15,000	1,20,000	2,182	8	0
6,250	6,500	502	8	0	1,20,000	1,25,000	2,212	8	0
6,500	6,750	517	8	0	1,25,000	1,30,000	2,242	8	0
6,750	7,000	532	8	0	1,30,000	1,35,000	2,272	8	0
7,000	7,250	547	8	0	1,35,000	1,40,000	2,302	8	0
7,250	7,500	562	8	0	1,40,000	1,45,000	2,332	8	0
7,500	7,750	577	8	0	1,45,000	1,50,000	2,362	8	0
7,750	8,000	592	8	0	1,50,000	1,55,000	2,392	8	0
8,000	8,250	607	8	0	1,55,000	1,60,000	2,422	8	0
8,250	8,500	622	8	0	1,60,000	1,65,000	2,452	8	0
8,500	8,750	637	8	0	1,65,000	1,70,000	2,482	8	0
8,750	9,000	652	8	0	1,70,000	1,75,000	2,512	8	0
9,000	9,250	667	8	0	1,75,000	1,80,000	2,542	8	0
9,250	9,500	682	8	0	1,80,000	1,85,000	2,572	8	0
9,500	9,750	697	8	0	1,85,000	1,90,000	2,602	8	0
9,750	10,000	712	8	0	1,90,000	1,95,000	2,632	8	0
10,000	10,500	735	0	0	1,95,000	2,00,000	2,662	8	0
10,500	11,000	757	8	0	2,00,000	2,05,000	2,692	8	0
11,000	11,500	780	0	0	2,05,000	2,10,000	2,722	8	0
11,500	12,000	802	8	0	2,10,000	2,15,000	2,752	8	0
12,000	12,500	825	0	0	2,15,000	2,20,000	2,782	8	0
12,500	13,000	847	8	0	2,20,000	2,25,000	2,812	8	0
13,000	13,500	870	0	0	2,25,000	2,30,000	2,842	8	0
13,500	14,000	892	8	0	2,30,000	2,35,000	2,872	8	0
14,000	14,500	915	[illegible]	0	2,35,000	2,40,000	2,902	8	0
14,500	15,000	937	8	0	2,40,000	2,45,000	2,932	8	0
15,000	15,500	960	0	0	2,45,000	2,50,000	2,962	8	0

Rs.	Rs.	Rs.	A.	P.	Rs.	Rs.	Rs.	A.	P.
2,50,000	2,55,000	2,992	8	0	3,25,000	3,30,000	3,442	8	0
2,25,000	2,60,000	3,022	8	0	3,30,000	3,35,000	3,472	8	0
2,60,000	2,65,000	3,052	8	0	3,35,009	3,40,000	3,502	8	0
2,65,000	2,70,000	3,082	8	0	3,40,000	3,45,000	3,532	8	0
2,70,000	2,75,000	3,112	8	0	3,45,000	3,50,000	3,562	8	0
2,75,000	2,80,000	3,142	8	0	3,50,000	3,55,000	3,592	8	0
2,80,000	2,85,000	3,172	8	0	3,55,000	3,60 000	3,622	8	0
2,85,000	2,90,000	3,202	8	0	3,60,000	3,65,000	3,652	8	0
2,90,000	2,95,000	3,232	8	0	3,65,000	3,70,000	3,682	8	0
2,95,000	3,00,000	3,262	8	0	3,70000	3,75,000	3,712	8	0
3,00,000	3,05,000	3,292	8	0	3,75,000	3,80,000	3,742	8	0
3,05,000	3,10,000	3,322	8	0	3,80,000	3,85,000	3,772	8	0
3,10,000	3,15,000	3,352	8	0	3,85,000	3,90,000	3,802	8	0
3,15,000	3,20,000	3,382	8	0	3,90,000	3,95,000	3,832	8	0
3,20,000	3,25,000	3,412	8	0	3,95,000	4,00,000	3,862	8	0

And when the amount or value of the subject-matter exceeds Rs. 4,00,000 the proper fee leviable shall be Rs. 3,862 annas eight plus Rs. 30 for each five thousand rupees or part thereof in excess of Rs. 4,00,000.

SCHEDULE II

Fixed Fees

Number.		Proper fee
1. Application or petition.	*(a)*—When presented to any Sub-Registrar or any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings; or when presented to any officer of land revenue by any person holding temporarily settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement; or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement;	Two annas.
	or when presented to any Civil Court other than a principal Civil Court of original jurisdiction, or to any Court of Small Causes or to a Collector or other officers of revenue in relation to any suit or case in which the amount or value of the subject matter is less than fifty rupees; or when presented to any Civil, Criminal or Revenue Court, or Registration office for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, or of any other document on record in such Court or Office.	Two annas.
	(b)—When containing a complaint or charge of any offence other than an offence for which Police Officers may, under the Criminal Procedure	

Number.		Proper fee
	Code, arrest without warrant, and presented to any Criminal Court; or when presented to a Civil, Criminal or Revenue Court or to a Registrar under the Registration Act or to a Collector, or any Revenue-officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate or the head of any Department other than a Minister in his executive capacity, and not otherwise provided for by this Act or to deposit in court revenue or rent; or for determination by a court of the amount of compensation to be paid by landlord to his tenant.	One rupee.
	(c)—When presented to a Minister in his executive capacity and not otherwise provided for by this Act.	Two rupees.
	(d)—When presented to the High Court—	
	(i) Under the Companies Act, 1977, for winding up a Company.	One hundred rupees.
	(ii) Under the same Act for taking some other judicial action.	Five rupees.
	(iii) In all other cases not otherwise provided for by this Act.	Two rupees.
	(e)—When presented or addressed to the Sadar-i-Riyasat * and not otherwise provided for by this Act.	Tworupees.
Exemptions.—		
1. Petitions from widows, orphans and Military Pensioners when submitted to the *Sadar-i-Riyasat* to Council of ministers.		
2. Applications for employment in Government service when sent in response to Government advertisement.		
3. Petitions from pensioners with regard to their pensions.		
4. Applications by Civil and Military Officers regarding questions arising out of the service such as applications for grant of increments, transfer, leave etc.		
5. Applications for scholarships.		
6. Applications for grant-in-aid to schools, Maktabs and Pathshalas.		
7. Applications for grant of loans from Provident Fund for house building or purchase of motor-car.		
8. Petitions from widows and orphans for grant of compassionate allowance.		

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*Section 27 of the J. and K. Constitution as amended in 1965, provides for the appointment of a Governor in the State.

Number.		Proper fee.
9. Applications for enquiries received from contractors and licensees arising out of the operation of such contracts and licenses but not applications for any concessions or remissions.		
10. Applications from the public or public bodies for repairs to drains, roads, ghats, bathing places or stand pipes or for provision of light and water whether in towns or in rural areas.		
11. Applications from Muafidars or Mukarraridars for payment or settlement of their pending claims.		
12. Applications for registration of arms.		
13. Applications made by Officer-in-charge Kashmir Willows to the Customs Officer for purposes of securing attestation of import and export certificate.		
1-A. Application to any Civil Court that records may be called from another Court.	When the Court grants the application and is of opinion that the transmission involves the use of post.	Twelve annas, in addition to any fee leviable on the application under clauses (a) and (b) of Art. 1 to this Schedule
2. Application for leave to sue as a pauper.	...	Eight annas.
3. Application for leave to appeal as pauper.	*(a)*—When presented to a Lower Court.	One rupee.
	(b)—When presented to a District Court or the High Court or the Revenue Minister.	Two rupees.
4. [*Omitted*].		
5. Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.	...	One rupee.
6. Bail-bond or other instrument of obligation given in the absence of any other provision in this Act.	...	One rupee.
7. [*Omitted.*]		
8. [*Omitted.*]		
9. [*Omitted.*]		
10. Mukhtarnama or Wakalatnama or any paper signed by an Advocate signifying or intimating that he is retained for a party.	When presented for the conduct of any one case –	
	(a)—to the Sadar-i-Riyasat, the High Court or a Minister.	Two rupees.
	(b)—to the District or Sessions Court.	One rupee.
	(c)—to any other Civil, Criminal or Revenue Court or Revenue office.	One rupee.
11. Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree, and is presented –	*(a)*—to the Sadar-i-Riyasat or the High Court, or a Minister.	Four rupee
	(b) to the District or Sessions Court.	One rupee.
	(c)—to any other Civil or Revenue Court or Revenue Office.	One rupee.
12. [*Omitted.*]		
13. [*Omitted.*]		
14. [*Omitted.*]		

Number		Proper fee
15. [*Omitted.*]		
16. [*Omitted.*]		
17. Plaint or memorandum of appeal in each of the following suits:—		
i. *(a)* to alter or set aside a summary decision or order of a Civil Court.	....	**Ten rupees.**
(b) to alter or set aside a summary decision or order of a Revenue Court, not otherwise provided for.	....	**Two rupees.**
ii. to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates;		
iii. to obtain a declaratory decree where no consequential relief is prayed;	....	**Ten rupees.**
iv. to set aside an award.		
v. to set aside an adoption.		
vi. every other suit where it is not possible to estimate at a money value the subject-matter in dispute, and which is not otherwise provided for by this Act.	....	**Ten rupees.**
vii. an appeal from a preliminary decree passed under rules 13, 15, 16 or 18 (b) of order XX of the Code of Civil Procedure.		
18. Application under Schedule II, Para. 17, of the Code of Civil Procedure.		
19. Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908.	....	**Ten rupees.**
20. [*Omitted.*]		
21. Plaint or memorandum of appeal in a suit for restitution of conjugal rights or custody of a wife.	....	**Five rupees.**
22. Plaint or memorandum of appeal in a suit by a reversioner under the Customary Law for a declaration in respect of an alienation of ancestral land.	....	**Twenty rupees.**

SCHEDULE III

(See section 191)

FORM OF VALUATION (TO BE USED WITH SUCH MODIFICATIONS, IF ANY, AS MAY BE NECESSARY)

IN THE COURT OF

Reprobate of the Will of , *(or admission of*
the property and credits of *,)deceased.*

I {Solemnly affirm / make oath}

and say that I am the executor (or one of the executors or one of the next kin)of , deceased and that I have truly set forth in Annexure A to this affidavit all the property and credits of which the above named deceased died possessed or was entitled to at the time of his death, and which have come, or are likely to come, to my hands.

2. I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct.

3. I further say that the said assets, exclusive only of such last mentioned items, but inclusive of all rents, interest, dividends and increased values since the date of the death of the said deceased, are under the value of,

ANNEXURE A

	Rs.	A.	P.
VALUATION OF THE MOVABLE AND IMMOVABLE PROPERTY OF , DECEASED.			
Cash in the house and at the banks, house-hold goods, wearing-apparel, books, plate, jewels, etc. *(State estimated value according to best of Executor's or Administrator's belief.)*			
Property in Government securities transferable at the Public Debt Office. *(State description and value of the price of the day; also the interest separately, calculating it to the time of making the application.)*			
Immovable property consisting of *(State description giving in the case of houses, the assessed value, if any, and the number of years, assessment, the market-value is estimated at, and, in the case of land, the area, the market-value and all rents that have accrued.)*			
Leasehold property * * * * * * *(If the deceased held any leases for years determinable, state the number of years' purchase the profit rents are estimated to be worth and the value of such, inserting separately arrears due at the date of death and all rents received or due since that date to the time of making the application.)*			
Property in public companies, *(State the particulars and the value calculated at the price of the day; also the interest separately, calculating it to the time of making the application.)*			
Policy of insurance upon life, money out on mortgage and other securities, such as bonds, mortgages, bills, notes and other sucurities for money. *(State the amount of the whole; also the interest separately, calculated it to the time of making the application.)*			
Book debts ... *(Other than bad.)* ...			
Stock in trade ... *((State the estimated value, if any.)* ...			
Other property not comprised under the forgoing heads ... *State the estimated value, if any.)* ...			
Total ...			
Deduct amount shown in Annexure B not subject to duty ...			
Net Total ...			

ANNEXURE B

SCHEDULE OF DEBTS, ETC.

	Rs.	A.	P.
Amount of debts due and owing from the deceased, payable by law out of the estate ...			
Amount of funeral expenses ...			
Amount of mortgage incumbrances ...			
Property held in trust not beneficially or with general power to confer a beneficial interest ...			
Other property not subject to duty ...			
Total ...			

[THE] KERALA COURT-FEES AND SUITS VALUATION ACT, 1959

(KERALA ACT 10 OF 1960)

[The text of the Act printed here is as amended by President's Act 8 of 1966 and Kerala Act 12 of 1969]

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[THE] KERALA COURT-FEES AND SUITS VALUATION ACT, 1959

(KERALA ACT X OF 1960)

[27th July, 1960.]

An Act to amend and consolidate the law relating to court-fees and valuation of suits in the State of Kerala.

WHEREAS it is necessary and expedient to amend and consolidate the law relating to court-fees and valuation of suits in the State of Kerala;

BE it enacted in the Tenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called THE KERALA COURT-FEES AND SUITS VALUATION ACT, 1959.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date[*] as the Government may, by notification in the Gazette, appoint.

2. Application of the Act.—(1) The provisions of this Act shall not apply to documents presented or to be presented before an officer serving under the Central Government.

(2) Where any other law contains provisions relating to the levy of fee in respect of proceedings under such other law, the provisions of this Act relating to the levy of fee in respect of such proceedings shall apply subject to the said provisions of such other law.

3. Definitions.—In this Act, unless the context otherwise requires,

(i) "appeal" includes a cross-objection;

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[*] The date so appointed is the 1st February, 1962 — See Ker Gaz., Extra., dated 19-1-1962, Notifn. No. 10463/C2/60-1/Law.

(ii) "Court" means any Civil, Revenue, or Criminal Court and includes a Tribunal or other authority having jurisdiction under any special or local law to decide questions affecting the rights of parties;

(iii) "prescribed" means prescribed by rules made under this Act; and

(iv) expressions used and not defined in this Act or in the Interpretation and General Clauses Act, 1125 [Act VII of 1125], but defined in the Code of Civil Procedure 1908 [Central Act V of 1908], shall have the meanings respectively assigned to them in the said Code.

CHAPTER II

LIABILITY TO PAY FEE

4. **Levy of fees in Courts and public offices.**—No document which is chargeable with fee under this Act shall—

(i) be filed, exhibited or recorded in, or be acted on or furnished by, any Court including the High Court, or

(ii) be filed, exhibited or recorded in any public office or be acted on or furnished by any public officer,

unless in respect of such document there be paid a fee of an amount not less than that indicated as chargeable under this Act :

Provided that whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is in the opinion of the Court necessary to prevent a failure of justice, nothing contained in this section shall be deemed to prohibit such filing or exhibition.

5. **Fees on documents inadvertently received.**—When a document on which the whole or any part of the fee prescribed by this Act has not been paid is produced or has, through mistake or inadvertence, been received in any Court or public office, the Court or the head of the office may, in its or his discretion at any time, allow the person by whom such fee is payable or any interested party to pay the fee or part thereof, as the case may be, within such time as may be fixed; and upon such payment, the document shall have the same force and effect as if the full fee had been paid in the first instance.

6. **Multifarious suits.**—(1) In any suit in which separate and distinct reliefs are sought based on the same cause of action, the plaint shall be chargeable with a fee on the aggregate value of the reliefs :

Provided that, if a relief is sought only as ancillary to the main relief, the plaint shall be chargeable only on the value of the main relief.

(2) Where more reliefs than one based on the same cause of action are sought in the alternative in any suit, the plaint shall be chargeable with the highest of the fees leviable in respect of any one of the reliefs.

(3) Where a suit embraces two or more distinct and different causes of action and separate reliefs are sought based on them, either alternatively or cumulatively, the plaint shall be chargeable with the aggregate amount of the fees with which plaints would be chargeable under this Act if separate suits were instituted in respect of the several causes of action :

Provided that, where the causes of action in respect of reliefs claimed alternatively against the same person arise out of the same transaction, the plaint shall be chargeable only with the highest of the fees chargeable on them.

Nothing in the sub-section shall be deemed to affect any power conferred upon a Court under Rule 6 of Order II of the Code of Civil Procedure, 1908 (Central Act V of 1908).

(4) The provisions of this section shall apply mutatis mutandis to memoranda of appeals, applications, petitions and written statements.

Explanation.—For the purpose of this section, a suit for possession of immovable property and for mesne profits shall be deemed to be based on the same cause of action.

7. Determination of market value.—(1) Save as otherwise provided, where the fee payable under this Act depends on the market value of any property, such value shall be determined as on the date of presentation of the plaint.

(2) The market value of land in suits falling under Sections 25 (a), 25 (b), 27 (a), 29, 30, 37 (1), 37 (3), 38, 45 or 48 shall be deemed to be ten times the annual gross profits of such land where it is capable of yielding annual profits minus the assessment if any made to the Government.

(3) The market value of a building shall in cases where its rental value has been entered in the registers of any local authority, be ten times such rental value and in other cases the actual market value of the building as on the date of the plaint.

(4) Where the subject-matter of the suit is only a restricted or fractional interest in a property, the market value of the property shall be deemed to be the value of the restricted or fractional interest and the value of the restricted or fractional interest shall bear the same proportion to the market value of the absolute interest in such property as the net income derived by the owner of the restricted or fractional interest bears to the total net income from the property.

8. Set off or counter claim.—A written statement pleading a set off or counter claim shall be chargeable with fee in the same manner as a plaint.

9. Documents falling under two or more descriptions.—Subject to the provisions of the last preceding section, a document falling within two or more descriptions in this Act shall, where the fees chargeable thereunder are different, be chargeable only with the highest of such fees·

Provided that, where one of such descriptions is special and another general, the fee chargeable shall be the fee appropriate to the special description.

CHAPTER III

DETERMINATION OF FEE

10. Statement of particulars of subject-matter of suit and plaintiff's valuation thereof.—In every suit in which the fee payable under this Act on the plaint depends on the market value of the subject-matter of the suit, the plaintiff shall file with the plaint, a statement in the prescribed form, of particulars of the subject-matter of the suit and his valuation thereof unless such particulars and the valuation are contained in the plaint.

11. Decision as to proper fee in the High Court.—Where in a suit instituted in the High Court, in which a fee is payable under this Act, any difference arises between the officer whose duty it is to see that proper fee is paid and any party as to the necessity of paying a fee or the amount thereof, the question shall be referred to the Taxing Officer who shall decide the same:

Provided that, if in the opinion of the Taxing Officer, the question is one of general importance, he may refer it to the Chief Justice of the High Court or such Judge or Judges of the High Court as the Chief Justice shall appoint, either generally or specially in this behalf:

Provided further that, when the case comes up for disposal before the Court, the decision of the Taxing Officer may be reviewed by the Court.

Section 10 — Note 1

(1) Determination of Court-fee — Allegations in the plaint and substance of the suit determine Court-fees — Truth or falsity of allegations in plaint need not be considered for valuation of suit. AIR 1967 Ker 176 (177) = 1967 Ker LT 1149.

12. Decision as to proper fee in other Courts.—(1) In every suit instituted in any Court other than the High Court, the Court shall before ordering the plaint to be registered, decide on the materials and allegations contained in the plaint and on the materials contained in the statement, if any, filed under Section 10, the proper fee payable thereon, the decision being however subject to review, further review and correction in the manner specified in the succeeding sub-sections.

(2) Any defendant may, by his written statement filed before the first hearing of the suit or before evidence is recorded on the merits of the claim but, subject to the next succeeding sub-section, not later, plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim. If the Court decides that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the Court shall fix a date before which the plaint shall be amended in accordance with the Court's decision and the deficit fee shall be paid. If the plaint be not amended or if the deficit fee be not paid within the time allowed, the plaint shall be rejected and the Court shall pass such order as it deems just regarding costs of the suit.

(3) A defendant added after issues have been framed on the merits of the claim may, if the Court so permits, plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim, and if the Court finds that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the Court shall follow the procedure laid down in sub-section (2).

Explanation.—Nothing in this sub-section shall apply to a defendant added as a successor or a representative in interest of a defendant who was on record before issues were framed on the merits of the claim and who had an opportunity to file a written statement pleading that the subject-matter of the suit was not properly valued or that the fee paid was not sufficient.

(4) (a) Whenever a case comes up before a Court of Appeal, it shall be lawful for the Court, either of its own motion or on the application of any of the parties, to consider the correctness of any order passed by the lower Court affecting the fee payable on the plaint or in any other proceeding in the lower Court and determine the proper fee payable thereon.

Explanation.—A case shall be deemed to come before a Court of Appeal even if the appeal relates only to a part of the subject-matter of the suit.

(b) If the Court of Appeal decides that the fee paid in the lower Court is not sufficient, the Court shall require the party liable to pay the deficit fee within such time as may be fixed by it.

(c) If the deficit fee is not paid within the time fixed and the default is in respect of a relief which has been dismissed by the lower Court and which the appellant seeks in appeal, the appeal shall be dismissed, but if the default is in respect of a relief which has been decreed by the lower Court, the deficit fee shall be recoverable as if it were an arrear of land revenue.

(d) If the fee paid in the lower Court is in excess, the Court shall direct the refund of the excess to the party who is entitled to it.

(5) All questions as to value for the purpose of determining the jurisdiction of Courts arising on the written statement of a defendant shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim.

Explanation.—In this section, the expression "merits of the claim" refers to matters which arise for determination in the suit, not being matters relating to the frame of the suit, misjoinder of parties and causes of action, the jurisdiction of the Court to entertain or try the suit or the fee payable but inclusive of matters arising on pleas of res judicata, limitation and the like.

13. **Additional fee on issues framed.**—Where a party becomes liable to pay additional fee by reason of an issue framed in the suit, the provisions of the last foregoing section shall apply to the determination and levy of such additional fee subject to the modification that where the party liable does not pay such additional fee within the time allowed, the Court shall strike off the issue and proceed to hear and decide the other issues in the case.

14. **Relinquishment of portion of claim.**—A plaintiff who has been called upon to pay additional fee may relinquish a part of his claim and apply to have the plaint amended so that the fee paid would be adequate for the claim made in the plaint as amended. The Court shall allow such application on such terms as it considers just and shall proceed to hear and decide the claim made in the plaint as amended, provided that the plaintiff shall not be permitted at any later stage of the suit to add to the claim the part so relinquished.

15. **Fee payable on written statements.**—Where fee is payable under this Act on a written statement filed by a defendant, the provisions of Section 12 shall apply to the determination and levy of the fee payable on such written statement, the defendant concerned being regarded for the said purpose as the plaintiff and the plaintiff or the co-defendant or the third party against whom the claim is made being regarded as the defendant.

16. **Fee payable on appeals, etc.**—The provisions of Sections 10 to 14 relating to the determination and levy of fee on plaints in suits shall apply mutatis mutandis to the determination and levy of fee in respect of a memorandum of appeal, cross-objection or other proceeding in second appeal or in an appeal under Section 5 of the Kerala High Court Act, 1958.

17. **Fee payable on petitions, applications, etc.**—The provisions of Sections 10 to 14 shall apply mutatis mutandis to the determination and levy of fee in respect of petitions, applications and other proceedings in Courts in the same way as they apply to the determination and levy of fee on plaints in suits.

18. **Curt-fee Examiners.**—(1) The High Court may depute officers to be designated Court-fee Examiners to inspect the records of subordinate Courts with a view to examine the correctness of representations made to and orders passed by, Courts on questions relating to valuation of subject-matter and sufficiency of fee in respect of proceedings in such Courts and the Government shall, from time to time, fix the number of officers who may be so deputed to inspect the records.

(2) Questions raised in reports submitted by such Court-fee Examiners and relating to any suit, appeal or other proceeding pending in a Court shall be heard and decided by such Court; and for the avoidance of doubt it is hereby declared that in hearing and deciding a question raised in any such report, it shall be lawful for the Court to review an earlier decision given by the Court on the same question.

19. **Inquiry and commission.**—For the purpose of deciding whether the subject-matter of a suit or other proceeding has been properly valued or whether the fee paid is sufficient, the Court may hold such inquiry as it considers proper and may, if it thinks fit, issue a commission to any proper person directing him to make such local or other investigation as may be necessary and to report thereon to the Court and the Court may pass appropriate orders as to costs.

20. **Notice to Government.**—In any inquiry relating to the fee payable on a plaint, written statement, petition, memorandum of appeal or other document, or to the valuation of the subject-matter of the claim to which the plaint, written statement, petition, memorandum of appeal or other document relates, in so far as such valuation affects the fee payable, the Court may, if it considers it just or

necessary to do so, give notice to the Government or to such officer as may be prescribed by the Government; and where such notice is given, the Government shall be deemed to be a party to the suit or other proceeding as respects the determination of the question or questions aforesaid; and the Court's decision on such question or questions shall, when it passes a decree or final order in such suit or proceeding, be deemed to form part of such decree or final order.

CHAPTER IV

COMPUTATION OF FEE

21. **Fee how reckoned.**—The fee payable under this Act shall be determined or computed in accordance with the provisions of this Chapter, Chapter VI, Chapter IX and Schedules I and II.

22. **Suits for money.**—In a suit for money including a suit for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically), fee shall be computed on the amount claimed.

23. **Suits for maintenance and annuities.**—In the suits hereinafter mentioned, fee shall be computed as follows :—

(a) In a suit for maintenance, on the amount claimed to be payable for one year;

(b) in a suit for enhancement or reduction of maintenance, on the amount by which the annual maintenace is sought to be enhanced or reduced;

(c) in a suit for annuities or other sums payable periodically, on five times the amount claimed to be payable for one year :

Provided that, where the annuity is payable for less than five years, the fee shall be computed on the aggregate of the sums payable :

Provided further that, a suit for enhancement of maintenance shall be instituted in a Court which will have jurisdiction to receive a suit for maintenance at the enhanced rate claimed and one for reduction of maintenance shall be instituted in a Court which will have jurisdiction to receive a suit for maintenance at the rate which is sought to be reduced.

24. **Suits for moveable property.**—(1) In a suit for moveable property other than documents of title, fee shall be computed—

(a) where the subject-matter has a market value, on such value; or

(b) where the subject-matter has no market value, on the amount at which the relief sought is valued in the plaint.

(2) (a) In a suit for possession of documents of title fee shall be computed on one-fourth of the amount or of the market value of the property secured by the document—

(i) where the plaint alleges denial of the plaintiff's title to the money or the property secured by the document, or

(ii) where an issue is framed regarding the plaintiff's title to the money or the property secured by the document :

Provided that, where the allegation in the plaint or the issue framed relates only to a portion of the amount or property, fee shall be computed on one-fourth of such portion of the amount or on one-fourth of the market value of such portion of the property.

(b) In a suit for possession of documents of title where the plaintiff's title to the money or the property secured by the document is not denied, fee shall be computed on the amount at which the relief sought is valued in the plaint.

Explanation I.—The expression "document of title" means a document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, in any property.

Explanation II.—When the main document of title has been valued and court-fee paid on that basis, no additional court-fee shall be leviable on documents of title which are subsidiary title deeds.

25. Suits for declaration.—In a suit for a declaratory decree or order, whether with or without consequential relief, not falling under Section 26—

(a) where the prayer is for a declaration and for possession of the property to which the declaration relates, fee shall be computed on the market value of the property or on rupees three hundred, whichever is higher;

(b) where the prayer is for a declaration and for consequential injunction and the relief sought is with reference to any immovable property, fee shall be computed on one-half of the market value of the property or on rupees three hundred whichever is higher;

(c) where the prayer relates to the plaintiff's exclusive right to use, sell, print or exhibit any mark, name, book, picture, design or other thing and is based on an infringement of such exclusive right, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees four hundred, whichever is higher;

(d) in other cases—

(i) where the subject-matter of the suit is capable of valuation, fee shall be computed on the market value of the property, and

(ii) where the subject-matter of the suit is not capable of valuation, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees three hundred whichever is higher.

26. Adoption suits.—In a suit for a declaration in regard to the validity or invalidity of an adoption or the factum of an adoption, fee shall be payable at the following rates :

(i) In a Munsiff's Court	Rupees fifty.
(ii) In a Sub-Court or a District Court	Rupees one hundred if the market value of the property involved in or affected by the relief is Rs. 10,000 or less and rupees five hundred if it is above Rs. 10,000.

27. Suits for injunction.—In a suit for injunction—

(a) where the relief sought is with reference to any immovable property, and

(i) where the plaintiff alleges that his title to the property is denied, or

(ii) where an issue is framed regarding the plaintiff's title to the property,

fee shall be computed on one-half of the market value of the property or on rupees one hundred and fifty, whichever is higher;

(b) where the prayer relates to the plaintiff's exclusive right to use, sell, print or exhibit any mark, name, book, picture, design or other thing and is based on an infringement of such exclusive right, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees two hundred, whichever is higher;

(c) in any other case whether the subject-matter of the suit has a market value or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees one hundred and fifty, whichever is higher.

28. Suits relating to trust property.—In a suit for possession or joint possession of trust property or for a declaratory decree, whether with or without consequential relief in respect of it, between trustees or rival claimants to the office of trustee or between a trustee and a person who has ceased to be trustee, fee shall be computed on one-fifth of the market value of the property subject to a maximum fee of rupees two hundred or where the property has no market value, on rupees one thousand :

Provided that, where the property does not have a market value, value for the purpose of determining the jurisdiction of Courts shall be such amount as the plaintiff shall state in the plaint.

Explanation.—For the purpose of this section, property comprised in a Hindu, Muslim or other religious or charitable endowment shall be deemed to be trust property and the manager of any such property shall be deemed to be the trustee thereof.

29. **Suits for possession under the Specific Relief Act, 1877.**—In a suit for possession of immovable property under Section 9 of the Specific Relief Act, 1877 (Central Act I of 1877),* fee shall be computed on one-third of the market value of the property or on rupees one hundred and fifty, whichever is higher.

[*] Now see Specific Relief Act, 1963 (47 of 1963) (1-3-1964).

30. **Suits for possession not otherwise provided for.**—In a suit for possession of immovable property not otherwise provided for, fee shall be computed on the market value of the property or on rupees three hundred, whichever is higher.

31. **Suits relating to easements.**—In a suit relating to an easement, whether by the dominant or the servient owner, or to a licence as defined in the law relating to easements for the time being in force, fee shall be computed on the amount at which the relief sought is valued in the plaint, or on rupees three hundred, whichever is higher :

Provided that, where compensation is claimed besides other relief relating to such easement or licence, fee shall be paid on the amount claimed as compensation in addition to the fee payable on such other relief.

32. **Pre-emption suits.**—In a suit to enforce a right of pre-emption fee shall be computed on the amount of the consideration for the sale which the pre-emptor seeks to avoid or on the market value, whichever is less.

33. **Suits relating to mortgages.**—(1) In a suit to recover the money due on a mortgage, fee shall be computed on the amount claimed.

Explanation.—It is immaterial that sale of the mortgaged property is not prayed for.

(2) Where, in such suit, the holder of a prior mortgage or charge is impleaded and he prays in his written statement that the amount due on his mortgage or charge be determined and that the decree contains a direction for the payment of such amount to him, fee shall be payable on the written statement computed on the amount claimed :

Provided that, where the holder of the mortgage or charge has paid a fee in any other proceeding on the claim to which his written statement relates, credit shall be given for the fee paid by him in such other proceeding.

(3) Where, in such a suit, the mortgaged property is sold and the holder of a prior or subsequent mortgage or charge applies for payment to him, out of the sale proceeds, of the amount due on his mortgage or charge, such holder of the prior or subsequent mortgage or charge shall pay on his application a fee computed on the amount claimed by him :

Provided that, where such holder of the mortgage or charge is a party to the suit in which the sale was held and has paid fee on the written statement filed by him in the suit, no fee shall be payable by him on the application for payment out of the sale proceeds :

Provided further that, where the holder of the mortgage or charge, not being a party to the suit in which the sale is held, has paid a fee in any other proceeding on the claim to which his application relates, credit shall be given for the fee paid by him in such other proceeding.

(4) In a suit by a co-mortagee for the benefit of himself and other co-mortgagees, fee shall be computed on the amount claimed on the entire mortgage:

Provided that, where a co-mortgagee impleaded as defendant in such suit claims on the entire mortgage a larger sum than is claimed in the plaint, the difference between the fee computed on the entire sum claimed in such defendant's written statement and the fee computed on the entire sum claimed in the plaint shall be payable on the written statement.

Explanation.—Nothing in this sub-section shall be construed as affecting the law of limitation.

(5) (a) In a suit by a sub-mortgagee to recover the amount claimed on the sub-mortgage by sale of the mortgagee's interest in the mortgaged property, fee shall be computed on the amount claimed under the sub-mortgage.

(b) In a suit by a sub-mortgagee, if the prayer is for the sale of the property mortgaged to the original mortgagee and the original mortgagor is also impleaded as a defendant, fee shall be computed on the entire amount claimed on the original mortgage which is sub-mortgaged to him.

(6) Where the holder of a prior or subsequent mortgage or charge is impleaded in a suit by a co-mortgagee to which sub-section (4) applies, or in a suit by a sub-mortgagee to which sub-section (5) applies, the provisions of sub-sections (2) and (3) shall apply mutatis mutandis to a written statement or an application filed by such holder of mortgage or charge.

(7) Where the original mortgagee who is impleaded in a suit to which the provisions of sub-section (5) (b) apply claims on the mortgage sub-mortgaged by him a larger amount than is claimed in the plaint, the provisions of sub-section (4) shall apply mutatis mutandis to the written statement of such mortgagor.

(8) In a suit against a mortgagee for redemption of a mortgage, fee shall be computed on the amount due on the mortgage as stated in the plaint or on one-fourth of the principal amount secured under the mortgage, whichever is higher:

Provided that, where the amount due on the mortgage is found to be more than the amount on which fee has been paid by the plaintiff, no decree shall be passed until the deficit fee is paid:

Provided further that, in the case of a usufructuary or anomalous mortgage, if the plaintiff prays for redemption as well as for accounts of surplus profits, fee shall be levied separately on the relief for accounts as in a suit for accounts.

(9) In a suit by a mortgagee to foreclose the mortgage or, where the mortgage is made by conditional sale, to have the sale declared absolute, fee shall be computed on the amount claimed in the plaint by way of principal and interest.

34. **Suits relating to kanams.**—(1) A suit by a landlord for recovery of possession of property transferred by way of kanam or kanam-kuzhikanam shall be deemed to involve the reliefs of redemption and ejectment, and fee shall be levied in respect of each of the reliefs, that is to say on the kanartham in respect of the relief of redemption and on one year's michavaram or rent in respect of the relief of ejectment.

(2) If in any such suit, arrears of michavaram or rent or damages or both are also sought to be recovered, fee shall be levied also on the amount of such arrears or damages or both:

Provided that, where the plaintiff seeks to set off the kanartham and the value of the improvements due by him to the defendant against arrears of michavaram or rent due to him, fee shall be levied only on the balance claimed; and if the amount ascertained to be due to him exceeds the amount as estimated by the plaintiff, no decree shall be passed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the amount so ascertained is paid. If the additional fee is not paid within such time as the Court may fix, the decree shall be limited to the amount to which the fee paid extends.

35. Suits for accounts.—(1) In a suit for accounts, fee shall be computed on the amount sued for as estimated in the plaint or on rupees three hundred whichever is higher.

(2) Where the amount payable to the plaintiff as ascertained in the suit is in excess of the amount as estimated in the plaint, no decree directing payment of the amount as so ascertained shall be passed until the difference between the fee actually paid and the fee that would have been payable had the suit comprised the whole of the amount so ascertained, is paid. If the additional fee is not paid within such time as the Court may fix, the decree shall be limited to the amount to which the fee paid extends.

(3) Where in any such suit it is found that any amount is payable to the defendant, no decree shall be passed in his favour until he pays the fee due on the amount.

36. Suits for dissolution of partnership.—(1) In a suit for dissolution of partnership and accounts or for accounts of dissolved partnership, fee shall be computed on the value of the plaintiff's share in the partnership as estimated by the plaintiff.

(2) If the value of the plaintiff's share as ascertained in the suit exceeds the value as estimated in the plaint no decree, or where there has been a preliminary decree, no final decree, shall be passed in favour of the plaintiff, no payment shall be made out of the assets of the partnership and no property shall be allotted as for the plaintiff's share, until the difference between the fee actually paid and the fee that would have been payable had the suit comprised the whole of the value so ascertained, is paid.

(3) No final decree shall be passed, no money shall be paid and no allotment of property shall be made in favour of a defendant in any such suit as, for or on account of, his share of the assets of the partnership, until the fee computed on the amount or value of his share of the assets of the partnership is paid.

37. Partition suits.—(1) In a suit for partition and separate possesssion of a share of joint family property or of property owned, jointly or in common, by a plaintiff who has been excluded from possession of such property, fee shall be computed on the market value of the plaintiff's share.

(2) In a suit for partition and separate possession of joint family property or property owned, jointly or in common, by a plaintiff who is in joint possession of such property, fee shall be paid at the following rates :—

When the plaint is presented to—

(i) a Munsiff's Court	Rupees twenty.
(ii) a Sub-Court or a District Court	Rupees one hundred if the value of plaintiff's share is Rupees 10,000 or less; and Rupees two hundred if the value is above Rs. 10,000.

Section 37 — Note 1

(1) Court-fee on partition suits — Section 37 (1) applies only if the plea is that plaintiff is excluded from possession of property — Mere exclusion from enjoyment of receipt of income from property or even exclusive use of property by co-sharer does not amount to exclusion of co-sharer so as to attract Section 37 (1) but only Section 37 (2). AIR 1967 Ker 176 (177) = 1967 Ker LT 1149.

(2) Decree in a partition suit — Decree directing defendent to pay mesne profits — Appeal by defendant — Relief against direction to pay mesne profits claimed — Mesne profits not falling under Order 20, Rule 12 — Mesne profits component part of the decree — Ad valorem Court-fee not payable — Court-fee held payable under Schedule 2, Article 17-B Madras Court Fees Act as the claim arose from a suit for partition. 1968 Ker LJ 549 (551) = 1968 Ker LR 598 (601). (Case decided against Court-fees Act 1870 as amended in Madras.)

(3) Where in a suit falling under sub-section (1) or sub-section (2), a defendant claims partition and separate possession of his share of the property, fee shall be payable on his written statement computed on half the market value of his share or at half the rates specified in sub-section (2), according as such defendant has been excluded from possession or is in joint possesssion.

(4) Where, in a suit falling under sub-section (1) or sub-section (2), the plaintiff or the defendant seeks cancellation of decree or other document of the nature specified in Section 40, separate fee shall. be payable on the relief of cancellation in the manner specified in that section.

38. Suits for joint possession.—In a suit for joint possession of joint family property or of property owned, jointly or in common, by a plaintiff who has been excluded from possession, fee shall be computed on the market value of the plaintiff's share.

39. Administration suits.—(1) In a suit for the administration of an estate, fee shall be levied on the plaint at the rates specified in Section 50.

(2) Where any amount or share or part of the assets of the estate is found due to the plaintiff, and the fee computed on the amount or the market value of such share or part of the assets exceeds the fee paid on the plaint, no payment shall be made and no decree directing payment of money or confirming title to such share or part of the asset shall be passed until the difference between the fee actually paid and the fee computed on the amount or value of the property is paid.

(3) No payment shall be made, no decree directing payment of money or confirming title to any share or part of the assets of the estate shall be passed in favour of a defendant in a suit for administration, until the fee computed on the amount or value of such share or part of such assets is paid by such defendant.

(4) In computing the fee payable by a plaintiff or by a defendant under sub-section (2) or sub-section (3), credit shall be given for the fee, if any, paid by such plaintiff or by such defendant in any other proceeding in respect of the claim on the basis of which such amount or share or part of the assets of the estate becomes due to such plaintiff or to such defendant.

40. Suits for cancellation of decrees, etc.—(1) In a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject-matter of the suit, and such value shall be deemed to be—

if the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed;

if a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property.

(2) If the decree or other document is such that the liability under it cannot be split up and the relief claimed relates only to a particular item of property belonging to the plaintiff or to the plaintiff's share in any such property, fee shall be computed on the value of such property or share or on the amount of the decree, whichever is less.

Explanation.—A suit to set aside an award shall be deemed to be a suit to set aside a decree within the meaning of this section.

Section 40 — Note 1

(1) Decree or other document for property sought to be cancelled — It is market value (in absence of any indication to contrary) of property that counts for Court-fee purposes and not value as shown in decree or other document. 1966 Ker LJ 1109 (1110).

41. Suits to set aside attachment, etc.—(1) In a suit to set aside an attachment by a Civil or Revenue Court of any property, movable or immovable, or of any interest therein or of any interest in revenue, or to set aside an order passed on an application made to set aside the attachment, fee shall be computed on the amount for which the property was attached or on one-fourth of the market value of the property attached, whichever is less.

(2) In a suit to set aside any other summary decision or order of a Civil or Revenue Court, if the subject-matter of the suit has a market value, fee shall be computed on one-fourth of such value, and in other cases, fee shall be payable at the rates specified in Section 50.

Explanation.—For the purpose of this section, the Registrar of Co-operative Societies shall be deemed to be a Civil Court.

42. Suits for specific performance.—In a suit for specific performance, whether with or without possession, fee shall be payable—

(a) in the case of a contract of sale, computed on the amount of the consideration;

(b) in the case of a contract of mortgage, computed on the amount agreed to be secured by the mortgage;

(c) in the case of a contract of lease, computed on the aggregate amount of the fine or premium, if any, and of the average of the annual rent agreed to be paid;

(d) in the case of a contract of exchange, computed on the amount of the consideration, or as the case may be, on the market value of the property sought to be got in exchange;

(e) in other cases, where the consideration for the promise sought to be enforced has a market value, computed on such market value, or where such consideration has no market value, at the rates specified in Section 50.

43. Suits between landlord and tenant.—(1) In the following suits between landlord and tenant, namely :—

(a) for enhancement of rent;

(b) for recovery of immovable property from which a tenant has been illegally ejected by the landlord;

(c) for establishing or disproving a right of leasehold;

fee shall be levied on the amount of rent for the immovable property to which the suit relates, payable for the year next before the date of presenting the plaint.

(2) In a suit for recovery of immovable property from a tenant including a tenant holding over after the termination of a tenancy, fee shall be computed on the premium, if any, and on the rent payable for the year next before the date of presenting the plaint.

Explanation.—Rent includes also damages for use and occupation payable by a tenant holding over.

(3) In a suit for reduction or apportionment of rent, fee shall be levied on the amount of rent sought to be reduced or on the amount of rent that is sought to be apportioned.

44. Suits for mesne profits.—(1) In a suit for mesne profits or for immovable property and mesne profits, fee shall in respect of mesne profits be computed, where the amount is stated approximately and sued for, on such amount. If the profits ascertained to be due to the plaintiff are in excess of the profits as approximately estimated and sued for, no decree shall be passed until the difference between the fee actually paid and the fee that would have been payable had the suit comprised the whole of the profits so ascertained is paid.

(2) Where a decree directs an enquiry as to the mesne profits which have accrued on the property, whether prior or subsequent to the institution of the suit, no final decree shall be passed till the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of profits accrued due till the date of such decree is paid.

(3) Where, for a period subsequent to the date of the decree or final decree, such decree or final decree directs payment of mesne profits at a specified rate, such decree or final decree shall not be executed until the fee computed on the amount claimed in execution has been paid.

45. Suits under the Survey and Boundaries Act.—In a suit under Section 11 of the Madras Survey and Boundaries Act, 1923, Section 13 of the Travancore Survey and Boundaries Act of 1094 or Section 14 of the Cochin Survey Act, II of 1074, fee shall be computed on one half of the market value of the property affected by the determination of the boundary or on rupees three hundred, whichever is higher.

46. Suits to alter or cancel entry in a register.—In a suit to alter or cancel any entry in a revenue register of the names of proprietors of the land or others interested in such land, the fee payable shall be fifteen rupees.

47. Suits relating to public matters.—In a suit for relief under Section 14 of the Religious Endowments Act, 1863 [Central Act XX of 1863], or under Section 91 or Section 92 of the Code of Civil Procedure, 1908 [Central Act V of 1908] the fee payable shall be ten rupees.

48. Interpleader suits.—(1) In an interpleader suit, fee shall be payable on the plaint at the rates specified in Section 50.

(2) Where issues are framed as between the claimants, fee shall be payable computed on the amount of the debt or the money or the market value of the property, movable or immovable, which forms the subject-matter of the suit. In levying such fee, credit shall be given for the fee paid on the plaint; and the balance of the fee shall be paid in equal shares by the claimants who claim the debt or the sum of money or the property adversely to each other.

(3) Value for the purpose of determining the jurisdiction of Courts shall be the amount of the debt, or the sum of money or the market value of other property to which the suit relates.

49. Third party proceedings.—In third party proceedings, fee shall be levied on one half of the value of the contribution or indemnity claimed against a third party or against a co-defendant if a claim is made against him:

Provided that, if the suit against the defendant who has filed the third party notice is dismissed, wholly or in part, he shall be entitled to a refund of the whole or a proportionate part of the fee paid by him.

Explanation.—The provisions of this section shall also apply to counter-claims made in third party proceedings.

50. Suits not otherwise provided for.—In suits not otherwise provided for, fee shall be payable at the following rates:—

(i) In a Revenue Court	Rupees fifteen.
(ii) In a Munsiff's Court	Rupees thirty.
(iii) In a Sub-Court or a District Court	Rupees one hundred if the value of the subject-matter is Rs. 10,000 or less; and rupees two hundred if the value is above Rs. 10,000.

51. Fee on memorandum of appeal against order relating to compensation.—The fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of property for public purposes shall be computed on the difference between the amount awarded and the amount claimed by the appellant.

52. **Appeals.**—The fee payable in an appeal shall be the same as the fee that would be payable in the Court of first instance on the subject-matter of the appeal :

Provided that, in levying fee on a memorandum of appeal against a final decree by a person whose appeal against the preliminary decree passed by the Court of first instance or by the Court of appeal is pending, credit shall be given for the fee paid by such person in the appeal against the preliminary decree.

Explanation (1).—Whether the appeal is against the refusal of a relief or against the grant of the relief, the fee payable in the appeal shall be the same as the fee that would be payable on the relief in the Court of first instance.

Explanation (2).—Costs shall not be deemed to form part of the subject-matter of the appeal except where such costs form themselves the subject-matter of the appeal or relief is claimed as regards costs on grounds additional to or independent of, the relief claimed regarding the main subject-matter in the suit.

Explanation (3).—In claims which include the award of interest subsequent to the institution of the suit, the interest accrued during the pendency of the suit till the date of decree shall be deemed to be part of the subject-matter of the appeal except where such interest is relinquished.

Explanation (4).—Where the relief prayed for in the appeal is difference from the relief prayed for or refused in the Court of first instance, the fee payable in the appeal shall be the fee that would be payable in the Court of first instance on the relief prayed for in the appeal.

Explanation (5).—Where the market value of the subject-matter of the appeal has to be ascertained for the purpose of computing or determining the fee payable, such market value shall be ascertained as on the date of presentation of the plaint.

Section 52 — Note 1

(1) Writ appeal under Section 5 of the Kerala High Court Act 5 of 1959 — Court-fees payable on writ appeal — Sch. 2. Art. 3 (iii) (a) (2) (c) which is a special provision applies and not Sec. 52 which is a general provision. 1965 Ker LT 69 = 1965 Ker LJ 33 (36).

(2) Table of costs is part of judgment and not of decree and therefore is not taxable. 1965 Ker LJ 33 (36) = 1965 Ker LT 69.

(3) Section 52 applies only to cases where Court-fee is computed "on the subject matter of the appeal". It does not apply to proceedings that all charged fixed fee irrespective of the subject-matter involved — In this view there is no contradiction between Section 52 and Schedule 2 of the Act. 1965 Ker LJ 33 (36) = 1965 Ker LT 69.

(4) In appeal defendant disputing whole of amount awarded to plaintiff — Amount of interest decreed for period subsequent to institution of suit up to the date of decree must be deemed to be part of subject-matter of appeal by reason of Section 52. Expl. (3). 1966 Ker LT 997 (998) = 1966 Ker LJ 1113.

(5) Applicability — Explanation applies whether appellant is plaintiff or defendant — That relinquishment of interest can only be by plaintiff does not make explanation any the less applicable to defendant's appeal. 1966 Ker LT 997 (997) = 1966 Ker LJ 1113.

(6) Order rejecting plaint under O. 7, Rule 11 (b) — Appeal from order — Section 52 of the Act does not apply — Section 52 contemplates a proceeding in the Court of first instance in respect of the subject-matter of the appeal—But there can be no proceeding instituted in the Court of first instance for the adjudication of the subject-matter in appeal viz., the adequacy of Court-fee paid and naturally no provision has been made for Court-fee payable in the Court of first instance in such a proceeding. AIR 1968 Ker 58 (59) = 1967 Ker LT 1009.

(7) Rejection of plaint under Order 7, R. 11(b), Civil Procedure Code— Appeal against the order — Amount of under-valuation determined — Article 1, Schedule 1 would apply without having recourse to Section 52. AIR 1968 Ker 58 (59) = 1967 Ker LT 1009.

(8) Rejection of plaint under Order 7, Rule 11(b) — Amount of under-valuation not determined — Appeal against the order of rejection — Subject-matter of the dispute in appeal is not capable of valuation — Schedule 1, Article 1 does not apply — Art. 3 (iii) (A) (i) would apply as the word 'order' in the Act includes orders which are decrees within Section 2 (2) of the Civil P. C. AIR 1968 Ker 58 (59) = 1967 Ker LT 1009.

CHAPTER V

VALUATION OF SUITS

53. Suits not otherwise provided for.—(1) In a suit as to whose value for the purpose of determining the jurisdiction of Courts, specific provision is not otherwise made in this Act or in any other law, value for that purpose and value for the purpose of computing the fee payable under this Act shall be the same.

(2) In a suit where fee is payable under this Act at a fixed rate, the value for the purpose of determining the jurisdiction of Courts shall be the market value or where it is not possible to estimate it at a money value, such amount as the plaintiff shall state in the plaint.

54. Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes.—(1) Notwithstanding anything contained in Section 99 of the Code of Civil Procedure, 1908 (Central Act V of 1908), an objection that by reason of the overvaluation or undervaluation of a suit or appeal, a Court of first instance or lower appellate Court which had no jurisdiction with respect to the suit or appeal exercised jurisdiction with respect thereto shall not be entertained by an appellate Court, unless—

(a) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded, or in the lower appellate Court in the memorandum of appeal to that Court, or

(b) the appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was overvalued, or undervalued and that the overvaluation or undervaluation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) If the objection was taken in the manner mentioned in clause (a) of sub-section (1), but the appellate Court is not satisfied as to both the matters mentioned in clause (b) of that sub-section and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of first instance or lower appellate Court.

(3) If the objection was taken in that manner and the appellate Court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeals, but if it remands the suit or appeal, or frames and refers issues for trial, or requires additional evidence to be taken, it shall direct its order to a Court competent to entertain the suit or appeal.

(4) The provisions of this section with respect to an appellate Court shall, so far as they be made applicable, apply to a Court exercising revisional jurisdiction under Sec. 115 of the Code of Civil Procedure, 1908 (Central Act V of 1908), or other enactment for the time being in force.

CHAPTER VI

PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION

55. Application for probate or letters of administration.—(1) Every application for the grant of probate or letters of administration shall be accompanied by a valuation of the estate in duplicate in the form set forth in Part I of Schedule III.

Section 55 — Note 1

(1) Under Section 55 of Kerala Act 10 of 1960 an application for grant of letters of administration shall be accompanied by an affidavit of valuation of the estate in the form set forth in Part I of Schedule 3 — No question of adjudication of title in respect of properties for which letters of administration are claimed arises in these proceedings. AIR 1969 Ker 256 (259).

(2) On receipt of such application, the Court shall send a copy thereof and of the valuation to the Collector of the district in which the estate is situated, or if the estate is situated in more than one district, to the Collector of the district in which the most valuable portion of the immovable property included in the estate is situated.

56. Levy of fee.—(1) The fee chargeable for the grant of probate or letters of administration shall comprise—

a fee at the rate or rates prescribed in Article 6 of Schedule I, computed—

(a) where the application is made within one year of the date of death of the deceased, on the market value of the estate on such date; or

(b) where the application is made after the expiry of one year from such date, on the market value of the estate on the date of the application:

Provided that property held in trust not beneficially or with general power to confer a beneficial interest shall not be liable to any fee under this Chapter.

Explanation.—Any member of a joint Hindu family governed by the Mitakshara Law who applies for probate or letters of administration in respect of the estate of a deceased member of the joint family shall pay a fee on the value of the share in the joint property which the deceased would have received if a partition of the property had been made immediately before his death.

(2) For the purpose of the computation of fee—

(a) the value of the items mentioned in Annexure B to Part I of Schedule III shall be deducted from the value of the estate:

Provided that, when an application is made for probate or letters of administration in respect of part only of an estate, no debt, no expenses connected with any funeral rites or ceremonies and no mortgage encumbrance on any part of the estate other than that in respect of which the application is made shall be deducted:

Provided further that when, after the grant of a certificate under Part X of the Indian Succession Act, 1925 (Central Act XXXIX of 1925), in respect of any property included in an estate, grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant;

(b) the power of appointment which the deceased had over property or which was created under a will shall be taken into account, the value being taken to be value of the property forming the subject-matter of the power.

57. Grant of probate.—The grant of probate or letters of administration shall not be delayed by reason of the reference to the Collector under Section 55, sub-section (2), or of a motion by the Collector under Section 59, sub-section (5); but the Court shall make no grant of probate or letters of administration until it is satisfied that a fee not less than that prescribed by this Act has been paid on the basis of the net value of the estate as furnished in the valuation accompanying the application, or in the amended valuation filed under Section 59, sub-section (3):

Provided that the Court may grant probate or letters of administration notwithstanding that the prescribed fee has not been paid, to the Administrator-General in his official capacity on his giving an undertaking to the satisfaction of the Court that the said fee will be paid within such time as may be fixed by the Court.

58. Relief in cases of general grants.—(1) Whenever a grant of probate or letters of administration has been made in respect of the whole of the property belonging to an estate and the full fee payable under this Act in respect of the application for such grant has been paid thereon, no fee shall be payable when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

(2) Whenever such grant has been made in respect of any property forming part of an estate, the amount of fee actually paid under this Act in respect thereof shall be deducted when a like grant is made in respect of the property belonging to the same estate identical *with or including the* property to which the former grant relates.

59. Inquiry by the Collector.—(*1*) The Collector to whom a copy of the application and of the valuation has been sent under Section 55, sub-section (2), shall examine the same and may make or cause to be made by any officer subordinate to him such inquiry, if any, as he thinks fit as to the correctness of the valuation or where a part only of the property is situated in his district, of the valuation of that part, and may require the Collector of any other district in which any part of the property is situated to furnish him with the correct valuation thereof.

(2) Any Collector required under sub-section (1) to furnish the correct valuation of any property shall comply with the requisition after making or causing to be made by any officer subordinate to him such inquiry, if any, as he thinks fit.

(3) If the Collector is of opinion that the applicant has underestimated the value of the property of the deceased, he may, if he thinks fit, require the attendance of the applicant, either in person or by his agent, and take evidence and inquire into the matter in such manner as he may think fit, and if he is still of opinion that the value of the property has been underestimated, may require the applicant to amend the valuation and, if the application for probate or letters of administration is pending in Court, to file a copy of the amended valuation in such Court.

(4) If, in any such case, the probate or letters of administration has or have been granted and the applicant amends the valuation to the satisfaction of the Collector and the Collector finds that a less fee has been paid than was payable according to the true value of the estate, he shall proceed under Section 61, sub-section (4), but if a higher fee has been paid than was payable according to the true value of the estate, the excess fee shall be refunded to the applicant.

(5) If the applicant does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court before which the application for probate or letters of administration was made to hold an inquiry into the true value of the property:

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required by Section 317 of the Indian Succession Act, 1925 (Central Act XXXIX of 1925).

60. Application to Court and powers of Court.—(1) The Court shall, when moved by the Collector under Section 59, sub-section (5), hold or cause to be held by any Court or officer subordinate to it an inquiry as to the true value at which the estate of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry.

(2) For the purposes of any such inquiry, the Court, or the Subordinate Court or the officer authorised by the Court to hold the inquiry, may examine the applicant on oath either in person or by commission, and may take such further evidence as may be produced to prove the true value of the estate, and where the inquiry has been entrusted to a Subordinate Court or officer, such Court or officer shall return to the Court the evidence taken and report the result of the inquiry and such report and the evidence so taken shall be evidence in the proceedings.

(3) The Court on the completion of the inquiry or on receipt of the report referred to in sub-section (2), as the case may be, shall record a finding as to the true value at which the estate should have been estimated and such finding shall be final.

(4) The Court may make such order in accordance with the provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908), as to the cost of the inquiry as it thinks fit.

61. Provision for cases where too low a fee has been paid.—(1) Where too low a fee has been paid on any probate or letters of administration in consequence of any mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator, acting under such probate or letters, applies, to the Collector in the form set forth in Part II of Schedule III and pays within six months after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, what is wanting to make up the fee which ought to have been paid at first on such probate or letters, the Collector shall, if satisfied that a low fee was paid in the first instance in consequence of a mistake and without any intention of fraud or to delay the payment of the proper fee, cause the probate or letters to be duly stamped.

(2) If, in a case falling under sub-section (1), the executor or administrator does not, within the six months referred to in that sub-section, pay the deficit fee, he shall forfeit a sum equal to five times the deficit fee.

(3) If, on application being made under sub-section (1), the Collector is not satisfied that the application was made within six months of the discovery of the mistake or of further effects not included in the original valuation or that the payment of a low fee in the first instance was not due to a bona fide mistake, he shall cause the probate or letters to be duly stamped on payment of the deficit fee together with a penalty not exceeding five times such fee.

(4) If, after the grant of probate or letters of administration of an estate, it is found by the Collector as a result of proceedings under Section 59 or Section 60 or otherwise, that a less fee has been paid than was payable according to the true value of the estate, he shall cause the probate or letters to be properly stamped on payment of the deficit fee, and if he is satisfied that the original undervaluation was not bona fide, he shall levy in addition a penalty not exceeding five times the deficit fee.

(5) The Board of Revenue may remit the whole or any part of the amount forfeited under sub-section (2) or of any penalty under sub-section (3) or sub-section (4).

62. Administrator to give proper security before letters stamped.—In case of letters of administration on which too low a fee has been paid at first, the Collector shall not cause the same to be duly stamped in the manner aforesaid until the adminstrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased has been then ascertained.

63. Relief when too high a fee has been paid.—(1) If, at any time after the grant of the probate or letters of administration of an estate, it is discovered that a higher fee has been paid than was payable according to the true value of the estate, the executor or administrator, as the case may be, may apply for a refund to the Collector to whom a copy of the valuation of the estate was sent under Section 55, sub-section (2). The application shall be accompanied by an amended valuation in the form set forth in Part II of Schedule III together with the probate or letters of administration upon which a refund is sought.

(2) If the Collector is satisfied that the amended valuation is correct, he shall—

(i) endorse a certificate on the stamped probate or letters of administration to the effect that so much of the fee represented by the stamp or stamps used has been refunded, and

(ii) refund the difference between the fee originally paid and that which should have been paid:

Provided that no refund shall be granted under this section unless the application for refund is made within three years of the date of the grant of the probate or letters of administration, or within such further period as the Collector may allow.

If, by reason of any legal proceedings, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available and in consequence thereof, the executor or administrator is prevented from claiming the return of such difference within the said period of three years, the Collector may allow such further time for making the claim as may appear to him to be reasonable under the circumstances.

If the Collector does not grant a refund, the executor or administrator, as the case may be, may apply to the Board of Revenue for an order of refund. An application for such refund should be accompanied by an amended valuation in the form set forth in Part II of Schedule III.

64. Recovery of penalties, etc.—Any excess fee found to be payable by an applicant for probate or letters of administration or by an executor or administrator, or any costs under Section 60, sub-section (4), or any penalty or forfeiture payable by any such executor or administrator may, on the certificate of the Board of Revenue, be recovered from the executor or administrator as if it were an arrear of land revenue.

65. Powers of Board of Revenue.—The powers and duties of the Collector under this Chapter shall be subject to the control of the Board of Revenue.

CHAPTER VII

REFUNDS AND REMISSIONS

66. Refund in cases of delay in presentation of plaint, etc.—(1) Where a plaint or memorandum of appeal is rejected on the ground of delay in its representation, or where the fee paid on a plaint or memorandum of appeal is deficient and the deficiency is not made good within the time allowed by law or granted by the Court, or the delay in payment of the deficit fee is not condoned and the plaint or memorandum of appeal is consequently rejected, the Court shall direct the refund to the plaintiff or the appellant, of the fee paid on the plaint or memorandum of appeal which has been rejected.

(2) Where a memorandum of appeal is rejected on the ground that it was not presented within the time allowed by the law of limitation, one-half of the fee shall be refunded.

67. Refund in cases of remand.—(1) Where a plaint or memorandum of appeal which has been rejected by the lower Court is ordered to be received, or where a suit is remanded in appeal for a fresh decision by the lower Court, the Court making the order or remanding the appeal may direct the refund to the appellant of the full amount of fee paid on the memorandum of appeal; and, if the remand is on second appeal, also on the memorandum of appeal in the first appellate Court.

(2) Where an appeal is remanded in second appeal for a fresh decision by the lower appellate Court, the High Court remanding the appeal may direct the refund to the appellant of the full amount of fee paid on the memorandum of second appeal if the remand is in second appeal:

Provided that no refund shall be ordered if the remand was caused by the fault of the party who would otherwise be entitled to a refund:

Provided further that, if the order of remand does not cover the whole of the subject-matter of the suit, the refund shall not extend to more than so much fee as would have been originally payable on that part of the subject-matter in respect whereof the suit has been remanded.

68. Refund where Court reverses or modifies former decision on ground of mistake.—Where an application for a review of judgment is admitted on the ground of some mistake or error apparent on the face of the record, and on the rehearing the Court reverses or modifies its fomer decision on that ground, it shall direct the refund to the applicant of so much of the fee paid on the application as exceeds the fee payable on any other application to such Court under Art. 11 (g) and (t) of Schedule II.

69. **Refund in cases of compromise or when suit is decided on the admission of parties.**—When a suit or appeal is compromised or when a suit is decided solely on the admission of the parties without any investigation, one-half of the court-fee paid on the plaint or memorandum of appeal shall be ordered by the Court to be refunded to the parties by whom the same have been paid respectively.

70. **Refund of fee paid by mistake or inadvertence.**—The fee paid by mistake or inadvertence shall be ordered to be refunded.

71. **Instruments of partition.**—Where the final decree in a partition suit has been engrossed on non-judicial stamps furnished by the parties, the Court shall order the refund to the parties of so much of the valued fee paid by them as is equal to the value of the non-judicial stamps furnished by them.

72. **Exemption of certain documents.**—Nothing contained in this Act shall render the following documents chargeable with any fee:—

(i) mukhtarnama, vakalatnama or other written authority to institute or defend a suit when executed by a member of any of the Armed Forces of the Union not in civil employment;

(ii) memorandum of appearance filed by advocates or pleaders when appearing for persons proceeded against in criminal cases;

(iii) plaints and other documents in suits filed in village courts;

(iv) plaints in suits before Collectors under Madras Regulation XII of 1816;

(v) application or petition to a Collector or other Officer making a settlement of land revenue, or to the Board of Revenue relating to matters connected with the assessment of land, or with the ascertainment of rights thereto or interest therein, if presented previous to the final confirmation of such settlement;

(vi) application relating to a supply for irrigation of water belonging to Government;

(vii) application for leave to extend cultivation or to relinquish land, when presented to an officer of land revenue by a person holding, under a direct engagement with Government, land of which revenue is settled but not permanently;

(viii) application for service of notice of relinquishment of land or of enhancement of rent;

(ix) written authority to an agent to destrain;

(x) first application (other than a petition containing a criminal charge of information) for the summons of a witness or other person to attend either to give evidence or to produce a document or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court;

(xi) bail bonds in criminal cases other than bail bonds in village courts, recognizances to prosecute or give evidence and recognizances for personal appearance or otherwise;

(xii) petition, application, charge or information respecting any offences when presented, made or laid to or before a police officer, or to or before the heads of villages or the village police;

(xiii) petition by a prisoner or other person in duress or under restraint of any Court or its officer:

(xiv) complaint of a public servant as defined in the Indian Penal Code (Central Act XLV of 1860),

(xv) application for permission to cut timber in Government forests or otherwise relating to such forests, not being applications from forest contractors for extending the period of their leases;

(xvi) application for the payment of money due by the Government to the applicant, other than an application for refund of lapsed deposit made six months after the date on which the amount lapsed to the Government;

(xvii) petition of appeal against any municipal tax;

(xviii) application for compensation under any law, for the time being in force relating to the acquisition of property for public purposes;

(xix) petition under Section 48 of the Indian Christian Marriage Act, 1872 (Central Act XV of 1872);

(xx) petition or appeal by a Government servant or a servant of the Court of Wards when presented to any superior officer or Government against orders of dismissal, removal, reduction in rank or suspension; copies of such orders filed with appeals, and applications for obtaining such copies;

(xxi) applications, for refund of court-fees under the provisions of this Act;

(xxii) applications presented to Munsifs in non-appealable cases;

(xxiii) requisitions made by the Government for copies of judgments and decrees or orders or records in suits or proceedings.

73. Special procedure regarding suits by societies registered under the Societies Registration Act.—Notwithstanding anything contained in this Act, where a suit is filed by a society registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Act XII of 1955 or the Societies Registration Act, 1860 (Central Act 21 of 1860) and the Collector of the district certifies that the society is not in a position to pay the amount of fee chargeable on the plaint under this Act, regard being had to the financial condition of the society, the plaint shall be chargeable only with one-half of the amount of the fee chargeable on it

74. Special provision regarding suits by registered trade union, member of Scheduled Castes, etc.—(1) Notwithstanding anything contained in the foregoing provisions of this Act, the Court shall, subject to the provisions of sub-section (2), admit the plaint in respect of the following kinds of suit even though the fee chargeable under this Act has not been paid and after such admission calculate the amount of court-fee chargeable in respect of the plaint under the provisions of this Act, and, require the Collector of the District to pay the fee so chargeable—

(i) suits for money instituted by a registered trade union wherein the claim does not exceed one thousand rupees;

(ii) suits for money instituted by a member of a Scheduled Caste or a Scheduled Tribe whose monthly income does not exceed one hundred rupees and wherein the claim does not exceed one thousand rupees;

Explanation.—For the purpose of this clause, Scheduled Caste and Scheduled Tribe shall have the same meaning as in the Constitution of India;

(iii) suits for money instituted by a prisoner whose monthly income does not exceed one hundred rupees and wherein the claim does not exceed one thousand rupees.

(iv) suits for money filed by a co-operative society registered under the Co-operative Societies Act for the time being in force against any person other than a member of the society;

(v) suits for recovery of compensation under the Workmen's Compensation Act, 1923 and for wages or bonus by workmen under the Industrial Disputes Act, 1947; and

(vi) suits for arrears of maintenance or for maintenance or for enhancement of maintenance or for recovery of shares of their deceased husbands or parents in the family property, filed by women or minors, where the monthly income of such women or minors, does not exceed one hundred rupees.

Explanation.—'Monthly income' for purposes of clauses (ii), (iii) and (vi) shall mean the average monthly income during the period of one year immediately prior to the date of institution of the suit:

Provided that the plaintiff in the suit has not entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter or has not acquired by transfer inter vivos an interest in such subject-matter and in cases covered by clauses (ii), (iii) and (iv) of sub-section (1) above, the claim originates in favour of the plaintiff.

(2) Every plaint presented to the Court under sub-section (1) shall be accompanied by such documents and records containing such particulars as may be prescribed to enable the Court to come to a finding whether the plaintiff in the suit is entitled to the concession under sub-section (1) or not. The Court may for this purpose hold such inquiry as it deems fit. If upon such enquiry the Court finds that the allegations do not show a cause of action or that the suit appears to be barred by any law or that the plaintiff is not entitled to the concession under sub-section (1), it shall require the plaintiff to pay the fee chargeable in respect of the plaint under the provisions of this Act, and on such payment the plaint shall be deemed to have been duly stamped at the time of presentation.

(3) On receipt of a requisition from the Court under sub-section (1) for payment of a court-fee, the Collector shall pay the required fee within the time specified by the Court.

(4) Where in respect of a suit filed under sub-section (1), if the plaintiff succeeds in the suit or where the suit is dismissed wholly or in part on the ground that the claim or portion of it made in the suit is false or vexatious and the Court records a finding to the effect that it is so, the fee chargeable in respect of the plaint in the suit under the provisions of this Act, shall be recoverable by the Government from the party ordered by the decree to pay the same and shall be a first charge on the subject-matter of the suit.

(5) The Government shall have the right at any time to apply to the Court to make an order for the payment of court-fees under sub-section (4).

(6) All matters arising between the Government and any party to the suit under this section shall be deemed to be questions arising between the parties to the suit within the meaning of Section 47 of the Civil Procedure Code.

(7) Where an order is made under this section, the Court shall forthwith cause a copy of the decree or order to be forwarded to the Collector of the District who may, without prejudice to any other mode of recovery, recover the amount of court-fees specified therein from the person or property liable for the payment as if it were an arrear of land revenue.

75. Power to reduce or remit fees.—The Government may, by notification in the Gazette, reduce or remit, in the whole or in any part of the territory of the State, all or any of the fees chargeable under this Act, and may, in like manner, cancel or vary such notification.

CHAPTER VIII

LEGAL BENEFIT FUND

76. Legal Benefit Fund.—(1) Notwithstanding anything contained in this Act or any other law for the time being in force, it shall be competent for the Government to levy an additional court-fee, by notification in the Gazette, in respect of appeals or revisions to tribunals or appellate authorities, other than Civil and Criminal Courts, at a rate not exceeding one per cent of the amount involved in the dispute in cases where it is capable of valuation and in other cases at a rate not exceeding one hundred rupees for each appeal or revision.

(2) There shall be constituted a legal benefit fund to which shall be credited—

(i) the proceeds of the additional court-fee levied and collected under sub-section (1);

(ii) fifty per cent of the court-fees levied and collected on mukhtarnama or vakalathnama under Article 16 of Schedule II of this Act.

(3) The fund constituted under sub-section (2) shall be applied and utilised for the purpose of providing an efficient legal service for the people of the State and to provide social security measures for the legal profession.

(4) The mode and manner in which legal service to the people may be made more efficient and social security measures for legal profession may be provided shall be as prescribed by rules made by Government.

CHAPTER IX

MISCELLANEOUS

77. Collection of fees by stamps.—All fees chargeable under this Act shall be collected by stamps.

78. Stamps to be impressed or adhesive.—The stamps used to denote any fee chargeable under this Act shall be impressed or adhesive or partly impressed and partly adhesive, as the Government may, by notification in the Gazette, from time to time, direct.

79. Amended document.—Where any document which ought to bear a stamp under this Act is amended in order merely to correct a mistake and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

80. Cancellation of stamp.—No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Such officer as the Court or the head of the office may, from time to time, appoint shall, on receiving any such document forthwith effect such cancellation by punching out the figurehead so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

81. Deduction to be made.—Where allowance is made in this Act for damaged or spoiled stamps, or where fee already paid is directed to be refunded to any person by an order of Court, the Collector may, on the application of the person concerned, pay to him the amount of fee or where damaged or spoiled stamps are produced, he may, after satisfying himself about their genuineness, give in lieu thereof the same amount or value in stamps of the same or any other description, or if the applicant so desires, the same amount or value in money provided that in all cases where money is paid in cash, a deduction shall be made of [seven Paise]* for each rupee or fraction thereof. No such deduction shall, however, be made where refund is claimed in respect of any fee paid in pursuance of an order of Court which has been varied or reversed in appeal.

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* Substituted for "seven naye paise" by Pres. Act 8 of 1966, Section 2 (w. e. f. 1-10-1966).

82. Penalty.—Any person appointed to sell stamps, who disobeys any rule made under this Act, and any person, not so appointed, who sells or offers for sale any stamps, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees or with both.

83. Power of High Court to make rules.—(1) The High Court may make rules to provide for or regulate all or any of the following matters, namely:—

(a) the fees payable for serving and executing processes issued by the High Court in its appellate jurisdiction and by the Civil and Criminal Courts subordinate thereto;

(b) the remuneration of persons employed by the Courts mentioned in clause (a) in the service or execution of processes;

(c) the fixing by District and Sessions Judges and District Magistrates of the number of process-servers necessary to be employed for the service and execution of processes issued from their respective Courts and the Courts subordinate thereto;

(d) the display in each Court of a table in the English and in the local language or languages showing the fees payable for the service and execution of processes.

(2) All rules made under sub-section (1) shall be subject to confirmation by the Government and on such confirmation shall be published in the Gazette and shall thereupon have effect as if enacted in this Act.

84. Power of Board of Revenue to make rules.—(1) The Board of Revenue may, with the previous sanction of the Government, make rules consistent with this Act to provide for or regulate all or any of the following matters, namely:—

(a) the fees chargeable for serving and executing processes issued by the Board of Revenue and by the Revenue Courts;

(b) the remuneration of the persons necessary to be employed for the service and execution of such processes;

(c) the fixing by Collectors of the number of persons necessary to be employed for the service and execution of such processes;

(d) the guidance of Collectors in the exercise of their powers under Chapter VI;

(e) the supply of stamps to be used under this Act;

(f) the number of stamps to be used for denoting any fee chargeable under this Act;

(g) the keeping of accounts of all stamps used under this Act;

(h) the circumstances in which stamps may be held to be damaged or spoiled;

(i) the circumstances in which, the manner in which, and the authorities by which, allowance for used, damaged or spoiled stamps may be made;

(j) the regulation of the sale of stamps to be used under this Act, the persons by whom alone such stamps may be sold and the duties and remuneration of such persons;

Provided that, in the case of stamps used in the High Court, such rules shall be made with the concurrence of the Chief Justice.

(2) All rules made under this section shall be published in the Gazette and on such publication shall have effect as if enacted in this Act.

85. Power of Government to make rules.—(1) The Government may, by notification in the Gazette, make rules* to carry out generally the purposes of this Act.

(2) All notifications and rules made under this section shall, as soon as possible, after they are made, be placed on the table of the Legislative Assembly for

one month, and shall be subject to such modification whether by way of repeal or amendment as the Legislative Assembly may make during the session in which they are so laid or the session immediately following.

* For the Kerala Court-fees and Suits Valuation Rules, 1962, see Notifn. No. 10463/C 2/60-2/Law in Ker. Gaz., Extra., dated 19-1-1962.

86. Continuance in force of existing rules.—Until rules are framed under Sections 83, 84 and 85 and until notifications are issued under Section 75, the rules and notifications now in force in respect of matters referred to in those sections, shall, in so far as they are not inconsistent with this Act, continue.

87. Repeal.—(1) The Madras Court-fees and Suits Valuation Act, 1955, in force in the Malabar district referred to in sub-section (2) of Section 5 of the States Reorganisation Act, 1956, the Travancore-Cochin Court-fees Act, 1125 and the Travancore-Cochin Suits Valuation Act, 1125, are hereby repealed.

(2) All suits and proceedings instituted before the commencement of this Act and all proceedings by way of appeal, revision or otherwise arising therefrom, whether instituted before or after such commencement, shall, notwithstanding the repeal of the said Acts, be governed by the provisions of the said Acts and the rules made thereunder.

SCHEDULE I

Ad Valorem Fees

Article (1)	Particulars (2)	Proper fee (3)
1	Plaint or written statement pleading a set off or counterclaim or memorandum of appeal presented to any Court— When the amount or value of the subject-matter in dispute—	
	[i] does not exceed five rupees;	Thirty-seven *[paise].
	[ii] exceeds five rupees, for every five rupees; or part thereof, in excess of five rupees up to one hundred rupees;	Thirty-seven *[paise].
	†[iii] exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees up to one thousand rupees;	†[Seventy-five paise].
	[iv] exceeds one thousand rupees, for every ten rupees, or part thereof, in excess of one thousand rupees...	One rupee.
2	(a) Application under section 95 of the Code of Civil Procedure, 1908 or petition under section 26 of the Insolvency Act, 1955.	An amount of one-half the scale of fee prescribed in Article 1 on the amount or compensation claimed.

* *Substituted* for 'Naye paise' by Pres. Act 8 of 1966, S. 3 [1-10-1966],

† *Substituted* for the original Item (iii), by Pres. Act 8 of 1966, S. 3 [1-10-1966].

Section 87 — Note 1

(1) Suit under Order 21, Rule 63 filed under Travancore Act — Revision filed against an order in the suit after Kerala Act came into force — Court-fee was held payable under Travancore Act Schedule 2, Article 8 (3). 1961 Ker LT 804 (804).

(2) Cross objections filed prior to 1-2-1962 (Date of commencement of the Kerala Act) Court-fees payable on cross objections is therefore governed by T. C. Act II of 1125. (T. C. Court-fees Act 1125). AIR 1967 Ker 147 (147) = 1966 Ker LT 1157.

(3) Travancore Cochin Court Fees Act Schedule 1, Article 1 is not confined to appeals or cross-objections only — Cross-objections filed in application under Section 11 of Kerala Agriculturists Debt Relief Act (31 of 1958) are also covered. AIR 1967 Ker 147 (148) = 1966 Ker LT 1157.

(4) Suits filed under old Act — Appeal from — Vakalaths, Miscellaneous petitions and copy application filed in appeal — Court-fee on them is payable under the old Act. 1962 Ker LJ 428 (431).

(5) Proceeding by way of appeal, revision or otherwise arising therefrom — Meaning of doctrine of ejusdem generis does not apply in the construction of Section 87 (2). 1962 Ker LJ 423 (431).

Article (1)	Particulars (2)	Proper Fee (3)
	(b) Appeal against order on an application or a petition falling under clause (a).	On the scale prescribed in Article 1 on the amount in dispute.
3	(a) Petition under section 54 or 55 of the Insolvency Act, 1955.	An amount of one-half the scale of fee prescribed in Article 1 on the market value of the subject-matter subject to a maximum fee of rupees five hundred.
	(b) Appeal against order on a petition falling under clause (a) whether by the Official Receiver or by the unsuccessful party.	An amount of one-half the scale of fee prescribed in Article 1 on the market value of the subject-matter subject to a maximum fee of rupees five hundred.
4	Memorandum of appeal against order in proceedings under the Indian Succession Act, 1925.	An amount of one-half the scale of fee prescribed in Article 1 on the amount or value of the subject-matter.
5	Application for review of judgment.	One-half of the fee payable on the plaint or memorandum of appeal comprising the relief sought in the application for review.
6	Probate of a will or letters of administration with or without will annexed—	
	When the amount or value of the estate in respect of which the grant of probate or letters is made exceeds one thousand rupees, but does not exceed 5 thousand rupees.	Two per centum on such amount or value.
	When such amount or valuee exceeds five thousand rupees.	Three per centum on which amount or value.
7	Certificate under the Indian Succession Act, 1925—	
	Where the amount or value of the debt or security or the aggregate amount or value of the debts and securities specified in the certificate extends up to rupees five thousand.	Two per centum on such amount or value.
	Where such amount or value exceeds five thousand rupees.	Three per centum on such amount or value.

Notes:—(1) Where a certificate is extended under Section 376 of the Indian Succession Act 1925, fee shall be computed on the amount for which a certificate is sought to be extended and the amount for which a certificate or certificates has or have already been issued, credit being given for the fee already paid.

(2) The amount of a debt is its amount, including interest, on the day on which the inclusion of the debt in the certificate is applied for so far such amount can be ascertained.

(3) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act, and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.

SCHEDULE II

Article (1)	Particulars (2)	Proper fee (3)
1	[i] Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866.	Ten rupees.
	[ii] Petition, plaint or memorandum of appeal when presented to a Court under the Dissolution of Muslim Mar-	Ten rupees.

Schedule 2 — Note 1

(1) Petition for winding up of company under Section 439 — Petition falls under Schedule II (b) (iii) — Payment of Court-fees of Rs. 20 held sufficient — Court-fees under Schedule II (q) need not be paid as the petition is not under Section 391 (2) of the Companies Act. ILR (1963) 1 Ker 637 (639)

Article (1)	Particulars (2)	Proper fee (3)
	riage Act, 1939 or the Cochin Dissolution of Muslim Marriage Act, XXII of 1120.	
	[iii] Petition under the Indian Divorce Act, 1869, excluding petitions under section 44 of that Act, and every memorandum of appeal under section 55 of that Act.	Thirty rupees.
	[iv] Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1936, or a counterclaim made under section 37 of that Act.	Thirty rupees.
	[v] Petition under section 22, 23, 27 or 28 of the Special Marriage Act, 1954.	Thirty rupees.
	[vi] Petition under section 9, 10 or 13 of the Hindu Marriage Act. 1955.	Thirty rupees
	If in a suit falling under any of these clauses. there is a specific claim for damages, separate fee at the rates prescribed in Article 1, of Schedule I shall be charged on the amount of damages claimed.	
2	Undertaking under section 49 of the Indian Divorce Act, 1869.	One rupee.
3	Memorandum of appeal from an order inclusive of an order determining any question under section 47 or section 144 of the Code of Civil Procedure, 1908, and not otherwise provided for when presented—	
	[i] to any Court other than the High Court or to any Executive Officer other than the Board of Revenue or Chief Executive Authority.	One rupee.
	[ii] to the Board of Revenue or Chief Executive Authority.	Two rupees.
	[iii] to the High Court—	
	[A] From an order other than an order under the Kerala Argriculturists Debt Relief Act, 1958.	
	[1] Where the order was passed by a Subordinate Court or other authority—	
	[a] If the order relates to a suit or proceeding, the value of which exceeds one thousand rupees.	Ten rupees.
	[b] In any other case.	Five rupees.
	[2] Where the appeal is under section 5 of the Kerala High Court Act, 1958—	
	[a] From an order passed in exercise of appellate jurisdiction.	Ten rupees.
	[b] From an order passed in exercise of original jurisdiction, which would be appealable under the Code of Civil Procedure, 1908, had it been passed by a Subordinate Court.	Ten rupees.
	[c] In any other case.	One hundred rupees.
	[3] Where the appeal is under section 45-B of the Banking Companies Act, 1949.	One hundred rupees.
	[4] Where the appeal is under section 411-A of the Code of Criminal Procedure, 1898.	Five rupees.
	[B] From an order under the Kerala Agiriculturists Debt Relief Act, 1958.	Two rupees.
	[iv] to the Government in pursuance of a statutory right to appeal for which no court-fee is leviable under any other enactment.	Five rupees.

Schedule 2, Article 3— Note 1

(1) Where a table of rates is given in schedule and a provision directing fee tax to be paid in accordance with it is made in a section, the schedule must be treated as a part of that section. Article 3 (iii) (A) (2) in Schedule 2 is a part of Section 21 and it being a specal provision in case of appeals under Section 5 of the Kerala High Court Act prevails over Section 52 which is a general provision of appeals. 1965 Ker LJ 33 (35) = 1965 Ker LT 69.

(2) Appeal filed under Section 5 of the Kerala High Court Act 1959 and under Section 45-N of Banking Companies Act (1949) from an order passed under Section 45-D of the Act — Court-fee is payable under Article 3 (iii) (A), (2) (c) of Schedule II — Article 3 (iii) (A) (3) not applicable. AIR 1964 Ker 181 (183) = 1963 Ker LT 1068 (DB).

(3) Writ appeal under Section 5 of Kerala High Court Act (5 of 1959) — "Court-fees — Payable on writ appeal — Article 3 (iii) (A) (2) (c) applies and not Section 52. 1965 Ker LJ 33 = 1965 Ker LT 69.

Article (1)	Particulars (2)	Proper fee (3)
4	Memorandum of appeal under section 39 of the Arbitration Act, 1940	
	[i] Where the appeal is from an order of a Munsiff's Court or an order of a Superior Court in a case where the value for jurisdiction does not exceed Rs. 5,000.	Fifteen rupees.
	[ii] in any other case.	One hundred rupees
5	Copy or translation of a judgment or order not being or having the force of a decree	
	When such judgment or order is passed by any Civil Court other than the High Court, or by the Presiding Officer of any Revenue Court or office or by any other Court or judicial or executive authority	
	[a] if the amount or value of the subject-matter is fifty or less than fifty rupees;	Fifty paise.
	[b] if such amount or value exceeds fifty rupees;	One rupee.
	When such judgment or order is passed by the High Court.	Two rupees.
6	Copy or translation of a judgment or order of a Criminal Court	Fifty paise.
7	Copy of a decree or order having the force of a decree—	
	When such decree or order is made by any Court other than the High Court –	
	[a] if the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees;	Seventy-five paise.
	[b] If such amount or value exceeds fifty rupees:	One rupee and fifty paise.
	When such decree or order is made by the High Court.	Five rupees.
8	Copy of any document liable to stamp duty under the Indian Stamp Act, 1899 or the Travancore-Cochin Stamp Act, 1125, when left by any party to a suit or proceeding in place of the original withdrawn -	
	[a] When the stamp duty chargeable on the original does not exceed fifty naye paise.	The amount of the duty chargeable on the original.
	[b] in any other case.	Seventy-five paise.
9	Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act or copy of any account statement, report or the like taken out of any Court or office of any public officer-	
	For every document	Seventy-five paise.
10	(a) Application or petition presented to any Officer of land revenue by any person holding temporarily settled land under direct engagement with Government and when the subject-matter of the application or petition relates exclusively to such engagement,	Twenty-five paise.
	(b) Application or petition presented to any officer of land revenue relating to the grant of land on darkhast or, assignment of land,	Twenty-five paise.
	(c) Application to a Collector for lease of land for agricultural or non-agricultural purposes.	Seventy-five paise.
	(d) Application or petition presented to any Executive Officer under any Act for the time being in force for the conservancy or improvement of any place if the application or petition relates solely to such conservancy or improvement.	Twenty-five paise.
	(e) Application or petition presented to any board or Executive Officer for a copy or translation of any order passed by such board or officer of any other document on record in such office.	Twenty-five paise.
	(f) Application to a Forest Officer by a forest contractor for extension of the period of lease.	
	(i) if the value of the subject-matter of the lease is Rs. 5,000, or less;	Five rupees.

Article (1)	*Particulars* (2)	*Proper fee* (3)
	(ii) if such value exceeds Rs. 5,000, for every rupees 1,000 or part thereof in excess of Rs. 5,000	One rupee.
	(g) Application for attestation of private documents intended to be used outside India.	One rupee.
	(h) Application for lapsed deposit presented after six months after the date on which the amount lapsed to the Government—	
	(i) When the amount or deposit does not exceed Rs. 50;	Fifty paise.
	(ii) when the amount or deposit exceeds Rs. 50 but does not exceed Rs. 1,000;	One rupee.
	(iii) when it exceeds Rs. 1,000	Two rupees.
	(i) Application or petition presented to the Government and not otherwise provided for—	
	(i) which involves the exercise or non-exercise of power conferred by law or rule having the force of law;	Two rupees,
	(ii) In other cases	Fifty paise.
	(j) Application or petition presented to the Board of Revenue or Chief Executive Authority and not otherwise provided for—	
	[i] which involves the exercise or non-exercise of power conferred by law or rule having the force of law;	Two rupees.
	[ii] in other cases	One rupee and fifty paise.
	(k) Application or petition not falling under clause [i] or [j] and presented to a public officer or in a public office and not otherwise provided for—	
	[i] which involves the exercise or non-exercise of power conferred by law or rule having the force of law;	One rupee.
	[ii] in other cases	Twenty-five paise
11.	[a] Application or petition presented to any Court for a copy or translation of any judgment, decree or any proceeding of or order passed by such Court or of any other document on record in such Court.	Twenty-five paise.
	[b] Application or petition presented to any Civil Court other than a Principal Civil Court of Original Jurisdiction or to any Court of Small Causes constituted under the Kerala Small Cause Courts Act, 1957, or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject matter is less than Rs. 50.	Twenty-five paise.
	[c] Application to any Court that records may be called from another Court, when the Court grants the application and is of opinion that the transmission of such records involves the use of the post.	Seventy-five paise in addition to the fee leviable on the application.
	[d] Application for permission tto deposit revenue or rent either in the office of the Collector or in the Court.	Seventy-five paise,
	[e] Application or petition presented to a Court for determination of the amount of compensation to be paid by a landlord to his tenant.	One rupee.
	[f] A written complaint or charge of any offence other than an offence for which a Police Officer may, under the Code of Criminal Procedure, arrest without warrant and presented to any Criminal Court and an oral complaint of any such offence reduced to writing under the Code of Criminal Procedure, 1898.	One rupee.
	[g] Application or petition presented to any Court, or to any Magistrate in his executive capacity and not otherwise provided for in this Act.	Seventy-five paise.
	[h] Application for arrest or attachment before judgment or for temporary injunction—	
	(i) when presented to a Civil Court or Revenue Court other than the High Court in relation to any suit or proceeding—	

Article (1)	*Particulars* (2)	*Proper fee* (3)
	(1) if the value of the subject-matter of which is less than Rs. 50;	One rupee.
	(2) if the value is Rs. 50 and above;	Two rupees and fifty paise.
	(ii) when presented to the High Court	Five Rupees,
[i]	Application or petition under Section 47 and Order XXI, Rules 58 and 90 of the Code of Civil Procedure, 1908—	
	(i) when filed in a Revenue Court or a Munsiff's Court,	One rupee.
	(ii) when filed in a Sub-Court or a District Court,	Two rupees and fifty paise.
	(iii) when filed in the High Court.	Five rupees.
[j]	Application or petition under Sections 34, 72, 73 and 74 of the Indian Trusts Act, 1882.	Five rupees.
[k]	(i) Application for probate or letters of administration to have effect throughout India.	Twenty-five rupees
	(ii) Application for probate or letters of administration not falling under clause (i)—	
	[1] if the value of the estate does not exceed Rs. 1,000;	Seventy-five paise.
	[2] if the value exceeds Rs. 1,000;	Five rupees.
	Provided that if a caveat is entered and the application is registered as a suit, one half the scale of fee prescribed in Article 1 of Schedule I on the market value of the estate less the fee already paid on the application shall be levied.	
[l]	Original petitions not otherwise provided for when filed in—	
	(i) a Munsiff's Court	
	(1) under the Madras Village Courts Act, 1888 (Madras Act I of 1889), or the Cochin Village Courts Act, XII of 1118 or the Travancore Village Panchayat Courts Act, 1090.	One rupee.
	(2) in other cases,	Five rupees.
	(ii) the Sub-Court or a District Court	Ten rupees.
	(iii) the High Court	Twenty rupees.
[m]	Application to set aside an award under the Arbitration Act, 1940—	
	(i) when presented to a Munsiff's Court;	Twenty-five rupees
	(ii) when presented to a Sub-Court, a District Court or the High Court—	
	(1) if the value of the subject-matter of the award does not exceed Rs. 5,000;	Twenty-five rupees
	(2) if such value exceeds Rs. 5,000; but does not exceed Rs. 10,000;	One hundred rupees.
	(3) if such value exceeds Rs. 10,000.	Two hundred and fifty rupees.
[n]	Application under section 14 or section 20 of the Arbitration Act, 1940, for a direction for filing an award or for an order for filing an agreement and application for enforcing foreign awards—	
	[i] when presented to a Munsiff's Court;	Fifteen rupees.
	[ii] when presented to a Sub-Court, a District Court or the High Court—	
	[1] if the value of the subject-matter of the award does not exceed Rs. 5,000;	Fifteen rupees.
	[2] if such value exceeds Rs. 5,000 but does not exceed Rs. 10,000;	One hundred rupees.
	[3] if such value exceeds Rs. 10,000.	Two hundred and fifty rupees.
[o]	Petition to the High Court for the admission of an Advocate, Attorney or Vakil,	Twenty rupees.

Schedule 2, Article 11 (1) — Note 1

(1) Suit under Order 21, Rule 63 — Revision from an order in the suit regarding Court-fee — Court-fee payable on revision petition is under Schedule 2, Article 8 (3) of the Travancore Cochin Act of 1125. 1961 Ker LT 804 (804). (Case under the old Act.)

Article (1)	Particulars (2)	Proper fee (3)
	[p] Revision petition presented to the High Court under Section 115 of the Code of Civil Procedure, 1908, or under Section 22 of the Kerala Small Cause Courts Act, 1957 or under the provisions of any other Act, arising out of a suit or proceeding—	
	[i] if the value of the suit or proceeding to which the order sought to be revised relates does not exceed Rs. 1,000;	Five rupees,
	[ii] if such value exceeds Rs. 1,000.	Ten rupees.
	[q] Petition under Sections 391, 439 and 440 of the Indian Companies Act, 1956, in connection with the winding up of a Company.	One hundred rupees.
	[r] Petition to the High Court under Article 226 of the Constitution for a writ other than the writ of *Habeas Corpus* or a petition under Article 227 of the Constitution.	Twenty-five rupees
	[s] Application under Section 45 of the Specific Relief Act, 1877.	One hundred rupees.
	[t] Application or petition presented to the High Court and not otherwise specifically provided for.	Two rupees.
	[u] Election petition questioning the election of a person in respect of—	
	[i] the office of member of a Panchayat;	Twenty-five rupees
	[ii] the office of President of a Panchayat;	Fifty rupees.
	[iii] the office of member of a Municipal Council or a District Board;	Fifty rupees.
	[iv] the office of Mayor of the Corporation of Trivendrum *[or the Corporation of Calicut] or of Chairman of a Municipality or President of a District Board.	Two hundred rupees.
	*[[v] election petition presented to the High Court under Section 80A of the Representation of the People Act, 1951.	Two hundred and Fifty rupees].
	[*] *Inserted* by Kerala Act 12 of 1969, S. 2 [w. e. f. 30-4-1969.]	
12.	Application for leave to sue as a pauper	Seventy-five *[paise
13.	Application for leave to appeal as a pauper—	
	[i] when presented to a District Court or a Sub-Court;	One rupee.
	[ii] when presented to the High Court.	Two rupees.
14.	[i] Bail bond or other instrument of obligation when filed in village courts.	Twenty-five *[paise].
	[ii] Bail bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1898 or the Code of Civil Procedure, 1908, and not otherwise provided for in this Act.	Seventy-five *[paise.]
15.	Every copy of power of attorney when filed in any suit or proceeding.	Seventy-five *[paise.]
	[*] *Substituted* for 'naye paise' by President's Act 8 of 1966, S. 4 [1-10-1966.]	
16.	Mukhtarnama, Vakalatnama or any paper signed by an advocate signifying or intimating that he is retained for a party— When presented—	
	[i] to any Court other than the High Court or to any Collector or Magistrate or other executive officer :	†[Two rupees.]
	[ii] to the Board of Revenue or a Chief Executive Authority.	†[Three rupees.]
	[iii] to the High Court.	†[Five rupees.]
	[iv] to the Government.	†[Five rupees.]
	[†] *Substituted*, *ibid* for 'one rupee fifty naye paise', 'two rupees', and 'three rupees' [1-10-1966.]	
17.	Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908—	
	(i) When presented to a Munsiff's Court or when presented to in a case where the value of the subject-matter does not exceed Rs. 5,000.	Fifteen rupees.
	(ii) in any other case.	One hundred rupees.
18.	Caveat	Ten rupees.

SCHEDULE III

Part I

(See Section 55)

Form of Valuation (to be used with such modifications, if any, as may be necessary) of Estate

IN THE COURT OF

Re: Probate of the will of (or Administration), of the Estate of Deceased

1. I [A. B.] solemnly affirm/make oath and say that I am the executor [or one of the executors or one of the next-of-kin] of deceased, and that I have truly set forth in Annexure A to this Form of Valuation all the estate of which the above-named deceased died possessed or to which he was entitled at the time of his death, and which has come, or is likely to come, to my hands.

2. I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct.

3. I further declare that the said estate exclusive only of the last mentioned items, wa on the date of the death of the said deceased ______________ under the value of *Is

4. I [A. B.] further declare that what is stated in this Form of Valuation is true to the best of my information and belief.

[Signed] ______________ A. B.

*This form to be used where the application is made after one year from the date of th e death.

ANNEXURE A

Valuation of the moveable and immovable property of deceased

	Rs. [Paise]
Cash in hand and at the bank, household goods, wearing apparel, books, plate, jewels, etc.	
[*State estimated value according to best of Executor's or Administrator's belief.*] ...	
Property in Government securities transferable at the Public Debt Office ...	
(State description and value on the date of the death of the deceased or on the date of the application as the case may be)	
Immovable property consisting of	
[*State description and market value on the date of the death of the deceased or on the date of the application, as the case may be.*]	
Leasehold property	
[*If the deceased held any leases for years determinable, state the period of the lease and the estimated amount of rent inserting separately arrears due on the date of death or on the date of the application, as the case may be.*]	
Property in public companies	
[*State the particulars and the value calculated at the price on the date of the death or on the date of the application, as the case may be.*]	
Policies of insurance upon life, money out on mortgages and other securities, such as bonds, bills, notes and other securities for money, ...	
[*State the amount of the whole on the date of the death or on the date of the application, as the case may be.*]	
Debts	
[*Other than bad debts.*]	
Stock-in-trade	
[*State the estimated value, if any.*]	
Other property not comprised under the foregoing heads	
[*State the estimated value, if any*]	
Total ...	
Deduct items shown in Annexure B in the manner provided in sub-section (2) of section 56	
Net value of the Estate ...	

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[*] *Substituted* for 'n.P.' by President's Act, 8 of 1966, S. 5 [1-10-1966].

Schedule 3, Part 1 — Note 1

(1) Part 1 of Schedule 3 provides for the disclosure of assets in respect of properties specified in Annexure A to the affidavit. No question of adjudication of title in respect of the assets in Annexure A arises in these proceedings. AIR 1969 Ker 256 (259).

ANNEXURE B

Schedule of debts, etc.

Rs. [paise]*

Amount of debts due and owing from the deceased, legally payable out of the estate ... ...

Amount of expenses connected with funeral rites and ceremonies ...

Amount of mortgage incumbrances ... ...

Property held in trust not beneficially or with general power to confer a beneficial interest ... ...

Other property not subject to duty ... ...

Total ...

---

* *Substituted* for 'nP.' by President's Act 8 of 1966, S. 5 [1-10-1966].

PART II

AMENDED FORM OF VALUATION OF ESTATE

[*See Sections 61 and 63*]

IN THE COURT OF

Re: Probate of the will of (or Administration of the Estate of),

Deceased

1. I [A. B.] am the executor (or one of the executors or one of the next-of-kin *as the case may be) of*

2. Probate was (*or* letters of administration were) granted to me on

3. It has now been discovered that the net value of the estate on which Court-fee was paid was not correctly ascertained.

4. I have now truly set forth in Annexure A to this amended Form of Valuation all the estate of the deceased at the date of ——— his / death ——— the application for probate (*or* letters of administration) which has come or is likely to come to my hands.

5. I further have now truly set forth in Annexure B all the items which I am by law allowed to deduct.

6. I further declare that the said estate, exclusive only of the last-mentioned items, at the date of ——— the death of the deceased was / this application is ——— under the value of

7. I [A. B.] further declare that what is stated in this amended Form of Valuation is true to the best of my information and belief.

[Signed] A. B.

ANNEXURE A

Amended valuation of the Estate of deceased.

Valuation on which Court-fee was paid.	*Increase.*	*Decrease.*	*Valuation as now amended*

Total ...

Deduct items shown in Annexure B in manner provided in sub-section (2) of Section 56.

Amended net value of estate ...

ANNEXURE B

Amended Schedule of debts. etc.

Valuation on which Court-fee was paid.	*Increase.*	*Decrease.*	*Valuation as now amended.*

Total ...

[THE] MYSORE COURT-FEES AND SUITS VALUATION ACT, 1958
(MYSORE ACT XVI OF 1958)

(Act printed here is as amended by Mysore Acts XXIV of 1958; X of 1964; XXVII of 1966 and XI of 1966)

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[THE] MYSORE COURT-FEES AND SUITS VALUATION ACT, 1958

(MYSORE ACT XVI OF 1958)

(Received the assent of the President on the Twenty-third Day of May 1958 and first published in the Mysore Gazette on the Twenty-sixth Day of May, 1958.)

An Act to amend and consolidate the laws relating to court-fees and valuation of suits in the State of Mysore.

Whereas it is necessary and expedient to amend and consolidate the laws relating to court-fees and valuation of suits in the State of Mysore;

Be it enacted by the Mysore State Legislature in the Ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. **Short title, extent and commencement.**—(1) This Act may be called THE MYSORE COURT-FEES AND SUITS VALUATION ACT, 1958.

(2) It extends to the whole of the State of Mysore.

(3) It shall come into force on such date* as the State Government may, by notification in the Official Gazette, appoint.

[*] The date so appointed is the 15th August, 1960—See Mys. Gaz., 1960, Pt. IV-C, page 1505.

2. **Application of Act.**—(1) The provisions of this Act shall not apply to documents presented or to be presented before an officer serving under the Central Government.

(2) Where any other law contains provisions relating to the levy of fee in respect of proceedings under such other law, the provisions of this Act relating to the levy of fee in respect of such proceedings shall apply, subject to the said provisions of such other law.

3. **Definitions.**—In this Act, unless the context otherwise requires,—

(i) "appeal" includes a cross-objection;

*[i-a] "Chief Controlling Revenue Authority" means the officer appointed by the State Government to be the Commissioner of Stamps for Mysore.]

[*] Inserted by Mys. Act X of 1964, Section 2 (5-3-1964).

(ii) "Court" means any Civil, Revenue or Criminal Court and includes a Tribunal or other authority having jurisdiction under any special or local law to decide questions affecting the rights of parties;

(iii) "prescribed" means prescribed by rules made under this Act; and

(iv) expressions used and not defined in this Act or in the Mysore General Clauses Act, 1899 (Mysore Act III of 1899), but defined in the Code of Civil Procedure, 1908 (Central Act V of 1908), shall have the meanings respectively assigned to them in the said Code.

CHAPTER II

LIABILITY TO PAY FEE

4. Levy of fee in Courts and public offices.—No document which is chargeable with fee under this Act shall—

(i) be filed, exhibited or recorded in, or be acted on or furnished by, any Court including the High Court, or

(ii) be filed, exhibited or recorded in any public office, or be acted on or furnished by any public officer,

unless in respect of such document there be paid a fee of an amount not less than that indicated as chargeable under this Act:

Provided that, whenever the filing or exhibition in a criminal Court of a document in respect of which the proper fee has not been paid is in the opinion of the Court necessary to prevent a failure of justice, nothing contained in this section shall be deemed to prohibit such filing or exhibition.

°[Provided further that no fee shall be payable in respect of any document filed, exhibited or recorded by or on behalf of the State Government or any officer of the State Government in his official capacity or acted on at the instance of or furnished to the State Government or any officer of the State Government in his official capacity.]

[°] Inserted by Mysore Act X of 1964, Section 3 (5-3-1934).

5. Fees on documents inadvertently received.—When a document on which the whole or any part of the fee prescribed by this Act has not been paid is produced or has, through mistake or inadvertence, been received in any Court or public office, the Court or the head of the office may, in its or his discretion, at any time, allow the person by whom such fee is payable to pay the fee or part thereof, as the case may be, within such time as may be fixed; and upon such payment, the document shall have the same force and effect as if the full fee had been paid in the first instance.

6. Multifarious suits.—(1) In any suit in which separate and distinct reliefs based on the same cause of action are sought, the plaint shall be chargeable with a fee on the aggregate value of the reliefs:

Provided that, if a relief is sought only as ancillary to the main relief, the plaint shall be chargeable only on the value of the main relief.

(2) Where more reliefs than one based on the same cause of action are sought in the alternative in any suit, the plaint shall be chargeable with the highest of the fees leviable on the reliefs.

(3) Where a suit embraces two or more distinct and different causes of action and separate reliefs are sought based on them, either alternatively or cumulatively, the plaint shall be chargeable with the aggregate amount of the fees with which

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Section 4 — Note 1

(1) A Regular suit filed by Liquidator of a company against debtors who disputed the claim of the company — Suit can be entertained by the winding up Court but court-fee has to be paid under Mysore Court-fees Act (1958) as on a regular suit. AIR 1967 Mys 190 (191)= (1967) 1 Mys LJ 449.

plaints would be chargeable under this Act if separate suits were instituted in respect of the several causes of action.

Provided that, where the causes of action in respect of reliefs claimed alternatively against the same person arise out of the same transaction, the plaints shall be chargeable only with the highest of the fees chargeable on them.

Nothing in this sub-section shall be deemed to affect any power conferred upon a Court under Rule 6 of Order II of the Code of Civil Procedure, 1908 (Central Act V of 1908).

(4) The provisions of this section shall apply mutatis mutandis to memoranda of appeals, applications, petitions and written statements.

Explanation.—For the purpose of this section, a suit for possession of immovable property and for mesne profits shall be deemed to be based on the same cause of action.

7. **Determination of market-value.**—(1) Save as otherwise provided, where the fee payable under this Act depends on the market-value of any property, such value shall be determined as on the date of presentation of the plaint.

(2) The market-value of land in suits falling under Sections 24 (a), 24 (b), 26 (a), 27, 28, 29, 31, 35 (1), 35 (2), 35 (3), 36, 38, 39 or 45 shall be deemed to be—

(a) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government,

or forms part of such an estate and is recorded in the Deputy Commissioner's register as separately assessed with such revenue,

and such revenue is permanently settled—

twenty-five times the revenue so payable;

(b) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such estate and is recorded as aforesaid,

and such revenue is settled, but not permanently—

twelve and a half times the revenue so payable;

(c) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue,—fifteen times the net profits, if any, from the land during the year next before the date of presenting the plaint or thirty times the revenue payable on the same extent of similar land in the neighbourhood, whichever is lower;

(d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as abovementioned or the land is a garden or the land is a house-site, whether assessed to full revenue or not, or is land not falling within the foregoing description—the market value of the land.

Explanation.—The word "estate" as used in this section means any land subject to the payment of revenue, for which the proprietor or farmer or raiyat shall have executed a separate engagement to Government, or which in the absence of such engagement, shall have been separately assessed with revenue.

8. **Set-off or counter claim.**—A written statement pleading a set-off or counter claim shall be chargeable with tee in tne same manner as a plaint.

Section 7 — Note 1

(1) Suit for possession of a specific property allotted to plaintiff's share at partition — Property not separately assessed to revenue — Not an estate within the meaning of Section 7 (2) (a) nor within the description of property in Section 7 (2). Court-fee is payable on market value of suit property. AIR 1969 Mys 255 (257) = (1968) 2 Mys LJ 273.

Section 8 — Note 1

(1) Suit for partition against co-owners — Defendant co-owner claims his share — Cancellation of release deed executed

9. Documents falling under two or more descriptions.—Subject to the provisions of the last preceding section, a document falling within two or more descriptions in this Act shall, where the fees chargeable thereunder are different, be chargeable only with the highest of such fees:

Provided that, where one of such descriptions is special and another general, the fee chargeable shall be the fee appropriate to the special description.

CHAPTER III

DETERMINATION OF FEE

10. Statement of particulars of subject-matter of suit and plaintiff's valuation thereof.—In evey suit in which the fee payable under this Act on the plaint depends on the market value of the subject-matter of the suit, the plaintiff shall file with the plaint a statement in the prescribed form, of particulars of the subject-matter of the suit and his valuation thereof unless such particulars and the valuation are contained in the plaint.

11. Decision as to proper fee in courts.—(1) In every suit instituted in any court, the court shall, before ordering the plaint to be registered, decide on the materials and allegations contained in the plaint and on the materials contained in the statement, if any, filed under Section 10, the proper fee payable thereon, the decision being however subject to review, further review, and correction in the manner specified in the succeeding sub-sections.

(2) Any defendant may, by his written statement filed before the first hearing of the suit or before evidence is recorded on the merits of the claim but, subject to the next succeeding sub-section not later plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim. If the Court decides that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the Court shall fix a date before which the plaint shall be amended in accordance with the Court's decision and the deficit fee shall be paid. If the plaint be not amended or if the deficit fee be not paid within the time allowed, the plaint shall be rejected and the Court shall pass such order as it deems just regarding costs of the suit.

(3) A defendant added after issues have been framed on the merits of the claim may in the written statement filed by him, plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim, and if the Court finds that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the Court shall follow the procedure laid down in sub-section (2).

Explanation.—Nothing in this sub-section shall apply to a defendant added as a successor or a representative in interest of a defendant who was on record before issues were framed on the merits of the claim and who had an opportunity to file a written statement pleading that the subject-matter of the suit was not properly valued or that the fee paid was not sufficient.

(4) (a) Whenever a case comes up before a Court of appeal, it shall be lawful for the Court, either on its own motion or on the application of any of the parties, to consider the correctness of any order passed by the lower Court affect-

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Section 8 — Note 1 (contd.)

by him in favour of another defendant co-owner necessary to grant him relief — Written statement claiming the relief does not fall under Order 8, Rule 6 — Section 8, Court-fees Act, does not apply. AIR 1967 Mys 217 (219) = (1967) 2 Mys LJ [illegible] (DB).

Section 9 — Note 1

(1) Where a case falls under two sections the question as to which of the two provisions would govern the case has to be answered by applying the provisions of Section 9 of the Act. (1968) 1 Mys LJ 336 (339) = 15 Law Rep 1.

ing the fee payable on the plaint or in any other proceeding in the lower Court and determine the proper fee payable thereon.

Explanation.—A case shall be deemed to come before a Court of appeal even if the appeal relates only to a part of the subject-matter of the suit.

(b) If the Court of appeal decides that the fee paid in the lower Court is not sufficient, the Court shall require the party liable to pay the deficit fee within such time as may be fixed by it.

(c) If the deficit fee is not paid within the time fixed and the default is in respect of a relief which has been dismissed by the lower Court and which the appellant seeks in appeal, the appeal shall be dismissed, but if the default is in respect of a relief which has been decreed by the lower Court, the deficit fee shall be recoverable as if it were an arrear of land revenue.

(d) If the fee paid in the lower Court is in excess, the Court shall direct the refund of the excess to the party who is entitled to it.

(5) All questions as to value for the purpose of determining the jurisdiction of Courts arising on the written statement of a defendant shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim.

Explanation.—In this section, the expression "merits of the claim" refers to matters which arise for determination in the suit, not being matters relating to the frame of the suit, misjoinder of parties and causes of action, the jurisdiction of the Court to entertain or try the suit or the fee payable, but inclusive of matters arising on pleas of res judicata, limitation and the like.

12. Additional fee on issues framed.—Where a party becomes liable to pay additional fee by reason of an issue framed in the suit, the provisions of the last foregoing section shall apply to the determination and levy of such additional fee subject to the modification that where the party liable does not pay such additional fee within the time allowed, the Court shall strike off the issue and proceed to hear and decide the other issues in the case.

13. Relinquishment of portion of claim.—A plaintiff who has been called upon to pay additional fee may relinquish a part of his claim and apply to have the plaint amended so that the fee paid would be adequate for the claim made in the plaint as amended. The Court shall allow such application on such terms as it considers just and shall proceed to hear and decide the claim made in the plaint as amended, provided that the plaintiff shall not be permitted at any later stage of the suit to add to the claim the part so relinquished.

14. Fee payable on written statements.—Where fee is payable under this Act on a written statement filed by a defendant, the provisions of Section 11 shall apply to the determination and levy of the fee payable on such written statement, the defendant concerned being regarded for the said purpose as the plaintiff and the plaintiff or the co-defendant or the third party against whom the claim is made being regarded as the defendant.

15. Fee payable on appeals, etc.—The provisions of Sections 10 to 13 relating to the determination and levy of fee on plaints in suits shall apply mutatis mutandis to the determination and levy of fee in respect of a memorandum of appeal, cross objection or other proceeding in second appeal.

Section 14 — Note 1

(1) **Suit for partition of property against co-owners — Co-owner defendant also claiming his share in written statement — Cancellation of release deed executed by him in favour of another co-owner defendant necessary for giving him relief — Written statement does not fall under O. 8, R. 6** and from the provisions of Secs. 14, 35 (4) and 38 of the Court-fees Act 1958 court-fee must be paid for the relief of cancellation of the release deed which is involved in the defendant's claim. AIR 1967 Mys 217 (219) = (1967) 2 Mys LJ 49 (DB).

16. Fee payable on petitions, applications, etc.—The provisions of Sections 10 to 13 shall apply mutatis mutandis to the determination and levy of fee in respect of petitions, applications and other proceedings in Courts in the same way as they apply to the determination and levy of fee on plaints in suits.

17. Court-fee Examiners.—(1) The High Court may depute officers to be designated Court-fee Examiners to inspect the records of subordinate Courts with a view to examine the correctness of representations made to, and orders passed by, Courts on questions relating to valuation of subject-matter and sufficiency of fee in respect of proceedings in such Courts.

(2) Questions raised in reports submitted by such Court-fee Examiners and relating to any suit, appeal or other proceeding pending in a Court shall be heard and decided by such Court; and for the avoidance of doubt it is hereby declared that in hearing and deciding a question raised in any such report, it shall be lawful for the Court to review an earlier decision given by the Court on the same question.

18. Inquiry and commission.—For the purpose of deciding whether the subject-matter of a suit or other proceeding has been properly valued or whether the fee paid is sufficient, the Court may hold such inquiry as it considers proper and may, if it thinks fit, issue a commission to any proper person directing him to make such local or other investigation as may be necessary and to report thereon to the Court.

19. Notice to the State Government.—In any inquiry relating to the fee payable on a plaint, written statement, petition, memorandum of appeal or other document, or to the valuation of the subject-matter of the claim to which the plaint, written statement, petition, memorandum of appeal or other document relates, in so far as such valuation affects the fee payable, the Court may, if it considers it just or necessary to do so, give notice to the State Government together with a copy of any of the documents aforesaid; and where such notice is given, the State Government shall be deemed to be a party to the suit or other proceeding as respects the determination of the question or questions aforesaid; and the Court's decision on such question or questions shall, when it passes a decree or final order in such suit or proceeding, be deemed to form part of such decree or final order.

CHAPTER IV

COMPUTATION OF FEE

20. Fee how reckoned.—The fee payable under this Act shall be determined or computed in accordance with the provisions of this Chapter, Chapter VI, Chapter VIII and Schedules I and II.

21. Suits for money.—In a suit for money (including a suit for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically), fee shall be computed on the amount claimed.

22. Suits for maintenance and annuities.—In the suits hereinafter mentioned, fee shall be computed as follows:—

(a) in a suit for maintenance, on the amount claimed to be payable for one year;

(b) in suit for enhancement or reduction of maintenance, on the amount by which the annual maintenance is sought to be enhanced or reduced;

(c) in a suit for annuities or other sums payable periodically, on five times the amount claimed to be payable for one year:

Provided that, where the annuity is payable for less than five years, the fee shall be computed on the aggregate of the sums payable:

Provided further that a suit for enhancement of maintenance shall be instituted in a Court which will have jurisdiction to receive a suit for maintenance at the enhanced rate claimed and one for reduction of maintenance shall be instituted in a Court which will have jurisdiction to receive a suit for maintenance at the rate which is sought to be reduced.

23. Suits for movable property.—(1) In a suit for movable property other than documents of title, fee shall be computed—

(a) where the subject-matter has a market value, on such value; or

(b) where the subject-matter has no market value, on the amount at which the relief sought is valued in the plaint:

Provided that where the suit is for goods pledged as security for payment of a debt, the fee shall be computed on the amount of debt.

(2) (a) In a suit for possession of documents of title, fee shall be computed on one-eighth of the amount or of the market value of the property secured by the document,

(i) where the plaint alleges denial of the plaintiff's title to the money or the property secured by the document, or

(ii) where an issue is framed regarding the plaintiff's title to the money or the property secured by the document:

Provided that where the allegation in the plaint or the issue framed relates only to a portion of the amount or property, fee shall be computed on one-eighth of such portion of the amount or on one-eighth of the market value of such portion of the property.

(b) In a suit for possession of documents of title where the plaintiff's title to the money or the property secured by the document is not denied, fee shall be computed on the amount at which the relief sought is valued in the plaint.

Explanation.—The expression "document of title" means a document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, in any property.

24. Suits for declaration.—In a suit for a declaratory decree or order, whether with or without consequential relief, not falling under Section 25,

(a) where the prayer is for a declaration and for possession of the property to which the declaration relates, fee shall be computed on the market value of the property or on rupees one hundred, whichever is higher;

Section 24 — Note 1

(1) Suit for declaration of occupancy rights should be valued for court-fee not as a suit for simple declaration without consequential relief, but as a suit falling within Article 5 of Sch. 2 of Court-fees Act of 1958. (1968) 1 Mys LJ 336 (340) = 15 Law Rep 1.

(2) Suit for declarations and for possession of the property to which the declaration relates — Court-fee is to be paid on the plaint under Section 24 (a). AIR 1969 Mys 255 (256) = (1968) 2 Mys LJ 273 = (1962) 40 Mys LJ 658 (660), (Cases under old Act.)

(3-4) Suit for declaration that the defendant was bound to construct the house according to conditions of Municipality and for injunction restraining him from building contrary to those conditions is a suit for injunction falling under Cl. (d). AIR 1955 Mys 65 (Pr 2) = ILR (1955) Mys 43 (FB). (AIR 1952 Mys 80 = ILR (1952) Mys 344, **Overruled.**)

(5) Suit for declaration that plaintiff is entitled to cut and remove timber trees standing on the suit properties and for injunction — The reliefs sought fall under Section 4 (iv) (c). ILR (1960) Mys 897 (899). (Case under old Act).

(6) Where the Court proceeded on the footing that the suit was one for injunction and decided the question of court-fees as under Section 4 (iv) (d) and not under Section 4 (iv) (c) and the defendant did not challenge the order, his objection was not to be considered in revision. AIR 1959 Mys 167 (167) = 36 Mys LJ 422. (Case under old Act.)

(7) Suit for cancellation of settlement deed —Value of the property — Means Market

(b) where the prayer is for a declaration and for consequential injunction and the relief sought is with reference to any immovable property, fee shall be computed on one-half of the market value of the property or on rupees one hundred, whichever is higher;

(c) where the prayer relates to the plaintiff's exclusive right to use, sell, print or exhibit any mark, name, book, picture, design or other thing and is based on an infringement of such exclusive right, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees five hundred, whichever is higher;

(d) in other cases, whether the subject-matter of the suit is capable of valuation or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees two hundred and fifty whichever is higher.

25. Adoption suits.—In a suit for a declaration in regard to the validity or invalidity of an adoption or the factum of an adoption, fee shall be payable at the following rates :—

(a) (i) In a Court of Munsiff or District Munsiff; and (ii) In a Court of Civil Judge, Junior Division, when the market value of the property involved in or affected by the relief does not exceed Rs. 5,000.	Rupees Twenty-five.
(b) (i) In the Court of Civil Judge, Junior Division, when the market value of the property involved in or affected by the relief exceeds Rs. 5,000 and (ii) In any Court other than the Courts specified in (a) (i).	Rupees one hundred if the market value of the property involved in or affected by the relief is Rs. 15,000 or less and rupees two hundred and fifty if it is above Rs. 15,000.

26. Suits for injunction.—In a suit for injunction—

(a) where the relief sought is with reference to any immovable property, and

(i) where the plaintiff alleges that his title to the property is denied, or

(ii) where an issue is framed regarding the plaintiff's title to the property,

fee shall be computed on one-half of the market value of the property or on rupees one hundred, whichever is higher;

(b) where the prayer relates to the plaintiff's exclusive right to use, sell, print or exhibit any mark, name, book, picture, design or other thing and is based on an infringement of such exclusive right, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees five hundred, whichever is higher;

Section 24 — Note 1 (contd.)

value and not value in deed. (1963) 1 Mys LJ 67 (70, 73) (DB).

(8) Suit for redemption of a mortgage — Court-fee is to be paid on the principal money. (1962) Mys LJ (Suppl) 545 (548).

Section 26 — Note 1

(1) Suit for injunction restraining the defendants from interfering with plaintiff's possession — No question of title to the property involved — Suit does not fall under Section 26 (a) but falls under Section 26 (c). (1968) 1 Mys LJ 309 (310) = 14 Law Rep 27.

(2) Suit as to lease-hold interest claimed by one party and denied by other should fall under Section 41 (1) (f) — Issue may be an issue of title within Section 26 (a). (1968) 1 Mys LJ 336 (339) = 15 Law Rep 1.

(3) Expression 'Property' refers only to the property which is the subject-matter of the suit. (1968) 1 Mys LJ 336 (338) = 15 Law Rep 1.

(4) Word "title" — Case include lesser interest as that of tenant. (1968) 1 Mys LJ 336 (338) = 15 Law Rep 1.

(c) in any other case, whether the subject-matter of the suit has a market value or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees one hundred, whichever is higher.

27. Suits relating to trust property.—In a suit for possession or joint possession of trust property or for a declaratory decree, whether with or without consequential relief in respect of it, between trustees or rival claimants to the office of trustee or between a trustee and a person who has ceased to be trustee, fee shall be computed on one-fifth of the market value of the property subject to a maximum fee of rupees two hundred or where the property has no market value, on rupees one thousand:

Provided that, where the property does not have a market value, value for the purpose of determining the jurisdiction of Courts shall be such amount as the plaintiff shall state in the plaint.

Explanation.—For the purpose of this section, property comprised in a Hindu, Muslim or other religious or charitable endowment shall be deemed to be trust property and the manager of any such property shall be deemed to be the trustee thereof.

28. Suits for possession under the Specific Relief Act, 1877.—In a suit for possession of immovable property under Section 9 of the Specific Relief Act, 1877* (Central Act I of 1877), fee shall be computed on one-half of the market value of the property or on rupees one hundred, whichever is higher.

[*] Now see Specific Relief Act, 1963 (47 of 1963) (1-3-1964).

29. Suits for possession not otherwise provided for.—In a suit for possession of immovable property not otherwise provided for fee shall be computed on the market value of the property or on rupees one hundred, whichever is higher.

30. Suits relating to easements.—In a suit relating to an easement, whether by the dominant or the servient owner, fee shall be computed on the amount at which the relief sought is valued in the plaint, which amount shall in no case be less than rupees one hundred:

Provided that, where compensation is claimed besides other relief relating to such easement, fee shall be paid on the amount claimed as compensation in addition to the fee payable on such other relief.

31. Pre-emption suits.—In a suit to enforce a right of pre-emption, fee shall be computed on the amount of the consideration for the sale which the pre-emptor seeks to avoid or on the market value, whichever is less.

32. Suits relating to mortgages.—(1) In a suit to recover the money due on a mortgage, fee shall be computed on the amount claimed.

Section 31 — Note 1

(1) Suit for declaration and possession of the property on the ground that it was allotted to the plaintiff on partition — Further prayer that the plaintiff had a preferential right to purchase the property allotted to defendant's share and sold by him — The suit so far as relief of declaration and possession is concerned falls under Section 24 (a) of the Act of 1958 — As the second relief is concerned it falls under Section 31 of the Act. In both the cases court-fee is payable under Section 7 of the Court-fees Act, 1958 on the market value of the property. AIR 1969 Mys 255 (256) = (1968) 2 Mys LJ 273.

Section 32 — Note 1

(1) Suit by prior mortgagee for decree for sale — Written statement filed by puisne mortgagee seeking adjudication of his claim based upon his mortgage — Court-fee need not be paid on written statement — It becomes payable when he makes an application for payment and court-fee is to be paid at that stage under Section 32 (3). (1968) 1 Mys LJ 275 (276) = 14 Law Rep 96.

(2) Money claim based on a mortgage deed and a promissory note — They are distinct subjects within the meaning of Section 14 of the Mysore Court-fees Act (3 of 1900) — Court fee should be calculated separately on two claims and paid on the aggregate of the fees so separately calculated and not on the total of the amount claimed under two heads. (1963) 1 Mys LJ (Supp) 121 (125) (DB).

Explanation.—It is immaterial that sale of the mortgaged property is not prayed for.

(2) Where, in such a suit, the holder of a prior mortgage or charge is impleaded and he prays in his written statement that the amount due on his mortgage or charge be determined and that the decree contains a direction for the payment of such amount to him, fee shall be payable on the written statement computed on the amount claimed:

Provided that, where the holder of the mortgage or charge has paid a fee in any other proceeding on the claim to which his written statement relates credit shall be given for the fee paid by him in such other proceeding.

(3) Where, in such a suit, the mortgaged property is sold and the holder of a prior or subsequent mortgage or charge applies for payment to him, out of the sale proceeds, of the amount due on his mortgage or charge, such holder of the prior or subsequent mortgage or charge shall pay on his application a fee computed on the amount claimed by him:

Provided that, where such holder of the mortgage or charge is a party to the suit in which the sale was held and has paid fee on the written statement filed by him in the suit, no fee shall be payable by him on the application for payment out of the sale proceeds:

Provided further that, where the holder of the mortgage or charge; not being a party to the suit in which the sale is held, has paid a fee in any other proceeding on the claim to which his application relates, credit shall be given for the fee paid by him in such other proceeding.

(4) In a suit by a co-mortgagee for the benefit of himself and the other co-mortgagees, fee shall be computed on the amount claimed on the entire mortgage:

Provided that, where a co-mortgagee impleaded as defendant in such suit claims on the entire mortgage a larger sum than is claimed in the plaint, the difference between the fee computed on the entire sum claimed in such defendant's written statement and the fee computed on the entire sum claimed in the plaint shall be payable on the written statement.

Explanation.—Nothing in this sub-section shall be construed as affecting the law of limitation.

(5) (a) In a suit by a sub-mortgagee to recover the amount claimed on the sub-mortgage by sale of the mortgagee's interest in the mortgaged property, fee shall be computed on the amount claimed under the sub-mortgage.

(b) In a suit by a sub-mortgagee, if the prayer is for the sale of the property mortgaged to the original mortgagee and the original mortgagor is also impleaded as a defendant, fee shall be computed on the entire amount claimed on the original mortgage which is sub-mortgaged to him.

(6) Where the holder of a prior or subsequent mortgage or charge is impleaded in a suit by a co-mortgagee to which sub-section (4) applies, or in a suit by a sub-mortgagee to which sub-section (5) applies, the provisions of sub-sections (2) and (3) shall apply mutatis mutandis to a written statement or an application filed by such holder of mortgage or charge.

(7) Where the original mortgagee who is impleaded in a suit to which the provisions of sub-section (5) (b) apply claims on the mortgage sub-mortgaged by him a larger amount than is claimed in the plaint, the provisions of sub-section (4) shall apply mutatis mutandis to the written statement of such mortgagor.

(8) In a suit against a mortgagee for redemption of a mortgage, fee shall be computed on the amount due on the mortgage as stated in the plaint or on one-fourth of the principal amount secured under the mortgage whichever is higher:

Provided that, where the amount due on the mortgage is found to be more than the amount on which fee has been paid by the plaintiff, no decree shall be passed until the deficit fee is paid:

Provided further that, in the case of a usufructuary or anomalous mortgage, if the plaintiff prays for redemption as well as for accounts of surplus profits, fee shall be levied separately on the relief for accounts as in a suit for accounts.

(9) In a suit by a mortgagee to foreclose the mortgage or where the mortgage is made by conditional sale to have the sale declared absolute, fee shall be computed on the amount claimed in the plaint by way of principal and interest.

33. Suits for accounts.—(1) In a suit for accounts, fee shall be computed on the amount sued for as estimated in the plaint.

(2) Where the amount payable to the plaintiff as ascertained in the suit is in excess of the amount as estimated in the plaint, no decree directing payment of the amount as so ascertained shall be passed until the difference between the fee actually paid and the fee that would have been payable had the suit comprised the whole of the amount so ascertained, is paid. If the additional fee is not paid within such time as the Court may fix, the decree shall be limited to the amount to which the fee paid extends.

(3) Where in any such suit it is found that any amount is payable to the defendant, no decree shall be passed in his favour until he pays the fee due on the amount.

34. Suits for dissolution of partnership.—(1) In a suit for dissolution of partnership and accounts or for accounts of dissolved partnership, fee shall be computed on the value of the plaintiff's share in the partnership as estimated by the plaintiff.

(2) If the value of the plaintiff's share as ascertained in the suit exceeds the value as estimated in the plaint, no decree, or where there has been a preliminary decree, no final decree, shall be passed in favour of the plaintiff, no payment shall be made out of the assets of the partnership and no property shall be allotted as for the plaintiff's share, until the difference between the fee actually paid and the fee that would have been payable had the suit comprised the whole of the value so ascertained is paid.

(3) No final decree shall be passed, no money shall be paid and no allotment of property shall be made in favour of a defendant in any such suit as for or on account of, his share of the assets of the partnership, until the fee computed on the amount or value of his share of the assets of the partnership is paid.

35. Partition suits.—(1) In a suit for partition and separate possession of a share of joint family property or of property owned, jointly or in common, by a plaintiff whose title to such property is denied, or who has been excluded from

Section 35 — Note 1

(1) Suit for partition and possession of share in joint family property — Plaint only stating that defendant refused partition on ground that partition could be claimed only after disposal of another suit for partition — **Held**, repudiation of right to ask for partition on such ground was not denial of title — Court-fee payable was that prescribed by sub-section (2) and not by sub-section (1). (1968) 1 Mys LJ 367 (368) = 15 Law Rep 34.

(2) Suit for partition of property against co-owners — Co-owner defendant also claiming his share in written statement — Cancellation of release deed executed by him in favour of another co-owner defendant necessary for giving him relief — Written statement does not fall under Order 8, Rule 6 and from provisions of Sections 14, 35 (4) and 38 of Court-fees Act, 1958 Court-fee must be paid on the relief of cancellation of the release deed which is in the defendants' claim. AIR 1967 Mys 217 = (1967) 2 Mys LJ 49 (DB).

(3) Suit for partition and possession of joint family property — Plaintiff in joint possession fixed fee in accordance with Article 11-B of Schedule 2 of Mysore Court-fees Act (1900) is payable. (1962) 40 Mys LJ 658 (660). (Case under old Act.)

(4) Suit for partition and separate possession of property claimed to be in joint possession — Court fee is payable under Article 11B — Court of first instance finding against joint possession of some of the properties — Appeal from decree — Court-fee payable on memo of appeal is also under Article 11B — The nature of the suit would not change by the decision of the court of first instance. AIR 1953 Mys 108 (109, 110) = 32 Mys LJ 92 (DB). (Case under old Act.)

possession of such property, fee shall be computed on the market value of the plaintiff's share.

(2) In a suit for partition and separate possession of joint family property or property owned, jointly or in common by a plaintiff who is in joint possession of such property, fee shall be paid at the following rates;

Rupees fifteen if the value of plaintiff's share is Rs. 3,000 or less;

Rupees thirty if the value is above Rs. 3,000 but not more than Rupees 5,000;

Rupees one hundred if the value is above Rs. 5,000 but below Rupees 10,000 and

Rupees two hundred if the value is Rs. 10,000 and above.

(3) Where, in a suit falling under sub-section (1) or sub-section (2), a defendant claims partition and separate possession of his share of the property, fee shall be payable on his written statement computed on half the market value of his share or at half the rates specified in sub-section (2), according as such defendant has been excluded from possession or is in joint possession.

(4) Where, in a suit falling under sub-section (1) or sub-section (2), the plaintiff or the defendant seeks cancellation of decree or other document of the nature specified in Section 38 separate fee shall be payable on the relief of cancellation in the manner specified in that section.

36. **Suits for joint possession.**—In a suit for joint possession of joint family property or of property owned, jointly or in common, by a plaintiff who has been excluded from possession, fee shall be computed on the market value of the plaintiff's share.

37. **Administration suits.**—(1) In a suit for the administration of an estate, fee shall be levied on the plaint at the rates specified in Section 47.

(2) Where any amount or share or part of the assets of the estate is found due to the plaintiff, and the fee computed on the amount or the market value of such share or part of the assets exceeds the fee paid on the plaint, no payment shall be made and no decree directing payment of money or confirming title to such share or part of the assets shall be passed until the difference between the fee actually paid and the fee computed on the amount or value of the property is paid.

(3) No payment shall be made, no decree directing payment of money or confirming title to any share or part of the assets of the estate shall be passed in favour of a defendant in a suit for administration, until the fee computed on the amount or value of such share or part of such assets is paid by such defendant.

(4) In computing the fee payable by a plaintiff or by a defendant under sub-section (2) or sub-section (3) credit shall be given for the fee if any, paid by such plaintiff or by such defendant in any other proceeding in respect of the claim on the basis of which such amount or share or part of the assets of the estate becomes due to such plaintiff or to such defendant.

38. **Suits for cancellation of decrees, etc.**—(1) In a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immov-

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Section 38 — Note 1

(1) Suit for partition of property against co-owners — Co-owner defendant also claims his share in written statement — Cancellation of release deed executed by him in favour of another co-owner defendant necessary for giving him relief — Written statement is not one falling under Order 8, Rule 6 and from the provisions of Sections 14, 35 (4) and 38 of the Court-fees Act 1958 Court-fee must be paid for the relief of cancellation of the release deed which is involved in the defendants' claim. AIR 1967 Mys 217 (219) = (1967) 2 Mys LJ 49 (DB).

able property, fee shall be computed on the value of the subject-matter of the suit, and such value shall be deemed to be—

if the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed;

if a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property.

(2) If the decree or other document is such that the liability under it cannot be split up and the relief claimed relates only to a particular item of property belonging to the plaintiff or to the plaintiff's share in any such property, fee shall be computed on the value of such property or share or on the amount of the decree, whichever is less.

Explanation 1.—A suit to set aside an award shall be deemed to be a suit to set aside a decree within the meaning of this section.

Explanation 2.—In a suit for cancellation of a decree and possession of any property, the fee shall be computed as in a suit for possession of such property.

39. Suits to set aside attachment, etc.—(1) In a suit to set aside an attachment by a civil or revenue court of any property, movable or immovable, or of any interest therein or of any interest in revenue, or to set aside an order passed on an application made to set aside the attachment, fee shall be computed on one-fourth of the market value of the attached property in respect of which the suit is instituted or on the amount for which the property was attached, whichever is less.

(2) In a suit to set aside any other summary decision or order of a civil or revenue court, if the subject-matter of the suit has a market value, fee shall be computed on one-fourth of such value, and in other cases, fee shall be payable at the rates specified in Section 47.

Explanation.—For the purpose of this section, the Registrar of Co-operative Societies shall be deemed to be a civil Court.

40. Suits for specific performance.—In a suit for specific performance, whether with or without possession, fee shall be payable—

(a) in the case of a contract of sale, computed on the amount of the consideration;

(b) in the case of a contract of mortgage, computed on the amount agreed to be secured by the mortgage;

(c) in the case of a contract of lease, computed on the aggregate amount of the fine or premium, if any, and of the average of the annual rent agreed to be paid;

(d) in the case of a contract of exchange, computed on the amount of the consideration or as the case may be, on the market value of the property sought to be got in exchange;

(e) in other cases, where the consideration for the promise sought to be enforced has a market value, computed on such market value or where such consideration has no market value, at the rates specified in Section 47.

41. Suits between landlord and tenant.—(1) In the following suits between landlord and tenant in civil Courts, namely:—

Section 40 — Note 1

(1) Section 40, Cl. (e) means that the relief falling within its ambit has to be valued by valuation of the right of the plaintiff if it has a market value but where it has none at the rates specified in Section 47. (1967) 1 Mys LJ 258 (261) = 9 Law Rep 492

Section 41 — Note 1

(1) Issue as to the existence or otherwise of a lease-hold interest claimed by one party and denied by others — The issue is one under which one party is trying to establish and the other to disprove a right of occupancy within the meaning of Clause (e) of sub-section (1) of Section 41. (1968) 1 Mys LJ 336 (339) = 15 Law Rep 1.

(a) for the delivery by a tenant of the counter-part of a lease or for acceptance of patta in exchange for a muchalika;

(b) for enhancement of rent;

(c) for the delivery by a landlord of a lease or for obtaining a patta in exchange for a muchalika;

(d) for recovering occupancy of immovable property from which a tenant has been illegally ejected by the landlord;

(e) for establishing or disproving a right of occupancy;

fee shall be levied on the amount of rent for the immovable property to which the suit relates, payable for the year next before the date of presenting the plaint.

(2) In a suit for recovery of immovable property from a tenant including a tenant holding over after the termination of a tenancy, fee shall be computed on the premium, if any, and on the rent payable for the year next before the date of presenting the plaint.

Explanation.—Rent includes also damages for use and occupation payable by a tenant holding over.

42. **Suits for mesne profits.**—(1) In a suit for mesne profits or for immovable property and mesne profits, fee shall in respect of mesne profits be computed, where the amount is stated approximately and sued for, on such amount. If the profits ascertained to be due to the plaintiff are in excess of the profits as approximately estimated and sued for no decree shall be passed until the difference between the fee actually paid and the fee that would have been payable had the suit comprised the whole of the profits so ascertained is paid.

(2) Where a decree directs an enquiry as to the mesne profits which have accrued on the property, whether prior or subsequent to the institution of the suit, no final decree shall be passed till the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits accrued due till the date of such decree is paid.

(3) Where for a period subsequent to the date of the decree or final decree, such decree or final decree directs payment of mesne profits at a specified rate such decree or final decree shall not be executed until the fee computed on the amount claimed in execution has been paid.

43. **Suits to alter or cancel entry in revenue registers and certain suits in revenue Courts.**—(1) In a suit to alter or cancel any entry in revenue or survey registers or records of the names of proprietors of revenue-paying estate, the fee payable shall be fifteen rupees.

(2) In suits in revenue Courts relating to a village office, the fee payable shall be fifteen rupees.

(3) In suits in Tahsildar's Courts under the Bombay Mamlatdars' Courts Act, 1906 (Bombay Act II of 1906) the fee payable shall be one rupee and fifty naye paise.

(4) In suits and applications under the Bombay Land Revenue Code, 1879 (Bombay Act V of 1879) and under the Hyderabad Land Revenue Act, 1317F (Hyderabad Act VIII of 1317 Fasli), the fee payable shall be seventy-five naye paise.

44. **Suits relating to public matters.**—In a suit for relief under Section 14 of the Religious Endowments Act, 1863 (Central Act XX of 1863), or under Section 91 or Section 92 of the Code of Civil Procedure, 1908 (Central Act V of 1908), the fee payable shall be fifty rupees.

Section 41 — Note 1 (contd.)

(2) Decree for mesne profits — Deficient Court-fees directed to be paid by decree within fifteen days under S. 8 it is open to court to stipulate in the decree any date by which the court-fees should be paid. AIR 1959 Mys 168 (168) = 36 Mys LJ 421. (Case under Act 3 of 1900.)

45. Interpleader suits.—(1) In an interpleader suit, fee shall be payable on the plaint at the rates specified in Section 47.

(2) Where issues are framed as between the claimants, fee shall be payable computed on the amount of the debt or the money or the market value of other property, movable or immovable, which forms the subject-matter of the suit. In levying such fee, credit shall be given for the fee paid on the plaint; and the balance of the fee shall be paid in equal shares by the claimants who claim the debt or the sum of money or the property adversely to each other.

(3) Value for the purpose of determining the jurisdiction of Courts shall be the amount of the debt, or the sum of money or the market value of other property to which the suit relates.

46. Third party proceedings.—In third party proceedings, fee shall be levied on one-half of the value of the contribution or indemnity claimed against a third party or against a co-defendant if a claim is made against him:

Provided that, if the suit against the defendant who has filed the third party notice is dismissed, wholly or in part, he shall be entitled to a refund of the whole or a proportionate part of the fee paid by him.

Explanation.—The provisions of this section shall also apply to counter-claims made in third party proceedings.

47. Suits not otherwise provided for.—In suits not otherwise provided for, fee shall be payable at the following rates:—

(i) In a revenue Court	Rupees Fifteen.
(ii) In any Civil Court	Rupees twenty if the value of the subject-matter is Rs. 5,000 or less; rupees one hundred if the value is above Rupees 5,000 but below Rs. 10,000; and rupees two hundred if the value is Rs. 10,000 and above.

48. Fee on memorandum of appeal against *[decision, award or order] relating to compensation.—The fee payable under this Act on a memorandum of appeal against *[a decision or an award or order] relating to compensation under any Act for the time being in force for the acquisition of property for public purposes shall be computed on the difference between the amount awarded and the amount claimed by the appellant.

[*] Substituted for the word 'order' and for the words 'an order' by Mys. Act XI of 1969, S. 2 (22-5-1969).

49. Appeals.—*[Save as provided in Section 48, the fee payable] in an appeal shall be the same as the fee that would be payable in the Court of first instance on the subject-matter of the appeal:

Provided that, in levying fee on a memorandum of appeal against a final decree by a person whose appeal against the preliminary decree passed by the Court of first instance or by the Court of appeal is pending, credit shall be given for the fee paid by such person in the appeal against the preliminary decree.

Explanation (1).—Whether the appeal is against the refusal of a relief or against the grant of the relief, the fee payable in the appeal shall be the same as the fee that would be payable on the relief in the Court of first instance.

Explanation (2).—Costs shall not be deemed to form part of the subject-matter of the appeal except where such costs form themselves the subject-matter of the appeal or relief is claimed as regards costs on grounds additional to, or independent of, the relief claimed regarding the main subject-matter in the suit.

Section 49 — Note 1

(1) Grant of probate, appeal against — Court-fee payable is under Schedule I, Article 4 which is a special provision for proceedings under Indian Succession Act and not under Section 49 of the Court-fees Act which is a general provision. (1964) 1 Mys LJ 248 (249) (DB).

Explanation (3).—In claims which include the award of interest subsequent to the institution of the suit, the interest accrued during the pendency of the suit till the date of decree shall be deemed to be part of the subject-matter of the appeal except where such interest is relinquished.

Explanation (4).—Where the relief prayed for in the appeal is different from the relief prayed for or refused in the Court of first instance, the fee payable in the appeal shall be the fee that would be payable in the Court of first instance on the relief prayed for in the appeal.

Explanation (5).—Where the market value of the subject-matter of the appeal has to be ascertained for the purpose of computing or determining the fee payable, such market value shall be ascertained as on the date of presentation of the plaint.

[°] Substituted for the words 'The fee payable' by Mys. Act 11 of 1969, S. 3 (22-5-1969).

CHAPTER

VALUATION OF SUITS

50. Suits not otherwise provided for.—(1) In a suit as to whose value for the purpose of determining the jurisdiction of Courts, specific provision is not otherwise made in this Act or in any other law, value for that purpose and value for the purpose of computing the fee payable under this Act shall be the same.

°[Provided that notwithstanding anything contained in sub-section (2) of Section 7, the value of land specified in clause (a), (b) or (c) of the said sub-section shall, for purposes of determining the jurisdiction of Courts, be the market value of such land].

[°] Inserted by Mys. Act X of 1964, S. 5 (5-3-1964).

(2) In a suit where fee is payable under this Act at a fixed rate, the value for the purpose of determining the jurisdiction of Courts shall be the market value or where it is not possible to estimate it at a money value such amount as the plaintiff shall state in the plaint.

51. Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes.—(1) Notwithstanding anything contained in Section 99 of the Code of Civil Procedure, 1908 (Central Act V of 1908), an objection that by reason of the overvaluation or undervaluation of a suit or appeal, a Court of first instance or lower appellate Court which had not jurisdiction with respect to the suit or appeal exercised jurisdiction with respect thereto shall not be entertained by an appellate Court, unless—

(a) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded, or in the lower appellate Court in the memorandum of appeal to that Court, or

(b) the appellate Court is satisfied for reasons to be recorded by it in writing, that the suit or appeal was overvalued or undervalued and that the overvaluation or undervaluation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) If the objection was taken in the manner mentioned in clause (a) of sub-section (1), but the appellate Court is not satisfied as to both the matters mentioned in clause (b) of that sub-section and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of first instance or lower appellate Court.

(3) If the objection was taken in that manner and the appellate Court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with

respect to the hearing of appeals; but if it remands the suit or appeal, or frames and refers issues for trial, or requires additional evidence to be taken, it shall direct its order to a Court competent to entertain the suit or appeal.

(4) The provisions of this section with respect to an appellate Court shall, so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under Section 115 of the Code of Civil Procedure, 1908 (Central Act V of 1908), or other enactment for the time being in force.

CHAPTER VI

PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION

52. Application for probate or letters of administration.—(1) Every application for the grant of probate or letters of administration shall be accompanied by a valuation of the estate in duplicate in the form set forth in Part I of Schedule III.

(2) On receipt of such application, the Court shall send a copy thereof and of the valuation of the Deputy Commissioner of the district in which the estate is situated, or if the estate is situated in more than one district, to the Deputy Commissioner of the district in which the most valuable portion of the immovable property included in the estate is situated.

53. Levy of fee.—(1) The fee chargeable for the grant of probate or letters of administration shall comprise—

A fee at the rate or rates prescribed in Article 6 of Schedule I, computed—

(a) where the application is made within one year of the date of death of the deceased, on the market value of the estate on such date; or

(b) where the application is made after the expiry of one year from such date, on the market value of the estate on the date of the application:

Provided that property held in trust not beneficially or with general power to confer a beneficial interest shall not be liable to any fee under this chapter.

Explanation.—Any member of a joint Hindu family governed by the Mitakshara Law who applies for probate or letters of administration in respect of the estate of the deceased member of the joint family shall pay a fee on the value of the share in the joint property which the deceased would have received if a partition of the property had been made immediately before his death.

(2) For the purpose of the computation of fee—

(a) the value of the items mentioned in Annexure B to Part I of Schedule III shall be deducted from the value of the estate:

Provided that, when an application is made for probate or letters of administration in respect of part only of an estate, no debt, no expenses connected with any funeral rites or ceremonies and no mortgage encumbrance on any part of the estate other than that in respect of which the application is made shall be deducted:

Provided further that when, after the grant of a certificate under Part X of the Indian Succession Act, 1925 (Central Act XXXIX of 1925), or under Bombay Regulation VIII of 1827 in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant;

(b) the power of appointment which the deceased had over a property or which was created under a will shall be taken into account, the value being taken to be the value of the property forming the subject-matter of the power.

54. **Grant of probate.**—The grant of probate or letters of administration shall not be delayed by reason of the reference to the Deputy Commissioner under sub-section (2) of Section 52; or of a motion by the Deputy Commissioner under sub-section (5) of Section 56; but the Court shall make no grant of probate or letters of administration until it is satisfied that a fee not less than that prescribed by this Act has been paid on the basis of the net value of the estate as furnished in the valuation accompanying the application, or in the amended valuation filed under sub-section (3) of Section 56:

Provided that the Court may grant probate or letters of administration notwithstanding that the prescribed fee has not been paid, to the Administrator-General in his official capacity on his giving an undertaking to the satisfaction of the Court that the said fee will be paid within such time as may be fixed by the Court.

55. **Relief in cases of several grants.**—(1) Whenever a grant of probate or letters of administration has been made in respect of the whole of the property belonging to an estate and the full fee payable under this Act in respect of the application for such grant has been paid thereon, no fee shall be payable when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

(2) Whenever such grant has been made in respect of any property forming part of an estate, the amount of fee actually paid under this Act in respect thereof shall be deducted when a like grant is made in respect of the property belonging to the same estate identical with or including the property to which the former grant relates.

56. **Inquiry by the Deputy Commissioner.**—(1) The Deputy Commissioner to whom a copy of the application and of the valuation has been sent under sub-section (2) of Section 52, shall examine the same and may make or cause to be made by any officer subordinate to him such inquiry, if any, as he thinks fit as to the correctness of the valuation or, where a part only of the property is situated in his district, of the valuation of that part, and may require the Deputy Commissioner of any other district in which any part of the property is situated to furnish him with the correct valuation thereof.

(2) Any Deputy Commissioner required under sub-section (1) to furnish the correct valuation of any property shall comply with the requisition after making or causing to be made by any officer subordinate to him such inquiry, if any, as he thinks fit.

(3) If the Deputy Commissioner is of opinion that the applicant has underestimated the value of the property of the deceased, he may, if he thinks fit, require the attendance of the applicant, either in person or by his agent, and take evidence and inquire into the matter in such manner as he may think fit, and if he is still of opinion that the value of the property has been underestimated, may require the applicant to amend the valuation, and, if the application for probate or letters of administration is pending in Court to file a copy of the amended valuation in such Court.

(4) If, in any such case, the probate or letters of administration has or have been granted and the applicant amends the valuation to the satisfaction of the Deputy Commissioner and the Deputy Commissioner finds that a less fee has been paid than was payable according to the true value of the estate, he shall proceed under sub-section (4) of Section 58; but if a higher fee has been paid than was payable according to the true value of the estate, the excess fee shall be refunded to the applicant.

(5) If the applicant does not amend the valuation to the satisfaction of the Deputy Commissioner, the Deputy Commissioner may move the Court before

which the application for probate or letters of administration was made to hold an inquiry into the true value of the property:

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required by Section 317 of the Indian Succession Act, 1925 (Central Act XXXIX of 1925).

57. Application to Court and powers of Court.—(1) The Court shall, when moved by the Deputy Commissioner under sub-section (5) of Section 56, hold or cause to be held by any Court or officer subordinate to it an inquiry as to the true value at which the estate of the deceased should have been estimated. The Deputy Commissioner shall be deemed to be a party to the inquiry.

(2) For the purposes of any such inquiry, the Court, or the subordinate Court or the officer authorised by the Court to hold the inquiry, may examine the applicant on oath either in person or by commission, and may take such further evidence as may be produced to prove the true value of the estate, and where the inquiry has been entrusted to a subordinate Court or officer, such Court or officer shall return to the Court the evidence taken and report the result of the inquiry and such report and the evidence so taken shall be evidence in the proceedings

(3) The Court on the completion of the inquiry or on receipt of the report referred to in sub-section (2), as the case may be, shall record a finding as to the true value at which the estate should have been estimated and such finding shall be final.

(4) The Court may make such order in accordance with the provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908), as to the cost of the inquiry as it thinks fit.

58. Provision for cases where too low a fee has been paid.—(1) Where too low a fee has been paid on any probate or letters of administration in consequence of any mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters, applies to the Deputy Commissioner in the form set forth in Part II of Schedule III and pays within six months after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, what is wanting to make up the fee which ought to have been paid at first on such probate or letters the Deputy Commissioner shall, if satisfied that a low fee was paid in the first instance in consequence of a mistake and without any intention of fraud or to delay the payment of the proper fee, cause the probate or letters to be duly stamped.

(2) If, in a case falling under sub-section (1) the executor or administrator does not, within the six months referred to in that sub-section, pay the deficit fee, he shall forfeit a sum equal to five times the deficit fee.

(3) If, on application being made under sub-section (1), the Deputy Commissioner is not satisfied that the application was made within six months of the discovery of the mistake or of further effects not included in the original valuation or that the payment of a low fee in the first instance was not due to a bona fide mistake, he shall cause the probate or letters to be duly stamped on payment of the deficit fee together with a penalty not exceeding five times such fee.

(4) If, after the grant of probate or letters of administration of an estate, it is found by the Deputy Commissioner as a result of proceedings under Section 56

Section 58 — Note 1

(1) Addition of new items to the assets and collect additional Court-fee is within the jurisdiction of Deputy Commissioner and is dealt with in S. 58 Court-fees Act, 1958. The matter being exclusively relating to revenue and not required to be considered judicially by the probate court the application for this purpose does not lie to the probate Court. (1968) 1 Mys LJ 273 (274).

(2) A refund of Court-fee paid on the memo of appeal can be made when a suit is remanded for disposal by the lower Court in the interest of justice. AIR 1952 Mys 20 (21) = 30 Mys LJ 186. (Case under Act 3 of 1900.)

or Section 57 or otherwise, that a less fee has been paid than was payable according to the true value of the estate, he shall cause the probate or letters to be properly stamped on payment of the deficit fee, and if he is satisfied that the original undervaluation was not bona fide, he shall levy in addition a penalty not exceeding five times the deficit fee.

(5) The Chief Controlling Revenue Authority may remit the whole or any part of the amount forfeited under sub-section (2) or of any penalty under sub-section (3) or sub-section (4).

59. **Administrator to give proper security before letters stamped.**—In case of letters of administration on which too low a fee has been paid at first, the Deputy Commissioner shall not cause the same to be duly stamped in the manner aforesaid until the administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained.

60. **Relief when too high a fee has been paid.**—(1) If, at any time after the grant of the probate or letters of administration of an estate, it is discovered that a higher fee has been paid than was payable according to the true value of the estate, the executor or the administrator, as the case may be, may apply for a refund to the Deputy Commissioner to whom a copy of the valuation of the estate was sent under sub-section (2) of Section 52. The application shall be accompanied by an amended valuation in the form set forth in Part II of Schedule III together with the probate or letters of administration upon which a refund is sought.

(2) If the Deputy Commissioner is satisfied that the amended valuation is correct, he shall—

(i) endorse a certificate on the stamped probate or letters of administration to the effect that so much of the fee represented by the stamp or stamps used has been refunded; and

(ii) refund the difference between the fee originally paid and that which should have been paid:

Provided that no refund shall be granted under this section unless the application for refund is made within three years of the date of the grant of the probate or letters of administration, or within such further period as the Deputy Commissioner may allow.

If, by reason of any legal proceedings, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available and in consequence thereof, the executor or administrator is prevented from claiming the return of such difference within the said period of three years, the Deputy Commissioner may allow such further time for making the claim as may appear to him to be reasonable under the circumstances.

If the Deputy Commissioner does not grant a refund, the executor or administrator, as the case may be, may apply to the Chief Controlling Revenue Authority for an order of refund. An application for such refund should be accompanied by an amended valuation in the form set forth in Part II of Schedule III.

61. **Recovery of penalties, etc.**—Any excess fee found to be payable by an applicant for probate or letters of administration or by an executor or administrator, or any costs under sub-section (4) of Section 57 or any penalty or forfeiture payable by any such executor or administrator may on the certificate of the Chief Controlling Revenue Authority, be recovered from the executor or administrator as if it were an arrear of land revenue.

62. **Powers of Chief Controlling Revenue Authority.**—The powers and duties of the Deputy Commissioner under this Chapter shall be subject to the control of the Chief Controlling Revenue Authority.

CHAPTER VII

REFUNDS AND REMISSIONS

63. Refund in cases of delay in presentation of plaint, etc.—(1) Where a plaint or memorandum of appeal is rejected on the ground of delay in its *[re-presentation,] or where the fee paid on a plaint or memorandum of appeal is deficient and the deficiency is not made good within the time allowed by law or granted by the Court, or the delay in payment of the deficit fee is not condoned and the plaint or memorandum of appeal is consequently rejected, the Court shall direct the refund to the plaintiff or the appellant, of the fee paid on the plaint or memorandum of appeal which has been rejected.

(2) Where a memorandum of appeal is rejected on the ground that it was not presented within the time allowed by the law of limitation, one-half of the fee shall be refunded.

[*] Substituted for "presentation" by Mys. Act X of 1964, Section 5 (5-3-1964).

64. Refund in cases of remand.—(1) Where a plaint or memorandum of appeal which has been rejected by the lower Court is ordered to be received, or where a suit is remanded in appeal for a fresh decision by the lower Court, the Court making the order or remanding the appeal shall, where the whole decree is reversed and the suit is remanded, and may in other cases direct the refund to the appellant of the full amount of fee paid on the memorandum of appeal; and, if the remand is on second appeal, also on the memorandum of appeal in the first appellate Court.

(2) Where an appeal is remanded in second appeal for a fresh decision by the lower appellate Court, the High Court remanding the appeal may direct the refund to the appellant of the full amount of fee paid on the memorandum of second appeal:

Provided that no refund shall be ordered if the remand was caused by the fault of the party who would otherwise be entitled to a refund:

Provided further that, if the order of remand does not cover the whole of the subject-matter of the suit, the refund shall not extend to more than so much fee as would have been originally payable on that part of the subject-matter in respect whereof the suit has been remanded.

65. Refund where Court reverses or modifies former decision on ground of mistake.—Where an application for a review of judgment is admitted on the ground of some mistake or error apparent on the face of the record, and on the rehearing the Court reverses or modifies its former decision on that ground, it shall direct the refund to the applicant of so much of the fee paid on the application as exceeds the fee payable on any other application to such Court under Article 11 (g) and (t) of Schedule II.

66. Refund on settlement before hearing.—Whenever by agreement of parties,—

(a) any suit is dismissed as settled out of Court before any evidence has been recorded on the merits of the claim; or

(b) any suit is compromised ending in a compromise decree before any evidence has been recorded on the merits of the claim; or

Section 66 — Note 1

(1) Suit decreed by erstwhile court in Bombay State — Appeal filed after States Reorganization to the High Court in Mysore State — Appeal settled out of Court — Application for refund of Court-fee on memo of appeal — Law applicable to the case was Court-fees Act (1870), Section 31 added by the Bombay Act 12 of 1954 — No provision of refund in case of appeals in that Act — Appellant not entitled to refund of Court-fee — Appellant not entitled to refund either under Section 17-A of the Mysore Civil Courts Act (1833) nor under Section 66 of the Mysore Court-fees Act, 1958 as both the Acts did not apply to the case. (1962) 40 Mys LJ 263 (265, 267) (DB).

(c) any appeal is disposed of before the commencement of hearing of such appeal;

half the amount of all fees paid in respect of the claim or claims in the suit or appeal shall be ordered by the Court to be refunded to the parties by whom the same have been respectively paid.

Explanation.—The expression "merits of the claim" shall have the meaning assigned to it in Section 11.

67. **Refund of fee paid by mistake or inadvertence.**—The fee paid by mistake or inadvertence shall be ordered to be refunded.

68. **Instruments of partition.**—Where the final decree in a partition suit has been engrossed on non-judicial stamps furnished by the parties, the Court shall order the refund to the parties of so much of the valued fee paid by them as is equal to the value of the non-judicial stamps furnished by them.

69. **Exemption of certain documents.**—Nothing contained in this Act shall render the following documents chargeable with any fee:—

(i) mukhtarnama, vakalatnama or other written authority to institute or defend a suit when executed by a member of any of the Armed Forces of the Union not in civil employment;

(ii) memorandum of appearance filed by advocates or pleaders when apparing for persons proceeded against in criminal cases;

(iii) plaints and other documents in suits filed in village Courts;

(iv) application or petition to a Deputy Commissioner or other officer making a settiement of land revenue, or to the State Government relating to matters connected with the assessment of land, or with the ascertainment of rights thereto or interest therein, if presented previous to the final confirmation of such settlement;

(v) application relating to a supply for irrigation of water belonging to Government;

(vi) application for leave to extend cultivation or to relinquish land, when presented to an officer of land revenue by a person holding, under a direct engagement with Government, land of which revenue is settled but not permanently;

(vii) application for service of notice of relinquishment of land or of enhancement of rent;

(viii) written authority to an agent to distrain;

(ix) first application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court;

(x) bail bonds in criminal cases, recognizances to prosecute or give evidence and recognizances for personal appearance or otherwise;

(xi) petition, application, charge or information respecting any offence when presented, made or laid to or before a police officer or to or before the heads of villages or the village police;

(xii) petition by a prisoner or other person in duress or under restraint of any Court or its officer;

(xiii) complaint of a public servant as defined in the Indian Penal Code (Central Act XLV of 1860) or an officer of the State Railway;

(xiv) application for permission to cut and remove timber in Government forests or otherwise relating to such forests, not being applications from forest contractors for extending the period of their leases;

(xv) application for the payment of money due by the Government to the applicant, other than an application for refund of lapsed deposit made six months after the date on which the amount lapsed to the Government;

(xvi) petition of appeal against any municipal tax;

(xvii) application for compensation under any law, for the time being in force relating to the acquisition of property for public purposes;

(xviii) petition under Section 48 of the Indian Christian Marriage Act, 1872 (Central Act XV of 1872);

(xix) petition or appeal by a Government servant or a servant of the Court of Wards when presented to any superior officer or Government against orders of dismissal, reduction or suspension; copies of such orders filed with such appeals, and applications for obtaining such copies;

(xx) copy of record of rights filed with plaints or applications.

70. Power to reduce or remit fees.—*[(1) The State Government may, by notification in the Official Gazette, reduce or remit, in the whole or any part of the State of Mysore, if in the opinion of the State Government it is necessary in public interest so to do, the fee payable in respect of any particular class of documents or any of the documents belonging to such class, or any documents when filed, exhibited or recorded by or acted on at the instance of or furnished to, any particular class of persons or any members of such class; and may in like manner cancel or vary such notification.]

(2) Every notification under sub-section (1) shall be laid as soon as may be after it is published in the Official Gazette before the State Legislative Assembly while it is in session, for a total period of thirty days which may be comprised in one session or in two or more sessions and if before the expiry of that period, the State Legislative Assembly makes any modification in the notification or directs that the notification shall not have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be.

[*] Substituted for original sub-section by Mys. Act X of 1964, Sec. 6 (5-3-1964).

CHAPTER VIII

MISCELLANEOUS

71. Collection of fees by stamps.—All fees chargeable under this Act shall be collected by stamps.

72. Stamps to be impressed or adhesive.—The stamps used to denote any fee chargeable under this Act shall be impressed or adhesive or partly impressed and partly adhesive, as the State Government may, by notification in the official Gazette from time to time, direct.

73. Amended document.—Where any document which ought to bear a stamp under this Act is amended in order merely to correct a mistake and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

74. Cancellation of stamp.—No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Such officer as the Court or the head of the office may, from time to time, appoint shall, on receiving any such document forthwith effect such cancellation by punching out the figurehead so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

75. Deduction to be made.—Where allowance is made in this Act for damaged or spoiled stamps, or where fee already paid is directed to pe refunded to any person by an order of Court, the Deputy Commissioner may, on the application of the person concerned, pay to him the amount of fee or where damaged or spoiled stamps are produced, he may, after satisfying himself about their genuineness, in lieu thereof pay the same amount or value in stamps of the same or any other description, or if the applicant so desires, the same amount or value in money provided that in all cases where money is paid in cash, a deduction shall be made of *[ten] paise for each rupee or fraction thereof. No such deduction shall, however, be made where refund is claimed in respect of any fee paid in pursuance of an order of Court which has been varied or reversed in appeal.

[*] Substituted for "six" by Mys. Act X of 1964, Section 7 (5-3-1964)

76. **Penalty.**—Any person appointed to sell stamps, who disobeys any rules made under this Act and any person, not so appointed, who sells or offers for sale any stamps, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

77. **Power of High Court to make rules.**—(1) The High Court may make rules to provide for or regulate all or any of the following matters, namely:—

(a) the fees payable for serving and executing processes issued by the High Court *[* * *] and by the civil and criminal Courts subordinate thereto;

(b) the remuneration of persons employed by the Courts mentioned in clause (a) in the service or execution of processes;

(c) the fixing by District and Sessions Judges and District Magistrates of the number of process-servers necessary to be employed for the service and execution of processes issued from their respective Courts and the Courts subordinate thereto;

(d) the display in each Court of a table in the English and in the local language or languages showing the fees payable for the service and execution of processes.

(2) All rules made under sub-section (1) shall be subject to confirmation by the State Government and on such confirmation shall be published in the official Gazette and shall thereupon have the force of law.

[*] Words "in its appellate jurisdiction" omitted by Mys. Act X of 1964, Section 8, (5-3-1964)

78. **Power of State Government to make rules.**—(1) The State Government may by notification in the official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, rules may be made to provide for or regulate all or any of the following matters, namely:—

(a) the fees chargeable for serving and executing processes issued by the Mysore Revenue Appellate Tribunal and by the Revenue Courts;

(b) the remuneration of the persons necessary to be employed for the service and execution of such processes;

(c) the fixing by Deputy Commissioners of the number of persons necessary to be employed for the service and execution of such process;

(d) the guidance of Deputy Commissioners in the exercise of their powers under Chapter VI;

(e) the supply of stamps to be used under this Act;

(f) the number of stamps to be used for denoting any fee chargeable under this Act;

(g) the keeping of accounts of all stamps used under this Act;

(h) the circumstances in which stamps may be held to be damaged or spoiled;

(i) the circumstances in which, the manner in which, and the authorities by which, allowance for used, damaged or spoiled stamps may be made;

(j) the regulation of the sale of stamps to be used under this Act, the persons by whom alone such stamps may be sold and the duties and remuneration of such persons.

(3) All rules made under this Act shall be laid, as soon as may be after they are made before the State Legislative Assembly while it is in session, for a total period of thirty days which may be comprised in one session or in two or more sessions and if before the expiry of that period, the State Legislative Assembly makes any modification in the rules or directs that any rules shall not have effect, the rules shall thereafter have effect only in such modified form or be of no effect, as the case may be.

79. Repeal and savings.—(1) The Court-fees Act, 1870 (Central Act VII of 1870) in its application to the Bombay Area, and the Coorg District, the Hyderabad Court-fees Act, 1324 F. (Hyderabad Act VI of 1324 F.), as in force in the Hyderabad Area; the Mysore Court-fees Act, 1900 (Mysore Act III of 1900), and Sections 11 and 17-A of the Mysore Civil Courts Act, 1883 (Mysore Act I of 1883), as in force in the Mysore Area, in relation to the fees and stamps other than fees and stamps relating to documents presented or to be presented before an officer serving the Central Government, and the Suits Valuation Act, 1887 (Central Act VII of 1887), in its application to the Bombay Area, and the Coorg District, the Hyderabad Suits Valuation (For Purposes of Jurisdiction) Act, 1318 F. (Hyderabad Act IV of 1318 F.), as in force in the Hyderabad Area, and the Mysore Suits Valuation Act, 1951 (Mysore Act XXXIX of 1951), as in force in the Mysore Area, and the Madras Court-fees and Suits Valuation Act, 1955 (Madras Act XIV of 1955), as in force in the Madras Area, are hereby repealed:

Provided that such repeal shall not affect—

(a) the previous operation of the said enactments or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the said enactments; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the said enactments; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed.

(2) Notwithstanding anything contained in sub-section (1), for the purpose of giving effect to the preceding proviso, to the said sub-section (1), the State

Section 79 — Note 1

(1) Court-fees — Refund — Appeal to Mysore High Court from decree passed by Dharwar Court in erstwhile Bombay State after Reorganisation — Appeal settled out to court — Appellant held not entitled to refund of Court-fees under Section 66, Mysore Court-fees Act (1958) as the appeal arose out of a suit filed before the Act of 1958 and therefore Section 79 of the Act of 1958 applied. (1962) 40 Mys LJ 263 (267) (DB).

(2) Act came into force on 15-8-1960 and not on 23-5-1958. When President gave his assent — Suit filed before 15-8-1960 is governed by Mysore Court-fees Act (1900) and Mysore Suits Valuation Act (39 of 1957) and not by Act 16 of 1958. (1962) Mys LT. (Supp) 545 (547).

(3) Appeal from an order refusing to wind up company — Appeal does not fall under Schedule 2, Article 17 (vii) of Court-fees Act 1870 as amended by Bombay Act (12 of 1954). AIR 1966 Mys 150 (152) (DB). (Case under Act of 1870 as amended by Bombay Act 12 of 1954.)

Government may, by notification in the official Gazette, make such provision as appears to it to be necessary or expedient—

(a) for making omissions from, additions to and adaptations and modifications of the rules, notifications and orders issued under the repealed enactments;

(b) for specifying the authority, officer or person who shall be competent to exercise such functions exercisable under any of the repealed enactments or any rules, notifications, or orders issued thereunder as may be mentioned in the said notification.

(3) All suits and proceedings instituted before the commencement of this Act shall, notwithstanding the repeal of the Acts specified in sub-section (1), be governed by the provisions of the said Acts and the rules made thereunder.

SCHEDULE I

Ad valorem Fees

Article (1)	*Particulars* (2)	*Proper fee* (3)
1.	Plaint, written statement pleading a set off or counter claim or memorandum of appeal presented to any Court. When the amount or value of the subject-matter in dispute—	
	(i) does not exceed ten rupees	Seventy-five naye paise.
	(ii) exceeds ten rupees, for every ten rupees, or part thereof, in excess of ten rupees.	Seventy-five naye paise.
2.	(a) Petition under section 26 of the Provincial Insolvency Act, 1920, or of the Mysore Insolvency Act, 1925, or of the Hyderabad Insolvency Act, 1351F, or application under S. 95 of the Code of Civil Procedure 1908	An amount of one-half the scale of fee prescribed in Article 1 on the amount or compensation claimed.
	(b) Appeal against order on a petition or application falling under clause (a).	On the scale prescribed in Article 1 on the amount in dispute.
3.	(a) Petition under section 53 or 54 of the Provincial Insolvency Act, 1920 or of the Mysore Insolvency Act, 1925, or of the Hyderabad Insolvency Act, 1351F.	An amount of one-half of fee prescribed in Article 1 on the market value of the subject-matter subject to a maximum fee of rupees five hundred.
	(b) Appeal against order on a petition falling under clause (a) whether by the official receiver or by the unsuccessful party.	An amount of one-half the scale of fee prescribed in Article 1 on the market value of the subject-matter subject to a maximum fee of rupees five hundred.
4.	Memorandum of appeal against order in proceedings under the Indian Succession Act, 1925.	An amount of one-half the scale of fee prescribed in Article 1 on the amount or value of the subject-matter.

Schedule 1, Article 1 — Note 1

(1) Suit cognisable by Court of Small Causes — Value of claim not exceeding Rs. 500/- — Proper court-fee leviable on plaint is according to Schedule I, Article 1-A and not according to Article 1. (1953) 31 Mys LJ 147. (Case under old Act.)

(2) Suit of a small cause nature not exceeding Rs. 500/- in value — Suit filed under Mysore Agriculturists' Relief Act — Suit is to be tried as original suit — Suit not within the jurisdiction of Small Cause Court — Court-fee is to be paid as on original suit and not under Schedule I, Article 1-A. AIR 1954 Mys 121 (121, 122) = 34 Mys LJ 36 (DB). (Case under old Act.) ** (1953) 31 Mys LJ 147. (Case under old Act.)

Schedule 1, Article 4 — Note 1

(1) Grant of probate appeal against Court-fee — Court-fee on an appeal against an order granting probate is payable under Article 4 of Schedule 1 which is special provision and not under Section 49 which is a general provision. (1964) 1 Mys LJ 248 (249) (DB).

Article (1)	*Particulars* (2)	*Proper fee* (3)
5.	Application for review of judgment, *[if presented before the ninetieth day from the date of the decree.]	One-half of the fee leviable on the plaint or memorandum of appeal.*[**]
*[5-A.	Application for review of judgment if presented on or after the ninetieth day from the date of the decree.	The fee leviable on the plaint or menorandum of appeal.]
	[*] Art. 5A and words in brackets in Col. 2 of Art. 5 *inserted* and certain words in Col 3 of Art. 5 omitted by Mys. Act X of 1964, S. 9 [5-3-1964].	
6.	Probate of a will or letters of administration with or without will annexed.	
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, on the part of the amount or value in excess of one thousand rupees, up to ten thousand rupees.	Two and a half per centum.
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds ten thousand rupees, on the part of amount or value in excess of ten thousand rupees, up to fifty thousand rupees.	Three and three fourths per centum.
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds fifty thousand rupees on the part of amount or value in excess of fifty thousand rupees, up to one lakh of rupees	Five per centum.
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one lakh of rupees on the part of the amount or value in excess of one lakh of rupees, up to two lakhs of rupees.	Five and five-eighths per centum.
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two lakhs of rupees, on the part of the amount or value in excess of two lakhs of rupees, up to two lakhs and fifty thousand rupees.	Six and one-fourth per centum
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two lakhs and fifty thousand rupees, on the part of the amount or value in excess of two lakhs and fifty thousand rupees, up to three lakhs of rupees.	Six and seven-eighths per centum.
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds three lakhs of rupees, on the part of the amount or value in excess of three lakhs of rupees, up to four lakhs of rupees	Seven and a half per centum.
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds four lakhs of rupees, on the part of the amount or value in excess of four lakhs of rupees, up to five lakhs of rupees.	Eight and one-eighth per centum.
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds five lakhs of rupees, on the part of the amount or value in excess of five lakhs of rupees.	Eight and three-fourths per centum.
[illegible]	**Certificate under Part X of the Indian Succession Act, 1925.**	**The fee leviable in the case of a probate (Art. 6) on the amount or value of any debt or security specified in the certificate under Section 374 of the Act, and one and a half times this fee on the amount or value of any debt or security to which the certificate is extended under Section 376 of the Act.**

Note. — (1) The amount of a debt is its amount, including interest, on the date on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained.

(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act, and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security of for both purposes, the value of the security is its market value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.

SHEDULE II.

Article (1)	*Particulars* (2)	*Proper fee* (3)
*[1.	Petition in a suit under the Mysore Converts' Marriage Dissolution Act, 1866 (Mysore Act XXI of 1866); or the Converts' Marriage Dissolution Act, 1866 (Central Act XXI of 1866); Petition under the Indian Divorce Act, 1869 (Central Act IV of 1869) other than a petition under section 44 of that Act, and every memorandum of appeal under section 55 of that Act; Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1936 (Central Act III of 1936) or counterclaim made under section 37 of that Act; Petition, plaint or memorandum of appeal when presented to a court under the Dissolution of Muslim Marriage Act, 1939 (Central Act VIII of 1939), the Mysore Dissolution of Muslim Marriage Act, 1943 (Mysore Act XLIII of 1943); and the Dissolution of Muslim Marriage Act, 1939 (Central Act VIII of 1939), as in force in the Hyderabad Area; Petition under section 22, 23, 24, 25 or 27 of the Special Marriage Act, 1954 (Central Act XLIII of 1954) and memorandum of appeal under section 39 of that Act; Petition under section 9, 10, 11, 12 or 13 of the Hindu Marriage Act, 1955 (Central Act XXV of 1955) and memorandum of appeal under section 28 of that Act. If in a suit falling under any of the above paragraphs there is a specific claim for damages, separate fee at the rates prescribed in Article 1 of Schedule I shall be charged on the amount of damages claimed.] [*] *Substituted* by Mysore Act XXIV of 1958, S. 2 [25-12-1958].	Thirty rupees.
2.	Undertaking under section 49 of the Indian Divorce Act, 1869.	One rupee.
3.	Memorandum of appeal *[from a decision or an award or] order inclusive of an order determining any question under section 47 or section 144 of the Code of Civil Procedure, 1908, and not otherwise provided for when presented—	
	(i) to any Court other than the High Court or to any Executive officer.	One rupee.
	(ii) to the Mysore Revenue Appellate Tribunal †[or the Co-operative Appellate Tribunal].	Two rupees.

Article (1)	*Particulars* (2)	*Proper fee* (3)
	(iii) to the High Court—	
	(1) Where the order was passed by a subordinate Court or other authority—	
	(a) If the order relates to a suit or proceeding, the value of which exceeds one thousand rupees.	Ten rupees.
	(b) In any other case. ...	Five rupees.
	(2) Where the appeal is under section 45-B of the Banking Companies Act, 1949.	One hundred rupees.
	(3) Where the appeal is under section 411-A of the Code of Criminal Procedure, 1898.	Five rupees.
	(iv) to the Government in pursuance of a statutory right to appeal for which no court-fee is leviable under any other enactment.	Five rupees.
	[*] *Substituted* for the words "from an order" by Mys. Act 11 of 1969, S. 4 [22-5-69].	
	[†] *Inserted* by Mys. Act 27 of 1966, S. 156 [w.r.e.f. 1-10-1964].	
4.	Memorandum of appeal under section 39 of the Arbitration Act, 1940—	
	(i) in a case where the value for jurisdiction does not exceed Rs. 5,000	Fifteen rupees.
	(ii) in any other case	One hundred rupees.
5.	Copy or translation of a judgment or order not being or having the force of a decree.	One rupee.
6.	Copy or translation of a judgment or order of a Criminal Court.	Fifty naye paise.
7.	Copy of a decree or order having the force of a decree—	
	When such decree or order is made by any Court other than the High Court;	One rupee.
	When such decree or order is made by the High Court.	Four rupees.
8.	Copy of any document liable to stamp duty under any law in force relating to stamps when left by any party to a suit or proceeding in place of the original withdrawn—	
	(a) When the stamp duty, chargeable on the original does not exceed one rupee.	The amount of the duty chargeable on the original.
	(b) in any other case.	One rupee and twenty-five naye paise.
9.	Copy of any revenue or judicial proceedings or order not otherwise provided for by this Act or copy of any account, statement, report, *[order] or the like taken out of any Court or †[public office]—	
	For every three hundred and sixty words or fraction of three hundred and sixty words.	Fifty naye paise.
	[*] *Inserted* by Mys. Act X of 1964, S. 11.	
	[†] *Substituted* for "office of any public officer" *ibid*.	
10.	*(a)* Application or petition presented to any officer of the Excise *[or Prohibition] Department or to any Magistrate by any person having dealings with the Government and when the subject-matter of such application relates exclusively to those dealings;	Twenty-five naye paise.
	(b) Application or petition presented to any officer of land-revenue by any person holding temporarily settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement;	Twenty-five naye paise.
	(c) Application or petition presented to any *[Municipal Corporation, Municipal Council, Sanitary Board, Notified Area Committee, Town Area Committee, the Commissioner, Executive Officer, Chief Officer, Secretary, President or Chairman] under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement;	Twenty-five naye paise.
	(d) Application or petition presented to any officer of land revenue relating to the grant of land on darkhast;	Twenty-five naye paise.

Article *(1)*	*Particulars* *(2)*	*Proper fee* *(3)*
	(e) Application to a Deputy Commissioner for lease of land for agricultural or non-agricultural purposes;	Seventy-five naye paise.
	(f) Application to a Forest Officer by a forest contractor for extension of the period of lease—	
	(i) if the value of the subject-matter of the lease is Rs. 5,000 or less.	Five rupees.
	(ii) If such value exceeds Rs. 5,000 for every Rs. 1,000 or part thereof in excess of Rs. 5,000.	One rupee.
	(g) Application for attestation of private documents intended to be used outside India.	One rupee.
	(h) Application for lapsed deposit presented after six months after the date on which the amount lapsed to the Government—	
	(i) when the amount or deposit does not exceed Rs. 50;	Fifty naye paise.
	(ii) when the amount or deposit exceeds Rs. 50 but does not exceed Rs. 1,000.	One rupee.
	(iii) when it exceeds Rs. 1,000.	Two rupees.
	(i) Application or petition presented to the Government and not otherwise provided for—	
	(i) which involves the excercise or non-exercise of power conferred by law or rule having the force of law;	Two rupees.
	(ii) in other cases.	One rupee and twenty-five naye paise.
	(j) Application or petition presented to the *[Mysore Revenue Appellate Tribunal] †[or the Co-operative Appellate Tribunal] or Divisional Commissioner or Chief Executive Authority and not otherwise provided for—	
	(i) which involves the exercise or non-exercise of power conferred by law or rule having the force of law;	Two rupees.
	(ii) in other cases.	One rupee and twenty-five naye paise.
	(k) Application or petition not falling under clause *(i)* or *(j)* and presented to a public officer or in a public office and not otherwise provided for—	
	(i) which involves the exercise or non-exercise of power conferred by law or rule having the force of law;	Fifty naye paise.
	(ii) in other cases.	Twenty-five naye paise.
	[*] *Inserted & substituted* by Mys. Act X of 1964, S. 10 [5-3-1964].	
	[†] *Inserted* by Mys. Act 27 of 1966, S. 156 (b) [w. r. e. f. 1-10-1964].	
11.	*(a)* Application or petition presented to any Civil Court other than a Principal Civil Court of original jurisdiction or to any Court of Small Causes or to a Deputy Commissioner or other officers of revenue or public Officer in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees.	Twenty-five naye paise.
	(b) Application or petition presented to any Court or to any *[Board, statutory authority or public officer] officer for the purpose of obtaining a copy or transaction of any judg-	Twenty-five naye paise.

Schedule 2, Article 11 — Note 1

(1) Company ordered to be wound up — Secured creditor claiming certain rights, over the property by way of security — Liquidator approaching winding up Court for directions in respect of such property — Proper procedure is to apply to the winding up court and court-fee payable on such application by liquidator is under Schedule, 2 Article 11 (b) of the Mysore Court-fees Act 1958. AIR 1969 Mys 280 (285. 286).

(2) Mysore Legislature was fully competent to pass the Act under Schedule 7, List 2, Item 3. The raising of Court-fee from Rs. 2 to Rs. 20 on writ petition also does not abridge the rights conferred by Part III of the Constitution. The Act is therefore constitutionally valid. AIR 1954 Mys 161 (161, 162) = 34 Mys LJ 178 (DB).

Article	*Particulars*	*Proper fee*
(1)	(2)	(3)
	ment, decree or order passed by such Court, *[Board, statutory authority] or officer, or of any other document on record in such Court, *[Board, statutory authority] or office.	
	(c) Application to any Court that records may be called from another Court, when the Court grants the application and is of opinion that the transmission of such records involves the use of the post,	One rupee in addition to the fee leviable on the application.
	(d) Application or petition containing a complaint or charge of any offence other than an offence for which police officers may, under the Code of Criminal Procedure, 1898, arrest without warrant, and presented to any Criminal Court.	One rupee.
	(e) Application or petition to deposit in Court or in the office of *[the Deputy Commissioner or other revenue officer] revenue or rent.	Fifty naye paise.
	(f) Application or petition for determination by a Court of the amount of compensation to be paid by a landlord to his tenant.	*[Seventy-five paise],
	(g) Application or petition presented to a Court or to a Deputy Commissioner, or any Revenue Officer or to a Public Officer having jurisdiction equal or subordinate to a Deputy Commissioner, or to any Magistrate in his executive capacity and not otherwise provided for by this Act.	Seventy-five naye paise.
	(h) Application for arrest or attachment before judgment or for temporary injunction when presented to a Civil Court or Revenue Court other than the High Court in relation to any suit or proceedings.	One rupee.
	(i) Application under Order XXI, Rule 58 of the Code of Civil Procedure, 1908, regarding claim to the attached property—	
	(i) when filed in a Revenue Court, or Court of a Munsiff, District Munsiff or Civil Judge, Junior Division.	One rupee.
	(ii) when filed in any other Court.	Two rupees and fifty naye paise.
	(j) Application or petition under section 47 and Order XXI, rule 90 of the Code of Civil Procedure, 1908 when filed in any Court.	One rupee.
	(k) Application or petition under sections 34, 72, 73 and 74 of the Indian Trusts Act, 1882.	Five rupees.
	(l) (i) Application for probate or letters of administration or for revocation thereof to have effect throughout India.	Twenty-five rupees.
	(ii) Application for probate or letters of administration or for revocation thereof not falling under clause (i) or an application for a certificate under Part X of the Indian Succession Act, 1925, or Bombay Regulation VIII of 1927—	
	(1) if the amount or value of the estate does not exceed Rs. 2,000.	Two rupees and fifty naye paise.
	(2) if the value exceeds Rs. 2,000, but does not exceed Rs. 5,000, provided that if a caveat is entered and the application is registered as a suit, one-half the scale of fee prescribed in Article 1 of Schedule I on the market value of the estate less the fee already paid on the application shall be levied.	Six rupees and twenty-five naye paise.
	(3) if the amount or value exceeds five thousand rupees.	Twelve rupees and fifty naye paise.
	(m) Original petitions not otherwise provided for when filed in—	
	(i) any Court subordinate to the High Court.	One rupee.
	(ii) the High Court.	Ten rupees.
	(n) Application to set aside an award under the Arbitration Act, 1940—	
	(1) if the value of the subject-matter of the award does not exceed Rs. 500.	Twelve rupees.
	(2) if such value exceeds Rs. 500.	Eighteen rupees and seventy-five naye paise.

Article (1)	*Particulars* (2)	*Proper fee* (3)
	(o) Application under section 14 or section 20 of the Arbitration Act, 1940, for a direction for filing an award or for an order for filing an agreement and application for enforcing foreign awards when presented to	
	(1) the Court of the Munsiff, District Munsiff and Civil Judge, Junior Division.	Fifteen rupees.
	(2) any other Court.	One hundred rupees.
	(p) †[* * * *]	
	(q) Revision petition presented to the High Court under section 115 of the Code of Civil Procedure, 1908, or under the provisions of any other Act, arising out of a suit or proceeding—	
	(i) if the value of the suit or proceeding to which the order sought to be revised relates does not exceed Rs. 1,000,	Five rupees.
	(ii) if such value exceeds Rs. 1,000.	Ten rupees.
	(r) Petition under sections 391, 439 and 522 of the Companies Act, 1956, in connection with the winding up of a company.	One hundred rupees.
	(s) Petition to the High Court under Article 226 of the Constitution for a writ other than the writ of Habeas Corpus, or a petition under Article 227 of the Constitution.	Twenty-five rupees.
	(t) Application under section 45 of the Specific Relief Act, 1877.	Ten rupees.
	(u) Application or petition presented to the High Court and not otherwise specifically provided for.	Two rupees.
	(v) Election petition to a Civil Court or judicial officer questioning the election of a person in respect of—	
	(i) the office of member of a *[Taluk Board or Panchayat]	Ten rupees.
	(ii) the office of President or Vice-President of a Taluk Board or Chairman or Vice-Chairman of a Panchayat	Fifteen rupees.
	(iii) the member of a Town †[* *] Municipal Council	Twenty-five rupees.
	(iv) the office of member or Alderman of the Council of the Corporation of Bangalore (or of Hubli-Dharwar) or of member of a City Municipal Council, Municipal Borough †[* *].	Fifty rupees.
	(v) the office of Mayor or Deputy Mayor of the Corporation of Bangalore (or of Hubli-Dharwar) or of Chairman of a Municipality †[* *].	Two hundred rupees.
	[*] *Inserted* by Mys. Act X of 1964, S. 10 [5-3-1964]. [†] Certain words *omitted* by *ibid*.	
12.	Application for leave to sue as a pauper.	Seventy-five naye paise.
13.	Application for leave to appeal as a pauper—	
	(a) when presented to a High Court	Two rupees and fifty naye paise.
	(b) when presented to any other Court	One rupee and twenty-five naye paise.
14.	Bail bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1898 or the Code of Civil Procedure, 1908 and not otherwise provided for by this Act.	One rupee and twenty-five naye paise.
15.	Every copy of power-of-attorney when filed in any suit or proceeding.	Seventy-five naye paise.
16.	Mukhtarnama or vakalatnama or any paper signed by an advocate signifying or intimating that he is retained for a party—	
	When presented—	
	(a) to any Court (other than a High Court or to the Mysore Revenue Appellate Tribunal or Sales Tax Appellate Tribunal *[* *] or Deputy Commissioner or †[any statutory or other authority or any officer]	One rupee.
	(b) to the Mysore Revenue Appellate Tribunal or the Mysore Sales Tax Appellate Tribunal	Two rupees.

Article (1)	*Particulars* (2)	*Proper fee* (3)
	(c) to the High Court	Three rupees.
	(d) to the Government	Three rupees.
	[*]. Words 'or to any Magistrate' *omitted* by Mys. Act X of 1964, S, 10 [5-3-1964].	
	[†] *Substituted* for the words "or other executive officer", *ibid.*	
17.	Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908.	
	(i) Where the value of the subject-matter does not exceed Rs. 5,000.	Fifteen rupees.
	(ii) In any other case.	One hundred rupees.
18.	Caveat—	
	When the amount or value of the property involved does not exceed two thousand rupees.	Six rupees and twenty-five naye paise.
	When the amount or value of the property involved exceeds two thousand rupees.	Twelve rupees and fifty naye paise.

SCHEDULE III

PART I

(*See* Section 52.)

Form of Valuation (to be used with such modifications, if any, as may be necessary of Estate.

IN THE COURT OF

Re : Probate of the will of the Estate of (or Administration), Deceased.

1. I (A. B.)... .... solemnly affirm/make oath and say that I am the executor (or one of the executors or one of the next-of-kin) of ....deceased and that I have truly set forth in Annexure A to this Form of Valuation all the estate of which the abovenamed deceased died possessed or to which he was entitled at the time of his death, and which has come, or is likely to come, to my hands.

2. I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct.

3. I further declare that the said estate exclusive only of the last-mentioned items was on the date of the death of the said deceased under the value of
*is

4. I (A. B.) (further declare that what is stated in this Form of Valuation is true to the best of my information and belief,

(Signed).................. A.B.

*This form to be used where the application is made after one year from the date of the death.

ANNEXURE A.

Valuation of the moveable and immoveable property of deceased.

	Rs.	nP.
cash in hand and at the bank, household goods, wearing apparel, books plate, jewels, etc. (State estimated value according to best of Executor's or Administrator's belief.)		
Property in Government Securities transferable at the Public Debt Office ... (State description and value on the date of the death of the deceased or on the date of the application as the case may be).		
Immovable property, consisting of ... (State description and market value on the date of the death of the deceased or on the date of the application, as the case may be).		
Leasehold property ... ... (If the deceased held any leases for years determinable, state the period of the lease and estimated amount of rent inserting separately arrears due on the date of death or on the date of the application, as the case may be.)		
Property in public companies ... ... (State the particulars and the value calculated at the price on the date of the death or on the date of the application, as the case may be).		
Policies of insurance upon life, money out on mortgages and other securities, such as bonds, bills, notes and other securities for money, (State the amount of the whole on the date of the death or on the date of the application, as the case may be).		

Debts ... ...
(Other than bad debts).

Stock in trade ... ...
(State the estimated value, if any) ... ...

Other property not comprised under the foregoing heads ... ...
(State the estimated value, if any) ... ...

Total ...

Deduct items shown in Annexure B in the manner provided in sub-section (2) Section 53.

Net value of the Estate ...

ANNEXURE B
SCHEDULE OF DEBTS, ETC.

Rs nP.

Amount of debts due and owing from the deceased, legally payable out of the estate ... ...

Amount of expenses connected with funeral rites and ceremonies ... ...

Amount of mortgage incumbrances... ... ...

Property held in trust not beneficially or with general power to confer a beneficial interest ... ...

Other property not subject to duty ... ...

Total ...

PART II
AMENDED FORM OF VALUATION OF ESTATE

(*See* sections 58 and 60)

IN THE COURT OF

Re—Probate of the will of.......................(or Administration of the Estate of...............) Deceased.

1. I (A. B.) am the executor (or one of the executors or one of the next-of-kin as the case may be) of

2. Probate was (or letters of administration were) granted to me on..............

3. It has now been discovered that the net value of the estate on which Court-fee was paid was not correctly ascertained.

4. I have now truly set forth in Annexure A to this amended form of Valuation all the estate of the deceased at the date of $\frac{\text{his death}}{\text{the application or probate or letters of administration}}$ which has come or is likely to come to my hands.

5. I further have now truly set forth in Annexure B all the items which I am by law allowed to deduct.

6. I further declare that the said estate, exclusive only of the last-mentioned items at the date of $\frac{\text{the death of the deceased was}}{\text{this application is}}$ under the value of.

7. I (A. B.) further declare that what is stated in this amended Form of Valuation is true to the best of my information and belief.

(Signed) A. B...............................

ANNEXURE A
AMENDED VALUATION OF THE ESTATE OF DECEASED

Valuation on which Court-fee was paid.	Increase.	Decrease.	Valuation as now amended.
Total ...			

Deduct items shown in Annexure B in the manner provided in sub-section (2) of S. 53.

Amended net value of estate ...

ANNEXURE B
AMENDED SCHEDULE OF DEBTS, ETC.

Valuation on which Court-fee was paid.	Increase	Decrease.	Valuation as now amended.
Total ...			

[THE] RAJASTHAN COURT-FEES AND SUITS VALUATION ACT, 1961

(NO. 23 OF 1961)

[Act printed here is as omended by Rajasthan Act IV of 1962]

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[THE] RAJASTHAN COURT-FEES AND SUITS VALUATION ACT, 1961

(RAJASTHAN ACT XXIII of 1961)

[Received the assent of the President on the 26th day of August 1961, and was published in the Rajasthan Gazette, Extraordinary, Part 4 (Ka), dated October 5, 1961.]

An Act to amend and consolidate the law relating to court-fees and valuation of suits in the State of Rajasthan.

Be it enacted by the Rajasthan State Legislature in the Twelfth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. **Short title, extent and commencement.**—(1) This Act may be called THE RAJASTHAN COURT-FEES AND SUITS VALUATION ACT, 1961.

(2) It extends to the whole of the State of Rajasthan.

(3) It shall come into force on such date* as the State Government may, by notification in the official Gazette, appoint.

[*] The date so appointed is the 1st November, 1961—See No. 5 (108) E & T/58 dated 25-10-1961 in Raj. Gaz., 25-10-1961, Extra., Pt. IV (Ga).

2. **Application of Act.**—(1) The provisions of this Act shall not apply to documents presented or to be presented before an officer serving under the Central Government.

(2) Where any other law contains provisions relating to the levy of fee in respect of proceedings under such other law, the provisions of this Act relating to the levy of fee in respect of such proceedings shall apply subject to the said provisions of such other law.

3. **Definitions.**—In this Act, unless the subject or context otherwise requires,—

(i) "appeal" includes a cross-objection;

(ii) "Court" means any Civil, Revenue or Criminal Court and includes a Tribunal or other authority having jurisdiction under any special or local law to decide questions affecting the rights of parties;

(iii) "prescribed" means prescribed by rules made under this Act; and

(iv) expressions used and not defined in this Act or in the Rajasthan General Clauses Act, 1955 (Rajasthan Act VIII of 1955), but defined in the Code of Civil Procedure, 1908 (Central Act V of 1908), shall have the meanings respectively assigned to them in the said Code.

CHAPTER II

LIABILITY TO PAY FEES

4. **Levy of fee in Courts and public offices.**— No document which is chargeable with fee under this Act shall—

(i) be filed, exhibited or recorded in, or be acted on or furnished by any Court including the High Court, or

(ii) be filed, exhibited or recorded in any public office, or be acted on or furnished by any public officer,

unless in respect of such document there be paid a fee of an amount not less than that indicated as chargeable under this Act:

Provided that, whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid, is in the opinion of the Court necessary to prevent a failure of justice, nothing contained in this section shall be deemed to prohibit such filing or exhibition.

5. Fees on documents inadvertently received.—When a document on which the whole or any part of the fee prescribed by this Act has not been paid is produced or has through mistake or inadvertence, been received in any Court or public office, the Court or the head of the office may, in its or his discretion at any time, allow the person by whom such fee is payable to pay the fee or part thereof, as the case may, within such time as may be fixed; and upon such payment, the document shall have the same force and effect as if the full fee had been paid in the first instance.

6. Multifarious suits.—(1) In any suit in which separate and distinct reliefs are sought based on the same cause of action, the plaint shall be chargeable with a fee on the aggregate value of the reliefs:

Provided that, if a relief is sought only as ancillary to the main relief, the plaint shall be chargeable only on the value of the main relief.

(2) Where more reliefs than one based on the same cause of action are sought in the alternative in any suit, the plaint shall be chargeable with the highest of the fees leviable on the reliefs.

(3) Where a suit embraces two or more distinct and different causes of action and separate reliefs are sought based on them, either alternatively or cumulatively, the plaint shall be chargeable with the aggregate amount of the fees with which plaints would be chargeable under this Act if separate suits were instituted in respect of the several causes of action:

Provided that, where the causes of action in respect of reliefs claimed alternatively against the same person arise out of the same transaction, the plaint shall be chargeable only with the highest of the fees chargeable on them.

(4) Nothing in sub-section (3) shall be deemed to affect any power conferred upon a Court under Rule 6 of Order II of the Code of Civil Procedure, 1908 [Central Act V of 1908].

(5) The provisions of this section shall apply mutatis mutandis to memoranda of appeals, applications, petitions and written statements.

Explanation.—For the purpose of this section, a suit for possession of immovable property and for mesne profits shall be deemed to be based on the same cause of action.

7. Determination of market value.—(1) Save as otherwise provided, where the fee payable under this Act depends on the market value of any property, such value shall be determined as on the date of presentation of the plaint.

(2) The market value of land in suits falling under clauses (a) and (b) of Section 24 or under clause (a) of Section 26 or under Section 28 or under Section 29 or under sub-section (1) or sub-section (3) of Section 35 or under Section 36 or under Section 44 shall be deemed to be—

(a) where rent in respect of such land has been settled, twenty-five times the rent rate sanctioned therefor during the last settlement, and

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Section 7 — Note 1

(1) Suit for possession of house — Court-fee has to be paid on basis of market value of house as on date of plaint — Value of improvements in property made subsequently need not be included in market value of house. 1969 Raj LW 247 (248).

(b) where rent in respect of such land has not been settled, twenty-five times the rent rate sanctioned during the last settlement for similar land in the neighbourhood.

8. **Set-off or counterclaim.**—A written statement pleading a set-off or counterclaim shall be chargeable with fee in the same manner as a plaint.

9. **Documents falling under two or more descriptions.**—A document falling within two or more descriptions in this Act shall, where the fees chargeable thereunder are different, be chargeable only with the highest of such fees:

Provided that, where one of such descriptions is special and another general, the fee chargeable shall be the fee appropriate to the special description.

CHAPTER III

DETERMINATION OF FEE

10. **Statement of particulars of subject-matter of suit and plaintiff's valuation thereof.**—In every suit in which the fee payable under this Act on the plaint depends on the market value of the subject-matter of the suit, the plaintiff shall file with the plaint a statement in the prescribed form of particulars of the subject-matter of the suit and his valuation thereof unless such particulars and the valuation are contained in the plaint.

11. **Decision as to proper fee.**—(1) In every suit instituted in any Court, the Court shall, before ordering the plaint to be registered, decide on the materials and allegations contained in plaint and on the materials contained in the statement, if any, filed under Section 10, the proper fee payable thereon, the decision being however subject to review, further review and correction in the manner specified in the succeeding sub-sections.

(2) Any defendant may plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before the hearing of the suit as contemplated by Order XVIII in the First Schedule to the Code of Civil Procedure, 1908 (Central Act V of 1908). If the Court decides that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the Court shall fix a date before which the plaint shall be amended in accordance with the Court's decision and the deficit fee shall be paid. If the plaint be not so amended or if the deficit fee be not paid within the time allowed, the plaint shall be rejected and the Court shall pass such order as it deems just regarding costs of the suit.

(3) A defendant added after issues have been framed on the merits of the claim may, in the written statement filed by him, plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant on the merits of the claim, and if the Court finds that the subject-matter of the suit has not been properly valued or that the fee

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Section 11 — Note 1

(1) Election Petition presented within Limitation but with insufficient Court-fee Stamp — Deficiency in Court fee however made up beyond the period of limitation before courts passing any order on it — Held 'Petition' was deemed to have been made within period of limitation — The question of limitation is not affected if the deficiency is made up by the party on the orders of the Court within the time allowed by it. 1966 Raj LW 135 (135) = ILR (1966) 16 Raj 263.

(2) When an issue of sufficiency of Court-fee is raised the court must decide it. In case of deficiency the Court should grant time to make up the deficiency and if it is not made up within the time allowed by it the plaint should be rejected. 1966 Raj LW 135 (135) = ILR (1966) 16 Raj 263.

(3) Once a written statement has been filed by the defendant the only manner in which the plea of insufficiency of Court-fee can be taken is by amending the written statement and not by a separate application. 1969 Raj LW 184 (186).

paid is not sufficient, the Court shall follow the procedure laid down in sub-section (2).

Explanation.—Nothing in this sub-section shall apply to a defendant added as a successor or a representative-in-interest of a defendant who was on record before issues were framed on the merits of the claim and who had an opportunity to file a written statement pleading that the subject-matter of the suit was not properly valued or that the fee paid was not sufficient.

(4) (a) Wherever a case comes up before a Court of Appeal, it shall be lawful for such Court, either of its own motion or on the application of any of the parties, to consider the correctness of any order passed by the lower Court affecting the fee payable on the plaint or written statement or in any other proceeding in the lower Court and determine the proper fee payable thereon.

Explanation.—A case shall be deemed to come before a Court of Appeal even if the appeal relates only to a part of the subject-matter of the suit.

(b) If the Court of Appeal decides that the fee paid in the lower Court is not sufficient, the Court shall require the party liable to pay the deficit fee within such time as may be fixed by it.

(c) If the deficit fee is not paid within the time fixed and the default is in respect of a relief which has been dismissed by the lower Court and which the appellant seeks in appeal, the appeal shall be dismissed, but if the default is in respect of a relief which has been decreed by the lower Court, the deficit fee shall be recoverable as if it were an arrear of land revenue.

(d) If the fee paid in the lower Court is in excess, the Court shall direct the refund of the excess to the party who is entitled to it.

(5) All questions as to value for the purpose of determining the jurisdiction of Courts arising on the written statement of a defendant shall be heard and decided before the hearing of the suit as contemplated by Order XVIII in the First Schedule to the Code of Civil Procedure, 1908 (Central Act V of 1908).

Explanation.—In this section, the expression "merits of the claim" refers to matters which arise for determination in the suit, not being matters relating to the frame of the suit, misjoinder of parties and causes of action, the jurisdiction of the Court to entertain or try the suit or the fee payable but inclusive of matters arising on pleas of res judicata, limitation and the like.

12. Additional fee on issues framed.—Where a party becomes liable to pay additional fee by reason of an issue framed in the suit, the provisions of the last foregoing section shall apply to the determination and levy of such additional fee subject to the modification that where the party liable does not pay such additional fee within the time allowed, the Court shall strike off the issue and proceed to hear and decide the other issues in the case.

13. Relinquishment of portion of claim.—A plaintiff who has been called upon to pay additional fee may relinquish a part of his claim and apply to have the plaint amended so that the fee paid would be adequate for the claim made in the plaint as amended. The Court shall allow such application on such terms as it considers just and shall proceed to hear and decide the claim made in the plaint as amended, provided that the plaintiffs shall not be permitted at any later stage of the suit to add to the claim the part so relinquished.

14. Fee payable on written statements.—Where fee is payable under this Act on a written statement filed by a defendant, the provisions of Section 11 shall apply to the determination and levy of the fee payable on such written statement, the defendant concerned being regarded for the said purpose as the plaintiff and the plaintiff or the co-defendant party against whom the claim is made being regarded as the defendant.

15. Fee payable on appeals, etc.—The provisions of Sections 10 to 13 relating to determination and levy of fee on plaints in suits shall apply mutatis mutandis to the determination and levy of fee in respect of a memorandum of appeal, cross-objection or other proceeding in second appeal or in an appeal from the judgment of a single Judge of the High Court of Rajasthan under any law for the time being in force.

16. Fee payable on petitions, applications, etc.—The provisions of Sections 10 to 13 shall apply mutatis mutandis to the determination and levy of fee in respect of petitions, applications and other proceedings in Courts in the same way as they apply to the determination and levy of fee on plaints in suits.

17. Court-fee Examiners.— (1) The High Court may depute officers to be designated Court-fee Examiners to inspect the records of subordinate Courts with a view to examine the correctness of representations made to, and orders passed by, Courts on questions relating to valuation of subject-matter and sufficiency of fee in respect of proceedings in such Courts.

(2) Questions raised in reports submitted by such Court-fee Examiners and relating to any suit, appeal or other proceeding pending in a Court shall be heard and decided by such Court; and for the avoidance of doubt it is hereby declared that in hearing and deciding a question raised in any such report, it shall be lawful for the Court to review an earlier decision given by the Court on the same question.

18. Inquiry and commission.—For the purpose of deciding whether the subject-matter of a suit or other proceedings has been properly valued or whether the fee paid is sufficient, the Court may hold such inquiry as it considers proper and may, if it thinks fit, issue a commission to any proper person directing him to make such local or other investigation as may be necessary and to report thereon to the Court. Such report and evidence recorded by such person shall be evidence in such inquiry.

19. Notice to the State Government.—In any inquiry relating to the fee payable on a plaint, written statement, petition, memorandum of appeal or other document, or to the valuation of the subject-matter of the claim to which the plaint, written statement, petition, memorandum of appeal or other document relates, in so far as such valuation affects the fee payable, the Court may, if it considers it just or necessary to do so, give notice to the State Government; and where such notice is given, the State Government shall be deemed to be a party to the suit or other proceeding as respects the determination of the question or questions, as aforesaid, and the Court's decision on such question or questions, when it passes a decree or final order in such suit or proceeding, shall be deemed to form part of such decree or final order.

CHAPTER IV

COMPUTATION OF FEE

20. Fee how reckoned.—The fee payable under this Act shall be determined or computed in accordance with the provisions of this Chapter, Chapter VI, Chapter VIII and Schedules I and II.

21. Suits for money.—In a suit for money (including a suit for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically), fee shall be computed on the amount claimed.

22. Suits for maintenance and annuities.—In the suits hereinafter mentioned, fee shall be computed as follows:—

(a) in a suit for maintenance, on the amount claimed to be payable for one year;

(b) in a suit for enhancement or reduction of maintenance, on the amount by which the annual maintenance is sought to be enhanced or reduced;

(c) in a suit for annuities or other sums payable periodically, on five times the amount claimed to be payable for one year:

Provided that, where the annuity is payable for less than five years, the fees shall be computed on the aggregate of the sums payable:

Provided further that a suit for enhancement of maintenance shall be instituted in a Court which will have jurisdiction to receive a suit for maintenance at the enhanced rate claimed and one for reduction of maintenance shall be instituted in a Court which will have jurisdiction to receive a suit for maintenance at the rate which is sought to be reduced.

23. Suits for movable property.—(1) In a suit for movable property other than documents of title, fee shall be computed—

(a) where the subject-matter has a market value, on such value; or

(b) where the subject-matter has no market value, on the amount at which the relief sought is valued in the plaint.

(2) (a) In a suit for possession of documents of title, fee shall be computed on one-fourth of the amount or of the market value of the property secured by the document—

(i) where the plaint alleges denial of the plaintiff's title to the money or the property secured by the documents, or

(ii) where an issue is framed regarding the plaintiff's title to the money or on the property secured by the documents:

Provided that where the allegation in the plaint or the issue framed relates only to a portion of the amount or property, fee shall be computed on one-fourth of such portion of the amount or on one-fourth of the market value of such portion of the property.

(b) In a suit for possession of documents of title where the plaintiff's title to the money or the property secured by the document is not denied, fee shall be computed on the amount at which the relief sought is valued in the plaint or at which such relief is valued by the Court, whichever is higher.

Explanation.—The expression "document of title" means a document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, in any property.

24. Suits for declaration.—In a suit for a declaratory decree or order, whether with or without consequential relief, not falling under Section 25—

(a) where the prayer is for a declaration and for possession of the property to which the declaration relates, fee shall be computed on the market value of the property, subject to a minimum fee of twenty rupees;

(b) where the prayer is for a declaration and for consequential injunction and the relief sought is with reference to any immovable property, fee shall be computed on one-half of the market value of the property, subject to a minmum fee of twenty rupees;

(c) where the prayer relates to the plaintiff's exclusive right to use, sell, print or exhibit any mark, name, book, picture, design or other thing and is based on an infringement of such exclusive right, fee shall be computed on the amount at which the relief sought is valued in the plaint subject to a minimum fee of forty rupees;

(d) where the prayer is for a declaration with reference to any property and no consequential relief is prayed for, fee shall be computed on the market value of the property, subject to a minimum fee of twenty rupees;

(e) in other cases, whether the subject-matter of the suit is capable of valuation or not, fee shall be computed on the amount at which the relief sought is valued in the plaint, subject to a minimum fee of twenty five rupees.

25. Adoption suits.—In a suit for a declaration in regard to the validity or invalidity of an adoption or the factum of an adoption, fee shall be payable at the following rates:—

Where the market value of the property involved in or affected by the relief—

(i) is rupees five thousand or less, Rupees fifty;

(ii) exceeds rupees five thousand but does not exceed rupees ten thousand, Rupees one hundred.

(iii) exceeds rupees ten thousand, Rupees five hundred.

26. Suits for injunction.—In a suit for injunction—

(a) where the relief sought is with reference to any immovable property, and where the plaintiff alleges that his title to the property is denied, fee shall be computed on one-half of the market value of the property or on rupees three hundred, whichever is higher;

(b) where the prayer relates to the plaintiff's exclusive right to use, sell, print or exhibit any mark, name, book, picture, design or other thing and is based on an infringement of such exclusive right, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees five hundred, whichever is higher;

(c) in any other case, whether the subject-matter of the suit has a market value or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees four hundred, whichever is higher.

27. Suits relating to trust property.—In a suit for possession or joint possession of trust property or for a declaratory decree, whether with or without consequential relief in respect of it, between trustees or rival claimants to the office of trustee or between a trustee and a person who has ceased to be a trustee, fee shall be computed on one-fifth of the market value of the property subject to a maximum fee of rupees two hundred or where the property has no market value, on rupees one thousand:

Provided that, where the property does not have a market value, value for the purpose of determining the jurisdiction of Courts shall be such amount as the plaintiff shall state in the plaint.

Explanation.—For the purpose of this section, property comprised in a Hindu, Muslim or other religious or charitable endowment shall be deemed to be trust property and the manager of any such property shall be deemed to be the trustee thereof.

28. Suits for possession under Specific Relief Act, 1877.—In a suit for possession of immovable property under Section 9 of the Specific Relief Act, 1877[*] (Central Act I of 1877), fee shall be computed on one-half of the market value of the property or on rupees two hundred, whichever is higher.

[*] Now see Specific Relief Act, 1963 (47 of 1963) (1-3-1964).

29. Suits for possession not otherwise provided for.—In a suit for possession of immovable property not otherwise provided for, fee shall be computed on the market value of the property, subject to a minimum fee of rupees twenty.

30. Suits relating to easement.—In a suit relating to an easement whether by the dominant or the servient owner, fee shall be computed on the amount at which the relief sought is valued in the plaint, which amount shall in no case be less than rupees two hundred:

Provided that, where compensation is claimed besides other relief relating to such easement, fee shall be paid on the amount claimed as compensation in addition to the fee payable on such other relief.

31. Pre-emption suits.—In a suit to enforce a right of pre-emption, fee shall be computed on the amount of the consideration for the sale which the pre-emptor seeks to avoid or on the market value of the property sold, whichever is less.

32. Suits relating to mortgages.—(1) In a suit to recover the money due on a mortgage, fee shall be computed on the amount claimed.

(2) Where, in such a suit, the holder of a prior mortgage or charge is impleaded and he prays in his written statement that the amount due on his mortgage or charge be determined and that the decree contain a direction for the payment of such amount to him, fee shall be payable on the written statement computed on the amount claimed :

Provided that, where the holder of the mortgage or charge has paid a fee in any other proceeding on the claim to which his written statement relates, credit shall be given for the fee paid by him in such other proceeding.

(3) Where, in such a suit, the mortgaged property is sold and the holder of a prior or subsequent mortgage or charge applies for payment to him, out of the sale proceeds, of the amount due on his mortgage or charge, such holder of the prior or subsequent mortgage or charge shall pay on his application a fee computed on the amount claimed by him :

Provided that, where such holder of the mortgage or charge is a party to the suit in which the sale was held and has paid fee on the written statement filed by him in the suit, no fee shall be payable by him on the application for payment out of the sale proceeds :

Provided further that, where the holder, of the mortgage or charge, not being a party to the suit in which the sale is held, has paid a fee in any other proceeding on the claim to which his application relates, credit shall be given for the fee paid by him in such other proceeding.

(4) In a suit by a co-mortgagee for the benefit of himself and the other co-mortgagees, fee shall be computed on the amount claimed on the entire mortgage :

Provided that, where a co-mortgagee impleaded as defendant in such suit claims on the entire mortgage a larger sum than is claimed in the plaint, the difference between the fee computed on the entire sum claimed in such defendant's written statement and the fee computed on the entire sum claimed in the plaint shall be payable on the written statement.

Explanation.—Nothing in this sub-section shall be construed as affecting the law of limitation.

(5) (a) In a suit by a sub-mortgagee to recover the amount claimed on the sub-mortgage by sale of the mortgagee's interest in the mortgaged property, fee shall be computed on the amount claimed under the sub-mortgage.

(b) In a suit by a sub-mortgagee if the prayer is for the sale of the property mortgaged to the original mortgagee and the original mortgagor is also impleaded as a defendant fee shall be computed on the entire amount claimed on the original mortgage which is sub-mortgaged to him.

(6) Where the holder of a prior or subsequent mortgage or charge is impleaded in a suit by a co-mortgagee to which sub-section (4) applies, or in a suit by a sub-mortgagee to which sub-section (5) applies, the provisions of sub-sections (2) and (3) shall apply mutatis mutandis to a written statement or an application filed by such holder of mortgage or charge.

(7) Where the original mortgagee who is impleaded in a suit to which the provisions of sub-section (5) (b) apply claims on the mortgage sub-mortgaged by him a larger amount than is claimed in the plaint, the provisions of sub-section (4) shall apply mutatis mutandis, to the written statement of such mortgagor.

(8) In a suit against a mortgagee for redemption of a mortgage, fee shall be computed on the amount due on the mortgage as stated in the plaint :

Provided that, where the amount due on the mortgage is found to be more than the amount on which fee has been paid by the plaintiff, no decree shall be passed until the deficit fee is paid :

Provided further that, in the case of a usufructuary or anomalous mortgage, if the plaintiff prays for redemption as well as for accounts of surplus profits, fee shall be levied separately on the relief for accounts as in a suit for accounts.

(9) In a suit by a mortgagee to foreclose the mortgage or, where the mortgage is made by conditional sale, to have the sale declared absolute, fee shall be computed on the amount claimed in the plaint by way of principal and interest.

33. Suits for accounts.—(1) In a suit for accounts, fee shall be computed on the amount sued for as estimated in the plaint.

(2) Where the amount payable to the plaintiff as ascertained in the suit is in excess of the amount as estimated in the plaint, no decree directing payment of the amount as so ascertained shall be passed until the difference between the fee actually paid and the fee that would have been payable, had the suit comprised the whole of the amount so ascertained, is paid.

(3) If the additional fee is not paid within such time as the Court may fix, the decree shall be limited to the amount to which the fee paid extends.

(4) Where in any such suit it is found that any amount is payable to the defendant, no decree shall be passed in his favour until he pays the fee due on the amount.

34. Suits for dissolution of partnership.—(1) In a suit for dissolution of partnership and accounts or for accounts of dissolved partnership, fee shall be computed on the value of the plaintiff's share in the partnership as estimated by the plaintiff.

(2) If the value of the plaintiff's share as ascertained in the suit exceeds the value as estimated in the plaint, no decree, or where there has been a preliminary decree, no final decree, shall be passed in favour of the plaintiff, no payment shall be made out of the assets of the partnership and no property shall be allotted towards the plaintiff's share, until the difference between the fee actually paid and the fee that would have been payable, had the suit comprised the whole of the value so ascertained, is paid.

(3) No final decree shall be passed, no money shall be paid and no allotment of property shall be made in favour of a defendant in any such suit for on or account of his share of the assets of the partnership, until the fee computed on the amount or value of his share of the assets of the partnership is paid.

35. Partition suits.—(1) In a suit for partition and separate possession of a share in joint family property or of property owned, jointly or in common, by a plaintiff who has been excluded from possession of such property, fee shall be computed on the market value of the plaintiff's share of the property.

(2) In a suit for partition and separate possession of joint family property or property owned, jointly or in common, by a plaintiff who is in joint possession of such property, fee shall be paid at the following rates, namely :—

(i) Rupees thirty if the value of plaintiff's share is Rs. 5,000 or less;

(ii) Rupees one hundred if the value is above Rs. 5,000 but does not exceed Rs. 10,000; and

(iii) Rupees two hundred if such value exceeds Rs. 10,000.

(3) Where, in a suit falling under sub-section (1) or sub-section (2), a defendant claims partition and separate possession of his share of the property, fee shall be payable on his written statement computed on half the market value of his share or at half the rates specified in sub-section (2), according as such defendant has been excluded from possession or is in joint possession.

(4) Where, in a suit falling under sub-section (1) or sub-section (2), the plaintiff or the defendant seeks cancellation of decree or other document of the

nature specified in Section 38, separate fee shall be payable on the relief of cancellation in the manner specified in that section.

36. Suit for joint possession.—In a suit for joint possession of joint family property or of property owned, jointly or in common, by a plaintiff who has been excluded from possession, fee shall be computed on the market value of the plaintiff's share of the property.

37. Administration suits.—(1) In a suit for the administration of an estate, fee shall be levied on the plaint at the rates specified in Section 45.

(2) Where any amount or share or part of the assets of the estate is found due to the plaintiff, and the fee computed on the amount or the market value of such share or part of the assets exceeds the fee paid on the plaint, no payment shall be made and no decree directing payment of money or confirming title to such share or part of the assets shall be passed until the difference between the fee actually paid and the fee computed on the amount or value of the property is paid.

(3) No payment shall be made, no decree directing payment of money or confirming title to any share or part of the assets of the estate shall be passed in favour of a defendant in a suit for administration, until the fee computed on the amount or value of such share or part of such assets is paid by such defendant.

(4) In computing the fee payable by a plaintiff or by a defendant under sub-section (2) or sub-section (3), credit shall be given for the fee if any, paid by such plaintiff or by such defendant in any other proceeding in respect of the claim on the basis of which such amount or share or part of the assets of the estate become due to such plaintiff or to such defendant.

38. Suits for cancellation of decrees, etc.—(1) In a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject-matter of the suit and such value shall be deemed to be—

(a) if the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed; and

(b) if a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property.

(2) If the decree or other document is such that the liability under it cannot be split up and the relief claimed relates only to a particular item of property belonging to the plaintiff or to the plaintiff's share in any such property, fee shall be computed on the value of such property or share or on the amount of the decree, whichever is less.

Explanation.—A suit to set aside an award shall be deemed to be a suit to set aside a decree within the meaning of this section.

39. Suits to set aside attachment, etc.—(1) In a suit to set aside an attachment by a Civil or Revenue Court of any property, movable or immovable, or of any interest therein or of any interest in revenue, or to set aside an order passed on an application made to set aside the attachment, fee shall be computed on the amount for which the property was attached or on one-fourth of the market value of the property attached, whichever is less.

(2) In a suit to set aside any other summary decision or order of a Civil or Revenue Court, if the subject-matter of the suit has a market value, fee shall be computed on one fourth of such value, and in other cases, fee shall be payable at the rates specified in Section 45.

Explanation.—For the purpose of this section, the Registrar of Co-operative Societies shall be deemed to be a Civil Court.

40. Suits for specific performance.—In a suit for specific performance, whether with or without possession, fee shall be payable—

(a) in the case of a contract of sale, computed on the amount of the consideration;

(b) in the case of a contract of mortgage, computed on the amount agreed to be secured by the mortgagee;

(c) in the case of a contract of lease, computed on the aggregate amount of the fine or premium, if any, and of the average of the annual rent agreed to be paid;

(d) in the case of a contract of exchange, computed on the amount of the consideration, or as the case may be, on the market value of the property sought to be taken in exchange;

(e) in other cases, where the consideration for the promise sought to be enforced has a market value, computed on such market value or where such consideration has no market value, at the rates specified in Section 45.

41. Suits between landlord and tenant.—(1) In the following suits between landlord and tenant, namely :—

(a) for the delivery by a tenant of the counter-part of a lease;

(b) for the enhancement of rent;

(c) for the delivery by a landlord of a lease;

(d) for the recovery of possession of immovable property from which a tenant has been illegally ejected by the landlord; and

(e) for establishing or disproving a right to occupy;

fee shall be levied on the amount of rent for the immovable property to which the suit relates payable for the year next before the date of presenting the plaint.

(2) In a suit for recovery of immovable property from a tenant including a tenant holding over after the termination of a tenancy, fee shall be computed on the premium, if any, and on the rent payable for the year next before the date of presenting the plaint.

Explanation.—Rent includes also damages for use and occupation payable by a tenant holding over.

42. Suits for mesne profits.—(1) In a suit for mesne profits or for immovable property and mesne profits therefrom, fee shall, in respect of mesne profits, be computed on the amount claimed as such profits. If the profits ascertained to be due to the plaintiff are in excess of the profits as claimed, no decree shall be passed until the difference between the fee actually paid and the fee that would have been payable, had the suit comprised the whole of the profits so ascertained, is paid.

(2) Where a decree directs an inquiry as to the mesne profits which have accrued on the property, whether prior or subsequent to the institution of the suit, no final decree shall be passed till the difference between the fee actually paid and the fee which would have been payable, had the suit comprised the whole of the profits accrued due till the date of such decree, is paid.

(3) Where, for a period subsequent to the date of the decree or final decree, such decree or final decree directs payment of mesne profits, at a specified rate, such decree or final decree shall not be executed until the fee computed on the amount claimed in execution has been paid.

Section 40 — Note 1

(1) Suit by vendor for recovery of unpaid purchase money under executory contract for sale — Suit held once for specific performance of contract for sale — Court-fee payable will be under S. 40 (a) i. e. on full consideration of the sale and not merely on the amount of unpaid purchase money. (1963) Raj LW 653 (654) = ILR (1963) 13 Raj 1183.

43. Suits relating to public matters.—In a suit for relief under Section 91 or Section 92 of the Code of Civil Procedure, 1908 (Central Act V of 1908), the fee payable shall be thirty rupees.

44. Interpleader suits.—(1) In an interpleader suit, fee shall be payable on the plaint at the rates specified in Section 45.

(2) Where issues are framed as between the claimants, fee shall be payable computed on the amount of the debt or the money or the market value of other property, movable or immovable which forms the subject-matter of the suit. In levying such fee, credit shall be given for the fee paid on the plaint; and the balance of the fee shall be paid in equal shares by the claimants who claim the debt or the sum of money or the property adversely to each other.

(3) Value for the purpose of determining the jurisdiction of Courts shall be the amount of the debt, or the sum of money or the market value of other property to which the suit relates.

45. Suits not otherwise provided for.—In suits not otherwise provided for, fee shall be payable at the following rates, namely :—

Where the amount or value of the subject-matter in dispute—

(i) is less than Rs. 1,000	Rupees ten.
(ii) is not less than Rs. 1,000 but does not exceed Rs 3,000/-	Rupees thirty.
(iii) is not less than Rs. 3,000/- and does not exceed Rs. 5,000/-	Rupees one hundred.
(iv) exceed Rs. 5,000/- but does not exceed Rs. 10,000/-	Rupees two hundred.
(v) exceeds Rs. 10,000/-	Rupees three hundred.

46. Fee on memorandum of appeal against order relating to compensation.—The fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of property for public proposes shall be computed on the difference between the amount awarded and the amount claimed by the appellant.

47. Appeals.—The fee payable in an appeal shall be the same as the fee that would be payable in the Court of first instance on the subject-matter of the appeal :

Provided that, in levying fee on a memorandum of appeal against a final decree by a person whose appeal against the preliminary decree passed by the Court of first instance or by the Court of appeal is pending credit shall be given for the fee paid by such person in the appeal against the preliminary decree.

Explanation.—(1) Whether the appeal is against the refusal of a relief or against the grant of the relief, the fee payable in the appeal shall be the same as the fee that would be payable on the relief in the Court of first instance.

Explanation.—(2) Costs shall not be deemed to form part of the subject-matter of the appeal except where such costs form themselves the subject-matter of the appeal or relief is claimed as regard costs on grounds additional to or independent of the relief claimed regarding the main subject-matter in the suit.

Explanation.—(3) In claims which include the award of interest subsequent to the institution of the suit, the interest accrued during the pendency of the suit till the date of decree shall be deemed to be part of the subject-matter of the appeal except where such interest is relinquished.

Explanation.—(4) Where the relief prayed for in the appeal is different from the relief prayed for or refused in the Court of first instance, the fee payable in the appeal shall be the fee that would be payable in the Court of first instance on the relief prayed for in the appeal.

Explanation.—(5) Where the market value of the subject-matter of the appeal has to be ascertained for the purpose of computing or determining the fee payable, such market value shall be ascertained as on the date of presentation of the plaint.

CHAPTER V

VALUATION OF SUITS

*[48. **Suits not otherwise provided for**—(1) In a suit as to whose] value for the purpose of determining the jurisdiction of Courts specific provision is not otherwise made in this Act or in any other law, value for that purpose and value for the purpose of computing the fee payable under this Act shall be the same.

(2) In a suit where fee is payable under this Act at a fixed rate, the value for the purpose of determining the jurisdiction of Courts shall be the market value or where it is not possible to estimate it at a money value such amount as the plaintiff shall state in the plaint.

[*] Substituted and shall be deemed always to have been substituted by Raj. Act 3 of 1962, S. 2.

49. Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes.—(1) Notwithstanding anything contained in Section 99 of the Code of Civil Procedure, 1908 (Central Act V of 1908), an objection that by reason of the overvaluation or undervaluation of a suit or appeal, a Court of first instance or lower appellate Court which had no jurisdiction with respect to the suit or appeal exercised jurisdiction with respect thereto shall not be entertained by an appellate Court, unless—

(a) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded, or in the lower appellate Court in the memorandum of appeal to that Court, or

(b) the appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was overvalued or undervalued and that the overvaluation or undervaluation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) If the objection was taken in the manner mentioned in clause (a) of sub-section (1), but the appellate Court is not satisfied as to both the matters mentioned in clause (b) of that sub-section and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of the first instance or lower appellate Court.

(3) If the objection was taken in that manner and the appellate Court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeals; but if it remands the suit or appeal, or frames and refers issues for trial, or requires additional evidence to be taken, it shall direct its order to a Court competent to entertain the suit or appeal.

(4) The provisions of this section with respect to an appellate Court shall, so far they can be made applicable, apply to a Court exercising revisional jurisdiction under Section 115 of the Code of Civil Procedure, 1908 (Central Act V of 1908), or other enactment for the time being in force.

CHAPTER VI

PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION

50. Application for probate or letters of administration.—(1) Every application for the grant of probate or letters of administration shall be accompanied by a valuation of the estate in duplicate in the form set forth in **Part I of** Schedule [illegible]

(2) On receipt of such application, the Court shall send a copy thereof and of the valuation to the Collector of the district in which the estate is situated, or if the estate is situated in more than one district, to the Collector of the district in which the most valuable portion of the immovable property included in the estate is situated.

51. Levy of fee.—(1) The fee chargeable for the grant of probate or letters of administration shall be calculated at the rate or rates prescribed in Article 6 of Schedule I,—

(a) where the application is made within one year of the date of death of the deceased, on the market value of the estate on such date; or

(b) where the application is made after the expiry of one year from such date, on the market value of the estate on the date of the application:

Provided that property held in trust not beneficially or with general power to confer a beneficial interest shall not be liable to any fee under this chapter.

Explanation.—Any member of a joint Hindu family governed by the Mitakshara law who applies for probate or letters of administration in respect of the estate of a deceased member of the joint family shall pay a fee on the value of the share in the joint property which the deceased would have received if a partition of the property had been made immediately before his death:

(2) For the purpose of the computation of fee—

(a) the value of the items mentioned in Annexure B to Part I of Schedule III shall be deducted from the value of the estate:

Provided that, when an application is made for probate or letters of administration in respect of part only of an estate, no debt, no expenses connected with any funeral rites or ceremonies and no mortgage encumbrance on any part of the estate other than that in respect of which the application is made shall be deducted:

Provided further that when, after the grant of a certificate under Part X of the Indian Succession Act, 1925 (Central Act XXXIX of 1925) in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the later grant shall be reduced by the amount of the fee payable in respect of the former grant;

(b) the power of appointment which the deceased had over a property or which was created under a will shall be taken into account, the value being taken to be the value of the property forming the subject-matter of the power.

52. Grant of probate.—The grant of probate or letters of administration shall not be delayed by reason of the reference to the Collector under Section 50, sub-section (2), or of a motion by the Collector under Section 54, sub-section (5); but the Court shall make no grant of probate or letters of administration until it is satisfied that a fee not less than that prescribed by this Act has been paid on the basis of the net value of the estate as furnished in the valuation accompanying the application, or in the amended valuation filed under Section 51, sub-section (3):

Provided that the Court may grant probate or letters of administration notwithstanding that the prescribed fee has not been paid, to the Administrator-General in his official capacity on his giving an undertaking to the satisfaction of the Court that the said fee will be paid within such time as may be fixed by the Court.

53. Relief in cases of several grants.—(1) Whenever a grant of probate or letters of administration has been made in respect of the whole of the property belonging to an estate and the full fee payable under this Act in respect of the application for such grant has been paid thereon, no fee shall be payable when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

(2) Whenever such grant has been made in respect of any property forming part of an estate, the amount of fee actually paid under this Act in respect thereof shall be deducted when a like grant is made in respect of the property belonging to the same estate identical with or including the property to which the former grant relates.

54. Inquiry by the Collector.—(1) The Collector to whom a copy of the application and of the valuation has been sent under Section 50, sub-section (2), shall examine the same and may make or cause to be made by any officer subordinate to him such inquiry, if any, as he thinks fit as to the correctness of the valuation or, where a part only of the property is situated in his district, of the valuation of that part and may require the Collector of any other district in which any part of the property is situated to furnish him with the correct valuation thereof.

(2) Any Collector required under sub-section (1) to furnish the correct valuation of any property shall comply with the requisition after making or causing to be made by any officer subordinate to him such inquiry, if any, as he thinks fit.

(3) If the Collector is of opinion that the applicant has under-estimate the value of the property of the deceased, he may, if he thinks fit, require the attendance of the applicant, either in person or by his agent, and take evidence and inquire into the matter in such manner as he may think fit, and if he is still of opinion that the value of the property has been under-estimated, may require the applicant to amend the valuation and, if the application for probate or letters of administration is pending in Court, to file a copy of the amended valuation in such Court.

(4) If, in any such case, the probate or letters of administration has or have been granted and the applicant amends the valuation to the satisfaction of the Collector and the Collector finds that the fee payable according to the true value of the estate has not been paid in full he shall proceed under Section 56, sub-section (4): but if the fee paid is in excess of that payable according to the true value of the estate, the excess fee shall be refunded to the applicant.

(5) If the applicant does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court before which the application for probate or letters of administration was made to hold an inquiry into the true value of the property:

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required by Section 317 of the Indian Succession Act, 1925 (Central Act XXXIX of 1925).

55. Application to Court and powers of Court.—(1) The Court shall, when moved by the Collector under Section 54, sub-section (5), hold or cause to be held by any Court or officer subordinate to it an inquiry as to the true value at which the estate of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry.

(2) For the purposes of any such inquiry, the Court, or the subordinate Court or the officer authorised by the Court to hold the inquiry, may examine the applicant on oath either in person or by commission, and may take such further evidence as may be produced to prove the true value of the estate, and where the inquiry has been entrusted to a subordinate Court or officer, such Court or officer shall return to the Court the evidence taken and report the result of the inquiry and such report and the evidence so taken shall be evidence in the proceedings.

(3) The Court on the completion of the inquiry or on receipt of the report referred to in sub-section (2), as the case may be, shall record a finding as to the

true value at which the estate should have been estimated and such finding shall be final.

(4) The Court may make such order in accordance with the provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908) as to the costs of the inquiry as it thinks fit.

56. Provision for cases where too low a fee has been paid.—(1) Where too low a fee has been paid on any probate or letters of administration in consequence of any mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator, acting under such probate or letters, apply to the Collector in the form set forth in Part II of Schedule III and pays within six months after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, the difference between the fee which ought to have been paid in the first instance on such probate or letters and the fee actually paid, the Collector shall, if satisfied that insufficient fee was paid in the first instance in consequence of a mistake and without any intention to defraud or to delay the payment of the proper fee, cause the probate or letters to be duly stamped.

(2) If, in a case falling under sub-section (1), the executor or administrator does not, within six months referred to in that sub-section, pay the deficit fee, he shall forfeit a sum equal to five times the deficit fee.

(3) If, on application being made under sub-section (1), the Collector is satisfied that the application was not made within six months of the discovery of the mistake or of further effects not included in the original valuation or that the payment of insufficient fee in the first instance was not due to a bona fide mistake, he shall cause the probate or letters to be duly stamped on payment of the deficit fee together with a penalty not exceeding five times such fee.

(4) If, after the grant of probate or letters of administration of an estate, it is found by the Collector as a result of proceedings under Section 54 or Section 55 or otherwise, that a less fee has been paid than that payable according to the true value of the estate he shall cause the probate or letters to be properly stamped on payment of the deficit fee, and if he is satisfied that the original undervaluation was not bona fide, he shall levy in addition a penalty not exceeding five times the deficit fee.

(5) The Board of Revenue may remit the whole or any part of the amount forfeited under sub-section (2) or of any penalty under sub-section (3) or sub-section (4).

57. Administrator to give proper security before letters stamped.--In case of letters of administration on which too low a fee has been paid in the first instance the Collector shall not cause the same to be duly stamped in the manner aforesaid until the administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained.

58. Relief when too high a fee has been paid.—(1) If, at any time after the grant of the probate or letters of administration of an estate, it is discovered that a higher fee has been paid than was payable according to the true value of the estate, the executor or administrator, as the case may be, may apply for a refund to the Collector to whom a copy of the valuation of the estate was sent under Section 50, sub-section (2). The application shall be accompanied by an amended valuation in the form set forth in Part II of Schedule III together with the probate or letters of administration upon which a refund is sought.

(2) If the Collector is satisfied that the amended valuation is correct, he shall—

(i) endorse a certificate on the stamped probate or letters of administration to the effect that so much of the fee represented by the stamp or stamps used has been refunded; and

(ii) refund the difference between the fee originally paid and that which should have been paid :

Provided that no refund shall be granted under this section unless the application for refund is made within three years of the date of the grant of the probate or letters of administration, or within such further period as the Collector may allow.

(3) If, by reason of any legal proceedings, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said period of three years, the Collector may allow such further time for making the claim as may appear to him to be reasonable under the circumstances.

(4) If the Collector does not grant a refund, the executor or administrator, as the case may be, may apply to the Board of Revenue for an order of refund. An application for such refund should be accompanied by an amended valuation in the form set forth in Part II of Schedule III.

59. **Recovery of penalties etc.**—Any excess fee found to be payable by an applicant for probate or letters of administration or by an executor or administrator or any costs under Section 55, sub-section (4) or any penalty or forfeiture payable by any such executor or administrator may, on the certificate of the Board of Revenue, be recovered from the executor or administrator as if it were an arrear of land revenue.

60. **Powers of Board of Revenue.**—The powers and duties of the Collector under this Chapter shall be subject to the control of the Board of Revenue.

CHAPTER VII

REFUNDS AND REMISSIONS

61. **Refund in cases of rejection of plaint, etc.**—(1) Where a plaint is rejected under Order 7, Rule 11, or a memorandum of appeal is rejected under O. 41, Rule 3 or 11 of the Code of Civil Procedure, 1908 (Act No. 5 of 1908), the Court may, in its discretion, direct the refund to the plaintiff or the appellant of the fee either in whole or in part, paid on the plaint or memorandum of appeal which has been rejected.

(2) Where a memorandum of appeal is rejected on the ground that it was not presented within the time allowed by the law of limitation, one-half of the fee shall be refunded.

62. **Refund in cases of remand.**—(1) Where a plaint or memorandum of appeal which has been rejected by the lower Court is ordered to be received, or where a suit is remanded in appeal for a fresh decision by the lower Court, the Court making the order or remanding the appeal may direct the refund to the appellant of the full amount of the fee paid on the memorandum of appeal; and it the remand is on second appeal also on the memorandum of appeal in the first appellate Court, and, if the remand is on an appeal from the judgment of single Judge of the High Court of Rajasthan under any law for the time being in force, also on the memorandum of second appeal and memorandum of appeal in the first appellate Court.

(2) Where an appeal is remanded in second appeal or in an appeal from the judgment of a single Judge of the High Court of Rajasthan under any law for the time being in force for a fresh decision by the lower appellate Court, the High Court remanding the appeal may direct the refund to the appellant of the full amount of fee paid on the memorandum of second appeal if the remand is in second appeal and of the full amount of fee paid on the memorandum of second appeal, and the memorandum of appeal from the judgment of a single Judge of the High Court of Rajasthan under any law for the time being in force, if the remand is on such latter appeal.

Provided that no refund shall be ordered if the remand was caused by the fault of the party who would otherwise be entitled to a refund:

Provided further that, if the order of remand does not cover the whole of the subject-matter of the suit, the refund shall not extend to more than so much fee as would have been originally payable on that part of the subject-matter in respect whereof the suit has been remanded.

63. Refund on grounds of mistake.—(1) Where an application for a review of judgment is admitted on the ground of some mistake or error apparent on the face of the record and on rehearing the Court reverses or modifies its former decision on that ground, it shall direct the refund to the applicant of so much of the fee paid on the application as exceeds the fee payable on any other application to such Court under Article 11 (g) and (h) of Schedule II.

(2) Any fee paid by mistake or inadvertence shall be ordered to be refunded to the person paying the same.

64. Exemption of certain documents.—Nothing contained in this Act shall render the following documents chargeable with any fee:—

(i) Mukhtarnama, vakalatnama or other written authority to institute or defend a suit when executed by a member of any of the Armed Forces of the Union not in civil employment;

(ii) application relating to supply for irrigation of water belonging to Government;

(iii) first application (other than a petition containing a criminal charge of information) for the summons of a witness or other person to attend either to give evidence or to produce a document or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court;

(iv) bail bonds in criminal cases, recognizances to prosecute or give evidence and recognizances for personal appearance or otherwise;

(v) petition, application, charge or information respecting any offence when presented, made or laid to or before a police officer;

(vi) petition by a prisoner or other person in duress or under restraint of any Court or its officer;

(vii) complaint of a public servant as defined in the Indian Penal Code, 1860 (Central Act XLV of 1860), or an officer of the State Railway relating to matters arising out of, or in connection with, discharge of his official duty;

(viii) application for the payment of money due by the State Government to the applicant, other than an application for refund of lapsed deposit made six months after the date on which the amount lapsed to the State Government;

(ix) petition of appeal against any municipal tax;

(x) an application for compensation under any law for the time being in force relating to the acquisition of property for public purposes;

(xi) petition of appeal by a Government servant or a servant of the Court of Wards when presented to any superior officer or Government against orders of dismissal, reduction or suspension; copies of such orders filed with such appeals, and applications for obtaining such copies.

Section 63 — Note 1

(1) Rajasthan Court-fees and Suits Valuation Act (XXII of 1961), Sections 63 (2), 61 and 62 — Refund of Court-fee — Who can order — Under Section 63 (2) Court can order refund and not Collector 1969 Raj LW 175 (175).

65. Power to reduce or remit fees.—The State Government may, by notification in the official Gazette reduce or remit, in the whole or in any part of the territory of this State, all or any of the fees chargeable under this Act, and may, in like manner, cancel or vary such notification.

CHAPTER VIII

MISCELLANEOUS

66. Collection of fees by stamps.—(1) All fees chargeable under this Act shall be collected by stamps.

(2) The stamps used to denote any fee chargeable under this Act shall be impressed or adhesive or partly impressed and partly adhesive, as the State Government may, by notification in the official Gazette, from time to time, direct.

67. Amended document.—Where any document which ought to bear a stamp under this Act is amended in order merely to correct a mistake and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

68. Cancellation of stamp.—(1) No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

(2) Such officer as the Court or the head of the office may, from time to time, appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figurehead so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

69. Deduction to be made.—Where allowance is made under this Act for damaged or spoiled stamps or where fee already paid is directed to be refunded to any person by an order of Court, the Collector may, on the application of the person concerned, pay to him the amount of fee, or, where damaged or spoiled stamps are produced, he may, after satisfying himself about their genuineness, give in lieu thereof the same amount or value in stamps of the same or any other description, or if the applicant so desired, the same amount or value in money: provided that in all cases where money is paid in cash, a deduction shall be made of six naye paise for each rupee or fraction thereof. No such deduction shall, however, be made where refund is claimed in respect of any fee paid in pursuance of an order of Court which has been varied or reversed in appeal.

70. Penalty.—Any person appointed to sell stamps, who disobeys any rule made under this Act, and any person, not so appointed, who sells or offers for sale any stamps, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

71. Power of High Court to make rules.—(1) The High Court may make rules to provide for or regulate all or any of the following matters, namely:—

(a) the fees payable for serving and executing processes issued by the High Court in its appellate jurisdiction and by the Civil and Criminal Courts subordinate thereto;

(b) the remuneration of persons employed by the Court mentioned in clause (a) in the service or execution of processes;

(c) the fixing by District and Sessions Judges and District Magistrates of the number of process-servers necessary to be employed for the service and execution of processes issued from their respective Courts and the Courts subordinate thereto;

(d) the display in each Court of a table in English and in Hindi showing the fees payable for the service and execution of processes.

(2) All rules made under sub-section (1) shall be subject to confirmation by the State Government with or without modification and on such confirmation they shall be published in the official Gazette and shall thereupon have effect as if enacted in this Act.

72. Power of Board of Revenue to make rules.—(1) The Board of Revenue may, with the previous sanction of the State Government, make rules consistent with this Act to provide for or regulate all or any of the following matters, namely:—

(a) the fees chargeable for serving and executing processes issued by the Board of Revenue and by the Revenue Courts:

(b) the remuneration of the persons necessary to be employed for the service and execution of such processes;

(c) the fixing by Collectors of the number of persons necessary to be employed for the service and execution of such processes;

(d) the guidance of Collectors in the exercise of their powers under Chapter VI;

(2) All rules made under this section shall be published in the official Gazette and on such publication shall have effect as if enacted in this Act.

73. Power of State Government to make rules.—(1) The State Government may, by notification in the official Gazette, make rules* to provide for the following matters, namely:—

(a) the supply of stamps to be used under this Act;

(b) the number of stamps to be used for denoting any fee chargeable under this Act;

(c) the keeping of accounts of all stamps used under this Act;

(d) the circumstances in which stamps may be held to be damaged or spoiled;

(e) the circumstances and manner in which, and the authorities by which, allowance for used, damaged or spoiled stamps may be made;

(f) the regulation of the sale of stamps to be used under this Act, the persons by whom alone such stamps may be sold and the duties and remuneration of such persons;

(g) generally for carrying out the purposes of this Act.

(2) All rules made under this Act shall be laid, as soon as may be after they are so made, before the House of the State Legislature, while it is in session, for a period of not less than fourteen days which may be comprised in one session or in two successive sessions and, if, before the expiry of the session in which they are so laid or of the session immediately following the House of the State Legislature makes any modification in any of such rules or resolves that any such rule should not be made, such rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

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* For the Rajasthan Court-fees and Suits Valuation Rules, 1961, see Raj. Gaz., Extra., 1-11-1961, Pt. IV (Ga).

74. Repeal and saving.—(1) The Rajasthan Court-fees Act (Adaptation) Ordinance, 1950 (Rajasthan Ordinance 9 of 1950), the Rajasthan Suits Valuation Act, 1958 (Rajasthan Act III of 1958) and all enactments amending the aforesaid Ordinance and the Act are hereby repealed and the provisions of the Rajasthan General Clauses Act, 1955 (Rajasthan Act VII of 1955), shall apply to such repeal.

(2) Notwithstanding such repeal, all suits and proceedings instituted before the commencement of this Act and all proceedings by way of appeal, revision or otherwise arising therefrom, whether instituted before or after such commencement, shall be governed by the provisions of the said Ordinance and the Act and the Rules made thereunder.

SCHEDULE I

Ad valorem Fees.

Article 1	Particulars 2	Proper fees 3
1.	Plaint or written statement pleading a set-off or counter claim or memorandum of appeal presented to any Court—	
	(i) When the amount or value of the subject-matter in dispute does not exceed one hundred rupees, for every five rupees, or part thereof.	Thirty-five naye paise.
	(ii) When the amount or value exceeds one hundred rupees, for every ten rupees, or part thereof up to one thousand rupees.	Seventy-five naye paise.
	(iii) When the amount or value exceeds one thousand rupees, for every fifty rupees, or part thereof, in excess of one thousand rupees up to five thousand rupees.	Three rupees.
	(iv) When the amount or value exceeds five thousand rupees, for every one hundred rupees, or part thereof, in excess of five thousand rupees.	Five rupees.
2.	(a) Petition under section 26 of the Provincial Insolvency Act, 1920 (Central Act V of 1920) as adapted or extending to the State or application under section 95 of the Code of Civil Procedure, 1908 (Central Act V of 1908).	An amount equal to one-half the fee at the scale prescribed in article 1 on the amount or compensation claimed.
	(b) Appeal against order on a petition or application falling under clause (a).	On the scale prescribed in article 1 on the amount in dispute.
3.	(a) Petition under section 53 or section 54 of the Provincial Insolvency Act, 1920 (Central Act V of 1920) as adapted or extending to the State.	An amount equal to one-half the fee at the scale prescribed in article 1 on the market value of the subject-matter, subject to a maximum fee of rupees five hundred.
	(b) Appeal against order on a petition falling under clause (a) whether by the Official Receiver or by the unsuccessful party.	An amount equal to one-half the fee at the scale prescribed in article 1 on the market value of the subject-matter, subject to a maximum fee of rupees five hundred.
4.	Memorandum of appeal against order in proceedings under the Indian Succession Act, 1925 (Central Act XXXIX of 1925).	An amount equal to one-half the fee at the scale prescribed in article 1 on the amount or value of the subject-matter.
5.	Application for review of judgment.	One-half of the fee payable on the plaint or memorandum of appeal comprising the relief sought in the application for review.
6.	Probate of a will or letters of administration with or without will annexed—	
	When the amount or value of the estate in respect of which the grant of probate or letters is made exceeds one thousand rupees, but does not exceed five thousand rupees.	Two per centum on such amount or value.
	When such amount or value exceeds five thousand rupees.	Three per centum on such amount or value.

Schedule 1, Article 1 — Note 1

(1) Appeal against an award of a Collector under the Land Acquisition Act — Award amounts to decree under S. 29 of the Act — Appeal against the award is an appeal against a decree and court-fee must be paid under Schedule I, Article 1 and not under Article 3, Schedule 1. 1967 Raj LW 127 (128) = ILR (1967) 17 Raj 78.

Article 1	Particulars 2	Proper fees 3
7.	Certificate under the Indian Succession Act, 1925 (Central Act XXXIX of 1925) -	
	Where the amount or value of the debt or security or the aggregate amount or value of the debts and securities specified in the certificate extends up to rupees five thousand.	Two per centum on such amount or value.
	Where such amount or value exceeds five thousand rupees.	Three per centum on such amount or value.

NOTE. (1) Where a certificate is extended under section 376 of the Indian Succession Act, 1925 (Central Act XXXIX of 1925) fee shall be computed on the amount for which a certificate is sought to be extended and the amount for which a certificate or certificates has or have already been issued credit being given for the fee already paid.

(2) The amount of a debt is its amount, including interest, the day on which the inclusion of the debt in the certificate is applied for so far as such amount can be ascertained.

(3) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act, and where such a power has been so conferred, whether the power is for the receiving of interest or dividends, on, or for the negotiation or transfer of the security, or for both purposes the value of the security is its market value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.

SCHEDULE II

Fixed Fees.

Article 1	Particulars. 2	Proper fee 3
1.	(i) Petition in a suit under the Native Convert's Marriage Dissolution Act, 1866 (Central Act XXI of 1866).	Ten rupees.
	(ii) Petition, plaint or memorandum of appeal when presented to a Court under the Dissolution of Muslim Marriage Act, 1939 (Central Act VIII of 1939).	Twenty rupees.
	(iii) Petition under the Indian Divorce Act, 1869 (Central Act IV of 1869) excluding petition under section 44 of that Act, and every memorandum of appeal under section 55 of that Act.	Twenty rupees.
	(iv) Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1936 (Central Act III of 1936) or a counter claim made under section 37 of that Act.	Twenty rupees,
	(v) Petition or memorandum of appeal under the Special Marriages Act, 1954 (Central Act XLIII of 1954) or under the Hindu Marriage Act, 1955 (Central Act XXV of 1955).	Twenty rupees.
	Explanation.—If in a petition or suit falling under any of these clauses there is a specific claim for damages, separate fee at the rates specified in article 1 of Schedule I shall be charged on the amount of damages claimed.	
2.	Undertaking under section 49 of the Indian Divorce Act, 1869 (Central Act IV of 1869).	One rupee.
3.	Memorandum of appeal from an order inclusive of an order determining any question under section 47 or section 144 of the Code of Civil Procedure, 1908 (Central Act V of 1908) and not otherwise provided for when presented—	
	(i) to any Court other than the High Court or to any Executive Officer other than the Board of Revenue or Chief Executive Authority.	One rupee,

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Schedule 2, Article 3 — Note 1

(1) Article 3 contemplates appeal from order and not from decree — Appeal against award given by Collector — Award is a decree under S. 26 of the Land Acquisition Act — Held court-fee is payable under Schedule 1, Article 1 and not under Article 3, Schedule 2. 1967 Raj LW 127 (128) = ILR (1967) 17 Raj 78.

Article 1	Particulars 2	Proper fees 3
	(ii) to the Board of Revenue or Chief Executive Authority.	Two rupees.
	(iii) to the High Court. From an order—	
	(1) Where the order was passed by a subordinate Court or other authority—	
	(a) if the order relates to a suit or proceeding, the value of which exceeds one thousand rupees.	Ten rupees.
	(b) in any other case.	Five rupees.
	(2) Where the appeal is from the judgment of a single Judge of High Court of Rajasthan under any law for the time being in force	
	(a) from an order passed in exercise of appellate jurisdiction.	Ten rupees.
	(b) in any other case.	One hundred rupees.
	(3) Where the appeal is under section 45-B of the Banking Companies Act, 1949 (Central Act 10 of 1949).	One hundred rupees.
	(4) Where the appeal is under section 411A of the Code of Criminal Procedure, 1898 (Central Act V of 1898).	Five rupees.
	(iv) to the State Government in pursuance of a statutory right to appeal for which no court-fee is leviable under any other enactment.	Five rupees.
4.	Memorandum of appeal under section 39 of the Arbitration Act, 1940 (Central Act X of 1940)	
	(i) where the value for jurisdiction does not exceed Rs. 5,000.	Fifteen rupees.
	(ii) in any other case.	One hundred rupees.
5.	Copy or translation of a judgment or order not being or having the force of a decree—	
	When such judgment or order is passed by any Civil Court other than the High Court or by the Presiding Officer of any Revenue Court or office or by any other Court or Judicial or Executive Authority—	
	(a) if the amount or value of the subject-matter is fifty or less than fifty rupees;	Fifty naye paise.
	(b) if such amount or value exceeds fifty rupees.	One rupee.
	When such judgment or order is passed by the High Court.	Two rupees.
6.	Copy or translation of a judgment or order of a Criminal Court.	Fifty naye paise.
7.	Copy of a decree or order having the force of a decree—	
	When such decree or order is made by any Court other than the High Court—	
	(a) if the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees;	Seventy-five naye paise.
	(b) if such amount or value exceeds fifty rupees.	One rupee and fifty-naye paise.
	When such decree or order is made by the High Court.	Five rupees.
8.	Copy of any document liable to stamp duty under the Rajasthan Stamp Law (Adaptation) Act, 1952 (Rajasthan Act VII of 1952), when left by any party to a suit or proceeding in place of the original withdrawn—	
	(a) when the stamp duty chargeable on the original does not exceed one rupee;	The amount of the duty chargeable on the original.
	(b) in any other case.	One rupee.

Article 1	Particulars 2	Proper fee 3
9.	Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act or copy of any account, statement, report, or the like taken out of any Court or office of any public officer –	
	For every document.	Seventy-five naye paise.
10.	(a) Application or petition presented under Chapter IV of the Motor Vehicles Act, 1939 (Central Act IV of 1939) -	
	(i) when presented to a Regional Transport Authority or its Chairman or Secretary.	Two rupees and fifty naye paise.
	(ii) when presented to the State Transport Authority or its Chairman or Secretary.	Five rupees.
	(b) Application or petition presented to any Executive Officer under any Act for the time being in force for the conservancy or improvement of any place if the application or petition relates solely to such conservancy or improvement.	Twenty-five naye paise.
	(c) Application or petition presented to any Board or Executive Officer for a copy or translation of any order passed by such Board or Officer or of any other document on record in such office.	Twenty-five naye paise.
	(d) Application to a Forest Officer by a forest contractor for extension of the period of lease -	
	(i) if the value of the subject-matter of the lease is Rs. 5,000 or less;	Five rupees.
	(ii) if such value exceeds Rs. 5,000 for every Rs. 1,000 or part thereof, in excess of Rs. 5,000.	One rupee.
	(e) Application for attestation of private documents intended to be used outside India.	One rupee.
	(f) Application for lapsed deposit presented after six months after the date on which the amount lapsed to the Government	
	(i) when the amount or deposit does not exceed Rs. 50;	Fifty naye paise.
	(ii) when the amount or deposit exceeds Rs. 50 but does not exceed Rs. 1,000;	One rupee.
	(iii) when it exceeds Rs. 1,000.	Two rupees.
	(g) Application or petition presented to the State Government and not otherwise provided for –	
	(i) which involves the exercise or non-exercise of power conferred by law or rule having the force of law:	Two rupees.
	(ii) in other cases.	Fifty naye paise
	(h) Application or petition presented to the Board of Revenue or Chief Executive Authority and not otherwise provided for –	
	(i) which involves the exercise or non-exercise of power conferred by law or rule having the force of law;	Two rupees.
	(ii) in other cases.	One rupee and fifty naye paise.
	(i) Application or petition not falling under clause (g) or clause (h) and presented to a public officer or in a public office and not otherwise provided for –	
	(i) which involves the exercise or non-exercise of power conferred by the law or rule having the force of law;	One rupee.
	(ii) in other cases	Twenty-five naye paise.

Article 1	Particulars 2	Proper fee 3
11.	(a) Application or petition presented to any Court for a copy or translation of any judgment, decree or any proceeding or of order passed by such Court or of any other document on record in such Court.	Fifteen naye paise.
	(b) Application or petition presented to any Civil Court other than a principal Civil Court of original jurisdiction or to any Court of Small Causes constituted under the Rajasthan Small Causes Courts Ordinance, 1950 Rajasthan Ordinance (VIII of 1950), in relation to any suit or case in which the amount or value of the subject-matter is less than Rs. 50.	Twenty-five naye paise.
	(c) Application to any Court that records may be called from another Court, when the Court grants the application and is of opinion that the transmission of such records involves the use of the post.	Seventy-five naye paise in addition to the fee leviable on the application.
	(d) Application or petition presented to a Court for determination of the amount of compensation to be paid by a landlord to his tenant.	One rupee.
	(e) A written complaint or charge of any offence other than an offence for which a police officer may, under the Code of Criminal Procedure, arrest without warrant and presented to any Criminal Court and an oral complaint of any such offence reduced to writing under the Code of Criminal Procedure, 1898 (Central Act V of 1898).	One rupee.
	(f) Application or petition presented to any Court, or to any Magistrate in his executive capacity and not otherwise provided for.	Fifty naye paise.
	(g) Application for arrest or attachment before judgment or for temporary injunction —	
	(i) when presented to a Civil Court other than the High Court in relation to any suit or proceeding —	One rupee.
	(ii) when presented to the High Court	Five rupees.
	(h) Application or petition under section 47 and Order XXI, Rules 58 and 90 of the Code of Civil Procedure, 1908 (Central Act V of 1908) —	
	(i) when filed in a Court subordinate to the High Court.	One rupee,
	(ii) when filed in the High Court	Five rupees.
	(i) Application or petition under sections 34, 72, 73 and 74 of the Indian Trusts Act, 1882 (Central Act II of 1882).	Five rupees.
	(j) (i) Application for probate or letters of administration to have effect throughout India.	Twenty-five rupees.
	(ii) Application for probate or letters of administration not falling under clause (i) —	
	(1) if the value of the estate does not exceed Rs. 1000;	Seventy-five naye paise.
	(2) if the value exceeds Rs. 1,000	Five rupees. Provided that if a caveat is entered and the application is registered as a suit, one-half the scale of fee prescribed in Article 1 of Schedule I on the market value of the estate less the fee already paid on the application shall be levied.
	(k) Original petitions not otherwise provided for when filed in —	
	(i) a Court subordinate to the High Court;	Two rupees.

Article 1	Particulars 2	Proper fee 3
	(ii) the High Court.	Ten rupees.
	(l) Application to set aside an award under the Arbitration Act, 1940 (Central Act X of 1940) –	
	(1) if the value of the subject-matter of the award does not exceed Rs. 5,000.	Twenty-five rupees,
	(2) if such value exceeds Rs. 5,000 but does not exceed Rs. 10,000,	One hundred rupees.
	(3) if such value exceeds Rs. 10,000.	Two hundred and fifty rupees
	(m) Application under section 14 or section 20 of the Arbitration Act, 1940 (Central Act X of 1940) for a direction for filing an award or for an order for filing an agreement and application for enforcing foreign awards –	
	(1) if the value of the subject-matter of the award does not exceed Rs. 5,000;	Fifteen rupees.
	(2) if such value exceeds Rs. 5,000 but does not exceed Rs. 10,000;	One hundred rupees.
	(3) if such value exceeds. Rs. 10,000.	Two hundred and fifty rupees.
	(n) Petition to the High Court for the admission of an Advocate or Vakil.	Twenty rupees.
	(o) Application presented to the High Court under section 24 of the Press (Objectionable Matter) Act, 1951 (Central Act LVI of 1951).	Fifty rupees.
	(p) Revision petition presented to the High Court under section 115 of the Code of Civil Procedure, 1908 (Central Act V of 1908), under section 23 of the Rajasthan Small Causes Courts Ordinance, 1950 (Rajasthan Ordinance VIII of 1950) or under the provisions of any other Act, arising out of a suit or proceeding –	
	(i) if the value of the suit or proceeding to which the order sought to be revised relates does not exceed Rs. 1,000;	Five rupees.
	(ii) if such value exceeds Rs. 1,000.	Ten rupees.
	(q) Petition under sections 391, 439 and 522 of the Indian Companies Act, 1956 (Central Act I of 1956) in connection with the winding up of a company.	One hundred rupees.
	(r) Petition to the High Court under Article 226 of the Constitution for a writ other than the writ of Habeas Corpus or a petition under Article 227 of the Constitution.	Twenty-five rupees.
	(s) Application or petition presented to the High Court and not otherwise specifically provided for.	Two rupees.
	(t) Election petition questioning the election of a person in respect of the office of –	
	(i) Member of any local authority;	Ten rupees.
	(ii) Chairman or Vice-Chairman of Municipal Board or Sarpanch or Up-Sarpanch of a Village Panchayat or Chairman of a Nyaya Panchayat;	Twenty-five rupees.
	(iii) Pradhan or Up-Pradhan of a Panchayat Samiti or Pramukh or Up-Pramukh of a Zila Parishad or President or Vice-President of a Municipal Council. –	Fifty rupees.
12.	Application for leave to sue as a pauper.	Seventy-five naye paise.
13.	Application for leave to appeal as a pauper—	
	(i) when presented to a Court subordinate to the High Court;	One rupee.
	(ii) when presented to the High Court;	Two rupees.
14.	Bail bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1898 (Central Act V of 1898) or the Code of Civil Procedure, 1908 (Central Act V of 1908), and not otherwise provided for in this Act;	Seventy-five naye paise.

Article 1	Particulars 2	Proper fee. 3
15.	Every copy of power of attorney when filed in any suit or proceedings.	Seventy-five naye paise.
16.	Mukhtarnama or Vakalatnama when presented for the conduct of any one case –	
	(a) to any Civil or Criminal Court other than a High Court or to any Revenue Court, or to any Collector or Magistrate, or other executive officer except such as are mentioned in clauses (b) and (c) of this Article.	Fifty naye paise.
	(b) to a Commissioner of Revenue, Circuit or Customs or to any officer charged with the executive administration of a Division, not being the Chief Revenue or Executive Authority.	One rupee.
	(c) to a High Court, Chief Commissioner, Board of Revenue, or other Chief Controlling Revenue or Executive Authority.	Two rupees.
17.	Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908 (Central Act V of 1908) –	
	(i) in a case where the value of the subject-matter does not exceed Rs. 5,000;	Fifteen rupees.
	(ii) in any other case.	One hundred rupees.
Caveat.		Ten rupees.

SCHEDULE III

PART I

(See Section 50)

Form of Valuation (to be used with such modifications, if any, as may be necessary) of Estate.

IN THE COURT OF

Re : Probate of the will or *(or Administration)*
of the Estate of *deceased.*

1. I, (A, B) Solemnly affirm/make oath and say that I am the executor (or one of the executors or one of the next of kin) of ... ... deceased, and that I have truly set forth in Annexure A to this Form of Valuation all the estate of which the above named deceased died possessed or to which he was entitled at the time of his death, and which has come, or is likely to come, to my hands.

2. I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct.

3. I further declare that the said estate exclusive only of the last mentioned items, was on the date of death of the said deceased / is * under the value of,

4. I (A, B) further declare that what is stated in this Form of Valuation is true to the best of my information and belief.

(Signed) ....A. B.

* This form to be used where the application is filed after one year from the date of the death.

ANNEXURE A

Valuation of the movable and immovable property of deceased. Cash in hand and at the bank, household goods, wearing apparel, books, plate, jewels etc.

(State estimated value according to best of Executor's or Administrator's belief).

Property in Government securities transferable at the Public Debt Office.

(State description and value on the date of the death of the deceased or on the date of the application, as the case may be).

Immovable property, consisting of..................... .. . .

(State description and market value on the date of the death of the deceased or on the date of the application, as the case may be).

Leasehold property... . ...

(If the deceased held any leases for years determinable, state the period of the lease and the estimated amount of rent inserting separately arrears due on the date of death or on the date of the application, as the case may be).

Property in public companies.

(State the particulars and the value calculated at the price on the date of the death or on the date of the application, as the case may be).

Policies of insurance upon life, money out on mortgages and other securities, such as bonds, bills, notes and other securities for money.

(State the amount of the whole on the date of the death or on the date of the application, as the case may be).

Debts.

(Other than bad debts.,

Stock in trade.

(State the estimated value, if any).

Other property not comprised under the foregoing heads.

(State the estimated value, if any).

Total

Deduct items shown in Annexure B in the manner provided in sub-section (2) of section 51.

Net value of the Estate ——————

ANNEXURE B

Schedule of debts etc.

Rs. nP.

Amount of debts due and owing from the deceased, legally payable out of the estate.

Amount of expenses connected with funeral rites and ceremonies.

Amount of mortgage encumbrances.

Property held in trust not beneficially or with general power to confer a beneficial interest.

Other property not subject to duty.

PART II

Amended Form of Valuation of Estate

(See Sections 56 and 58)

IN THE COURT OF

Re : Probate of the will of *(or Administration of)*
the Estate of *Deceased.*

1. I (A. B.) am the executor (or one of the executors or one of the next of kin, as the case may be) of.

2. Probate was (or letters of administration were) granted to me on.

3. It has now been discovered that the net value of the estate on which court-fee paid was not correctly ascertained.

4. I have now truly set forth in Annexure A to this amended Form of Valuation all the estate of ______ the deceased at the date of his death / the application for probate (or letters of administration) which has come or is likely to come to my hands.

5. I further have now truly set forth in Annexure B all the items which I am by law allowed to deduct.

6. I, further declare that the said estate, exclusive only of the last mentioned items, at the date of the death of the deceased was / this application is under the value of.

7. I, (A, B) further declare that what is stated in this amended Form of Valuation is true to the best of my information and belief.

(Signed) A. B.......................................

ANNEXURE A

Amended valuation of the estate of deceased.

Valuation on which court-fee was paid.	Increase.	Decrease.	Valuation as now amended.
Total			

Deduct items shown in Annexure B in the manner provided in sub-section (2) of section 51.

Amended net value of Estate. ——————

ANNEXURE B

Amended Schedule of debts, etc.

Valuation on which court-fee was paid.	Increase.	Decrease	Valuation as now amended
Total			

[THE] TAMIL NADU COURT-FEES AND SUITS VALUATION ACT, 1955
(T. N. ACT XIV OF 1955)

[The Act printed here is as amended by Madras Act XXXVI of 1955; Mad A. L. O., 1957; Madras Acts IX of 1960; XXXIX of 1961; and XXII of 1965.]

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[THE] TAMIL NADU* COURT-FEES AND SUITS VALUATION ACT
(TAMIL NADU ACT 14 OF 1955)

An Act to amend and consolidate the law relating to court-fees and valuation of suits in the *[State of Tamil Nadu]

Whereas it is necessary and expedient to amend and consolidate the law relating to court-fees and valuation of suits in the *[State of Tamil Nadu]:

Be it enacted in the Sixth Year of the Republic of India as follows:—

[*] Substituted for "Madras" and "State of Madras" by Tamil Nadu Adaptation of Laws Orders, 1969 (w.e.f. 14-1-1969)—Fort St. George Gazette, 13-8-1969, Pt. IV, Section 4, Extra., p. 57.

CHAPTER I
PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called THE TAMIL NADU COURT-FEES AND SUITS VALUATION ACT, 1955.

(2) I extends to the whole of the State of Tamil Nadu.*

(3) It shall come into force on such date† as the State Government may, by notification in the Fort St. George Gazette, appoint.

[*] The Act has been extended to territories added to the State by Central Act 56 of 1959 by T. N. Act 39 of 1961, Section 3 and Schedule I and to transferred territories by T. N. Act 22 of 1965.

[†] The Act came into force on 19-5-1955; and in the transferred territories on 1-7-1966.

2. Application of Act.—(1) The provisions of this Act shall not apply to—

(a) proceedings in the Presidency Court of Small Causes, Madras;

(b) documents presented or to be presented before an officer serving under the Central Government.

(2) Where any other law contains provisions relating to the levy of fee in respect of proceedings under such other law, the provisions of this Act relating to the levy of fee in respect of such proceedings shall apply subject to the said provisions of such other law.

3. Definitions.—In this Act, unless the context otherwise requires,—

(i) "appeal" includes a cross-objection;

(ii) "Court" means any Civil, Revenue, or Criminal Court and includes a Tribunal or other authority having jurisdiction under any special or local law to decide questions affecting the rights of parties;

(iii) "prescribed" means prescribed by rules made under this Act; [......]*

*[(iii-a) "transferred territory" means the Kanyakumari district and the Shencottah taluk of the Tirunelveli district; and]

(iv) expressions used and not defined in this Act or in the Tamil Nadu General Clauses Act 1891 (Tamil Nadu Act I of 1891), but defined in the Code of Civil Procedure, 1908, shall have the meanings respectively assigned to them in the said Code.

[*] Word "and" omitted and clause (iii-a) inserted by **T. N. Act 22 of 1965, Sec. 4, Sch. II** (w.e.f. 1-7-1966).

CHAPTER II

LIABILITY TO PAY FEE

4. Levy of fee in Courts and public offices.—No document which is chargeable with fee under this Act shall—

(i) be filed, exhibited or recorded in, or be acted on or furnished by, any Court including the High Court, or

(ii) be filed, exhibited or recorded in any public office, or be acted on or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated as chargeable under this Act:

Provided that, whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is in the opinion of the Court necessary to prevent a failure of justice, nothing contained in this section shall be deemed to prohibit such filing or exhibition.

5. Fees on documents inadvertently received.—When a document on which the whole or any part of the fee prescribed by this Act has not been paid is produced or has, through mistake or inadvertence, been received in any Court or public office, the Court or the head of the office may, in its or his discretion at any time, allow the person by whom such fee is payable to pay the fee or part thereof, as the case may be, within such time as may be fixed; and upon such payment, the document shall have the same force and effect as if the full fee had been paid in the first instance.

6. Multifarious suits.—(1) In any suit in which separate and distinct reliefs are sought based on the same cause of action, the plaint shall be chargeable with a fee on the aggregate value of the reliefs:

Section 3 — Note 1

(1) Section 3 (ii) of the Madras Court-fees and Suits Valuation Act contemplates four classes of Courts, civil, revenue, criminal and any authority or Tribunal having jurisdiction under any special or local law to decide questions affecting rights of parties. A Collector acting under Section 46 of the Income-tax Act may be a Court within the meaning of this section. But he will not constitute a civil Court for purposes of Section 41 (1) of the Court-fees Act. ILR (1960) Mad 371 (376) = (1960) 1 MLJ 137.

Section 5 — Note 1

(1) Suit filed on original side of High Court — Transfer to City Civil Court under Act X of 1955 — Transfer by virtue of a statute and exercise of discretion by High Court — Section 16 of Madras City Civil Courts Act did not apply. There could be no levy of higher court-fee under Section 5. (1959) 1 Mad LJ 160 = 71 Mad LW 701.

Section 6 — Note 1

(1) If a person sues several lessees who are recalcitrant, for recovering possession of the several holdings leased out

Provided that, if a relief is sought only as ancillary to the main relief, the plaint shall be chargeable only on the value of the main relief.

(2) Where more reliefs than one based on the same cause of action are sought in the alternative in any suit, the plaint shall be chargeable with the highest of the fees leviable on the reliefs.

(3) Where a suit embraces two or more distinct and different causes of action and separate reliefs are sought based on them either alternatively or cumulatively, the plaint shall be chargeable with the aggregate amount of the fees with which plaints would be chargeable under this Act if separate suits were instituted in respect of the several causes of action:

Provided that, where the causes of action in respect of reliefs claimed alternatively against the same person arise out of the same transaction, the plaint shall be chargeable only with the highest of the fees chargeable on them.

Nothing in the sub-section shall be deemed to affect any power conferred upon a Court under Rule 6 of Order II of the Code of Civil Procedure, 1908.

(4) The provisions of this section shall apply mutatis mutandis to memoranda of appeals, applications, petitions and written statements.

Explanation.—For the purpose of this section, a suit for possession of immovable property and for mesne profits shall be deemed to be based on the same cause of action.

7. Determination of market value.—(1) Save as otherwise provided, where the fee payable under this Act depends on the market value of any property, such value shall be determined as on the date of presentation of the plaint.

Section 6 — Note 1 (contd.)

to them, the cause of action against each lessee is different and distinct, relating to each lease and holding, and court-fee should be paid separately in respect of each holding under Section 7 of the Act, even though the reliefs may be clubbed together under Section 6 (3) of the Madras Court-fees and Suits Valuation Act. Cases of conspiracy among several tenants to defeat the claims of the landowner might however stand on a different footing. ILR (1959) Mad 252 (254) = (1958) 2 MLJ 536 = 71 Mad LW 754.

(2) Suit against several tenants of plaintiff for a declaration that tenants have no permanent rights of occupancy — Plaint alleging conspiracy and joint denial of title by all tenants of different parcels of lands. The suit is based on a single cause of action, viz., joint denial of title by all the defendants. To such a case section 6 (3) of the Madras Court-fees and Suits Valuation Act has no application. (1958) 2 MLJ 412 (414).

(3) Petition of the trustee of several devasthanams — Property of those devasthanams acquired by Government by separate notifications — Petition to quash those notifications — Petitioner asserting rights as trustee — Identity of points to be decided could not impart unity to the right — Petitioner must file as many petitions as there were institutions whose right he sought to assert — Court-fee is to be paid under Section 6 (4) of the Madras Act. AIR 1957 Mad 570 (571) = (1957) 2 Mad LJ 145.

(4) Applicability — Agreement by defendant settling lands jointly on 24 persons — Latter in possession and cultivation but enjoying separate portions under arrangement among themselves inter se without reference to defendant — Interference by defendant with possession — Suit by all settlees jointly for declaration and injunction — **Held,** on facts, the plaintiffs got only a single joint right and interference by the defendant with that right constituted but one cause of action, there being only one subject-matter and the plaint did not comprise as many subjects as there were plaintiffs. No additional Court-fee need be paid. AIR 1962 Mad 416 (417) = (1962) 1 Mad LJ 172.

(5) Suit for partition of two properties — One property claimed by plaintiff through mother—Other property claimed through grandfather — **Held,** claim to two properties related to two distinct causes of action and separate court-fee must be paid upon each under Section 6. (1963) 76 Mad LW 257 (258).

Section 7 — Note 1

(1) Plaintiff purchasing land adjacent to defendants' factory from the defendant — Land characterised as ryotwari land in the patta secured by plaintiff from Government in respect of the land — Suit for possession by plaintiff against defendant — Land valued for Court-fee purposes as ryotwari land under Section 7 (2) (a) of Madras Court Fees Act 1955 — **Held,** land was valued properly — Court could not take into consideration the probabilities of its use in future

(2) The market value of land in suits falling under Sections 25 (a), 25 (b), 27 (a), 29, 30, 37 (1), 37 (3), 38, 45 or 48 shall be deemed to be—

(a) where the land is ryotwari land—thirty times the survey assessment on the land:

Provided that, where the land forms part of a survey field and is not separately assessed to revenue, the value of such part shall be deemed to be thirty times such proportion of the survey assessment as the part bears to the entire survey field.

Explanation.—Lands in the areas in which the Malabar Tenancy Act, 1929, is in force shall be regarded as ryotwari lands.

(b) where the land is situated in an estate as defined in sub-section (2) of Sec. 3 of the Tamil Nadu Estates Land Act, 1908, not being a land of the description mentioned in sub-clause (g) and such estate has been taken over by the Government under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948—thirty times the land revenue payable on the land under Section 23 of that Act; but if a ryotwari settlement has since been effected in pursuance of Section 22 of that Act; in respect of such land, thirty times the assessment as so fixed;

(c) Where the land is situated in an estate which became an estate under the Tamil Nadu Estates Land (Third Amendment) Act, 1936—thirty times the rent payable for the land as fixed under the Tamil Nadu Estates Land (Reduction of Rent) Act, 1947.

(d) where the land is an 'estate' as defined in the Tamil Nadu Estates Land Act, 1908—

(i) where separate peishkush is recorded in the Collector's register as payable for the estate—thirty times peishkush;

(ii) in any other case—thirty times the annual melvaram, realizable from the estate;

(e) where the land is a minor inam held under inam title deed—thirty times the assessment as noted in the village 'B' Register;

(f) where the land is in an inam village which is not an 'estate' as defined in sub-sec. (2) of Section 3 of the Tamil Nadu Estates Land Act, 1908—thirty times the rent payable in respect of it;

(g) where the land is a house site whether assessed to full revenue or not, poramboke land, or is land not falling within the foregoing description—its market value.

*[(3) Notwithstanding anything contained in sub-section (2), the market value of land, building or garden in the transferred territory shall, in cases of dispute, be deemed to be ten times the difference between the annual gross profits of such land, building or garden where it is capable of yielding annual profits and the assessment, if any, due to the State Government.]

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* Inserted by T. N. Act 22 of 1965, S. 4 and Sch. II (w.e.f. 1-7-1966).

Section 7 — Note 1 (contd.)

and its potentialities and value it under Section 7 (2) (g). (1968) 81 MLW 502 (503).

(2) In any case of dispute regarding the quantum of a tax or any other financial burden between a subject and the State, the burden is on the State to show that the larger quantum is leviable and not the smaller one. (1958) 2 Mad LJ 536 (537) = 71 Mad LW 754.

(3) Several holdings leased to different persons — Suit by landlord against lessees — No conspiracy between the tenants — Cause of action against each lessee is different and distinct, relating to each lease — Court-fee should be paid separately in respect of each holding under Section 7 of the Madras Court-fees and Suits Valuation Act even when the suits are clubbed under Section 6 (3). (1958) 2 Mad LJ 536 (537) = 71 Mad LW 754.

8. Set-off or counter-claim.—A written statement pleading a set-off or counter-claim shall be chargeable with fee in the same manner as a plaint.

9. Documents falling under two or more descriptions.—Subject to the provisions of the last preceding section, a document falling within two or more descriptions in this Act shall, where the fees chargeable thereunder are different, be chargeable only with the highest of such fees:

Provided that where one of such descriptions is special and another general, the fee chargeable shall be fee appropriate to the special description.

CHAPTER III

DETERMINATION OF FEE

10. Statement of particulars of subject-matter of suit and plaintiff's valuation thereof.—In every suit in which the fee payable under this Act on the plaint depends on the market value of the subject-matter of the suit, the plaintiff shall file with the plaint, a statement in the prescribed form, of particulars of the subject-

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Section 8 — Note 1

(1) Counter-claim differs from set-off in the following respects —

(1) Set-off is limited to money claims but there is no such limitation in the case of counter-claims.

(2) Set-off is a ground for defence. Counter-claim, is not really a defence to the plaintiff's claim but is a weapon of defence enabling the defendant to enforce his right or claim against the plaintiff as effectively as an independent action of his own.

(3) The plea of the defendant to the extent to which it operates on an extinguishment of plaintiff's claim is in the nature of set-off while in respect of the balance claimed by the defendant it partakes of the character of counter-claim. AIR 1967 Mad 300 (301) = (1966) 1 Mad LJ 200.

(2) The right to a set-off is the right to plead a debt or a money claim due from the plaintiff in deduction or extinction of the plaintiff's claim. A plea of set-off can exist only where both the plaintiff's and defendant's claims are for recovery of money. AIR 1967 Mad 300 (301) = (1966) 1 Mad LJ 200.

(3) Defendant claiming a set-off in a suit by plaintiff has to pay Court-fee on the amount of set-off. 79 Mad LW 159 (162) = ILR (1966) 2 Mad 636.

(4) Any claim in respect of which the defendant could bring an independent separate action against the plaintiff can form the subject-matter of a plea of counter claim. Provided such a plea can be conveniently tried with the plaintiffs' claim. AIR 1967 Mad 300 (301) = (1966) 1 Mad LJ 200.

(5) Every defence will not constitute a counter-claim. A person who has a right not enforceable by an action but in some other way cannot enforce that right by a counter-claim. AIR 1967 Mad 300 (303) = (1966) 1 Mad LJ 200.

(6) A plea for value of improvements by the alienee in a suit for partition by the plaintiff is not a counter-claim. AIR 1967 Mad 300 (301) = (1966) 1 Mad LJ 200.

(7) Counter-claim can be made in a suit for injunction, specific performance or for a declaration. AIR 1967 Mad 300 (301) = (1966) 1 Mad LJ 200.

(8) Suit for partition and separate possession — No question of plea of set-off can arise. AIR 1967 Mad 300 (301) = (1966) 1 Mad LJ 200.

(9) A claim by a defendant in a suit for possession of property that he should be paid the cost of improvements effected by him as a condition of the decree for possession, is neither a claim for set-off nor one by way of counter-claim and Section 8 of the Madras Court-fees and Suits Valuation Act cannot apply to such claims. AIR 1961 Mad 527 (528) = (1961) 2 Mad LJ 34. (AIR 1961 Mad 355. **Distinguished.**)

(10) Counter-claim — Suit for redemption — Claim by defendants for value of improvements alleged to have been effected by him is in nature of counter-claim against plaintiff — Court-fee on claim is payable by defendant. AIR 1961 Mad 355 (355) = 73 Mad LW 665.

(11) Suit for the recovery of money—Defence that there was extinction of plaintiff's liability under settlement long anterior to suit leaving claim against plaintiff — The defendant in claiming adjustment of debt in his written statement and claiming a difference as due to him has to pay Court-fee only on the difference he claimed. (1966) 79 Mad LW 159 (162) = ILR (1966) 2 Mad 636.

Section 9 — Note 1

(1) Partnership already dissolved — Plaint praying for partition and separate possession of half share in partnership assets after providing for debts of firm — The suit is for accounts of a dissolved partnership — Court-fee is payable under Section 36 (1) and not Section 37 (2). 72 Mad L W 172 (173, 174) = (1959) 1 Mad LJ 224.

matter of the suit and his valuation thereof unless such particulars and the valuation are contained in the plaint.

11. Decision as to proper fee in the High Court.—Where, in a suit instituted in the High Court, in which a fee is payable under this Act, any difference arises between the officer whose duty it is to see that proper fee is paid and any party as to the necessity of paying a fee or the amount thereof, the question shall be referred to the Taxing Officer who shall decide the same:

Provided that, if in the opinion of the Taxing Officer, the question is one of general importance, he may refer it to the Chief Justice of the High Court or such Judge or Judges of the High Court as the Chief Justice shall appoint, either generally or specially in this behalf:

Provided further that, when the case comes up for disposal before the Court, the decision of the Taxing Officer may be reviewed by the Court.

12. Decision as to proper fee in other Courts.—(1) In every suit instituted in any Court other than the High Court, the Court shall, before ordering the plaint to be registered, decide on the materials and allegations contained in the plaint and on the materials contained in the statement, if any, filed under Section 10 the proper fee payable thereon, the decision being, however, subject to review, further review and correction in the manner specified in the succeeding sub-sections.

(2) Any defendant may, by his written statement filed before the first hearing of the suit or before evidence is recorded on the merits of the claim but subject to the next succeeding sub-section, not later, plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim. If the Court decides

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Section 12 — Note 1

(1) Ordinarily there are three stages at which a Court can enquire into the question whether a plaint or appeal has been properly valued. They are: (a) Before the registration of the plaint or appeal. In such cases it will be open to the Court to review correct and further review its decision in the manner specified in Section 12 (1) of the Madras Court-fees Act; (b) After the suit or appeal has been registered an issue on the question of Court-fee can be raised by the defendant or respondent and the Court should decide the matter. In such cases the decision will be binding on the Court that rendered it unless a fresh decision is asked for by the Court-fee Examiner; (c) On the objection of Court-fee Examiners under Section 18 of the Act, when a decision has been given on the report of the Court-fee Examiner no further review or reconsideration is possible except by an appellate Court under Section 12 (4) of the Act. 73 Mad LW 625 (628) = (1960) 2 MLJ 527.

(2) The duty of assessing deficit court-fee rests on the Court and not on the court-fee examiner — The Court while assessing the deficit court-fee ought to give full reasons for its assessment. (1958) 2 Mad LJ 536 (537) = 71 MLW 754.

(3) The word 'plead' used in the section is wider than, and is not restricted only to, the written statement. A defendant has opportunity to raise an objection relating to court-fee either at the time of filing his written statement or subsequently by a petition supported by an affidavit before the evidence is recorded. (1958) 71 Mad LW 116 (118) = (1958) 1 Mad LJ 308.

(4) Plaintiff ordered to pay deficit Court-fee — Plaintiff can file a revision against the order without waiting for a dismissal of suit for default in payment and then file an appeal. AIR 1959 Mad 155 (156) = (1959) 1 Mad LJ 151.

(5) Though the new sub-sections (2) and (3) of Section 12 (Madras Amendment, 1955), give a statutory right to the defendant to raise objections to the adequacy of the court-fee paid by the plaintiff, in practice, so far as mofussil Courts are concerned, there has been no startling departure and in fact what was being done in practice has been placed on a statutory basis now. The field of investigation in regard to court-fees is confined practically to the determination of two points, viz., under-estimation of the subject of suit and the category under which it should fall for the purpose of court-fee, and cannot be larger than what it was before. AIR 1958 Mad 573 (575, 576) = (1958) 1 Mad LJ 21.

(6) Partition suit — Deficit court-fee — Court granting time to pay — Default — One of defendants applying to be transposed as plaintiff and offering to pay court-fee — Court has jurisdiction to allow application — Plaint though imperfect is still valid for purposes of order for

that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the Court shall fix a date before which the plaint shall be amended in accordance with the Court's decision and the deficit fee shall be paid. If the plaint be not amended or if the deficit fee be not paid within the time allowed, the plaint shall be rejected and the Court shall pass such order as it deems just regarding costs of the suit.

(3) A defendant added after issues have been framed on the merits of the claim may, in the written statement filed by him, plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions, arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant on the merits of the claim, and if the Court finds that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the Court shall follow the procedure laid down in sub-section (2).

Explanation.—Nothing in this sub-section shall apply to a defendant added as a successor or a representative-in-interest of a defendant who was on record before issues were framed on the merits of the claim and who had an opportunity to file a written statement pleading that the subject-matter of the suit was not properly valued or that the fee paid was not sufficient.

(4) (a) Whenever a case comes up before a Court of Appeal, it shall be lawful for the Court either of its own motion or on the application of any of the parties, to consider the correctness of any order passed by the lower Court affecting the fee payable on the plaint or in any other proceeding in the lower Court and determine the proper fee payable thereon.

Explanation.—A case shall be deemed to come before a Court of Appeal even if the appeal relates only to a part of the subject-matter of the suit.

(b) If the Court of Appeal decides that the fee paid in the lower Court is not sufficient, the Court shall require the party liable to pay the deficit fee within such time as may be fixed by it.

(c) If the deficit fee is not paid within the time fixed and the default is in respect of a relief which has been dismissed by the lower Court and which the appellant seeks in appeal, the appeal shall be dismissed, but if the default is in respect of a relief which has been decreed by the lower Court, the deficit fee shall be recoverable as if it were an arrear of land revenue.

(d) If the fee paid in the lower Court is in excess, the Court shall direct the refund of the excess to the party who is entitled to it.

(5) All questions as to value for the purpose of determining the jurisdiction of Courts arising on the written statement of a defendant shall be heard and decided before evidence is recorded affecting such defendant on the merits of the claim.

Section 12 — Note 1 (contd.)

transposition — O. 1, R. 10 (2) gives wide discretion. AIR 1966 Ker 150 (160) = 1966 Ker LT 199.

(7) There is no provision in the Madras Court-fees Act or any other statute which enables a defendant to move High Court in revision against the decision of the Court of first instance on the matter of Court-fee payable on the plaint. Section 12 (2) only enables the defendant to raise a contention as to the proper Court-fee payable on the plaint. AIR 1961 SC 1299 (1300) = (1961) 3 SCR 1015.

(8) Defendant cannot challenge the discretion exercised by the trial Court in the matter of granting time for payment of the Court-fee. AIR 1966 Ker 150 (158) = 1966 Ker LT 199.

(9) Suit for accounts of dissolved partnership — Plaintiff's estimate not sham — Court would be bound to accept estimate under Section 36 (1) the value to be adopted is the plaintiff's estimate and the power of the Court would not extend beyond ascertaining the real value from the documents referred to in Section 12 (1). AIR 1960 Mad 260 (261) = (1960) 1 Mad LJ 468.

(10) Objection as to adequacy of court-fee paid — Can be raised after issue of a commission under O. 26 of the Civil P. C. for examination of plaintiff — Sub-section (3) of Section 12 does not preclude the question being raised at that stage. (1966) 2 Mad LJ 551 (554) = 80 Mad LW 31.

Explanation.—In this section, the expression "merits of the claim" refers to matters which arise for determination in the suit not being matters relating to the frame of the suit, misjoinder of parties and causes of action, the jurisdiction of the Court to entertain or try the suit or the fee payable but inclusive of matters arising on pleas of res judicata, limitation and the like.

13. **Additional fee on issues framed.**—Where a party becomes liable to pay additional fee by reason of an issue framed in the suit, the provisions of the last foregoing section shall apply to the determination and levy of such additional fee subject to the modification that where the party liable does not pay such additional fee within the time allowed, the Court shall strike off the issue and proceed to hear and decide the other issues in the case.

14. **Relinquishment of portion of claim.**—A plaintiff who has been called upon to pay additional fee may relinquish a part of his claim and apply to have the plaint amended so that the fee paid would be adequate for the claim made in the plaint as amended. The Court shall allow such application on such terms as it considers just and shall proceed to hear and decide the claim made in the plaint as amended, provided that the plaintiff shall not be permitted at any later stage of the suit to add to the claim the part so relinquished.

15. **Fee payable on written statements.**—Where fee is payable under this Act on a written statement filed by a defendant, the provisions of Section 12 shall apply to the determination and levy of the fee payable on such written statement, the defendants concerned being regarded for the said purpose as the plaintiff or the co-defendant or the third party against whom the claim is made being regarded as the defendant.

16. **Fee payable on appeals, etc.**—The provisions of Sections 10 to 14 relating to the determination and levy of fee on plaints in suits shall apply mutatis mutandis to the determination and levy of fee in respect of a memorandum of appeal, cross-objection or other proceeding in second appeal or in an appeal under the Letters Patent.

17. **Fee payable on petitions, applications, etc.**—The provisions of Sections 10 to 14 shall apply mutatis mutandis to the determination and levy of fee in respect of petitions, applications and other proceedings in Courts in the same way as they apply to the determination and levy of fee on plaints in suits.

18. **Court-fee Examiners.**—(1) The High Court may depute officers to be designated court-fee examiners to inspect the records of subordinate Courts with a view to examine the correctness of representations made to, and orders passed by Courts on questions relating to valuation of subject-matter and sufficiency of fee in respect of proceedings in such Courts.

Section 16 — Note 1

(1) With regard to a memorandum of appeal the stage at which an appellate Court can interfere on a matter relating to Court-fee is prior to the registration of the appeal. After the registration of an appeal it is only by means of an objection taken by the respondent or with regard to a request for a decision by the Court-fee Examiner under Section 18 that the appellate Court can review the Court-fee paid — Otherwise it has no power suo motu to do so. 76 Mad LW 504 (505) = (1963) 2 Mad LJ 59.

Section 18 — Note 1

(1) Court can consider the question of proper court-fee on an objection of the Court-fee examiner under Sec. 18 of the Act, when a decision has been given on the report of the court-fee examiner, no further review or reconsideration is possible except by an appellate Court under Section 12 (4) of the Act. ILR (1961) Mad 369 (376) = (1960) 2 MLJ 527.

(2) With regard to a memorandum of appeal, after the registration of the appeal it is only by means of an objection taken by the respondent or with regard to a request for a decision by the Court-fee Examiner under Section 18 of the Madras Court-fees and Suits Valuation Act, that the Court could review the court-fee paid. Otherwise it has no power suo motu to do so. (1963) 2 MLJ 59 (60) = 76 Mad LW 504.

(2) Questions raised in reports submitted by such Court-fee Examiners and relating to any suit, appeal or other proceeding pending in a Court shall be heard and decided by such Court; and for the avoidance of doubt it is hereby declared that in hearing and deciding a question raised in any such report it shall be lawful for the Court to review an earlier decision given by the Court on the same question.

19. Inquiry and commission.—For the purpose of deciding whether the subject-matter of a suit or other proceeding has been properly valued or whether the fee paid is sufficient the Court may hold such inquiry as it considers proper and may, if it thinks fit, issue a commission to any proper person directing him to make such local or other investigation as may be necessary and to report thereon to the Court.

20. Notice to the State Government.—In any inquiry relating to the fee payable on a plaint, written statement, petition, memorandum of appeal or other document, or to the valuation of the subject-matter of the claim to which the plaint, written statement, petition, memorandum of appeal or other document relates, in so far as such valuation affects the fee payable, the Court may, if it considers it just or necessary to do so, give notice to the State Government and where such notice is given, the State Government shall be deemed to be a party to the suit or other proceeding as respect the determination of the question or questions aforesaid; and the Court's decision on such question or questions shall, when it passes a decree or final order in such suit or proceeding, be deemed to form part of such decree or final order.

CHAPTER IV

COMPUTATION OF FEE

21. Fee how reckoned.—The fee payable under this Act shall be determined or computed in accordance with the provisions of Chapter VI, Chapter VIII and Schedules I and II.

*[**21-A. Fee to be computed to the nearest multiple of five paise.**—In the determination or computation of the amount of fee payable under this Act, any fraction of five paise less than two and a half paise shall be disregarded and any fraction of five paise equal to, or exceeding two and a half paise shall be regarded as five paise.]

*Inserted by T. N. Act 9 of 1960, S. 2 (w.e.f. 1-4-1960).

22. Suits for money.—In a suit for money (including a suit for damages or compensation, or arrears of maintenance, annuities, or of other sums payable periodically), fee shall be computed on the amount claimed.

*[**Explanation.**—For the purposes of this section, the expression "suit for money" shall, in respect of the transferred territory, also include suits for rent, pattom, michavaram, adukkurathu, jenmikaram, or other dues of a like nature.]

[*] Added by T. N. Act 22 of 1965, Section 4 and Schedule II (w.e.f. 1-7-1966).

23. Suits for maintenance and annuities.—In the suits hereinafter mentioned fee shall be computed as follows:—

(a) in a suit for maintenance, on the amount claimed to be payable for one year;

Section 23 — Note 1

(1) Reading Sections 23 and 40 of the Madras Court-fees and Suits Valuation Act together, it is clear that there cannot be two different standards of valuation for purposes of claiming maintenance and for cancellation of a decree for maintenance. In either case the amount claimed or decreed for one year will be the basis of valuation. In such cases it is not proper to treat the maintenance decree-holder as the holder of a life estate and claim court-fee on the basis of an actual calculation based on the expectancy of life. AIR 1959 Mad 432 (433) = (1958) 2 Mad LJ 159.

(b) in a suit for enhancement or reduction of maintenance, on the amount by which the annual maintenance is sought to be enhanced or reduced;

(c) in a suit for annuities or other sums payable, periodically on five times the amount claimed to be payable for one year:

Provided that, where the annuity is payable for less than five years, the fees shall be computed on the aggregate of the sums payable:

Provided further that a suit for enhancement of maintenance shall be instituted in a Court which will have jurisdiction to receive a suit for maintenance at the enhanced rate claimed and one for reduction of maintenance shall be instituted in a Court which will have jurisdiction to receive a suit for maintenance at the rate which is sought to be reduced.

24. Suits for movable property.—(1) In a suit for movable property other than documents of title, fee shall be computed—

(a) where the subject-matter has a market value, on such value; or

(b) where the subject-matter has no market value, on the amount at which the relief sought is valued in the plaint.

(2) (a) In a suit for possession of documents of title, fee shall be computed on one-fourth of the amount or of the market value of the property secured by the document—

(i) where the plaint alleges denial of the plaintiff's title to the money or the property secured by the document, or

(ii) where an issue is framed regarding the plaintiff's title to the money or the property secured by the document:

Provided that where the allegation in the plaint or the issue framed relates only to a portion of the amount or property, fee shall be computed on one-fourth of such portion of the amount or on one-fourth of the market value of such portion of the property.

(b) In a suit for possession of documents of title where the plaintiff's title to the money or the property secured by the document is not denied, fee shall be computed on the amount at which the relief sought is valued in the plaint.

Explanation.—The expression "document of title" means a document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest whether vested or contingent, in any property.

25. Suits for declaration.—In suit for a declaratory decree or order, whether with or without consequential relief, not falling under Section 26—

(a) where the prayer is for a declaration and for possession of the property to which the declaration relates, fee shall be computed on the market value of the property or on rupees three hundred, whichever is higher;

Section 25 — Note 1

(1) Section 25 (a) and (b) deal with tangible rights in immovable property or where substantial question as to the title of immovable property is involved. Whereas Sec. 25 (d) deals with intangible rights concerning immovable property where no investigation regarding title to the property is necessary. (1967) 2 Mad LJ 536 (537) = 80 Mad LW 393.

(2) The provisions of Section 25 (a) apply where the prayer is for declaration and exclusive possession of the property. (1961) 2 MLJ 481 (482).

(3) Suit for declaration and prayer for possession as a consequential relief — Appeal falls under Section 25 (a). ILR (1961) Mad 369 (378) = (1960) 2 Mad LJ 527.

(4) Lessees holding land under single agreement with defendant — Lessees subsequently holding portions of land separately under agreement inter se between them — Interference with their possession by defendant — Suit by lessees against defendant for declaration and injunction — Plaint valued under Section 25 (b) — **Held,** there was only one agreement between the plaintiffs

(b) where the prayer is for a declaration and for consequential injunction and the relief sought is with reference to any immovable property, fee shall be computed on one-half of the market value of the property or on rupees three hundred, whichever is higher;

(c) where the prayer relates to the plaintiff's exclusive right to use, sell, print or exhibit any mark, name, book, picture, design or other things and is based on an infringement of such exclusive right, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees five hundred, whichever is higher;

(d) in other cases, whether the subject-matter of the suit is capable of valuation or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees four hundred, whichever is higher.

Section 25 — Note 1 (contd.)

and the defendant — Interference with possession under that agreement could only be one cause of action — There was only one subject-matter — The Court-fee paid was proper. AIR 1962 Mad 416 (417) = (1962) 1 Mad LJ 172.

(5) The plaint asked for a declaration that the decrees obtained against the first defendant on the foot of the mortgage were null and void and not binding on the plaintiff.

Held, the plaints fell within the ambit of Sections 25 (b) and not 25 (d) of Madras Act 14 of 1955 and Court-fee should be paid on the valuation of the suits assessed on that basis. The plaints have to be regarded as asking for reliefs with reference to immovable properties. Without deciding question of title it is impossible to dispose of the suits. (1963) 1 Mad LJ 219 = ILR (1963) Mad 368 (371).

(6) Section 38 would apply only to cases where joint possession is sought as substantive relief and not as a consequential one. Where joint possession is sought as a consequential relief there is no specific provision in the Act and it is the residuary provisions of Secton 25 (d) that would apply to such cases. (1961) 2 Mad LJ 481.

(7) Suit against several tenants of plaintiff for a declaration that tenants have no permanent rights of occupancy — Plaint alleging conspiracy and joint denial of title by all tenants of different parcels of land — Suit is based on a single cause of action viz., joint denial of title by all the defendants — Section 6 (3) of Madras Court-fees and Suits Valuation Act has no application — Court-fees paid under Section 25 (d) held proper. (1958) 2 Mad LJ 412 (413).

(8) Suit for declaration that the plaintiff also was a trustee of the property and as such was entitled to joint possession along with the defendant — Relief for possession was a consequential relief and not a substantive relief — Suit not being provided for, will fall under a residuary clause (d) of Section 25. (1961) 2 Mad LJ 481 (483).

(9) Wakf Board appointing committee only to keep watch on management of wakf property by Mutawalli — Suit by Mutawali for declaration that order appointing committee is not valid and for injunction to restrain it from interfering with his management — Section 25 (d) applies and not Section 28. 77 Mad LW 351 = (1965) 1 Mad LJ 278 (279).

(10) Where the purchaser of a property files a suit only for a declaration that an equitable mortgage created by his vendor was not binding on him he is entitled to pay Court-fee under Section 25 (d) and is not liable to pay Court-fee under Section 40 of the Madras Court-fees Act for cancellation of the equitable mortgage to which he was not a party. (1964) 1 Mad LJ 152 (153).

(11) Suit for declaration of rental rights — No adjudication regarding title — Adjudication regarding intangible rights only — Valuation of the suit — Court-fees to be paid not on market value of the property under Section 25 (a) or (b) but under Cl. (d). (1967) 2 Mad LJ 536 (538) = 80 Mad LW 393.

(12) A suit for a declaration that a particular business carried on under a specified name and style belongs to the plaintiff and that the defendants have no right to interfere with the same is one in respect of an intangible right and will fall within Section 26 (d) of the Madras Court-fees and Suits Valuation Act, 1955. 75 Mad LW 531 = (1962) 2 Mad LJ 420 (420).

(13) Plaintiff suing for declaration that he was entitled as of right to be in possession of property as he had taken an assignment of lease from the lessee the defendant — **Held**, the plaintiff was in fact claiming rental rights which means that he was seeking relief on a contract of lease — The main relief asked for came within Sec. 42 (c) and court-fee is as payable under Section 25 (d). (1967) 2 Mad LJ 536 (537, 538) = 80 Mad LW 393.

Cases prior to 1955 Act

(14) Suit for declaration of title to immovable property and for injunction falls under the proviso and court-fee is payable on half the value of the immov-

26. Adoption suits.—In a suit for a declaration in regard to the validity or invalidity o an adoption or the factum of an adoption, fee shall be payable at the following rates:—

(i) In the District Munsif's Court	Rupees fifty.
(ii) In the City Civil Court Madras, or a Sub-Court or a District Court	Rupees one hundred if the property involved in or affected by the relief is Rs, 10,000 or less and rupees five hundred if it is above Rs. 10,000.
iii) In the High Court	Rupees five hundred.

27. **Suits for injunction.**—In a suit for injunction—

(a) where the relief sought is with reference to the immovable property, and

(i) where the plaintiff alleges that his title to the property is denied, or

(ii) where an issue is framed regarding the plaintiff's title to the property,

fee shall be computed on one-half of the market value of the property or on rupees three hundred, whichever is higher;

(b) where the prayer relates to the plaintiff's exclusive right to use, sell, print or exhibit any mark, name, book, picture, design or other thing and is based on an infringement of such exclusive right, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees five hundred, whichever is higher;

Section 25 — Note 1 (contd.)

able property computed in accordance with para (v) of Section 7. AIR 1925 Mad 1143 (1143) ** AIR 1931 Mad 69 (70) ** AIR 1948 Mad 344 (344).

(15) Proviso should be read with para (v) of Section 7 so as to make the words "with reference to" mean involving possession of land, houses or gardens. Proviso held to be inapplicable to a case where relief claimed was a declaration of right of easement. AIR 1927 Mad 348 (349) ** AIR 1958 Andh Pra 106 (107).

(16) Words "the relief sought is with reference to any immovable property" in the proviso, should in some sense relate to the title to immovable property. AIR 1936 Mad 201 (202) = 59 Mad 962 ** AIR 1946 Mad 235 (236) = ILR (1946) Mad 885.

[See also AIR 1958 Andh Pra 106 (107). (Where, in a suit for a permanent injunction restraining the defendant from interfering with the plaintiff's enjoyment of the suit land by grazing their cattle thereon the only dispute is as to whether the plaintiff is entitled to rights of grazing or the contesting defendants are entitled to those rights, neither Section 7 (iv) (c) nor the Madras proviso applies. AIR 1946 Mad 235 = ILR (1946) Mad 885, **Rel. on.**)]

(17) It has been held that where a suit is brought by the mortgagor and puisne mortgagee for a declaration that the sale proposed to be held by the defendants mortgagees in pursuance of the power of sale vested in them under Section 69 of the Transfer of Property Act without the intervention of Court would be wrongful, illegal and void on account of the rights to which the plaintiffs, as agriculturists, would be entitled under debt relief legislation and for an injunction restraining the mortgagees from exercising the right until such time as the amount that really becomes payable under the mortgages is ascertained under the debt relief legislation, the proviso to Section 7 (iv) (c) has no application, and the plaintiffs are entitled to put up their own valuation for declaration and injunction. AIR 1955 Mad 676 (Prs. 9, 14) = ILR (1956) Mad 146 (DB).

(18) The words "relief sought" in the proviso must be read as relating to the words "consequential relief" in clause (c) of the main Act. AIR 1936 Mad 201 (202) = 59 Mad 962.

(19) Where the plaintiffs brought a suit in a representative capacity for a declaration that the scheme decided upon and sought to be published by the defendant Municipality under the Madras Town Planning Act was illegal and ultra vires and not binding upon the plaintiffs and for a permanent injunction prohibiting the defendant from enforcing all or any of the provisions of the scheme against the plaintiffs and paid a fixed court-fee under Sch. II, Art. 17 in respect of the declaration and in respect of the injunction court-fee under Section 7 (iv) (d) was paid, it was held that the declaration and injunction asked for could not be construed to be with reference to immovable properties affected by the scheme and therefore, the proviso to Section 7 (iv) (c) (Mad) had no application. AIR 1955 Mad 212 (Pr. 5).

(20) The proviso merely introduces a downward limit below which relief sought in respect of immovable property consequential on a declaratory decree shall not be valued. It does not lay down that if the relief sought properly falls within any other provision requiring a higher valuation, the higher valuation is not to be made. AIR 1932 Mad 605 (609) = 56 Mad 212 (DB).

(c) in any other case, whether the subject-matter of the suit has a market value or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees four hundred, whichever is higher.

28. Suits relating to trust property.—In a suit for possession or joint possession of trust property or for a declaratory decree, whether with or without consequential relief in respect of it, between trustees or rival claimants to the office of trustee or between a trustee and a person who has ceased to be a trustee, fee shall be computed on one-fifth of the market value of the property subject to a maximum fee of rupees two hundred or where the property has no market value, on rupees one thousand:

Provided that, where the property does not have a market value, value for the purpose of determining the jurisdiction of Courts shall be such amount as the plaintiff shall state in the plaint.

Explanation.—For the purpose of this section, property comprised in a Hindu, Muslim or other religious or charitable endowment shall be deemed to be trust property and the manager of any such property shall be deemed to be the trustee thereof.

29. Suits for possession under the Specific Relief Act, 1877.—In a suit for possession of immovable property under Section 9 of the Specific Relief Act, 1877 Central Act 1 of 1877)* fee shall be computed on one-half of the market value of the property or on rupees two hundred, whichever is higher.

[*] Now see Specific Relief Act, 1963 (47 of 1963) (1-3-1964).

30. Suits for possession not otherwise provided for.—In a suit for possession of immovable property not otherwise provided for, fee shall be computed on the market value of the property or on rupees four hundred, whichever is higher.

Section 28 — Note 1

(1) For the applicability of Section 28 the suit must be between trustees or rival claimants to the office of trustee or between a trustee and a person who had ceased to be a trustee. (1966) 2 Mad LJ 551 (555) = 80 Mad LW 31.

(2) A suit by a muttavalli praying for a declaration that the order of the Wakf Board appointing a committee to supervise the management of the Wakf by the muttavalli was not binding on him can be valued under S. 25(d) of the Court-fees Act (1955). It is not a suit between trustees or rival claimants to the office of the trustee. It need not be valued under Section 28 which will be attracted only if there is a dispute between the plaintiff and rival trustees to the office of the trustee (mutavalli). (1965) 1 Mad LJ 278 = ILR (1965) 1 Mad 308 (309).

(3) If a person in possession against whom a suit is filed by the trustee of the endowment has been a manager of the property as commonly understood the case would directly fall within the language of Section 28 read with explanations. (1966) 2 Mad LJ 551 (558) = 80 Mad LW 31.

(4) The provision of paying a court-fee on 1/5 of the market value of the property plus a ceiling of Rs. 200 is a fee payable at a fixed rate. 71 Mad LW 477 (478) = (1958) 2 Mad LJ 225.

Section 30 — Note 1

(1) The provisions of Section 30 of the Madras Court-fees and Suits Valuation Act will apply only to cases when the plaintiff seeks exclusive possession. (1961) 2 Mad LJ 481 (482).

(2) If a person sues several lessees, who are recalcitrant, for recovering possession of the several holdings leased out to them and there is no conspiracy between them (lessees) against the plaintiff, it is obvious that there are different and distinct causes of action relating to each lease and holding and court-fee is payable under Section 30 even where the suits are clubbed under Section 6 (3). 71 MLW 754 (756) = (1958) 2 Mad LJ 536.

(3) In any case of dispute regarding the quantum of a tax or any other financial burden between a subject and the State the burden is on the State to show that the larger quantum is leviable and not the smaller one. 71 Mad LW 754 (756) = (1958) 2 Mad LJ 536.

(4) Suit for possession of land by vendee against vendor — Land characterised in revenue records as ryotwari lands — Court-fee payable is under Section 7 (2) (a) — Land in the hands of vendor was for purpose of building houses or factory — That will not be made a ground to invoke Section 7 (2) (a) in view of its being characterised as ryotwari land in revenue papers. (1968) 81 MLW 502 (503).

31. Suits relating to easements.—In a suit relating to an easement, whether by the dominant or the servient owner, fee shall be computed on the amount at which the relief sought is valued in the plaint, which amount shall in no case be less than rupees three hundred:

Provided that, where compensation is claimed besides other relief relating to such easement, fee shall be paid on the amount claimed as compensation in addition to the fee payable on such other relief.

32. Pre-emption suits.—In a suit to enforce a right of pre-emption, fee shall be computed on the amount of the consideration for the sale which the pre-emptor seeks to avoid or on the market value, whichever is less.

33. Suits relating to mortgages.—(1) In a suit to recover the money due on a mortgage, fee shall be computed on the amount claimed.

Explanation.—It is immaterial that sale of the mortgaged property is not prayed for.

(2) Where in such a suit the holder of a prior mortgage or charge is impleaded and he prays in his written statement that the amount due on his mortgage or charge be determined and that the decree contains, a direction for the payment of such amount to him, fee shall be payable on the written statement computed on the amount claimed:

Provided that, where the holder of the mortgage or charge has paid a fee in any other proceeding on the claim to which his written statement relates, credit shall be given for the fee paid by him in such other proceeding.

(3) Where, in such a suit, the mortgaged property is sold and the holder of a prior or subsequent mortgage or charge applies for payment to him, out of the sale proceeds, of the amount due on his mortgage or charge, such holder of the prior or subsequent mortgage or charge shall pay on his application a fee computed on the amount claimed by him:

Provided that, where such holder of the mortgage or charge is a party to the suit in which the sale was held and has paid fee on the written statement filed by him in the suit, no fee shall be payable by him on the application for payment out of the sale proceeds:

Provided further that, where the holder of the mortgage or charge not being a party to the suit in which the sale is held, has paid a fee in any other proceed-

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Section 33 — Note 1

(1) Section is applicable only where mortgaged property is sold in mortgage suit and holder of prior or subsequent mortgage applies for payment out of sale proceeds of the amount due on his mortgage or charge. (1966) 1 Mad LJ 211 (212) = ILR (1967) 2 Mad 109.

(2) Section 33 (3) is not applicable to cases where a decree-holder-mortgagee obtains permission to bid and set off and then applies for a sale certificate. (1966) 1 Mad LJ 211 (212) = ILR (1967) 2 Mad 109.

(3) Suit for redemption of Kanom — Court-fee was payable under sub-sec. (1) of Section 34 as calculated under the provisions of Section 33 — The plaintiff was bound under Section 33 (8) to pay Court-fee on the amount due on the mortgage as stated in the plaint or on one-fourth of the principal amount secured under the mortgage whichever was higher. 1958 KLT 894 (895) = 1958 Ker LJ 1025. (Redemption of part of the mortgaged property claimed — Fee paid was more than 1/4 amount secured under the deed — Fee held sufficient.)

(4) Scope — Suit for redemption of mortgage and for accounts — Allegation in plaint that documents in question though executed as sale-deeds, operated only as mortgages — **Held,** there was no need of cancellation of sale-deeds and, therefore, payment of Court-fees on that basis was not necessary — Court-fee paid for the relief of redemption under Section 33 (8) was held proper. AIR 1970 Mad 107 (107) = (1969) 1 Mad LJ 151. (C. R. P. 1764 of 1961 (Mad), Overruled.)

(5) Where a Court grants a mortgage decree subject to the rights of the prior mortgagee who is a party to the suit — The prior mortgagee is not required to pay Court-fee on his written statement stating that he was a prior and not a puisne mortgagee. 1961 Mad WN 304 = (1961) 1 Mad LJ 352 (352).

ing on the claim to which his application relates, credit shall be given for the fee paid by him in such other proceeding.

(4) In a suit by a co-mortgagee for the benefit of himself and the other co-mortgagees, fee shall be computed on the amount claimed on the entire mortgage:

Provided that, where a co-mortgagee impleaded as defendant in such suit claims on the entire mortgage a larger sum than is claimed in the plaint, the difference between the fee computed on the entire sum claimed in such defendant's written statement and the fee computed on the entire sum claimed in the plaint shall be payable on the written statement.

Explanation.—Nothing in this sub-section shall be construed as affecting the law of limitation.

(5) (a) In a suit by a sub-mortgagee to recover the amount claimed on the sub-mortgagee's interest in the mortgaged property, fee shall be computed on the amount claimed under the sub-mortgage.

(b) In a suit by a sub-mortgagee, if the prayer is for the sale of the property mortgaged to the original mortgagee and the original mortgagor is also impleaded as a defendant, fee shall be computed on the entire amount claimed on the original mortgage which is sub-mortgaged to him.

(6) Where the holder of a prior or subsequent mortgage or charge is impleaded in a suit by a co-mortgagee to which sub-section (4) applies, or in a suit by a sub-mortgagee to which sub-section (5) applies, the provisions, sub-sections (2) and (3) shall apply mutatis mutandis to a written statement or an application filed by such holder of mortgage or charge.

(7) Where the original mortgagee who is impleaded in a suit to which the provisions of sub-section (5) (b) apply claims on the mortgage sub-mortgaged by him, a larger amount than is claimed in the plaint, the provisions of sub-section (4) shall apply mutatis mutandis to the written statement of such mortgagor.

(8) In a suit against a mortgagee for redemption of a mortgage, fee shall be computed on the amount due on the mortgage as stated in the plaint or on one-fourth of the principal amount secured under the mortgage, whichever is higher:

Provided that, where the amount due on the mortgage is found to be more than the amount on which fee has been paid by the plaintiff, no decree shall be passed until the deficit fee is paid:

Provided further that, in the case of a usufructuary or anomalous mortgage, if the plaintiff prays for redemption as well as for accounts of surplus profits, fee shall be levied separately on the relief for accounts as in a suit for accounts.

(9) In a suit by a mortgagee to foreclose the mortgage or, where the mortgage is made by conditional sale, to have the sale declared absolute, fee shall be computed on the amount claimed in the plaint by way of principal and interest.

34. Suits relating to kanams *[* * *].—(1) A suit by a landlord for recovery of possession of property transferred by way of kanam or kanam kuzhikanam shall be deemed to involve the reliefs of redemption and ejectment, and fee shall be levied in respect of each of the reliefs, that is to say, on the kanartham in respect of the relief of redemption and on one year's michavaram or rent in respect of the relief of ejectment.

(2) If in any such suit, arrears of michavaram or rent or damages or both are also sought to be recovered, fee shall be levied also on the amount of such arrears or damages or both:

Provided that where the plaintiff seeks to set off the kanartham and the value of the improvements due by him to the defendant against arrears of michavaram or rent due to him, fee shall be levied only on the balance claimed; and if the amount ascertained to be due to him exceeds the amount as estimated

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Section 34 — Note 1

(1) Suits relating to kanoms under Malabar Tenancy Act 1929 are governed by Section 34 of the Madras Court-Fees Act. 1958 Ker LJ 1025 = 1958 Ker LT 894 (894).

by the plaintiff, no decree shall be passed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the amount so ascertained is paid. If the additional fee is not paid within such time as the Court may fix, the decree shall be limited to the amount to which the fee paid extends.

*[(3) Notwithstanding anything contained in sub-sections (1) and (2), in respect of the transferred territory, in a suit for ejectment of a kanom holder or a tenant, who has a right to permanent occupancy, or is enjoying under a perpetual lease or under a lease for a term exceeding 25 years, fee shall be computed according to the market value of the subject matter.]

* Words 'under the Malabar Tenancy Act 1929,' omitted and sub-section (3) inserted by T. N. Act 22 of 1965, Section 4 and Sch. II (w. e. f. 1-7-1966).

35. **Suits for accounts.**—(1) In a suit for accounts, fee shall be computed on the amount sued for as estimated in the plaint.

(2) Where the amount payable to the plaintiff as ascertained in the suit is in excess of the amount as estimated in the plaint, no decree directing payment of the amount as so ascertained shall be passed until the difference between the fee actually paid and the fee that would have been payable had the suit comprised the whole of the amount so ascertained, is paid. If the additional fee is not paid within such time as the Court may fix, the decree shall be limited to the amount to which the fee paid extends.

(3) Where in any such suit it is found that any amount is payable to the defendant, no decree shall be passed in his favour until he pays the fee due on the amount.

36. **Suits for dissolution of partnership.**—(1) In a suit for dissolution of partnership and accounts or for accounts of dissolved partnership, fee shall be computed on the value of the plaintiff's share in the partnership as estimated by the plaintiff.

(2) If the value of the plaintiff's share as ascertained in the suit exceeds the value as estimated in the plaint, no decree, or where there has been a preliminary decree, no final decree, shall be passed in favour of the plaintiff, no payment shall be made out of the assets of the partnership and no property shall be allotted as for the plaintiff's share until the difference between the fee actually paid and the fee that would have been payable had the suit comprised the whole of the value so ascertained, is paid.

Section 35 — Note 1

(1) Scope — Suit for redemption of mortgage and for accounts — Allegation in plaint that documents in question, though executed as sale-deeds, operated only as mortgages — **Held,** there was no need of cancellation of sale-deeds and, therefore, payment of Court-fees on that basis was not necessary — The Court-fee for relief of redemption paid under Section 33 (8) and for relief of accounting under Section 35 (1) was held proper. AIR 1970 Mad 107 (107) = (1969) 1 Mad LJ 151.

Section 36 — Note 1

(1) Plaint praying for partition and separate possession of half share in partnership assets after providing for debts of firm — The suit is for accounts of dissolved partnership — Court-fee is payable under Section 36 (1) which is specific provision for such suits and not Section 37 (2). (1959) 1 MLJ 224 = 72 Mad LW 172 (173).

(2) Suit for accounts of dissolved partnership. If the estimate given by a plaintiff is on the face of it a sham one or so obviously wrong the Court can ask the plaintiff to make a proper estimate. But mere inaccuracy in the estimate will not make it a sham one. Reality and not accuracy is the test for ascertaining a proper valuation under Section 36 (1) of the Madras Court-fees and Suits Valuation Act. AIR 1960 Mad 260 (261, 262) = (1960) 1 Mad LJ 468.

(3) Suits for accounts of dissolved partnership governed by Sections 32 and 33 of the Andhra Pradesh Court-fees and Suits Valuation Act — Section 33 of the above Act corresponds to Section 36 of the Madras Court-fees Act — Valuation by plaintiff — Court has no power to direct plaintiff to amend valuation in suits falling under Sections 32 and 33 — Section 11, not applicable to suits governed by those sections. AIR 1962 Andh Pra 449 (451, 452) = (1962) 1 Andh LT 348.

(3) No final decree shall be passed, no money shall be paid and no allotment of property shall be made in favour of a defendant in any such suit as, for or on account of, his share of the assets of the partnership, until the fee computed on the amount or value of his share of the assets of the partnership, is paid.

37. Partition suits.—(1) In a suit for partition and separate possession of a share of joint family property or of property owned, jointly or in common, by a plaintiff who has been excluded from possession of such property, fee shall be computed on the market value of the plaintiff's share.

(2) In a suit for partition and separate possession of joint family property or property owned, jointly or in common, by a plaintiff who is in joint possession of such property, fee shall be paid at the following rates:

When the plaint is presented to :—

(i) a District Muniff's Court.—	Rupees thirty;
(ii) the City Civil Court, Madras, or a Sub-Court or a District Court.	Rupees thirty if the value of plaintiff's share is Rs. 5,000 or less. Rupees one hundred if the value is above Rs. 5,000 but below Rs. 10,000 ; and Rupees two hundred if the value is Rs. 10,000 and above.
(iii) the High Court	Rupees three hundred.

(3) Where, in a suit falling under sub-section (1) or sub-section (2), a defendant claims partition and separate possession of his share of the property, fee shall be payable on his written statement computed on half the market value of his share or at half the rates specified in sub-section (2), according as such defendant has been excluded from the possession or is in joint possession.

(4) Where, in a suit falling under sub-section (1) or sub-section (2), the plaintiff or the defendant seeks cancellation of decree or other document of the nature specified in Section 40, separate fee shall be payable on the relief of cancellation in the manner specified in that section.

Section 37 — Note 1

(1) Mere appropriation of profits of the property or even exclusive use or possession of the property by one co-sharer, does not amount to "exclusion" of other co-sharers from possession for which an intention of the co-sharer to keep the others out of possession is an essential element. 1959 Ker LT 412 (413) = ILR (1959) Ker 315.

(2) Where the plaintiff is claiming possession from a third party alienee or from a member of the family so long as he cannot claim joint possession he is liable to pay Court-fee under Section 37 (1). (1964) 77 Mad LW 687 = 1964 Mad WN 674 (676).

(3) Final decree in partition suit — Decree directing payment of mesne profits — Mesne profits are not under O. 20, Rule 12 but form part of the property available for partition — Appeal from decree — Appellant need not pay separate Court-fee on the amount of mesne profits in dispute. (1968) Ker LJ 549 = 1968 Ker LR 598 (601).

(4) Defendants in possession — Suit by plaintiff for partition and possession of his share claiming as co-sharer — No claim of adverse possession by defendant — Plaintiff deemed to be in joint possession — Suit falls under Section 37 (2) of the Court Fees Act and need not pay ad valorem Court-fee on the value of his share. (1960) 1 Mad LJ 354 (356).

(5) Section 37 (1), (2) — Suit for partition and mesne profits — Plaintiff alleging joint possession with defendant — The prayer in the plaint for the recovery of possession was not inconsistent with a case of joint possession and was really for the conversion of the plaintiff's joint possession of the whole property into separate possession by him of a part of it. Hence Court-fee was payable under Section 37 (2) and not under Section 37 (1) of the Act. 1959 Ker LT 412 (414) = ILR (1959) Ker 315.

(6) Partnership dissolved — Plaint praying for partition and separate possession of half share in partnership assets after providing for debts of firm — Court-fee payable is under Section 36 (1) and not Section 37 (2). (1959) 1 Mad LJ 224 = ILR (1959) Mad 707 (710).

(7) Where a suit for partition of two items of properties was transferred from the file of the City Civil Court to the High Court under Section 24, Civil P. C., Section 14 of Madras City Civil Court Act would be applicable and the plaintiff would be bound to pay the Court-fees on the scale for the time being in force in the High Court as a Court of ordinary original civil jurisdiction. Under

38. Suits for joint possession.—(1) In a suit for joint family property or of property owned, jointly or in common, by a plaintiff who has been excluded from possession, fee shall be computed on the market value of the plaintiff's share.

39. Administration suits.—(1) In a suit for the administration of an estate, fee shall be levied on the plaint at the rates specified in Section 50.

(2) Where any amount or share or part of the assets of the estate is found due to the plaintiff and the fee computed on the amount or the market value of such share or part of the assets exceeds the fee paid on the plaint, no payment shall be made and no decree directing payment of money or confirming title to such share or part of the assets shall be passed until the difference between the fee actually paid and the fee computed on the amount or value of the property is paid.

(3) No payment shall be made, no decree directing payment of money or confirming title to any share or part of the assets of the estate shall be passed in favour of a defendant in a suit for administration, until the fee computed on the amount or value of such share or part of such assets is paid by such defendant.

(4) In computing the fee payable by a plaintiff or by a defendant under sub-section (2) or sub-section (3), credit shall be given for the fee, if any, paid by such plaintiff or by such defendant in any other proceeding in respect of the claim on the basis of which such amount or share or part of the assets of the estate becomes due to such plaintiff or to such defendant.

40. Suits for cancellation of decrees, etc.—(1) In a suit for cancellation of a decree for money or other property having a money value, or other document

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Section 37 — Note 1 (contd.)

Section 37 (2) (ii) he has to pay fee of Rs. 300. (1963) **70** Mad LW 257.

(8) Suit falling under Section 37 (1) — Plaintiff also claiming relief of accounts of the properties and income of the properties since 1951 — The accounting claimed was only incidental to the relief of partition and was intended to ascertain the family property that was available for partition — No separate Court-fee on the relief of accounting need be paid. 1964 Mad WN 674 (677) = 77 Mad LW 687.

(9) The plaintiff brought a suit with a prayer that the suit house might be valued for the purpose of working out partition in pursuance of direction by her deceased mother in the deed of settlement in which the direction was to pay her brother and sister each 1/3 of the market value of the house. The plaintiff paid Court-fees under Section 37 (2) as on a partition suit.

Held, that the suit was not a suit for partition falling under Section 37 (2) but was one for administration of the deceased mother's estate and therefore the Court-fee payable was under Section 39 of the Act. (1959) 2 Mad LJ 120 (121).

Section 38 — Note 1

(1) Section 38 of the Madras Court-fees and Suits Valuation Act would apply only to cases where joint possession is sought as a substantive relief and not as a consequential one. (1961) 2 Mad LJ 481 (482).

Section 39 — Note 1

(1) The plaintiff brought a suit with a prayer that the suit house might be valued for purposes of partition in pursuance of direction by her deceased mother in the deed of settlement in which the direction was to pay her brother and sister each 1/3 of the market value of the house — Plaintiff paid Court-fee under Section 37 (2) as on a partition suit — **Held,** that the suit was not a suit for partition falling under Section 37 (2) but was one for administration of the deceased mother's estate and therefore the Court-fee payable was under Section 39 of the Act. (1959) 2 Mad LJ 120 (121).

(2) Where a plaint (though purported to be filed as an inter-pleader suit) claims reliefs that the Court may take charge of the suit property and ascertain the shares of the contending parties and distribute the same, it is an administration suit attracting Court-fee under Section 39 of the Court-fees Act and Court-fee has got to be levied after the shares are ascertained and before the decree is passed. Neither Section 48 nor Section 50 of the Court-fees Act could apply to such cases. (1961) 2 Mad LJ 33 (34).

Section 40 — Note 1

(1) It is quite true that when the plaintiff's case is that a document is sham and nominal, it need not be set aside and the suit for relief on that footing is not one for cancellation. But even

which purports or operates to create, declare, assign, limit or extinguish whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject-matter of the suit, and such value be deemed to be—

if the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed;

if a part of the decree or other document *is sought to be cancelled*, such part of the amount or value of the property.

(2) If the decree or other document is such that the liability under it cannot be split up and the relief claimed relates only to a particular item of property belonging to the plaintiff or to the plaintiff's share in any such property, fee shall be computed on the value of such property or share or on the amount of the decree, whichever is less.

Explanation.—A suit to set aside an award *shall* be deemed *to* be a *suit to* set aside a decree within the meaning of this section.

Section 40 — Note 1 (contd.)

in such cases, if the plaintiff sues for cancellation he would have to pay Court-fee for the relief, whether it was necessary to have the deed cancelled or not. But a prayer for mere declaration about plaintiff's title after attacking the document as sham and nominal in the body of the plaint, does not attract the application of Section 40. (1959) 1 Mad LJ 355 (358) ** (1964) 1 MLJ 278 (279) = ILR (1964) 2 Mad 163.

(2) If under the substantive law it is necessary for a party to set aside a transaction before obtaining the relief prayed the Court would imply that there was a prayer to set aside the transaction or direct an amendment of the plaint to that effect when such prayer is not necessary but is made in the plaint it will be considered a mere surplusage. ILR (1961) Mad 369 (377) = (1960) 2 Mad LJ 527.

(3) Sale-deed by father and mother as guardian of minor sons — Suit by minors for declaration and possession of the property on the ground that sale-deed was void — Sale-deed was held executed by lawful guardian of the minor and hence it was necessary that sale-deed must be set aside before decree for possession could be given. The case fell under Section 40. (1959) 1 MLJ 118 = 72 Mad LW 671 (673).

(4) Suit by next friend on behalf of P and himself for partition and declaration that execution sale is invalid and not binding on them — Suit decreed in favour of next friend but dismissed as against P only — Suit by P after 14 years for declaration that execution sale and dismissal of the previous suit are not binding on him and he is entitled to share in suit properties — **Held,** P could be directed to pay Court-fee only on value of decree that he was praying to set aside and not on the market value of suit properties. 1966 Mad WN 137 (139) = 79 Mad LW 214. (Case before the Act 1955.)

(5) Suit by a reversioner 'A' for his share in the property — Suit abated against him — Subsequent suit by A's sons for the same purpose — Setting aside of abatement of previous suit by 'A' necessary — Court-fee must be paid on the value of the share of 'A'. (1959) 1 Mad LJ 21 (22).

(6) Maintenance decree — Plaintiff ordered to pay Rs. 600 P. M. as maintenance — Suit to set aside this part of the decree — Suit valued for purposes of Court-fee at Rs. 7,200 i.e., on the amount payable for one whole year — **Held,** Sections 23 and 40 must be read together and if that is done it will at once be found that the Court-fee will be payable only on Rs. 7200. AIR 1959 Mad 432 (433) = (1958) 2 Mad LJ 159.

(7) A claim suit under Order 21, R. 63 of the Civil P. C. falls under Sec. 40 and in such a suit the valuation of the property will be the value of the decree in execution of which the property was sold. 74 Mad LW 54 (56) = (1961) 1 Mad LJ 156.

(8) Purchaser of property — Suit by, for declaration that an equitable mortgage created by his vendor not binding on him — As the plaintiff was not a party to the document Court-fee is to be paid under Section 25 (d) and not under Section 40 of the Madras Court-fees Act. (1964) 1 Mad LJ 152 (153).

(9) Strangers who are not a party to a document need not ask for its cancellation. If however they pray for setting it aside on a ground that they were not bound by it, such prayer would not be one coming within Section 40 but merely a declaratory in nature. ILR (1961) Mad 369 (377) = (1960) 2 Mad LJ 527.

41. Suits to set aside attachment, etc.—(1) In a suit to set aside an attachment by a Civil or Revenue Court of any property, movable or immovable, or of any interest therein or of any interest in revenue, or to set aside an order passed on an application made to set aside the attachment, fee shall be computed on the amount for which the property was attached or on one-fourth of the market value of the property attached, whichever is less.

(2) In a suit to set aside any other summary decision or order of a Civil or Revenue Court, if the subject-matter of the suit has a market value, fee shall be computed on one-forth of such value, and in other cases, fee shall be payable at the rates specified in Section 50.

Explanation.—For the purpose of this section, the Registrar of Co-operative Societies shall be deemed to be a Civil Court.

Section 40 — Note 1 (contd.)

(10) A purchaser of an undivided interest, who is in possession, is not bound to pay Court-fees under Section 7 (v) of the Court-fees Act but under Art. 17-B. ILR (1963) Andh Pra 830.

(11) Decree for partition — Suit by coparcener for declaration that it is not binding on person not party to it and for partition of plaint properties into two equal shares — Section 7 (iv-A) (Mad.) is not applicable — Suit is governed by Articles 17-A and 17-B of Schedule 2 (Mad.). AIR 1957 Andh Pra 955 (956) = 1956 Andhra LT 377 = 1956 Andhra WR 553.

(12) Suit for cancellation of deed of exchange and for recovery of property — **Held**, that it was not Section 7 (v) but only Section 7 (iv-A) that was applicable. AIR 1959 Andh Pra 495 (496, 497).

(13) Suit for partition and separate share — Alienation of property by plaintiff's guardian during his minority — Court-fee is payable under Section 7 (iv-A). (1968) 81 Mad LW 338.

(14) The plaintiff brought a suit for possession of certain lands on the allegation that an ex parte decree for possession of those lands obtained against him in a previous suit was null and void as the suit lands were situate in an inam estate.

Held, that as the Court had jurisdiction to try the previous suit on the allegations in the plaint, the plaintiff who was a party to that ex parte decree had to specifically pray for setting aside that decree and pay Court-fee under Sec. 7 (iv-A) (Mad). 1956 Andhra WR 183.

(15) Suit for redemption of mortgage and for accounts — Allegation in the plaint that the documents in question though executed as sale deeds operated only as mortgages — **Held,** where a certain document is the very basis of the plaint claim for redemption and accounts but the prayer is based on the averment that its effect in law, in the light of the facts to be established, is something different from what ex facie it purports to be, there is no need for asking for cancellation — The Court-fee need not be paid under Section 40 but under Section 33 (8). AIR 1970 Mad 107 (107) = (1969) 1 Mad LJ 151.

Section 41 — Note 1

(1) Section 41 (2) of the Madras Court-fees and Suits Valuation Act provides for valuation of suits to set aside a summary decision of a civil or revenue Court. Such suits contemplate the adjudication of the title and are not mere appeals from the summary orders. Under the new Madras Court-fees Act such suits are divided into two categories, those capable of valuation and those which are not so capable. The subject-matter of such suits should be held to be what the summary orders were concerned with, viz., the immovable property and Court-fee has to be paid on the proportionate market-value as laid down in Section 41 (2) of the Act. AIR 1960 Mad 147 (148, 149) = (1959) 2 Mad LJ 440.

(2) A Collector acting under Sec. 46 of the Income-tax Act may be a Court within the meaning of Section 3 (ii) of Madras Court-fees and Suits Valuation Act but he will not constitute a Civil Court for the purpose of Section 41 of the Court-fees Act and his decision will not be tantamount to a decision by a Civil or a Revenue Court within the meaning of Section 41 of the Madras Court Fees and Suits Valuation Act. (1960) 1 Mad LJ 137 = ILR (1960) Mad 371 (375, 376).

(3) Suit decreed before Madras Act of 1955 — Suit under Order 21, Rule 58 filed and decided after Act 1955 — Suit under Rule 63 — Court-fee is payable under Section 41 (2) and not under Act of 1870. (1965) 78 Mad LW 497 = ILR (1965) 2 Mad 90 (92).

(4) Claim petition under Order 21, Rule 58 of the Civil P. C. made before the commencement of Act, 14 of 1955 — Suit under Order 21, Rule 63, Civil P. C., after the commencement of Act 14 of 1955 — Court-fee payable only under Act 7 of 1870. AIR 1959 Mad 155 (156) = (1959) 1 Mad LJ 151.

42. Suits for specific performance.—In a suit for specific performance, whether with or without possession, fee shall be payable—

(a) in the case of a contract of sale, computed on the amount of the consideration;

(b) in the case of contract of mortgage, computed on the amount agreed to be secured by the mortgage;

(c) in the case of a contract of lease computed on the aggregate amount of the fine or premium, if any and of the average of the annual rent agreed to be paid;

(d) in the case of a contract of exchange, computed on the amount of the consideration, or as the case may be, on the market value of the property sought to be got in exchange.

(e) in the other cases, where the consideration for the promise sought to be enforced has a market value, computed on such market value, or where such consideration has no market value, at the rates specified in Section 50.

43. Suits between landlord and tenant.—(1) In the following suits between landlord and tenant, namely :—

(a) for the delivery by a tenant of the counterpart of a lease or for acceptance of patta in exchange for a muchilika;

(b) for enhancement of rent;

*[(bb) in respect of the transferred territory, for abatement of rent, where it is not coupled with any other relief;]

(c) for the delivery by a landlord of a lease or for obtaining a patta in exchange for a muchilika;

(d) for recovering occupancy of immovable property from which a tenant has been illegally ejected by the landlord;

(e) for establishing or disproving a right of occupancy;

fee shall be levied on the amount of rent for the immovable property to which the suit relates, payable for the year next before the date of presenting the plaint.

(2) In a suit for recovery of immovable property from a tenant including a tenant holding over after the termination of a tenancy, fee shall be computed on the premium, if any, and on the rent payable for the year next before the date of presenting the plaint.

Explanation.—Rent includes also damages for use and occupation payable by a tenant holding over.

(3) In an appeal from a suit to contest a distraint under Section 95, sub-sec. (1) or sub-section (2) of the Tamil Nadu Estates Land Act, 1908, or to contest right of sale under Section 112 of that Act, fee shall be charged on the

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Section 42 — Note 1

(1) Suit for specific performance of unperformed portion of a contract for sale — Court-fee should be paid on the amount of consideration on the unperformed part of contract. (1966) 2 Mad LJ 38 (39) = 79 Mad LW 312.

(2) Plaintiff an assignee of a lease from the lessee — Defendant 2 was put in possession by defendant 1 who was the assignor — Suit by plaintiff for declaration that he was entitled to be in possession as of right — **Held** on fair reading of the allegations in the plaint plaintiff was claiming his rental rights which obviously meant that he was suing on a contract of lease in his favour — The main relief asked for was sufficient to bring the case under Section 42 (c) of the Court-fees Act. (1967) 2 MLJ 536 (537) = 80 Mad LW 393.

Section 43 — Note 1

(1) Suit in ejectment — Tenancy protected under Madras City Tenants Protection Act — Compensation amount for super structure offered — Main relief is for possession of land — Recovery of possession of super structure is incidental — Court-fee should be paid as on a suit for possession of land. AIR 1967 Madras 305 (306) = (1966) 1 Mad LJ 549 (550) ** AIR 1967 Mad 305 (306) = (1966) 1 Mad LJ 549.

amount of the arrears for which the distraint has been made or the sale is proposed to be held.

* Inserted by T. N. Act 22 of 1965, S. 4 and Sch. II (w. e. f. 1-7-1966).

44. Suits for mesne profits.—(1) In a suit for mesne profits or for immovable property and mesne profits, fee shall in respect of mesne profits be computed, where the amount is stated approximately and sued for, on such amount. If the profits ascertained to be due to the plaintiff are in excess of the profits as approximately estimated and sued for, no decree shall be passed until the difference between the fee actually paid and the fee that would have been pavable had the suit comprised the whole of the profits so ascertained is paid.

(2) Where a decree directs an enquiry as to the mesne profits which have accrued on the property, whether prior or subsequent to the institution of the suit, no final decree shall be passed till the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits accrued due till the debt of such decree is paid.

(3) Where, for a period subsequent to the date of the decree or final decree, such decree or final decree directs payments of mesne profits at a specified rate, such decree or final decree shall not be executed until the fee computed on the amount claimed in execution has been paid.

*[**44-A. Suits for the interest of assignee of land revenue.**—In respect of the transferred territory, in a suit for the interest of an assignee of land revenue, fee shall be computed at ten times his gross profits as such for the year next before the date of presenting the plaint.]

* Inserted by T. N. Act 22 of 1965, S. 4 and Sch. II (w.e.f. 1-7-1966).

14. Suits under the Tamil Nadu Survey and Boundaries Act, 1923.—In a suit under Sec. 14 of the Tamil Nadu Survey and Boundaries Act, 1923, fee shall be computed on one half of the market value of the property affected by the determination of the boundary or on rupees three hundred, whichever is higher.

46. Suits to alter or cancel entry in a register.—In a suit to alter or cancel any entry in a register of the names of proprietors of revenue-paying estate, the fee payable shall be fifteen rupees.

47. Suits relating to public matters.—In a suit for relief under Section 14 of the Religious Endowments Act, 1863, or under Section 91 or Section 92 of the Code of Civil Procedure, 1908, the fee payable shall be fifty rupees.

48. Interpleader suits.—(1) In an interpleader suit, fee shall be payable on the plaint at the rates specified in Section 50.

Section 44 — Note 1

(1) Suit for mesne profits — Court-fee paid on the amount mentioned in the sale-deed — Appeal — **Held** the price offered by the plaintiff for the purchase of the property is the ordinary measure of value and the proper basis for Court-fee valuation. Estimation of the mesne profits might be inaccurate or exaggerated. That cannot be the basis, upon a formula of capitalisation for the value, unless no other basis is available. (1963) 2 Mad LJ 59 (60) = 76 Mad LW 504 ** (1969) 1 Andh WR 448 (451) = (1968) 2 Andh LT 236. (Case before the Act of 1956.)

(2) An order in a suit determining the quantum of mesne profits payable subsequent to the filing of the suit will amount to a final decree within the meaning of Order 20, Rule 12, Civil P. C. and as such in an appeal against such an order the Court-fee has to be computed on ad valorem basis depending on the amount of mesne profits in dispute in the appeal. 70 Mad LW 1021 (1022) = (1958) 1 Mad LJ 99.

Section 48 — Note 1

(1) Where a plaint claims relief that the Court may take charge of the suit property and ascertain the shares of the contending parties and distribute the same, it is an administration suit attracting Court-fee under Section 39 of the Court-fees Act and not an inter-pleader suit and Court-fee has got to be levied after the shares are ascertained and before the decree is passed — Neither Section 48 nor Section 50 of the Court-fees Act could apply to such cases. (1961) 2 Mad LJ 33 (34).

(2) Where issues are framed as between the claimants, fee shall be payable computed on the amount of the debt or the money or the market value of other property, movable or immovable, which forms the subject-matter of the suit. In levying such fee, credit shall be given for the fee paid on the plaint; and the balance of the fee shall be paid in equal shares by the claimants who claim the debt or the sum of money or the property adversely to each other.

(3) Value for the purpose of determining the jurisdiction of Courts shall be the amount of the debt, or the sum of money or the market value of other property to which the suit relates.

49. Third party proceedings.—In third party proceedings, fee shall be levied on one-half of the value of the contribution or indemnity claimed against a third party or against a co-defendant if a claim is made against him :

Provided that, if the suit against the defendant who has filed the third party notice is dismissed, wholly or in part, he shall be entitled to a refund of the whole or a proportionate part of the fee paid by him.

Explanation.—The provisions of this section shall also apply to counter-claims made in third party proceedings.

50. Suits not otherwise provided for.—In suits not otherwise provided for fee shall be payable at the following rates :—

(i) In a Revenue Court.	Rupees fifteen.
(ii) In a District Munsiff's Court.	Rupees thirty.
(iii) In the City Civil Court, Madras, or a Sub-Court or a District Court.	Rupees thirty if the value of the subject-matter is Rs. 5,000 or less; rupees one hundred if the value is above Rs. 5,000 but below Rs. 10,000 and rupees two hundred if the value si Rs. 10,000 and above.
(iv) In the High Court	Rupees three hundred.

51. Fee on memorandum of appeal against order relating to compensation.—The fee payable under this Act on a memorandum of appeal against an

Section 50 — Note 1

(1) Property attached for recovery of income-tax arrears by Collector under Section 46 of the Income Tax Act — Claim petition — Adjudication by Collector — Suit to set aside the order of the Collector — Collector not a Civil Court within the meaning of Section 41 (1), Court-fees Act — Case does not fall under Section 41 (1) — Court-fee payable is under Section 50 of the Madras Court-fees and Suits Valuation Act. (1960) 1 MLJ 137 = ILR (1960) Mad 371.

(2) Claim suits to contest summary order contemplate adjudication of title. The subject-matter of suit in such cases is the title to the property which was the subject-matter of the claim, obstruction or redelivery of possession and being capable of valuation the suit falls under Section 41 (2), Court-fees Act and not under Section 50. AIR 1960 Mad 147 (149) = (1959) 2 Mad LJ 440. (Suit under Order 21, Rule 99, Civil P. C.)

(3) Under Madras Court Fees Act (1955) summary orders are divided in two categories, those in which the subject-matter is capable of valuation and those in which it is not so capable — Where the subject-matter in the suit is substantially to set aside a summary order the inclusion in the suit of incidental relief like injunction, possession. etc., will not alter the character of the suit. AIR 1960 Mad 147 (148) = (1959) 2 Mad LJ 440.

(4) Order rejecting application for leave to sue in forma pauperis and rejecting plaint for failure to pay Court-fee within time granted — Appeal — **Held** the subject-matter of appeal is only the right to seek his remedy on a scheme of deferred payment of Court-fee — Subject-matter is incapable of valuation — Court-fee is payable under Section 52 read with Section 50. AIR 1959 Mad 14 (15) = (1958) 1 Mad LJ 97.

(5) Where a plaint claims relief that the Court may take charge of the suit property and ascertain the shares of the contending parties and distribute the same it is an administration suit attracting Court-fee under Section 39 of the Court-fees Act and Court-fee has got to be levied after the shares are ascertained and before the decree is passed — Neither Section 48 nor Sec. 50 of the Court-fees Act would apply to such cases. (1961) 2 Mad LJ 33 (34).

Section 51 — Note 1

(1) On an appeal under Section 6 (4) (a) of the Madras Slum Improvement Act, Court-fees will have to be paid

order relating to compensation under any Act for the time being in force for the acquisition of property for public purposes shall be computed on the difference between the amount awarded and the amount claimed by the appellant.

52. Appeals.—The fee payable in an appeal shall be the same as the fee that would be payable in the Court of first instance on the subject-matter of the appeal :

Provided that, in levying fee on a memorandum of appeal against a final decree by a person whose appeal against the preliminary decree passed by the Court of first instance or by the Court of appeal is pending, credit shall be given for the fee paid by such person in the appeal against the preliminary decree.

Explanation (1).— Whether the appeal is against the refusal of a relief or against the grant of the relief, the fee payable in the appeal shall be the same as the fee that would be payable on the relief in the Court of first instance.

Explanation (2).—Costs shall not be deemed to form part of the subject-matter of the appeal except where such costs form themselves the subject-matter of the appeal or relief is claimed as regards costs on grounds additional to or independant of, the relief claimed regarding the main subject-matter in the suit.

Explanation (3).—In claims which include the award of interest subsequent to the institution of the suit, the interest accrued during the pendency of the suit till the date of decree shall be deemed to be part of the subject-matter of the appeal except where such interest is relinquished.

Explanation (4).—Where the relief prayed for in the appeal is different from the relief prayed for or refused in the Court of first instance, the fee payable in the appeal shall be the fee that would be payable in the Court of first instance on the relief prayed for in the appeal.

Explanation (5).—Where the market value of the subject-matter of the appeal has to be ascertained for the purpose of computing or determining the fee payable, such market value shall be ascertained as on the date of presentation of the plaint

CHAPTER V

VALUATION OF SUITS

53. Suits not otherwise provided for.—(1) In suit as to whose value for purpose of determining the jurisdiction of Courts, specific provision is not otherwise made in this Act or in any other law, value for that and value for the purpose of computing the fee payable under this Act shall be the same.

(2) In a suit where fee is payable under this Act at a fixed rate, the value for the purpose of determining the jurisdiction of Courts shall be the market

Section 51 — Note 1 (contd.)
under Article 3 of Schedule II of the Madras Court-fees and Suits Valuation Act and not under Section 51 as it does not involve a dispute regarding award of any amount. (1964) 2 MLJ 487 = ILR (1965) 1 Mad 535 (542).

Section 52 — Note 1

(1) In appeal petitioner not contesting liability to pay Court-fee but seeking remedy in pauper form — **Held,** the subject-matter of appeal is only the right to seek his remedy on a scheme of deferred payment of Court-fee — Subject-matter incapable of valuation — Court-fee is payable under Section 52 read with Section 50. AIR 1959 Mad 14 (15) = (1958) 1 Mad LJ 97.

Section 53 — Note 1

(1) Suit for possession of trust property — Plaintiff alleging to be entitled to act as trustee — Market value of the property shown as Rs. 20,200/- **Held,** that combining Section 28 with Sec. 53 (1) and (2) of the Madras Court-Fees Act, 1955 as well as Section 12 of the Madras Civil Courts Act, the value for pecuniary jurisdiction and Court-fee jurisdiction is the same and hence the value of the subject-matter of the suit was beyond the pecuniary jurisdiction of the District Munsif. 71 Mad LW 477 = (1958) 2 Mad LJ 225 (226).

value or where it is not possible to estimate it at a money value such amount as the plaintiff shall state in the plaint.

54. Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes.—(1) Notwithstanding anything contained in Section 99 of the Code of Civil Procedure, 1908, an objection that by reason of the overvaluation or undervaluation of a suit or appeal, a Court of first instance or lower appellate Court which had not jurisdiction with respect to the suit or appeal exercised jurisdiction with respect thereto shall not be entertained by an appellate Court, unless—

(a) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded, or in the lower appellate Court in the memorandum of appeal to that Court, or

(b) the appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was overvalued, or undervaluation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) If the objection was taken in the manner mentioned in clause (a) of sub-section (1), but the appellate Court is not satisfied as to both the matters mentioned in clause (b) of that sub-section and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of first instance or lower appellate Court.

(3) If the objection was taken in that manner and the appellate Court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeals; but if it remands the suit or appeal, or frames and refers issues for trial, or requires additional evidence to be taken, it shall direct its order to a Court competent to entertain the suit or appeal.

(4) The provisions of this section with respect to an appellate Court shall, so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under Section 115 of the Code of Civil Procedure, 1908, or other enactment for the time being in force.

CHAPTER VI

PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION

55. Application for probate or letters of administration.—(1) Every application for the grant of probate or letters of administration shall be accompanied by a valuation of the estate in duplicate in the form set forth in Part I of Schedule III.

(2) On receipt of such application, the Court shall send a copy thereof and of the valuation, to the Collector of the district in which the estate is situated, or if the estate is situated in more than one district, to the Collector of the district in which the most valuable portion of the immovable property included in the estate is situated.

56. Levy of fee.—(1) The fee chargeable for the grant of probate or letters of administration shall comprise—

a fee at the rates prescribed in Article 6 of Schedule I, computed—

Section 54 — Note 1

(1) Memo of appeal — Court can interfere on Court-fee question prior to the registration of appeal — After registration question cannot be taken up unless on an objection by the respondent or a request for a decision by the Court-fee examiner under Section 18 — Otherwise, it has no power to do so suo motu. 76 Mad LW 504 = 1963 Mad WN 335 (345).

Section 56 — Note 1

(1) Ordinarily the estate of a person

(a) where the application is made within one year of the date of death of the deceased, on the market value of the estate on such date; or

(b) where the application is made after the expiry of one year from such date on the market value of the estate on the date of the application:

Provided that property held in trust not beneficially or with general power to confer a beneficial interest shall not be liable to any fee under this chapter.

Explanation.—Any member of a joint Hindu family governed by the Mitakshara Law who applies for probate or letters of administration in respect of the estate of a deceased member of the joint family shall pay a fee on the value of the share in the joint property which the deceased would have received if a partition of the property had been made immediately before his death.

(2) For the purpose of the computation of fee—

(a) the value of the items mentioned in Annexure B to Part I of Schedule III shall be deducted from the value of the estate:

Provided, that, when an application is made for probate or letters of administration in respect of part only of an estate, no debt, no expenses connected with any funeral rites or ceremonies and no mortgage encumbrance on any part of the estate other than that in respect of which the application is made shall be deducted :

Provided further that when, after the grant of a certificate under Part X of the Indian Succession Act, 1925, or under Bombay Regulation VIII of 1827 in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant;

(b) the power of appointment which the deceased had over a property or which was created under a will shall be taken into account, the value being taken to be the value of the property forming the subject-matter of the power.

57. Grant of probate.—The grant of probate or letters of administration shall not be delayed by reason of the reference to the Collector under Section 55, sub-section (2), or of a motion by the Collector under Section 59, sub-section (5); but the Court shall make no grant of probate or letters of administration until it is satisfied that a fee not less than that prescribed by this Act has been paid on the basis of the net value of the estate as furnished in the valuation accompanying the application, or in the amended valuation filed under Section 59, sub-section (3) :

Provided that the Court may grant probate or letters of administration notwithstanding that prescribed fee has not been paid to the Administrator-General in his official capacity on his giving an undertaking to the satisfaction of the Court that the said fee will be paid within such time as may be fixed by the Court.

58. Relief in cases of several grants.—(1) Whenever a grant of probate or letters of administration has been made in respect of the whole of the property belonging to an estate and the full fee payable under this Act in respect of the application for such grant has been paid thereon, no fee shall be payable when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

(2) Whenever such grant has been made in respect of any property forming part of an estate the amount of fee actually paid under this Act in respect thereof shall be deducted when a like grant is made in respect of the property belong-

Section 56 — Note 1 (contd.)
on a certain date would, in the eye of law, be the original corpus plus all the accretions that have been lawfully made to it less everything that has been lawfully taken away from it.

Thus the dividends payable on the shares form accretions to the estate and duty must be paid on them. AIR 1956 Mad 200 (201) = (1955) 2 MLJ 657.

ing to the same estate identical with or including the property to which the former grant relates.

59. Inquiry by the Collector.—(1) The Collector to whom a copy of the application and of the valuation has been sent under Section 55, sub-section (2), shall examine the same and may make or cause to be made by any officer subordinate to him such inquiry if any, as he thinks fit as to the correctness of the valuation or where a part only of the property is situated in his district, of the valuation of that part, and may require the Collector of any other district in which any part of the property is situated to furnish him with the correct valuation thereof.

(2) Any Collector required under sub-section (1) to furnish the correct valuation of any property shall comply with the requisition after making or causing to be made by any officer subordinate to him such inquiry, if any as he thinks fit.

(3) If the Collector is of opinion that the applicant has under-estimated the value of the property of the deceased, he may, if he thinks fit, require the attendance of the applicant, either in person or by his agent, and take evidence and inquire into the matter in such manner as he may think fit, and if he is still of opinion that the value of the property has been under-estimated may require the applicant to amend the valuation, and, if the application for probate or letters of administration is pending in Court, to file a copy of the amended valuation in such Court.

(4) If, in any such case, the probate or letters of administration has or have been granted and the applicant amends the valuation to the satisfaction of the Collector and the Collector finds that a less fee has been paid than was payable according to the true value of the estate, he shall proceed under Section 61, sub-section (4); but if a higher fee has been paid than was payable according to the true value of the estate, the excess fee shall be refunded to the applicant.

(5) If the applicant does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court before which the application for probate or letters of administration was made to hold an inquiry into the true value of the property:

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required by Section 317 of the Indian Succession Act, 1925.

60. Application to Court and powers of Court.—(1) The Court shall, when moved by the Collector under Section 59, sub-section (5), hold or cause to be held by any Court or officer subordinate to it an inquiry as to the true value at which the estate of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry.

(2) For the purposes of any such inquiry, the Court, or the Subordinate Court or the officer authorized by the Court to hold the inquiry, may examine the applicant on oath, either in person or by commission, and may take such further evidence as may be produced to prove the true value of the estate, and where the inquiry has been entrusted to a Subordinate Court, or officer, such Court, or officer, shall return to the Court the evidence taken and report the result of the inquiry and such report and the evidence so taken shall be evidence in the proceedings.

(3) The Court on the completion of the inquiry or on receipt of the report referred to in sub-section (2), as the case may be, shall record a finding as to the true value at which the estate should have been estimated and such finding shall be final.

(4) The Court may make such order in accordance with the provisions of the Code of Civil Procedure, 1908 as to the cost of the inquiry as it thinks fit.

61. Provision for cases where too low a fee has been paid.—(1) Where too low a fee has been paid on any probate or letters of administration in consequence of any mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator, acting under such probate or letters, applies to the Collector in the form set forth in Part II of Schedule III and pays within six months after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, what is wanting to make up the fee which ought to have been paid at first on such probate or letters, the Collector shall, if satisfied that a low fee was paid in the first instance in consequence of a mistake and without any intention of fraud or to delay the payment of the proper fee, cause the probate or letters to be duly stamped.

(2) If in a case falling under sub-section (1), the executor or administrator does not, within the six months referred to in that sub-section, pay the deficit fee, he shall forfeit a sum equal to five times the deficit fee.

(3) If, on application being made under sub-section (1), the Collector is not satisfied that the application was made within six months of the discovery of the mistake or of further effects not included in the original valuation or that the payment of a low fee in the first instance was not due to a bona fide mistake, he shall cause the probate or letters to be duly stamped on payment of the deficit fee together with a penalty not exceeding five times such fee.

(4) If, after the grant of probate or letters of administration of an estate it is found by the Collector as a result of proceedings under Section 59 or Section 60 or otherwise, that a less fee has been paid than was payable according to the true value of the estate, he shall cause the probate or letters to be properly stamped on payment of the deficit fee, and if he is satisfied that the original undervaluation was not bona fide, he shall levy in addition a penalty not exceeding five times the deficit fee.

(5) The Board of Revenue may remit the whole or any part of the amount forfeited under sub-section (2) or of any penalty under sub-section (3) or sub-section (4).

62. Administrator to give proper security before letters stamped.—In case of letters of administration on which too low a fee has been paid at first, the Collector shall not cause the same to be duly stamped in the manner aforesaid until the administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained.

63. Relief when too high a fee has been paid.—(1) If, at any time after the grant of the probate or letters of administration of an estate, it is discovered that a higher fee has been paid than was payable according to the true value of the estate, the executor or administrator, as the case may be, may apply for a refund to the Collector to whom a copy of the valuation of the estate was sent under Section 55, sub-section (2). The application shall be accompanied by an amended valuation in the form set forth in Part II of Schedule III together with the probate or letters of administration upon which a refund is sought.

(2) If the Collector is satisfied that the amended valuation is correct, he shall—

(i) endorse a certificate on the stamped probate or letters of administration to the effect that so much of the fee represented by the stamp or stamps used has been refunded; and

(ii) refund the difference between the fee originally paid and that which should have been paid:

Provided that no refund shall be granted under this section unless the application for refund is made within three years of the date of the grant of the probate or letters of administration, or within such further period as the Collector may allow.

If, by reason of any legal proceedings, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available and in consequence thereof, the executor or administrator is prevented from claiming the return of such difference within the said period of three years, the Collector may allow such further time for making the claim as may appear to him to be reasonable under the circumstances.

If the Collector does not grant a refund, the executor or administrator, as the case may be, may apply to the Board of Revenue for an order of refund. An application for such refund should be accompanied by an amended valuation in the form set forth in Part II of Schedule III.

64. Recovery of penalties, etc.—Any excess fee found to be payable by an applicant for probate or letters of administration or by an executor or administrator, or any costs under Section 60, sub-section (4), or any penalty or forfeiture payable by any such executor or administrator, may, on the certificate of the Board of Revenue, be recovered from the executor or administrator as if it were an arrear of land revenue.

65. Powers of Board of Revenue.—The powers and duties of the Collector under this Chapter shall be subject to the control of the Board of Revenue.

CHAPTER VII

REFUNDS AND REMISSIONS

66. Refund in cases of delay in presentation of plaint, etc.—(*1*) Where a plaint or memorandum of appeal is rejected on the ground of delay in its representation, or where the fee paid on a plaint or memorandum of appeal is deficient and the deficiency is not made good within the time allowed by law or granted by the Court, or the delay in payment of the deficit fee is not condoned and the plaint or memorandum of appeal is consequently rejected, the Court shall direct the refund to the plaintiff or the appellant, of the fee paid on the plaint or memorandum of appeal which has been rejected.

(2) Where a memorandum of appeal is rejected on the ground that it was not presented within the time allowed by the law of limitation, one-half of the fee shall be refunded.

67. Refund in cases of remand.—(1) Where a plaint or memorandum of appeal which has been rejected by the lower Court is ordered to be received, or where a suit is remanded in appeal for a fresh decision by the lower Court, the Court making the order or remanding the appeal may direct the refund to the appellant of the full amount of fee paid on the memorandum of appeal; and, if the remand is on second appeal, also on the memorandum of appeal in the first appellate Court, and if the remand is in Letters Patent Appeal, also on the memo-

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Section 66 — Note 1

(1) No power of refund of Court-fee except in cases provided in the Act — Apart from provisions of Act Court has limited inherent power of refund — Case not falling under Act — Exercise of inherent power also not proper — Party can apply for refund to Government. AIR 1966 Mad 423 (424, 425) = (1966) 1 Mad LJ 402.

(2) Memo of Appeal returned for deficit Court-fee — Appeal not represented — Court can issue a certificate in exercise of its inherent powers that the appeal was not numbered and direct the appellant to apply to the Revenue Authorities for ex gratia refund as in the case of spoiled stamps. (1958) 1 Mad LJ 183 (184) ** (1959) 72 Mad LW 371 = (1959) 1 Mad LJ 110 (111).

randum of second appeal and memorandum of appeal in the first appellate Court.

(2) Where an appeal is remanded in Second Appeal or Letters Patent Appeal for a fresh decision by the lower appellate Court, the High Court remanding the appeal may direct the refund to the appellant of the full amount of fee paid on the memorandum of Second Appeal if the remand is in Second Appeal, and of the full amount of fee paid on the memorandum of Second Appeal and the Memorandum of Letters Patent Appeal if the remand is in Letters Patent Appeal:

Provided that, no refund shall be ordered if the remand was caused by the fault of the party who would otherwise be entitled to a refund:

Provided further that, if the order of remand does not cover the whole of the subject-matter of the suit, the refund shall not extend to more than so much fee as would have been originally payable on that part of the subject-matter in respect whereof the suit has been remanded.

68. Refund where Court reverses or modifies former decision on ground of mistake.—Where an application for a review of judgment is admitted on the ground of some mistake or error apparent on the face of the record, and on the rehearing the Court reverses or modifies its former decision on that ground, it shall direct the refund to the applicant of so much of the fee paid on the application as exceeds the fee payable on any other application to such Court under Article 11 (g) and (u) of Schedule II.

69. Refund on settlement before hearing.—Whenever any suit is dismissed as settled out of Court before any evidence has been recorded on the merits of the claim, half the amount of all fees paid in respect of the claim or claims in the suit shall be ordered by the Court to be refunded to the parties by whom the same have been respectively paid.

Explanation.—The expression 'merits of the claim' shall have the meaning assigned to it in Section 12.

Section 69 — Note 1

(1) Section 69 of the Madras Court Fees Act, 1955 does not apply to suits transferred to City Civil Courts from the original side of High Court by virtue of Act 10 of 1955. ILR 1958 Mad 1109 (1115) = (1959) 1 Mad LJ 160. (Refund of Court-fee granted under High Court Rules, Rule 13.)

(2) Section 69 and other provisions of refund cannot be treated as authorising a refund in respect of Court-fees paid under any of the repealed enactments or rules. ILR (1958) Mad 1109 (1115) = (1959) 1 Mad LJ 160.

(3) Refund of half the Court-fee — Suit settled out of Court but plaintiff insisting on a memo of compromise being recorded — Refund of Court-fee cannot be claimed. (1965) 2 Mad LJ 513 (515).

(4) Section 69 of the Court-fees Act does not provide for a refund of Court-fees where a compromise is got decreed by the Court. But where a suit is in fact settled out of Court and is dismissed as such, merely because a memo is put into Court setting out the terms of settlement, the party may not be deprived of the benefit of the section. AIR 1967 Mad 311 (312, 313) = (1965) 2 Mad LJ 513.

(5) Suit for three reliefs valued separately — First relief decided in favour of plaintiffs and interim decree passed — Subsequently suit dismissed as settled out of Court — Plaintiffs would be entitled for refund of half Court-fee payable only on remaining two reliefs as the reliefs were separable. (1965) 1 Mad LJ 169 = ILR (1965) 2 Mad 323 (325).

(6) Section 69 applies to testamentary suits as well as suits filed on original side of High Court — Probate proceeding instituted as original petition converted into suit on entering caveat and ad valorem Court-fee paid — Withdrawal of defence — Order for probate to be issued — Request by plaintiff for refund of Court-fee paid at the time of conversion of suit—No inherent power to refund Court-fee paid at time of conversion could be invoked since there was a specific provision in Section 69 for settlement of disputes out of Court. AIR 1962 Mad 108 (110, 111) = (1961) 2 Mad LJ 524 (DB).

(7) Recording of evidence — Word 'recorded' does not refer to oral evidence alone — Admission of even documentary evidence on record amounts to 'recording of evidence' — If such documentary evidence relates to merits of claim, party will not be entitled to refund of Court-fee under Section 69. AIR 1967 Mad 180 (180, 181) = (1965) 78 Mad LW 752. (1965-1 MLJ 169, Disting.)

70. Refund of fee paid by mistake or inadvertence.—The fee paid by mistake or inadvertence shall be ordered to be refunded.

71. Instruments of partition.—Where the final decree in a partition suit has been engrossed on non-judicial stamps furnished by the parties, the Court shall order the refund to the parties of so much of the valued fee paid by them as is equal to the value of the non-judicial stamps furnished by them.

72. Exemption of certain documents.—Nothing contained in this Act shall render the following documents chargeable with any fees :—

(i) mukhtarnama, vakalatnama, or other written authority to institute or defend a suit when executed by a member of any of the Armed Forces of the Union not in civil employment;

(ii) memorandum of appearance filed by advocates or pleaders when appearing for persons proceeded against in criminal cases;

(iii) plaints and other documents in suits filed in village Courts;

(iv) plaints in suits before Collectors under Tamil Nadu Regulation 12 of 1816;

(v) application or petition to a Collector or other Officer making a settlement of land revenue, or to the Board of Revenue relating to matters connected with the assessment of land, or with the ascertainment of rights thereto or interest therein, if presented previous to the final confirmation of such settlement;

(vi) application relating to a supply for irrigation of water belonging to Government;

(vii) application for leave to extend cultivation or to relinquish land, when presented to an officer of land revenue by a person holding, under a direct engagement with Government, land of which revenue is settled but not permanently :

viii) application for service of notice of relinquishment of land or of enhancement of rent;

(ix) written authority to an agent to distrain;

(x) first application (other than a petition containing a criminal charge of information) for the summons of a witness or other person to attend either to give evidence or to produce a document or in respect of the

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Section 70 — Note 1

(1) Mistake or inadvertence must relate directly to the payment of Court-fee — Proper Court-fee paid cannot be refunded because party's remedy lay, in some other, and, from point of view of Court-fee, cheaper proceeding — Revision application — Fee paid as on memo of appeal — Fee was held paid under mistake or inadvertence entitling refund. 1967 Ker LT 721 (722) = ILR (1967) 2 Ker 432. (Suit decided under Section 70 as adapted by Kerala Act, 1956.)

(2) Section 70 being a beneficial provision there is no warrant for restricting it to mistakes other than mistakes of procedure. A mistake which arises as a result of the adoption of an erroneous procedure with the consequent payment of a Court-fee appropriate to the procedure adopted will come within the ambit of the section. (1962) 1 Mad LJ 331 (332) = 74 Mad LW 745. (Suit by mistake instead of an application under Sec. 47, Dissented from in 1967 Ker LT 721.)

(3) Appeal pending — Writ petitions filed in respect of the same matter — Appeal successful — Withdrawal of writ petitions — Case not covered by Sec. 70 —Court-fee on writ petitions cannot be refunded. (1966) 2 Mad LJ 238 (239) = 79 Mad LW 392.

Section 72 — Note 1

(1) Accused filing appeal — Neither stamped vakalath nor vakalath is necessary. 1959 Ker LT 800 (801) = 1959 Ker LJ 911.

(2) A petition for revision under Sections 435 and 439 of the Criminal Procedure Code, against a sentence of fine and imprisonment in default of payment thereof does not fall under Section 72 (xiii) of the Madras Court-fees and Suits Valuation Act, 1955, and is not exempt from payment of the prescribed Court-fee.

That section covers only petitions by prisoners in jail or other persons in actual custody. 73 Mad LW 670 = (1961) 1 MLJ 149 (150).

production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court;

(xi) bail bonds in criminal cases other than bail bonds in village Courts, recognizances to prosecute or give evidence and recognizances for personal appearance or otherwise;

(xii) petition, application, charge or information respecting any offence when presented, made or laid to or before a police officer, or to or before the heads of villages or the village police;

(xiii) petition by a prisoner or other person in duress or under restraint of any Court or its officer;

(xiv) complaint of a public servant as defined in the Indian Penal Code or an officer of the State Railway;

(xv) application for permission to cut timber in Government forests or otherwise relating to such forests, not being applications from forest contractors for extending the period of their leases;

(xvi) application for the payment of money due by the Government to the applicant, other than an application for refund of lapsed deposit made six months after the date on which the amount lapsed to the Government;

(xvii) petition of appeal against any municipal tax;

(xviii) application for compensation under any law, for the time being in force relating to the acquisition of property for public purposes;

(xix) petition under Section 48 of the Indian Christian Marriage Act, 1872;

(xx) petition or appeal by a Government servant or a servant of the Court of Wards when presented to any superior officer or Government against orders of dismissal, reduction or suspension; copies of such orders filed with such appeals, and applications for obtaining such copies.

73. **Power to reduce or remit fees.**—The State Government may, by notification in the Fort St. George Gazette, reduce or remit, in the whole or in any part of the territory of this State, all or any of the fees chargeable under this Act, and may, in like manner, cancel or vary such notification.

CHAPTER VIII

MISCELLANEOUS

74. **Collection of fees by stamps.**—All fees chargeable under this Act shall be collected by stamps.

75. **Stamps to be impressed or adhesive.**—The stamps used to denote any fee chargeable under this Act shall be impressed or adhesive or partly impressed and partly adhesive, as the State Government may, by notification in the Fort St. George Gazette, from time to time direct.

76. **Amended document.**—Where any document which ought to bear a stamp under this Act is amended in order merely to correct a mistake and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

Section 73 — Note 1

(1) Although under S. 73 the State Government have power to remit the fees payable by a class of people, every classification must be a reasonable one and must not be arbitrary. AIR 1957 Mad 382 (383 to 385) = (1957) 1 Mad LJ 188.

(2) Section 73 does not empower Government to remit fees payable by a particular individual in a particular case. AIR 1957 Mad 382 (384) = (1957) 1 Mad LJ 188.

77. Cancellation of stamp.—No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Such officer as the Court or the head of the office may, from time to time appoint, shall, on receiving any such document forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

78. Deduction to be made.—Where allowance is made in this Act for damaged or spoiled stamps or where fee already paid is directed to be refunded to any person by an order of Court, the Collector may, on the application of the person concerned, pay to him the amount of fee or where damaged or spoiled stamps are produced, he may, after satisfying himself about their genuineness, give in lieu thereof the same amount or value in stamps of the same or any other description, or if the applicant so desires, the same amount or value in money provided that in all cases where money is paid in cash, a deduction shall be made of *[five Paise] for each rupee or fraction thereof. No such deduction shall however be made where refund is claimed in respect of any fee paid in pursuance of an order of Court which has been varied or reversed in appeal.

[*] Substituted for 'one anna' by T. N. Act 9 of 1960 (w. e. f. 1-4-1960).

79. Penalty.—Any person appointed to sell stamps, who disobeys any rule made under this Act, and any person, not so appointed, who sells or offers for sale any stamps, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

80. Power of High Court to make rules.—(1) The High Court may make rules to provide for or regulate all or any of the following matters, namely:

(a) the fees payable for serving and executing processes issued by the High Court in its appellate jurisdiction and by the Civil and Criminal Courts subordinate thereto;

(b) the remuneration of persons employed by the Courts mentioned in clause (a) in the service of execution of processes;

(c) the fixing by District Magistrates of the number of process servers necessary to be empolyed for the service and execution of processes issued from their respective Courts and the Courts subordinate thereto;

(d) the display in each Court of a table in the English and in the local language or languages showing the fees payable for the service and execution of processes.

(2) All rules made under sub-section (1) shall be subject to confirmation by the State Government and on such confirmation shall be published in the Fort St. George Gazette and shall thereupon have effect as if enacted in this Act.

81. Power of Board of Revenue to make rules.—(1) The Board of Revenue may, with the previous sanction of the State Government, make rules consistent with this Act to provide for or regulate all or any of the following matters, namely :—

(a) the fees chargeable for serving and executing processes issued by the Board of Revenue and by the Revenue Courts;

Section 80 — Note 1

(1) Process fees on the original side of High Court are collected not under Madras Court-fees Act but under different provisions — Section 80 of Madras Court-fees Act does not touch the process fees payable on the original side of the High Court. AIR 1957 Mad 382 (383) = (1957) 1 Mad LJ 188.

(b) the remuneration of the persons necessary to be employed for the service and execution of such processes;

(c) the fixing by Collectors of the number of persons necessary to be employed for the service and execution of such processes;

(d) the guidance of Collectors in the exercise of their powers under Chapter VI;

(e) the supply of stamps to be used under this Act;

(f) the number of stamps to be used for denoting any fee chargeable under this Act;

(g) the keeping of accounts of all stamps used under this Act;

(h) the circumstances in which stamps may be held to be damaged or spoiled;

(i) the circumstances in which, the manner in which, and the authorities by which, allowance for used, damaged or spoiled stamps may be made;

(j) the regulation of the sale of stamps to be used under this Act, the persons by whom alone such stamps may be sold and the duties and remuneration of such persons:

Provided that, in the case of stamps used in the High Court such rules shall be made with the concurrence of the Chief Justice.

(2) All rules made under the section shall be published in the Fort St. George Gazette and on such publication, shall have effect as if enacted in this Act.

82. **Power of Government to make rules.**—(1) The State Government, may, by notification in the Fort St. George Gazette make rules to carry out generally the purposes of this Act.

(2) All notifications and rules made under this section shall, as soon as possible, after they are made be placed on the table of the Legislative Assembly for one month, and shall be subject to such modification whether by way of repeal or amendment as the Legislative Assembly may make during the session in which they are so laid.

83. **Continuance in force of existing rules.**—Until rules are framed under Sections 80, 81 and 82 and until notifications are issued under Section 73, the rules and notifications now in force in respect of matters referred to in those sections, shall, in so far as they are not inconsistent with this Act, continue.

84. **Amendment of Central Act III of 1873.**—In the Tamil Nadu Civil Courts Act, 1873, Section 14 shall be omitted.

85. **Repeal of Central Act IV of 1877.**—The Presidency Magistrates (Court Fees) Act, 1877 in so far it applies to the State of Tamil Nadu is hereby repealed.

86. **Amendment of Central Act VII of 1892.**—In the Madras City Civil Court Act, 1892, Sections 9 and 13 shall be omitted.

87. **Repeal and saving.**—(1) The Court-fees Act, 1870, in its application to the State of Tamil Nadu and in relation to the fees and stamps other than fees and

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Section 87 — Note 1

(1) Although a taxing statute ordinarily will have no retrospective effect, since the earlier Act of 1870 is repealed, the necessity for making a provision that it shall not have retrospective operation was felt and Clause (2) of Sec. 87 was enacted. Taxing statute has to be construed strictly and in case of reason-

stamps relating to documents presented or to be presented before an officer serving under the Central Government and the Suits Valuation Act, 1887, in its application to the State of Tamil Nadu are hereby repealed.

(2) All suits and proceedings instituted before the commencement of this Act and all proceedings by way of appeal, revision or otherwise arising therefrom whether instituted before or after such commencement shall, notwithstanding the repeal of the Court-fees Act, 1870 and the Suits Valuation Act, 1887, be governed by the provisions of the said Acts and the rules made thereunder.

*[**88. Savings in respect of the transferred territory.**—In respect of the transferred territory, all suits and proceedings instituted before the commencement of the Tamil Nadu (Transferred Territory) Extension of Laws Act, 1935, and all proceedings by way of appeal, revision or otherwise, arising therefrom, whether instituted before or after such commencement, shall, notwithstanding the repeal of the corresponding law by the said Act be governed by the provisions of the said corresponding law and the rules made thereunder.

Explanation.—In this section, the expression, "corresponding law" shall mean the Travancore-Cochin Court-Fees Act, 1125 (Travancore-Cochin Act II of 1125) and the Travancore-Cochin Suits Valuation Act, 1125 (Travancore-Cochin Act IV of 1125).]

* Inserted by T. N. Act 22 of 1965, S. 4 and Sch. II (1-7-1966).

Section 87 — Note 1 (contd.)

able doubt, the construction that is beneficial to the subject has always to be adopted. AIR 1956 Mad 597 (599) = (1956) 1 Mad LJ 63.

(2) Obiter: The Court-fee payable under the earlier Act is applicable not only to a copy application for a judgment and decree in a suit or proceeding instituted before the Act but also in respect of a copy of a judgment and decree in an appeal, revision or any other proceeding instituted before or after such commencement, provided it relates to suits and proceedings instituted before the commencement of the Act, and also in respect of (a) vakalat filed in Courts in respect of suits instituted before the commencement of the Act, (b) certified copies of documents such as decrees, judgments, etc., filed as enclosures to appeals and (c) applications for copies of documents filed in suits or proceedings instituted before the commencement of the Act. AIR 1956 Mad 597 (600) = (1956) 1 Mad LJ 63.

(3) In the context in which it has been used in Section 87 (2) a copy application is a proceeding within the meaning of that section. The use of the word "otherwise" will not detract this meaning to be given to the word proceeding. AIR 1956 Mad 597 (598, 599) = (1956) 1 Mad LJ 63.

(4) Scope — Claim in pursuance of notice under Section 9 (3) of Land Acquisition Act filed before commencement of the Act — Court-fee on memo of appeal under Section 54 of the Land Acquisition Act filed after commencement of the Madras Act is to be calculated under Schedule 1, Article 1 of Central Court-fees Act (1870), on claim of enhancement and not under the Act of 1955 in view of Section 87 (2) of the Act. AIR 1962 Ker 25 (26) = 1961 Ker LT 484 (DB). ((1960) 2 MLJ 207, Rel. on.)

(5) Proceedings under Sections 9 and 11 of Land Acquisition Act are proceedings within the meaning of Section 87 (2) of Court-fees Act — Reference under Section 18 of the Act is a continuation of those proceedings or arising out of those proceedings within Section 87 (2) of the Court-fees Act — Proceedings under Sections 9 and 11 started before the Court-fees Act of 1955 — Reference after 1955 — Court-fee is payable under the old law. ILR (1960) Mad 954 (959, 960) = (1960) 2 MLJ 207.

(6) Court-fees Act (1870), Sch. II, Art. 17 (1) — Civil P. C. (1908), O. 21, Rr. 58, 63 and 103 — Suit decreed before Madras Act of 1955—Claim under O. 21, R. 58 filed and decided after the Act of 1955 — Suit under R. 63 — Court-fee is payable under Section 41 (2) and not under Act of 1870. ILR (1965) 2 Mad 90 (92) = (1965) 2 Mad LJ 449.

(7) Execution proceedings — Claim petition filed — Adverse order passed before coming into force of new Court-fees Act — Claim suit filed after coming into force of said Act — Requisite court-fee to be paid as per provision in old Court-fees Act as the claim petitions out of which the claim suit arose were instituted before the Act of 1955. AIR 1959 Mad 155 (156) = (1959) 1 Mad LJ 151.

SCHEDULE I

Ad Valorem Fees

Article. (1)	Particulars. (2)	Proper fee. (3)
1.	Plaint or written statement pleading a set off or counter-claim or memorandum of appeal presented to any Court— When the amount or value of the subject-matter in dispute—	
	(i) does not exceed five rupees;	[Forty Paise.
	(ii) exceeds five rupees, for every five rupees, or part thereof in excess of five rupees, up to one hundred rupees;	Forty Paise.
	(iii) exceeds one hundred rupees, for every ten rupees or part thereof, in excess of one hundred rupees;	Seventy-five Paise.]
	*Substituted by T.N. Act 9 of 1960 [w.e.f. 1-4-1960.)	
2	(a) Petition under section 26 of the Provincial Insolvency Act, 1920, or application under section 95 of the Code of Civil Procedure, 1908.	An amount of one-half the scale of fee prescribed in article 1 on the amount or compensation claimed.
	(b) Appeal against order on a petition or application falling under clause (a).	On the scale prescribed in article 1 on the amount in dispute.
3.	(a) Petition under section 53 or 54 of the *Provincial* Insolvency Act, 1920.	An amount of one-half the scale of fee prescribed in article 1 on the market value of the subject matter subject to a maximum fee of rupees five hundred.
	(b) Appeal against order on a petition falling under clause (a) whether by the Official Receiver or by the unsuccessful party.	An amount of one-half the scale of fee prescribed in article 1 on the market value of the subject-matter subject to a maximum fee of rupees five hundred.
4.	Memorandum of appeal against order in proceedings under the *Indian* Succession Act, 1925.	An amount of one-half the scale of fee prescribed in article 1 on the amount or value of the subject-matter.
5.	Application for review of judgment.	One-half of the fee payable on the plaint or memorandum of appeal comprising the relief sought in the application for review.
6.	Probate of a will or letters of administration with or without will annexed— When the amount or value of the estate in respect of which the grant of probate or letters is made exceeds one thousand rupees, but does not exceed five thousand rupees.	Two per centum on such amount or value.
	When such amount or value exceeds five thousand rupees.	Three per centum on such amount or value.

Schedule I Art. 1 — Note 1

(1) Suit for partition and separate possession — Defendant claiming amount of bona fide improvement in his statement — Claim cannot be construed either one by way of set-off or by way of counter-claim — No Court-fee is payable on such claim. AIR 1967 Mad 300 (301, 303) = (1966) 1 Mad LJ 200.

(2) Suit for redemption — Defendant claiming in his written statement the cost of improvement made by him in addition to mortgage amount — The claim of the defendant is in the nature of counter-claim and court-fee must be paid on it. AIR 1961 Mad 355 (355) = 73 Mad LW 665.

(3) Madras Court-fees and Suits Valuation Act (14 of 1955), Section 8 — Suit for declaration of title, possession and mesne profits — Claim by defendant for compensation for improvements as a condition of decree for possession — Not a set-off or counter-claim within Section 8 — No court-fee payable on such claim. AIR 1961 Mad 527 (528) = (1961) 2 Mad LJ 34.

Article (1)	Particulars (2)	Proper fee (3)
7.	Certificate under the Indian Succession Act, 1925—	
	Where the amount or value of the debts and securities specified in the certificate extends up to rupees five thousand.	Two per centum on such amount or value.
	Where such amount or value exceeds five thousand rupees.	Three per centum on such amount or value.

Note. — (1) Where a certificate is extended under section 376 of the Indian Succession Act, 1925, fee shall be computed on the amount for which a certificate is sought to be extended and the amount for which a certificate or certificates has or have already been issued, credit being given for the fee already paid.

(2) The amount of a debt is its amount, including interest, on the day on which the inclusion of the debt in the certificate is applied for so far as such amount can be ascertained.

(3) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act, and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.

SCHEDULE II

Note: For "Eight annas" "Twelve annas" and "Four annas" words 'fifty naye paise seventy-five naye paise' and 'twenty-five naye paise' were *substituted* by Madras Act 9 of 1960 [1-4-1960].

Article. (1)	Particulars. (2)	Proper fee. (3)
1.	(i) Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866	Ten rupees.
	(ii) Petition, plaint or memorandum of appeal when presented to a Court under the Dissolution of Muslim Marriage Act, 1939.	Ten rupees.
	(iii) Petition under the Indian Divorce Act, 1869, excluding petitions under section 44 of that Act, and every memorandum of appeal under section 55 of that Act.	Thirty rupees.
	(iv) Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1936, or a counter-claim made under section 37 of that Act.	Thirty rupees.
	(v) Plaint or memorandum of appeal in a suit under the Indian Colonial Divorce Jurisdiction Act, 1926.	Fifty rupees.
	If in a suit falling under any of these clauses, there is a specific claim for damages, separate fee at the rates prescribed in Article 1 of Schedule I shall be charged on the amount of damages claimed.	
2.	Undertaking under section 49 of the Indian Divorce Act, 1869.	One rupee.
3.	Memorandum of appeal from an order inclusive of an order determining any question under section 47 or section 144 of the Code of Civil Procedure, 1908, and not otherwise provided for when presented—	
	(i) to any Court other than the High Court or to any Executive Officer other than Board of Revenue or Chief Executive Authority.	One rupee.

Schedule 2, Art. 3 — Note 1

(1) On an appeal under Section 6 (4) (a) of the Madras Slum Improvement Act, court-fee will have to be paid under Art. 3 of Sch. II of the Madras Court-fees and Suits Valuation Act and not under Section 51. (1964) 2 Mad LJ 487 (491) = (1960) 73 Mad LW 333.

(2) Art. 3 (i) of Sch. 2 applies to all Courts, Civil and Criminal and the word 'order' in it, in the context of a criminal appeal includes a judgment leading to an order of conviction or acquittal. (1966) 2 Mad LJ 375 (377) = 1966 Mad LW (Cri) 150 ** 1966 Mad LJ (Cri) 740 (742). (Court fee payable on a memorandum of appeal by an accused from a decision of conviction and sentence of a criminal court is under Sch. 2, Art. 3 (1) and not under Art. 11 (g), Sch. 2.)

Article	Particulars	Proper fee.
(1)	(2)	(3)
	(ii) to the Board of Revenue or Chief Executive Authority	Two rupees.
	(iii) to the High Court—	
	(A) From an order other than an order under the Tamil Nadu Agriculturists' Relief Act, 1938—	
	(1) Where the order was passed by a subordinate Court or other authority—	
	(a) If the order relates to a suit or proceeding, the value of which exceeds one thousand rupees	Two rupees.
	(b) In any other case	Five rupees.
	(2) Where the appeal is under Clause 15 of the Letters Patent—	
	(a) From an order passed in exercise of appellate jurisdiction.	Ten rupees.
	(b) From an order passed in exercise of original jurisdiction, which would be appealable under the Code of Civil Procedure, 1908, had it been passed by a Subordinate Court	Ten rupees.
	(c) In any other case	One hundred rupees.
	(3) Where the appeal is under section 43-B of the Banking Companies Act, 1949.	One hundred rupees.
	(4) Where the appeal is under section 411-A of the Code of Criminal Procedure, 1898.	Five rupees.
	(B) From an order under the Tamil Nadu Agricuturists' Relief Act, 1938.	Two rupees.
	(iv) To the Government in pursuance of a statutory right to appeal for which no court-fee is leviable under any other enactment.	Five rupees.
4.	Memorandum of appeal under section 39 of the Arbitration Act, 1940—	
	(i) Where the appeal is from an order of a District Munsif's Court or an order of a superior Court in a case where the value for jurisdiction does not exceed Rs. 5,000	Fifteen rupees.
	(ii) in any other case	One hundred rupees.
5.	Copy or translation of a judgment or order not being or having the force of a decree –	
	Where such judgment or order is passed by any Civil Court other than the High Court or by the Presiding Officer of any Revenue Court or office or by any other Court or judicial or executive authority—	
	(a) if the amount or value of the subject-matter is fifty or less than fifty rupees;	Fifty paise.
	(b) if such amount or value exceeds fifty rupees;	One rupee.
	When such judgment or order is passed by the High Court.	Two rupees.
6.	Copy or translation of a judgment or order of a Criminal Court.	Fifty paise.
7.	Copy of a decree or order having the force of a decree—	
	When such decree or order is made by any Court other than the High Court—	
	(a) if the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees :	Seventy-five paise.
	(b) if such amount or value exceeds fifty rupees :	One rupee and fifty paise.
	When such decree or order is made by the High Court.	Five rupees.
8.	Copy of any document liable to stamp duty under the Indian Stamp Act, 1899, when left by any party	

Article (1)	Particulars (2)	Proper fee. (3)
	to a suit or proceeding in place of the original withdrawn—	
	(a) When the stamp duty chargeable on the original does not exceed fifty paise	The amount of the duty chargeable on the original.
	(b) in any other case	Seventy-five paise.
9.	Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act or copy of any account, statement, report, or the like taken out of any Court or office of any public officer—	
	For every document	Seventy-five paise.
10.	(a) Application or petition presented to any officer of land revenue by any person holding temporarily settled land under direct engagement with Government and when the subject-matter of the application or petition relates exclusively to such engagement.	Twenty-five paise.
	(b) Application or petition presented to any officer of land revenue relating to the grant of land on darkhast.	Twenty-five paise.
	(c) Application to a Collector for lease of land for agricultural or non-agricultural purposes.	Seventy-five paise.
	(d) Application or petition presented to any Executive Officer under any Act for the time being in force for the conservancy or improvement of any place if the application or petition relates solely to such conservancy or improvement.	Twenty-five paise.
	(e) Application or petition presented to any board or Executive Officer for a copy or translation of any order passed by such board or officer or of any other document on record in such office.	Twenty-five paise.
	(f) Application to a Forest Officer by a Forest contractor for extension of the period of lease—	
	(i) if the value of the subject-matter of the lease is Rs. 5,000 or less.	Five rupees.
	(ii) if such value exceeds Rs. 5,000, for every Rs. 1,000 or part thereof in excess of Rs. 5,000.	One rupee.
	(g) Application for attestation of private documents intended to be used outside India.	One rupee.
	(h) Application for lapsed deposit presented after six months after the date on which the amount lapsed to the Government—	
	(i) when the amount or deposit does not exceed Rs. 50;	Fifty paise.
	(ii) when the amount or deposit exceeds Rs. 50 but does not exceed Rs. 1,000;	One rupee.
	(iii) when it exceeds Rs. 1,000	Two rupees.
	(i) Application or petition presented to the Government and not otherwise provided for—	
	(i) which involves the exercise or non-exercise of power conferred by law or rule having the force of law;	Two rupees.
	(ii) in other cases	Fifty paise.
	(j) Application or petition presented to the Board of Revenue or Chief Executive Authority and not otherwise provided for—	
	(i) which involves the exercise or non-exercise of power conferred by law or rule having the force of law.	Two rupees.

Schedule 2, Art. 10 — Note 1.

(1) An application under Section 7 (2) of the Madras Buildings (Lease and Rent Control) Act, 1949, for eviction of a tenant, made before the Subordinate Judge as Rent Controller, is liable to be affixed with a court-fee stamp of Re. 1 under Art. 10 (k) (i) of Sch. 2 to the Madras Court-fees and Suits Valuation Act. The court-fee payable is not to be determined with reference to the office which the officer, who has been appointed as the Controller, holds. ILR (1960) Mad 559 (561) = (1960) 1 Mad LJ 135.

Article. (1)	Particulars. (2)	Proper fee. (3)
	(ii) in other cases	One rupee and fifty paise.
	(k) Application or petition not falling under cl. (i) or (j) and presented to a public officer or in a public office and not otherwise provided for—	
	(i) which involves the exercise or non-exercise of power conferred by law or rule having the force of law ;	One rupee.
	(ii) in other cases	Twenty-five paise.
11.	(a) Application or petition presented to any Court for a copy or translation of any judgment, decree or any proceeding of or order passed by such Court or of any other document on record in such Court.	Twenty-five paise.
	(b) Application or petition presented to any Civil Court other than a Principal Civil Court of Original Jurisdiction or to any Court of Small Causes constituted under the Provincial Small Cause Courts Act, 1887, or to a Collector or other Officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than Rs. 50.	Twenty-five paise.
	(c) Application to any Court that records may be called from another Court, when the Court grants the application and is of opinion that the transmission of such records involves the use of the post.	Seventy-five paise in addition to the fee leviable on the application.
	(d) Application for permission to deposit revenue or rent either in the office of the Collector or in the Court.	Seventy-five paise.
	(e) Application or petition presented to a Court for determination of the amount of compensation to be paid by a landlord to his tenant.	One rupee.
	(f) A written complaint or charge of any offence other than an offence for which a Police officer may, under the Code of Criminal Procedure, arrest without warrant and presented to any Criminal Court and an oral complaint of any such offence reduced to writing under the Code of Criminal Procedure, 1898.	One rupee.
	(g) Application or petition presented to any Court, or to any Magistrate in his executive capacity and not otherwise provided for in this Act.	Seventy-five paise
	(h) Application for arrest or attachment before judgment or for temporary injunction—	
	(i) when presented to a Civil Court or Revenue Court other than the High Court in relation to any suit or proceeding—	
	(1) if the value of the subject-matter *[* *] is less than Rs. 50 ;	One rupee.

Schedule 2, Art. 11 — Note 1

(1) Scope and object — "Proceedings otherwise arising thereform" — Interpretation of — Copy application comes within the meaning of the word proceeding in the context in which it has appeared in Section 87 (2) — Copy application arising out of proceedings started before the Act of 1955—Court-fee is to be paid under the old law under Sch. 2, Art. 11 (a) and (b) of Court-fees Act of 1870. AIR 1956 Mad 597 (600) = (1956) 1 Mad LJ 63.

(2) Application under Section 7 (2) of the Madras Buildings (Lease and Rent Control) Act 1949 before a Rent Controller — Rent Controller not a Court for the purposes of Court-fee — Sch. 2 Art. 11 (g) of Court-fees Act, 1955 does not apply. ILR (1960) Mad 559 (561).

(3) Proviso governs not only clause (2) but also clause (1). AIR 1962 Mad 108 (109) = (1961) 2 Mad LJ 524 (DB).

(4) Application for probate — Application opposed and hence treated as a suit. Formal entry of caveat is not necessary in order to attract proviso — When an application for probate becomes contentious and is treated as suit it should be assumed for the purpose of the proviso that the caveat is impliedly entered. (1966) 2 Mad LJ 33 (34) = 79 Mad LW 311.

Article	Particulars	Proper fee.
(1)	(2)	(3)
	(2) if the value is Rs. 50 and above;	Two rupees and fifty paise.
	(ii) when presented to the High Court.	Five rupees.
	* Words 'of which' were *omitted* by T.N. Act 36 of 1955, S. 3 and Sch. II.	
	(i) Application or petition under section 47 and Order XXI, Rules 58 and 90 of the Code of Civil Procedure, 1908—	
	(i) when filed in a Revenue Court or a District Munsif's Court,	One rupee.
	(ii) when filed in the City Civil Court, Madras, a Sub-Court or a District Court,	Two rupees and fifty paise.
	(iii) when filed in the High Court.	Five rupees.
	(j) Application or petition under sections 34, 72, 73 and 74 of the Indian Trusts Act, 1882.	Five rupees.
	(k) (i) Application for probate or letters of administration to have effect throughout India.	Twenty-five rupees.
	(ii) Application for probate or letters of administration not falling under clause (i)—	
	(1) if the value of the estate does not exceed Rs. 1,000;	Seventy-five paise.
	(2) if the value exceeds Rs. 1,000 : Provided that if a caveat is entered and the application is registered as a suit, one-half the scale of fee prescribed in Article 1 of Sch. I on the market value of the estate less the fee already paid on the application shall be levied.	Five rupees.
	(l) Original petitions not otherwise provided for when filed in—	
	(i) a District Munsif's Court—	
	(1) under the Tamil Nadu Village Courts Act, 1888 Tamil Nadu Act 1 of 1889),	One rupee.
	(2) in other cases	Five rupees.
	(ii) the City Civil Court, Madras, a Sub-Court or a District Court,	Ten rupees.
	(iii) the High Court	Twenty rupees.
	(m) Application to set aside an award under the Arbitration Act, 1940—	
	(i) when presented to a District Munsif's Court:	Twenty-five rupees.
	(ii) when presented to the City Civil Court, Madras, Sub-Court, a District Court or the High Court—	
	(1) if the value of the subject-matter of the award does not exceed Rs. 5,000;	Twenty-five rupees.
	(2) if such value exceeds Rs. 5,000 but does not exceed Rs. 10,000;	One hundred rupees.
	(3) if such value exceeds Rs. 10,000 ...	Two hundred and fifty rupees.
	(n) Application under section 14 or section 20 of the Arbitration Act, 1940, for a direction for filing an award or for an order for filing an agreement and application for enforcing foreign awards—	
	(i) when presented to a District Munsif's Court;	Fifteen rupees.
	(ii) when presented to the City Civil Court, Madras, a Sub-Court, a District Court or the High Court—	
	(1) if the value of the subject-matter of the award does not exceed Rs. 5,000;	Fifteen rupees.
	(2) if such value exceeds Rs. 5,000 but does not exceed Rs. 10,000;	One hundred rupees.
	(3) if such value exceeds Rs. 10,000.	Two hundred and fifty rupees.

Schedule 2, Art. 11 — Note 1 (contd.)

(5) Where an Arbitrator, without any direction of the Court, himself proceeds to file the award under Section 14 (2) of the Arbitration Act. The residuary provision in Art. 11 (l) of Sch. 2 of the Court-fees and Suits Valuation Act will apply and not Art. 11 (n). (1959) 2 Mad LJ 417 (418) = 72 Mad LW 639 ** (1967) 1 Mad LJ 309 (310) = 80 Mad LW 150.

Article. (1)	Particulars. (2)	Proper fee. (3)
	(o) Petition to the High Court for the admission of an Advocate, Attorney or Vakil.	Twenty rupees.
	(p) Application presented to the High Court under section 24 of the Press (Objectionable Matter) Act, 1951.	Fifty rupees.
	(q) Revision petition presented to the High Court under section 115 of the Code of Civil Procedure, 1908, or under section 25 of the Provincial Small Cause Courts Act, 1887, or under the provisions of any other Act, arising out of a suit or proceeding—	
	(i) if the value of the suit or proceeding to which the order sought to be revised relates does not exceed Rs. 1,000 ;	Five rupees.
	(ii) if such value exceeds Rs. 1,000.	Ten rupees.
	(r) Petition under sections 153, 166 and 221 of the Indian Companies Act, 1913, in connection with the winding up of a company.	One hundred rupees
	(s) Petition to the High Court under Article 226 of the Constitution for a writ other than the writ of *Habeas Corpus* or a petition under Article 227 of the Constitution.	Twenty-five rupees.
	(t) Application under section 45 of the Specific Relief Act, 1877.	One hundred rupees
	(u) Application or petition presented to the High Court and not otherwise specifically provided for.	Two rupees.
	(v) Election petition questioning the election of a person in respect of—	
	(i) the office of member of a panchayat ;	Twenty-five rupees.
	(ii) the office of President of a panchayat ;	Fifty rupees.
	(iii) the office of member or Alderman of the Council of the Corporation of Madras or of member of a Municipal Council or a District Board,	Fifty rupees.
	(iv) the office of Mayor or Deputy Mayor of the Corporation of Madras or of Chairman of a Municipality or President of District Board.	Two hundred rupees
12.	Application for leave to sue as a pauper.	Seventy-five paise.
13.	Application for leave to appeal as a pauper—	
	(i) when presented to a District Court or Sub-Court ;	One rupee.
	(ii) when presented to the High Court.	Two rupees.
14.	(i) Bail bond or other instrument of obligation when filed in village Courts.	Twenty-five paise.
	(ii) Bail bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1898, or the Code of Civil Procedure, 1908, and not otherwise provided for in this Act.	Seventy-five paise.
15.	Every copy of power-of-attorney when filed in any suit or proceeding.	Seventy-five paise.
16.	Mukhtarnama, Vakalatnama or any paper signed by an advocate signifying or intimating that he is retained for a party. When presented—	
	(i) to any Court other than the High Court or to any Collector or Magistrate or other executive officer ;	One rupee and fifty paise.
	(ii) to the Board of Revenue or a Chief Executive Authority ;	Two rupees.
	(iii) to the High Court	Three rupees.
	(iv) to the Government	Three rupees.
17.	Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908—	
	(i) when presented to a District Munsif's Court or when presented to the City Civil Court	Fifteen rupees.

Article. (1)	Particulars. (2)	Proper fee. (3)
	or Sub-Court of Ootacamund in a case where the value of the subject-matter does not exceed Rs. 5,000.	
	(ii) In any other case	One hundred rupees.
18.	Caveat	Ten rupees.

SCHEDULE III

PART I

(*See* section 55)

Form of Valuation (to be used with such modifications, if any, as may be necessary) of Estate.

IN THE COURT OF

Re : Probate of the Will of (or Administration of the Estate), Deceased.

1. I (A. B.) solemnly affirm/make oath and say that I am the executor (or one of the executors or one of the next of kin) of deceased, and that I have truly set forth in Annexure A to this Form of Valuation all the estate of which the above named deceased died possessed or to which he was entitled at the time of his death, and which has come or is likely to come, to my hands.

2. I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct.

3. I further declare that the said estate exclusive only of the last mentioned
was on the date of the death of the said deceased
items .... under the
* is
value of

4. I (A. B.) further declare that what is stated in this Form of Valuation is true to the best of my information and belief.

(Signed) A. B....................

ANNEXURE A

Valuation of the movable and immovable property of deceased.

	Rs.	nP.
Cash in hand and at the bank, household goods, wearing apparel, books, plate, jewels, etc. *(State estimated value according to best of Executor's or Administrator's belief.)*		
Property in Government securities transferable at the Public Debt Office *(State description and value on the date of the death of the deceased or on the date of the application, as the case may be.)*		
Immovable property, consisting of .. .. *(State description and market value on the date of the death of the deceased or on the date of the application, as the case may be.)*		
Leasehold property ... ... *(If the deceased held any leases for years determinable, state the period of the lease and the estimated amount of rent inserting separately arrears due on the date of the death or on the date of the application; as the case may be.)*		
Property in public companies .. .. *(State the particulars and the value calculated at the price on the date of the death or on the date of the application, as the case may be.)*		
Policies of insurance upon life, money out on mortgages and other securities, such as bonds, bills, notes and other securities for money. *(State the amount of the whole on the date of the death or on the date of the application, as the case may be.)*		
Debts ... ... *(Other than bad debts.)*		
Stock in trade ... ... *(State the estimated value, if any.)*		
Other property not comprised under the foregoing heads ... *(State the estimated value, if any.)*		
Total ...		
Deduct items shown in Annexure B in the manner provided in sub-section *(2)* of section 56		
Net value of the Estate ...		

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* This form to be used where the application is made after one year from the date of the death.

ANNEXURE B

Schedule of debts, etc.

	Rs	nP.
Amount of debts due and owing from the deceased, legally payable out of the estate		
Amount of expenses connected with funeral rites and ceremonies ...		
Amount of mortgage incumbrances		
Property held in trust not beneficially or with general power to confer a beneficial interest		
Other property not subject to duty		
Total ...		

PART II

AMENDED FORM OF VALUATION OF ESTATE

(*See* sections 61 and 63)

IN THE COURT OF

Re : Probate of the Will of (or Administration of the Estate of , Deceased.

1. I (A. B.) am the executor (or one of the executors or one of the next-of-kin, *as the case may be*) of

2. Probate was (*or* letters of administration were) granted to me on

3. It has now been discovered that the value of the estate on which court-fee was paid was not correctly ascertained.

4. I have now truly set forth in Annexure A to this amended Form of Valuation all the estate of the deceased at the date of $\frac{\text{his death}}{\text{the application for probate (or letters of administration)}}$ which has come or is likely to come to my hands.

5. I further have now truly set forth in Annexure B all the items which I am by law allowed to deduct.

6. I further declare that the said estate, exclusive only of the lastmentioned items, at the date of $\frac{\text{the death of the deceased was}}{\text{this application is}}$ under the value of

7. I (A. B.) further declare that what is stated in this amended Form of Valuation is true to the best of my information and belief.

(Signed) (A. B.)..............................

ANNEXURE A

Amended Valuation of the estate of deceased.

	Valuation on which court-fee was paid.	*Increase.*	*Decrease.*	*Valuation as now amended.*
Total ...				
Deduct items shown in Annexure B in the manner provided in sub-section (2) of section 56.				
Amended net value of estate				

ANNEXURE B

Amended Schedules of debts.

	Valuation on which court fee was paid.	*Increase.*	*Decrease.*	*Valuation as now amended.*
Total ...				

[THE] WEST BENGAL COURT-FEES ACT, 1970

(W. B. Act 10 of 1970)

An Act to amend and consolidate the law relating to court-fees in the State of West Bengal.

[26-2-1970.]

WHEREAS it is expedient to amend and consolidate the law relating to court-fees in the State of West Bengal;

It is hereby enacted in the Twenty-first Year of the Republic of India, by the Legislature of West Bengal, as follows :—

CHAPTER I

PRELIMINARY

1. Short title, extent and application.—(1) This Act may be called the West Bengal Court-fees Act, 1970.

(2) It extends to the whole of the State of West Bengal.

(3) The provisions of this Act shall not apply to fees or stamps relating to documents presented or to be presented before any officer serving under the Central Government.

(4) Where any other law contains provisions relating to the levy of fee in respect of proceedings under such other law, the provisions of this Act relating to the levy of fee in respect of such proceedings shall apply subject to the said provisions of such other law.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context;—

(1) "appeal" includes a cross-objection;

(2) "Collector" includes any officer not below the rank of a Sub-Deputy Collector appointed by the Collector to perform the functions of a Collector under this Act;

(3) "Court" means any Civil, Revenue or Criminal Court and includes a Tribunal or other authority having jurisdiction under any local or special law to decide questions affecting the rights of parties;

(4) "suit" includes an appeal from a decree except in Section 9;

(5) expressions used and not defined in this Act or in the Bengal General Clauses Act, 1899, but defined in the Code of Civil Procedure, 1908, shall have the meanings respectively assigned to them in the said Code.

CHAPTER II

FEES PAYABLE IN COURTS AND IN PUBLIC OFFICES

3. Levy of fees in Court of Small Causes, Calcutta.—The fees for the time being chargeable in the Court of Small Causes at Calcutta, and its office shall be collected in the manner hereinafter appearing.

4. Levy of fee in Courts and public offices.—(1) No document which is chargeable with fee under this Act shall—

(i) be filed, exhibited or recorded in, or be acted on or furnished by, any Court including the High Court, or

(ii) be filed, exhibited or recorded in any public office or be acted on or furnished by any public officer,

unless in respect of such document there be paid a fee of an amount not less than that indicated as chargeable under this Act:

Provided that, whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the Court, necessary to prevent a failure of justice, nothing contained in this section shall be deemed to prohibit such filing or exhibition.

(2) Notwithstanding anything contained in sub-section (1) or in any other Act, a Court may receive a plaint or memorandum of appeal in respect of which an insufficient fee has been paid subject to the condition that the plaint or memorandum of appeal shall be rejected unless the plaintiff or appellant, as the case may be, pays to the Court within a time to be fixed by the Court such reasonable sum on account of court-fees as the Court may direct.

5. **Procedure in case of difference as to necessity of amount of fee.**—(1) In case any difference arises between the officer whose duty it is to see that any fee is paid under this Act and any suitor or his pleader, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in the High Court, be referred to the Taxing Officer whose decision thereon shall be final, subject to revision, on an application made within sixty days from the date of the decision, by the suitor or by his pleader, or such officer as may be appointed in this behalf by the State Government, by the Chief Justice or by such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.

(2) When any such difference arises in the Court of Small Causes at Calcutta, the question shall be referred to the Registrar of the Court of Small Causes at Calcutta whose decision shall be final, subject to revision, on application made within sixty days from the date of the decision, by the party concerned or such officer as may be appointed in this behalf by the State Government, by the Chief Judge or by such Judge of the Court of Small Causes at Calcutta as the Chief Judge shall appoint either generally or specially in this behalf.

(3) The Chief Justice shall declare who shall be the Taxing Officer within the meaning of sub-section (1) of this section.

6. **Document inadmissible unless fees collected by stamp purchased in West Bengal.**—Notwithstanding anything contained in this Act or in any other law for the time being in force, no document of any of the kinds chargeable under this Act shall be filed, exhibited or recorded in any Court including the High Court, or shall be received, furnished or acted upon by any such Court or by any public officer, unless in respect of such document, the stamp referred to in S. 39 has been purchased from a person authorised or appointed to sell stamps in West Bengal.

CHAPTER III

COMPUTATION OF FEES

7. **Computation of fees payable in certain suits.**—The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—

for money;

(i) In suits for money including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically—according to the amount claimed;

for maintenance and annuities;

(ii) In suits for maintenance and annuities or other sums payable periodically—according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year:

Provided that in suits by widows for maintenance such value shall be deemed to be the amount claimed to be payable for one year;

for movable property having a market value;

(iii) In suits for movable property other than money, where the subject-matter has a market value—according to such value at the date of presenting the plaint;

for movable property of no market value,

(iv) In suits—

(a) for movable property where the subject-matter has no market value, as for instance, in the case of documents relating to title,

for declaratory decree and consequential relief;

(b) to obtain a declaratory decree or order, where consequential relief is prayed.

for injunction;

(c) to obtain an injunction,

for easement;

(d) for a right to some benefit (not herein otherwise provided for) to arise out of land, and/

for accounts;

(e) for accounts—

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal subject to the provisions of section 11.

In all such suits the plaintiff shall state the amount at which he values the relief sought.

for possession of land, buildings or gardens;

(v) In suits for the possession of land, buildings or gardens, not being suits referred to in clause (vi)—

(a) according to the value of the subject-matter, and such value shall be deemed to be fifteen times the net profits which have arisen from the land, building or garden during the year next before the date of presenting the plaint or if the Court sees reason to think that such profits have been wrongly estimated, fifteen times such amount as the Court may assess as such profits or according to the market-value of the land, building or garden, whichever is lower;

(b) if, in the opinion of the Court, such profits are not readily ascertainable or assessable, or where there are no such profits, according to the market-value of the land, building or garden;

Explanation.—In this paragraph "building" includes a house, out-house, stable, privy, urinal, shed, hut, wall and any other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever;

for recovery of possession of immovable property;

(vi) In a suit for recovery of possession of immovable property from—

(a) a trespasser, where no declaration of title to property is either prayed for or necessary for disposal of the suit—according to the amount at which the relief sought is valued in the plaint subject to the provisions of Section 11;

b) a licensee upon revocation or termination of his license,—

(i) where a license fee is payable by the licensee in respect of the immovable property to which the suit refers—according to the amount of the license fee of the immovable property payable for the year next before the date of presenting the plaint, or

(ii) where no such license fee is payable by the licensee—according to the amount at which the relief sought is valued on the plaint subject to the provisions of section 11;

to enforce a right of pre-emption;

(vii) In suits to enforce a right of pre-emption—according to the market-value of the land, building or garden in respect of which the right is claimed;

Explanation.—In this paragraph "building" has the same meaning as in paragraph (v);

for partition and separate possession of a share of joint family property, etc.;

(viii) In suits for partition and separate possession of a share of joint family property or of a joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property—if the plaintiff has been excluded from possession of the property of which he claims to be a coparcener or co-owner—according to the market-value of the share in respect of which the suit is instituted;

for interest of assignee of land-revenue;

(ix) In suits for the interest of an assignee of land-revenue—fifteen times his net profits as such for the year next before the date of presenting the plaint;

to set aside an attachment;

(x) In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for which the land or interest was attached :

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest;

to redeem;

(xi) In suits against a mortgagee for the recovery of the property mortgaged,

to foreclose;

and in suits by a mortgagee to foreclose the mortgage, or where the mortgage is made by conditional sale, to have the sale declared absolute—

according to the principal money expressed to be secured by the instrument of mortgage;

for specific performance;

(xii) In suits for specific performance—

(a) of a contract of sale—according to the amount of the consideration,

(b) of a contract of mortgage—according to the amount agreed to be secured,

(c) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term,

(d) of an award—according to the amount or value of the property in dispute;

between landlord and tenant;

(xiii) In the following suits between landlord and tenant—

(a) for the delivery by a tenant of the counterpart of a lease,

(b) to enhance the rent of a tenant having a right of occupancy,

(c) for the delivery by a landlord of a lease,

(d) for the recovery of immovable property from a tenant including a tenant holding over after the determination of a tenancy,

(e) to contest a notice of ejectment,

(f) to recover the occupancy of immovable property from which a tenant has been illegally ejected by the landlord, and

(g) for abatement of rent—

according to the amount of the rent of the immovable property to which the suit refers, payable for the year next before the date of presenting the plaint.

8. Fee on memorandum of appeal against order relating to compensation.—The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes, shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

9. Statement of particulars of subject-matter of suits and plaintiff's valuation thereof.—In every suit in which an ad valorem court-fee is payable under this Act on the plaint, the plaintiff shall file with the plaint a statement of particulars of the subject-matter of the suit and his own valuation thereof unless such particulars and the valuation are contained in the plaint. The statement shall be in such form and shall contain such particulars as may be prescribed by the State Government by notification in the Official Gazette. In every such suit the plaintiff shall also, if the Court so directs, file a duplicate copy of the plaint and of the said statement.

10. Procedure where insufficient court-fee is filed on plaint or memorandum of appeal.—(1) In every suit in which a court-fee is payable under this Act on the plaint or memorandum of appeal the Court shall, on the date fixed for the appearance of the opposite party or as soon as may be thereafter, and in every case before proceeding to deliver judgment, record a finding whether a sufficient court-fee has been paid.

(2) If the Court records a finding that an insufficient court-fee has been paid on the plaint or memorandum of appeal the Court shall—

(a) stay all further proceedings in the suit until it has determined the proper amount of such court-fee payable and the plaintiff or the appellant, as the case may be, has paid such amount or until the date referred to in clause (b), as the case may be:

Provided that if the plaintiff or appellant gives, within such time as the Court may allow, security, to the satisfaction of the Court, for the payment of any additional amount for which he may be found liable the Court may proceed with the suit;

(b) fix a date before which the plaintiff or appellant shall pay the amount of court-fee due from him, as determined by the Court under clause (a).

(3) If the plaintiff or appellant fails to give the security referred to in clause (a) of sub-section (2) or to pay the amount referred to in clause (b) of that sub-section within the time allowed, or before the date fixed, by the Court, as the case may be, the suit shall be dismissed.

11. **Inquiry as to valuation of suits.**—If the Court is of opinion that the subject-matter of any suit has been wrongly valued, it may revise the valuation and determine the correct valuation and may hold such inquiry as it thinks fit for such purpose.

12. **Investigation to ascertain proper valuation.**—(1) For the purpose of an inquiry under Section 11 the Court may depute, or issue a commission to, any suitable person to make such local or other investigation as may be necessary and to report thereon to the Court. Such report and any evidence recorded by such person shall be evidence in the inquiry.

(2) The Court may, from time to time, direct such party to the suit as it thinks fit to deposit such sum as the Court thinks reasonable as the costs of the inquiry, and if the costs are not deposited within such time as the Court shall fix, may, notwithstanding anything contained in any other Act, dismiss the suit if such party is the plaintiff or the appellant and, in any other case, may recover the costs as a public demand.

13. **Power of persons making inquiry under Sections 11 and 12.**—(1) The Court, when making an inquiry under Section 12 shall have, respectively, for the purposes of such inquiry or investigation, the powers vested in a Court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

(a) enforcing the attendance of any person and examining him on oath or affirmation;

(b) compelling the production of documents or material objections; and

(c) issuing commissions for the examination of witnesses.

(2) An inquiry or investigation referred to in sub-section (1) shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code, 1860.

14. **Costs of inquiry as to valuation and refund of excess fee.**—(1) If in the result of an inquiry under Section 11 the Court finds that the subject-matter of the suit has been undervalued the Court may order the party responsible for the undervaluation to pay all or any part of the costs of the inquiry.

(2) If in the result of such inquiry the Court finds that the subject-matter of the suit has not been undervalued the Court may, in its discretion, order that all or any part of such costs shall be paid by the State Government or by any party to the suit at whose instance the inquiry has been undertaken, and if any amount exceeding the proper amount of fee has been paid shall refund the excess amount so paid.

15. Procedure in suits for mesne profits or account when amount found due exceeds amount claimed.—Where, in any suit for mesne profits or for land and mesne profits or for an account, the fee which would have been payable if the suit had comprised the whole of the relief to which the Court finds the plaintiff to be entitled, exceeds the fee actually paid, the Court shall require the plaintiff to pay an additional fee equal to the amount of the excess, and if such additional fee is not paid within such time as the Court may fix, the suit, or if a decree has previously been passed therein, so much of the claim as has not been so decreed, shall be dismissed:

Provided that, where the additional fee is payable in respect of a portion of the claim which can be relinquished, that portion only shall be dismissed.

16. Decision of questions as to valuation.—(1) Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this Chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.

(2) But whenever any such suit comes before a Court of Appeal, reference or revision, if such Court considers that the said question has been wrongly decided, to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided,—

(a) if the party required to pay is the appellant or petitioner, the provisions of sub-sections (2) and (3) of Section 10 shall, so far as may be, apply;

(b) if the party required to pay is the respondent or the opposite party, the provisions of sub-section (2) of Section 10 shall, so far as may be, apply, and, if such party fails to pay the fee required before the date fixed by the Court, the Court shall recover the amount of such fee from him as a public demand.

Explanation.—For the purposes of this section a question relating to the classification of any suit for the purpose of Section 7 shall not be deemed to be a question relating to valuation.

17. Recovery of deficit court-fee in certain cases.—(1) The High Court shall, when dealing with an application for leave to appeal to the Supreme Court, make an order for the payment of any deficit court-fee with such interest not exceeding six per centum per annum as the High Court may direct, in all cases where the High Court finds that the subject-matter of the suit or appeal had been undervalued either in the Court of first instance or in the Court of Appeal or in both, irrespective of whether the certificate of fitness for appeal to the Supreme Court is or is not granted.

(2) The fee together with interest thereon found to be payable under sub-section (1) shall be paid by the party ordered to do so and if such party fails to pay the amount required before the date fixed by the High Court, it shall be recoverable from him as a public demand.

18. Refund of fee paid on memorandum of appeal.— If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in Order XLI, Rule 23 of the same Code for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal:

Provided that if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

19. Refund fee on application for review of judgment.—Where an application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.

20. Refund where Court reverses or modifies its former decision on ground of mistake.—(1) Where an application for a review of judgment is admitted, and where, on the rehearing the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a cetificate from the Court authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee payable on any other application to such Court under Schedule II to this Act, No. 1, clause (b) or clause (d).

(2) Nothing in sub-section (1) of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part to fresh evidence which might have been produced at the original hearing.

21. Multifarious suits.—(1) In any suit in which two or more separate and distinct causes of action are joined and separate and distinct reliefs are sought in respect of each, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees with which the plaints or memoranda of appeal would be chargeable under this Act in separate suits instituted in respect of each such cause of action:

Provided that nothing in this sub-section shall be deemed to affect any power conferred by or under the Code of Civil Procedure, 1908, to order separate trials.

(2) Where more reliefs than one based on the same cause of action are sought either jointly or in the alternative, the fee shall be paid according to the value of the relief in respect of which the largest fee is payable.

22. Written examinations of complainants.—When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which police officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing, under the provisions of the Code of Criminal Procedure, the complainant shall pay a fee of one rupee unless the Court thinks fit to remit such payment.

23. Exemption of certain documents.—Nothing contained in this Act shall render the following documents chargeable with any fee:—

(i) Power of attorney or other written authority to institute or defend a suit when executed by a member of any of the Armed Forces of the Union not in civil employment.

(ii) Written statements called for by the Court after the first hearing of a suit.

(iii) Probate of a will, letters of administration, where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed two thousand rupees.

(iv) Application or petition to a Collector or other officer making a settlement of land-revenue, or to the Board of Revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such settlement.

(v) Application relating to a supply for irrigation of water belonging to Government.

(vi) Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land-revenue by a person holding, under direct engagement with Government, land of which the revenue is settled, but not permanently.

(vii) Application for service of notice of relinquishment of land or of enhancement of rent.

(viii) Written authority to an agent to distrain.

(ix) First application (other than a petition containing a criminal charge or information) for the summons of a witness or other persons to attend either to give evidence or to produce a document, or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.

(x) Bail bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.

(xi) Petition, application, charge or information respecting any offence, when presented, made or laid to or before a Police Officer, or to or before the Heads of Village or the village police.

(xii) Petition by a prisoner, or other person in duress or under restraint of any Court or its officers.

(xiii) Complaint of a public servant (as defined in the Indian Penal Code), a municipal officer, or an officer or emplovees of Government Railway.

(xiv) Application for permission to cut timber in Government forests or otherwise relating to such forests.

(xv) Application for the payment of money due by Government to the applicant.

(xvi) Petition of appeal against any municipal tax.

(xvii) Applications for compensation under any law for the time being in force relating to the acquisition of property for public purposes.

(xviii) Petitions of appeal by employees of the Government or Court of Wards against orders of dismissal, reduction or suspension; copies of such orders filed with such appeals, and applications for obtaining such copies.

CHAPTER IV

PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION.

24. Relief where too high a court-fee has been paid.—Where any person on applying for the probate of a will or letters of administration has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a court-fee thereon, if within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Board of Revenue for the local area in which the probate or letters has or have been granted.

and delivers to such Authority a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation,

and if such Authority is satisfied that a greater fee was paid on the probate or letters than the law required, the said Authority may—

(a) cancel the stamp on the probate or letters, if such stamp has not been already cancelled;

(b) substitute another stamp for denoting the court-fee which should have been paid thereon; and

(c) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

25. Relief where debts due from a deceased person have been paid out of his estate.—(1) Whenever it is proved to the satisfaction of such Authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act, such Authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

(2) But when, by reason of any legal proceeding, the debts due from the deceased have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority may allow such further time for making the claim as may appear to be reasonable under the circumstances.

26. Relief in case of several grants.—(1) Whenever a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

(2) Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

27. Probates declared valid as to property though not covered by court-fee.—The probate of the will, or the letters of administration of the effects, of any person deceased heretofore or hereafter granted shall be deemed valid and available by his executors or administrators for recovering, transferring or assigning any movable or immovable property whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court-fee was paid on such probate or letters of administration.

28. Provision for case where too low a court-fee has been paid on probates, etc.—Where any person on applying for probate or letters of administration has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a court-fee thereon, the Board of Revenue for the local area in which the probate or letters has or have been granted may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of the grant, of five times, or, if it or they is or are produced after one year from such date, of twenty times, such proper court-fee, without any deduction of the court-fee originally paid on such probate or letters:

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court-fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake or of its not being known at the time that some particular part of the estate belonging to the deceased, and without any intention of fraud or to delay the payment of the proper court-fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

29. Administrator to give proper security before letters stamped under Section 28.—In case of letters of administration on which too low a court-fee has been paid at first, the said Authority shall not cause the same to be duly stamped in manner aforesaid until the administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased has been then ascertained.

30. Executors, etc., not paying full court-fee on probates, etc., within six months after discovery of under-payment.—Where too low a court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not, within six months after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, apply to the said Authority and pay what is wanting to make up the court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten per cent, on the amount of the sum wanting to make up the proper court-fee.

31. Notice of applications for probate or letters of administration to be given to Revenue-authority and procedure thereon.—(1) Where an application for probate or letters of administration is made to any Court other than the High Court, the Court shall cause notice of the application to be given to the Collector.

(2) Where such an application as aforesaid is made to the High Court, the High Court shall cause notice of the application to be given to the Board of Revenue for the local area in which the High Court is situated.

(3) The Collector within the local limits of whose Revenue-jurisdiction the property of the deceased or any part thereof is, may at any time inspect or cause to be inspected, and take or cause to be taken copies of, the record of any case in which application for probate or letters of administration has been made; and if, on such inspection or otherwise, he is of opinion that the petitioner has underestimated the value of the property of the deceased, the Collector may, if he thinks fit, require the attendance of the petitioner (either in person or by agent) and take evidence and inquire into the matter in such manner as he may think fit, and, if he is still of opinion that the value of the property has been under-estimated, may require the petitioner to amend the valuation.

(4) If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court before which the application for probate or letters of administration was made, to hold an inquiry into the true value of the property:

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required by Section 317 of the Indian Succession Act, 1925.

(5) The Court, when so moved as aforesaid, shall hold, or cause to be held, an inquiry accordingly, and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry.

(6) For the purposes of any such inquiry, the Court or person authorized by the Court to hold the inquiry may examine the petitioner for probate or letters of administration on oath (whether in person or by commission), and may take such further evidence as may be produced to prove the true value of the property. The person authorized as aforesaid to hold the inquiry shall return to the Court

the evidence taken by him and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceeding, and the Court may record a finding in accordance with the report, unless it is satisfied that it is erroneous.

(7) The finding of the Court recorded under sub-section (5) shall be final, but shall not bar the entertainment and disposal by the Board of Revenue of any application under Section 28.

(8) The State Government may make rules for the guidance of Collectors in the exercise of the powers conferred by sub-section (3).

32. **Payment of court-fees in respect of probates and letters of administration.**—(1) No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in Schedule III, and the Court is satisfied that the fee mentioned in No. 10 of Schedule I has been paid on such valuation.

(2) The grant of probate or letters of administration shall not be delayed by reason of any motion made by the Collector under sub-section (4) of Section 31.

33. **Recovery of penalties, etc.**—(1) Any excess fee found to be payable on an inquiry held under sub-section (6) of Section 31, and any penalty or forfeiture under Section 30, may, on the certificate of the Board of Revenue, be recovered from the executor or administrator as if it were an arrear of land-revenue by any Collector.

(2) The Board of Revenue may remit the whole or any part of any such penalty or forfeiture as aforesaid, or any part of any penalty under Section 28 or of any court-fee under Section 28 in excess of the full court-fee which ought to have been paid.

34. **Section 42 not to apply to probates or letters of administration.**—Nothing in Section 42 shall apply to probates or letters of administration.

CHAPTER V

PROCESS-FEES

35. **Rules as to costs of processes.**—(1) The High Court shall, as soon as may be, make rules as to the following matters :—

(i) the fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by other Civil and Revenue Courts established within the local limits of such jurisdiction;

(ii) the fees chargeable for serving and executing processes issued by the Criminal Courts established within such limits in the case of offences other than offences for which police officers may arrest without a warrant; and

(iii) the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

(2) The High Court may from time to time alter and add to the rules so made.

Confirmation and publication of rules.

(3) All such rules, alterations and additions shall after being confirmed by the State Government be published in the Official Gazette, and shall thereupon have the force of law.

36. **Tables of process fees.**—A table in the English and Vernacular languages, showing the fees chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

37. **Number of peons in district and subordinate Courts.**—Subject to rules to be made by the High Court and approved by the State Government, every District

Judge and every Magistrate of a District shall fix, and may from time to time alter, **the number** of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto.

Number of peons in Mofussil Small Causes Courts.

Explanation.—For the purposes of this section, every Court of Small Causes established under the Provincial Small Cause Courts Act, 1887, shall be deemed to be subordinate to the Court of the District Judge.

38. Number of peons in Revenue Courts.—Subject to rules to be framed by the Board of Revenue and approved by the State Government, every officer performing the functions of a Collector of a district shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him.

CHAPTER VI

OF THE MODE OF LEVYING FEES

39. Collection of fees by stamps.—All fees referred to in Section 3 and chargeable under this Act shall be collected by stamps.

40. Stamps to be impressed or adhesive.—The stamps used to denote any fees chargeable under this Act shall be impressed or adhesive, or partly impressed and partly adhesive, as the State Government may, by notification in the Official Gazette from time to time, direct.

41. Rules for supply, number, renewal and keeping accounts of stamps.—(1) The State Government may, from time to time, make rules for regulating—

(a) the supply of stamps to be used under this Act;

(b) the number of stamps to be used for denoting any fee chargeable under this Act;

(c) the renewal of damaged or spoiled stamps; and

(d) the keeping of accounts of all stamps used under this Act:

Provided that, in the case of stamps used in the High Court, such rules shall be made with the concurrence of the Chief Justice of that Court.

(2) All such rules shall be published in the Official Gazette, and shall thereupon have the force of law.

42. Stamping documents inadvertently received.—(1) No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.

(2) But, if any such document is through mistake or inadvertence received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of the High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; and on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

43. Amended document.—Where any such document is amended in order merely to correct a mistake and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

44. Cancellation of stamp.—(1) No document requiring a stamp under this Act shall be filed, or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

(2) Such officer as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation

by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

CHAPTER VII

MISCELLANEOUS

45. Sale of stamps.—(1) The State Government may, from time to time, make rules for regulating the sale of, and the particulars to be entered at the time of sale on, stamps to be used under this Act, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

(2) All such rules shall be published in the Official Gazette and shall thereupon have the force of law.

(3) Any person appointed to sell stamps who disobeys any rule made under this section, and any person not so appointed who sells or offers for sale any stamps, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

46. Enlargement of time.—Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Act, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

47. Power to suspend, reduce or remit fees.—(1) The State Government may, from time to time, subject to such conditions or restrictions as it may think fit to impose, by notification in the Official Gazette, suspend the payment of or reduce or remit, in the whole of West Bengal or in any part thereof, all or any of the fees mentioned in Schedules I and II to this Act and may in like manner cancel or vary such order.

(2) The State Government may, from time to time by rules, prescribe the manner in which any fee the payment of which is suspended under sub-section (1) may be realised and for this purpose direct that such fee may be recovered as a public demand.

48. Saving of fees to certain officers of High Court.—Nothing in Chapters II and VI of this Act applies to the Commission payable to the Accountant-General of the High Court or to the fees which any officer of the High Court is allowed to receive in addition to a fixed salary.

49. Continuance in force of the existing rules.— Until rules are framed under Ss. 9, 35, 41, 45 and sub-section (2) of Section 47 and until notifications are issued under sub-section (1) of Section 47, the rules and notifications in force on the date of commencement of the Act in respect of matters referred to in those sections shall, in so far as they are not inconsistent with this Act, continue.

50. Repeal and savings.—(1) The Court-fees Act, 1870, in its application to the State of West Bengal and in relation to the fees and stamps other than fees and stamps relating to documents presented or to be presented before an officer serving under the Central Government is hereby repealed.

(2) All suits and proceedings instituted before the commencement of the West Bengal Court-fees Ordinance, 1969, and all proceedings by way of appeal, revision or otherwise arising therefrom whether instituted before or after such commencement shall, notwithstanding the repeal of the Court-fees Act, 1870, be governed by the provisions of the said Act and the rules made thereunder.

(3) The West Bengal Court-fees Ordinance, 1969, is hereby repealed.

(4) Anything done or any action taken under the West Bengal Court-fees Ordinance, 1969, shall be deemed to have been validly done or taken under this Act as if this Act had commenced on the 10th day of January, 1970.

SCHEDULE I.

Ad valorem Fees

Number.		Proper Fee.
1. Plaint written statement pleading a set-off or counter claim or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to the High Court or any Civil or Revenue Court except the Court mentioned in section 3.	When the amount or value of the subject-matter in dispute does not exceed seventy-five rupees, for every five rupees or part thereof of such amount or value, and	Forty paise.
	when such amount or value exceeds seventy-five rupees, for every five rupees or part thereof in excess of seventy-five rupees, up to one hundred rupees, and	Fifty paise.
	when such amount or value exceeds one hundred rupees, for every ten rupees or part thereof, in excess of one hundred rupees, up to one hundred and fifty rupees, and	One rupee and sixty-five paise.
	when such amount or value exceeds one hundred and fifty rupees, for every ten rupees or part thereof, up to one thousand rupees, and	One rupee and fifteen paise.
	when such amount or value exceeds one thousand rupees, for every one hundred rupees or part thereof, in excess of one thousand rupees, up to seven thousand five hundred rupees, and	Seven rupees and fifty paise.
	when such amount or value exceeds seven thousand five hundred rupees, for every two hundred and fifty rupees, or part thereof, in excess of seven thousand five hundred rupees, up to ten thousand rupees, and	Fifteen rupees.
	when such amount or value exceeds ten thousand rupees, for every five hundred rupees or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees, and	Twenty-two rupees and fifty paise.
	when such amount or value exceeds twenty thousand rupees, for every one thousand rupees or part thereof, in excess of twenty thousand rupees up to fifty thousand rupees, and	Thirty rupees.
	when such amount or value exceeds fifty thousand rupees, for every five thousand rupees or part thereof in excess of fifty thousand rupees : Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be ten thousand rupees.	Thirty-seven rupees and fifty paise.
(a) Petition under section 26 of the Provincial Insolvency Act, 1920 or application under section 95 of the Code of Civil Procedure, 1908,	...	An amount of the half the scale of fee prescribed in article 1 on the amount or compensation claimed.
(b) appeal against order on a petition or application falling under clause (a).	...	On the scale prescribed under article 1 on the amount in dispute.

Number.		Proper Fee.
3. (a) Petition under sections 53 and 54 of the Provincial Insolvency Act, 1920.	...	An amount of one-half of the scale of fee prescribed in article 1 on the market value of the subject-matter subject to a maximum fee of rupees five hundred.
(b) appeal against order on a petition falling under clause (a) whether by the Official Receiver or by the unsuccessful party.	...	An amount of one-half of the scale of fee prescribed in Article 1 on the market value of the subject-matter subject to a maximum fee of rupees five hundred.
4. Application for review of judgment, if presented on or after the ninetieth day from the date of the decree.	...	The fee leviable on the plaint or memorandum of appeal.
5. Application for review of judgment, if presented before the ninetieth day from the date of the decree.	...	One-half of the fee leviable on the plaint or memorandum of appeal.
6. Copy or translation of a judgment or order not being, or having the force of, a decree.	When such judgment or order is passed by any Civil Court, other than the High Court, or by the presiding offier of any Revenue Court or Office, or by any other Judicial or Executive Authority—	
	(a) If the amount or value of the subject-matter is fifty or less than fifty rupees.	Forty paise.
	(b) If such amount or value exceeds fifty rupees.	Seventy-five paise.
	When such judgment or order is passed by the High Court.	One rupee and fifty paise.
7. Copy of a decree or order having the force of a decree.	When such decree or order is made by any Civil Court other than the High Court, or by any Revenue Court—	
	(a) If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees.	Fifty paise.
	(b) If such amount or value exceeds fifty rupees.	One rupee.
	When such decree or order is made by the High Court.	Four rupees.
8. Copy of any document liable to stamp-duty under the Indian Stamp Act, 1899, when left by any party to a suit or proceeding in place of the original withdrawn.	(a) When the stamp-duty chargeable on the original does not exceed fifty paise.	The amount of the duty chargeable on the original.
	(b) In any other case.	Fifty paise.

Number.		Proper Fee.
9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act or copy of any account, statement, report or the like, taken out of any Civil or Criminal or Revenue Court or Office, or from the office of any Chief officer charged with the executive administration of a Division.	For every three hundred and sixty words or fraction of three hundred and sixty words.	Fifty paise.
10. Probate of a will or letters of administration with or without will annexed.	When the amount or the value of the property in respect of which the grant of probate or letters of administration is made, exceeds two thousand rupees, on such amount or value up to ten thousand rupees, and	Two per centum.
	when such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees, up to fifty thousand rupees, and	Three per centum.
	when such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees, up to a lakh of rupees, and	Four per centum.
	when such amount or value exceeds a lakh of rupees on the portion of such amount or value which is in excess of a lakh of rupees, up to two lakhs and fifty thousand rupees, and	Five per centum.
	when such amount or value exceeds two lakhs and fifty thousand rupees on the portion of such amount which is in excess of two lakhs and fifty thousand rupees up to three lakhs of rupees, and	Five and a half per centum.
	when such amount or value exceeds three lakhs of rupees on the portion of such amount which is in excess of three lakhs of rupees, up to four lakhs of rupees, and	Six per centum.
	when such amount or value exceeds four lakhs of rupees, on the portion of such amount which is in excess of four lakhs of rupees, up to five lakhs of rupees, and	Six and a half per centum.
	when such amount or value exceeds five lakhs of rupees, on the portion of such amount which is in excess of five lakhs of rupees :	Seven per centum.
	Provided that when, after the grant of certificate under the Indian Succession Act, 1925, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the	

Number.		Proper Fee.
	latter grant shall be reduced by the amount of the fee paid in respect of the former grant.	
11. Certificate under the Indian Succession Act, 1925.	When the amount or value of any debt or security specified in the certificate under section 374 of the Act exceeds one thousand rupees,	Two per centum on the first ten thousand rupees, three per centum on the next forty thousand rupees, four per centum on the next fifty thousand rupees, and five per centum on the next one lakh and fifty thousand rupees,
	and	
	when the aggregate amount or value of any debts or securities specified in the certificate and of any debts or securities to which the certificate has been extended under S. 376 of the Act, exceeds one thousand rupees.	five and a half per centum on the next fifty thousand rupees, six per centum on the next one lakh of rupees, six and a half per centum on the next one lakh of rupees, and seven per centum on the remainder of such amount or value. In respect of such portion of the aggregate amount or value as consists of the amount or value of debts or securities so specified, the fee hereinbefore provided in that behalf in this article and three per centum on such portion of the first ten thousand rupees, four and a half per centum on such portion of the next forty thousand rupees, six per centum on such portion of the next fifty thousand rupees, and seven and a half per centum on such portion of the next one lakh and fifty thousand rupees, eight and a quarter per centum on such portion of the next fifty thousand rupees,

Number	Proper Fee.
	nine per centum on such portion of the next one lakh of rupees, nine and three-quarters per centum on such portion of the next one lakh of rupees, and ten and a half per centum on such portion of the remainder of such aggregate amount or value as consists of the amount or value of debts or securities to which the certificate has been extended. *Note.* — *(1)* The amount of a debt is its amount including interest on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained. *(2)* Whether or not any power with respect to a security specified in a certificate has been conferred, under the Act and where such a power has been so conferred whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.
12. Plaint presented with an originating summons under the Rules of the High Court at Calcutta (Original Side), 1914.	The fee leviable on a plaint in a suit for the same relief, subject to a minimum fee of thirty rupees.

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Table of rates of ad valorem *fees leviable on the institution of suits*

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fees	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.
Rs.	Rs.	Rs. P.	Rs.	Rs.	Rs. P.
...	5	0 40	500	510	57 40
5	10	0 75	510	520	58 50
10	15	1 15	520	530	59 65
15	20	1 50	530	540	60 75
20	25	1 90	540	550	61 90
25	30	2 25	550	560	63 00
30	35	2 65	560	570	64 15
35	40	3 00	570	580	65 25
40	45	3 40	580	590	66 40
45	50	3 75	590	600	67 50
50	55	4 15	600	610	68 65
55	60	4 50	610	620	69 75
60	65	4 90	620	630	70 90
65	70	5 25	630	640	72 00
70	75	5 65	640	650	73 15
75	80	6 15	650	660	74 25
80	85	6 65	660	670	75 40
85	90	7 15	670	680	76 50
90	95	7 65	680	690	77 65
95	100	8 15	690	700	78 75
100	110	9 75	700	710	79 90
110	120	11 40	710	720	81 00
120	130	13 00	720	730	82 15
130	140	14 65	730	740	83 25
140	150	16 25	740	750	84 40
150	160	18 00	750	760	85 50
160	170	19 15	760	770	86 65
170	180	20 25	770	780	87 75
180	190	21 40	780	790	88 90
190	200	22 50	790	800	90 00
200	210	23 65	800	810	91 15
210	220	24 75	810	820	92 25
220	230	25 90	820	830	93 40
230	240	27 00	830	840	94 50
240	250	28 15	840	850	95 65
250	260	29 25	850	860	96 75
260	270	30 40	860	870	97 90
270	280	31 50	870	880	99 00
280	290	32 65	880	890	100 15
290	300	33 75	890	900	101 25
300	310	34 90	900	910	102 40
310	320	36 00	910	920	103 50
320	330	37 15	920	930	104 65
330	340	38 25	930	940	105 75
340	350	39 40	940	950	106 90
350	360	40 50	950	960	108 00
360	370	41 65	960	970	109 15
370	380	42 75	970	980	110 25
380	390	43 90	980	990	111 40
390	400	45 00	990	1,000	112 50
400	410	46 15	1,000	1,100	120 00
410	420	47 25	1,100	1,200	127 50
420	430	48 40	1,200	1,300	135 00
430	440	49 50	1,300	1,400	142 50
440	450	50 65	1,400	1,500	150 00
450	460	51 75	1,500	1,600	157 50
460	470	52 90	1,600	1,700	165 00
470	480	54 00	1,700	1,800	172 50
480	490	55 15	1,800	1,900	180 00
490	500	56 25	1,900	2,000	187 50
			2,000	2,100	195 00

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.		When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.	
Rs.	Rs.	Rs.	P.	Rs.	Rs.	Rs.	
2,100	2,200	202	50	9,250	9,500	720	00
2,200	2,300	210	00	9,500	9,750	735	00
2,300	2,400	217	50	9,750	10,000	750	00
2,400	2,500	225	00	10,000	10,500	772	50
2,500	2,600	232	50	10,500	11,000	795	00
2,600	2,700	240	00	11,000	11,500	817	50
2,700	2,800	247	50	11,500	12,000	840	00
2,800	2,900	255	00	12,000	12,500	862	50
2,900	3,000	262	50	12,500	13,000	885	00
3,000	3,100	270	00	13,000	13,500	907	50
3,100	3,200	277	50	13,500	14,000	930	00
3,200	3,300	285	00	14,000	14,500	952	50
3,300	3,400	292	50	14,500	15,000	975	00
3,400	3,500	300	00	15,000	15,500	997	50
3,500	3,600	307	50	15,500	16,000	1,020	00
3,600	3,700	315	00	16,000	16,500	1,042	50
3,700	3,800	322	50	16,500	17,000	1,065	00
3,800	3,900	330	00	17,000	17,500	1,087	50
3,900	4,000	337	50	17,500	18,000	1,110	00
4,000	4,100	345	00	18,000	18,500	1,132	50
4,100	4,200	352	50	18,500	19,000	1,155	00
4,200	4,300	360	00	19,000	19,500	1,177	50
4,300	4,400	367	50	19,500	20,000	1,200	00
4,400	4,500	375	00	20,000	21,000	1,230	00
4,500	4,600	382	50	21,000	22,000	1,260	00
4,600	4,700	390	00	22,000	23,000	1,290	00
4,700	4,800	397	50	23,000	24,000	1,320	00
4,800	4,900	405	00	24,000	25,000	1,350	00
4,900	5,000	412	50	25,000	26,000	1,380	00
5,000	5,100	420	00	26 000	27,000	1,410	00
5,100	5,200	427	50	27,500	28,000	1,440	00
5,200	5,300	435	00	28,000	29,000	1,470	00
5,300	5,400	442	50	29,000	30,000	1,500	00
5,400	5,500	450	00	30 000	31,000	1,530	00
5,500	5,600	457	50	31,000	32,000	1,560	00
5,600	5,700	465	00	32,000	33,000	1,590	00
5,700	5,800	472	50	33,000	34,000	1,620	00
5,800	5,900	480	00	34,000	35,000	1650	00
5,900	6,000	487	50	35,000	36,000	1,680	00
6,000	6,100	495	00	36,000	37,000	1,710	00
6,100	6,200	502	50	37,000	38,000	1,740	00
6,200	6,300	510	00	38,000	39,000	1,770	00
6,300	6,400	517	50	39,000	40,000	1,800	00
6,400	6,500	525	00	40.000	41,000	1,830	00
6,500	6,600	532	50	41,000	42,000	1,860	00
6,600	6,700	540	00	42,000	43,000	1,890	00
6,700	6,800	547	50	43,000	44,000	1,920	00
6,800	6,900	555	00	44,000	45,000	1,950	00
6,900	7,000	562	50	45,000	46,000	1,980	00
7,000	7,100	570	00	46,000	47,000	2,010	00
7,100	7,200	577	50	47,000	48,000	2,040	00
7,200	7,300	585	00	48.000	49,000	2,070	00
7,300	7,400	592	50	49 000	50,000	2,100	00
7.400	7,500	600	00	50,000	55,000	2,137	50
7,500	7,750	615	00	55,000	60,000	2,175	00
7,750	8,000	630	00	60,000	65,000	2,212	50
8,000	8,250	645	00	65,000	70,000	2,250	00
8,250	8,500	660	00	70,000	75,000	2,287	50
8,500	8,750	675	00	75,000	80,000	2,325	00
8,750	9,000	690	00	80,000	85,000	2,362	50
9,000	9,250	705	00	85,000	90,000	2,400	00

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.		When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.	
Rs.	Rs.	Rs.	P.	Rs.	Rs.	Rs.	P.
90,000	95,000	2,437	50	1.90,000	1,95,000	3,187	50
95,000	1,00,000	2,475	00	1,95,000	2,00,000	3,225	00
1,00,000	1,05,000	2,512	50	2,00'000	2,05,000	3,262	50
1,05,000	1,10,000	2,550	00				
1,10,000	1,15,000	2,587	50				
1,15,000	1,20.000	2,625	00				
1,20,000	1,25,000	2,662	50				
1,25,000	1,30,000	2,700	00				
1,30,000	1,35,000	2,737	50				
1,35,000	1,40,000	2,775	00				
1,40,000	1,45,000	2,812	50				
1,45,000	1,50,000	2,850	00				
1,50,000	1.55,000	2,887	50				
1,55,000	1,60,000	2,925	00				
1,60,000	1,65,000	2,962	50				
1,65,000	1.70,000	3,000	00				
1,70,000	1,75;000	3,037	50				
1,75,000	1,80,000	3,075	00				
1,80 000	1,85,000	3,112	50				
1,85,000	1,90,000	3,150	00				

and the fee increases at the rate of thirty-seven rupees and fifty paise for every five thousand rupees, or part thereof up to a maximum fee of ten thousand rupees, for example—

Rs.	Rs.	
3,00,000	4,012	50
4,00,000	4,762	50
5,00 000	5,512	50
6,00,000	6,262	50
7,00,000	7,012	50
8,00,000	7,762	50
9,00 000	8,512	50
10,00,000	9,262	50
11,00,000	10,000	00

SCHEDULE II

Fixed fees

Number.		Proper Fee.
1. Application or petition.	(a) When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings;	Fifteen paise.
	Or when presented to any officer of land-revenue by any person holding temporarily-settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement;	Fifteen paise.
	Or when presented to any municipal Commissioner or member of a Zilla Parishad under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement;	Fifteen paise.
	Or when presented to any Civil Court other than a principal Civil Court of original jurisdiction, or to any Court of Small Causes constituted under the Provincial Small Cause Courts Act, 1887, or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees;	Fifteen paise.
	Or when presented to any Civil, Criminal or Revenue Court, or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or officer, or of any other document on record in such Court or office.	Fifteen paise.

Number.		Proper Fee.
	(b) When containing a complaint or charge of any offence other than an offence for which police-officers may, under the Criminal Procedure Code, arrest without warrant, and presented to any Criminal Court;	In the case of a complaint or charge of an offence presented to a Criminal Court one rupee, and in other cases seventy-five paise.
	Or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any Revenue.officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act;	In the case of a complaint or charge of an offence presented to a Criminal Court one rupee, and in other cases seventy-five paise.
	Or to deposit in Court revenue or rent;	
	Or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant.	
	(c) When presented to the Board of Revenue or to any Chief Officer charged with the executive administration of a Division and not otherwise provided for by this Act.	One rupee and fifty paise.
	(d) For arrest or attachment before judgment or for temporary injunction –	
	(i) when presented to a Civil Court other than the High Court in relation to any suit or proceeding—	
	(1) if the value of the subject-matter is less than Rs. 50;	One rupee.
	(2) if the value is Rs. 50 and above;	Two rupees and fifty paise.
	(ii) when presented to the High Court.	Five rupees.
	(e) Under section 47 and Order XXI, rules 58 and 90 of the Code of Civil Procedure, 1908—	
	(i) when filed in Revenue Court or in Munsif's Court;	One rupee.
	(ii) when filed in the City Civil Court, Calcutta, a Subordinate Judge's Court or a District Court;	Two rupees and fifty paise.
	(iii) when filed in the High Court.	Five rupees.
	(f) Under sections 34, 72, 73 and 74 of the Indian Trusts Act, 1882.	Five rupees.
	(g) (i) For probate or letters of administration to have effect throughout India.	Twenty-five rupees.
	(ii) Application for probate or letters of administration not falling under clause (i)—	
	(1) if the value of the estate does not exceed Rs. 1,000;	Seventy-five paise.
	(2) if the value exceeds Rs. 1,000;	Five rupees.
	Provided that if a caveat is entered and the application is registered as a suit, one-half the scale of fee prescribed in Article 1 of Schedule I on the market value of the estate less the fee already paid on the application shall be levied.	
	(h) Application under section 14 or section 20 of the Arbitration Act, 1940, for a direction for filing an award or for an order for filing an agreement and application for enforcing foreign awards –	
	(i) when presented to a Munsiff's Court;	Fifteen rupees.
	(ii) when presented to the City Civil Court, Calcutta, a Subordinate Judge's Court, a District Court or the High Court—	
	(1) if the value of the subject-matter of the award does not exceed Rs. 5,000;	Fifteen rupees.

Number		Proper Fee
	(2) if such value exceeds Rs. 5,000 but does not exceed Rs. 10,000;	One hundred rupees.
	(3) if such value exceeds Rs. 10,000	Two hundred and fifty rupees.
	(i) Petition to the High Court for the admission of an Advocate, Attorney or Vakil.	Twenty rupees.
	(j) When presented to the High Court under section 115 of the Code of Civil Procedure, 1908, for revision of an order—	
	(i) when the value of the suit to which the order relates does not exceed Rs. 1,000;	Five rupees.
	(ii) when the value of the suit exceeds Rs. 1,000.	Ten rupees.
	(k) When presented to the High Court—	
	(i) for directions, orders or writs under Article 226 of the Constitution of India for any purpose other than the enforcement of the fundamental rights conferred by Part III thereof;	Twenty rupees.
	(ii) for directions, orders or writs under Article 226 for the enforcement of any of the fundamental rights conferred by Part III of the Constitution of India or for the exercise of its jurisdiction under article 227 thereof;	Twenty rupees.
	(iii) in any other case not otherwise provided for by this Act.	Two rupees.
2. Original petition not otherwise provided for.	When filed in—	
	(i) a Munsif's Court.	One rupee.
	(ii) the City Civil Court, Calcutta, a Subordinate Judge's Court or a District Court,	Five rupees.
	(iii) the High Court.	Twenty rupees.
3. Application to any Civil Court that records may be called for from another Court.	When the Court grants the application and is of opinion that the transmission of such records involves the use of the post.	Seventy-five paise in addition to any fee levied on the application under clause (a), clause (b), or clause (d) of article 1 of this Schedule.
4. Application for leave to sue as a pauper.	...	Fifty paise.
5. Application for leave to appeal as a pauper.	(a) When presented to a District Court.	One rupee.
	(b) When presented to a Commissioner or the High Court,	Two rupees.
6. Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.	...	Fifty paise.
7. Bail bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1898, or the Code of Civil Procedure, 1908, and not otherwise provided for by this Act.	...	Fifty paise.

Number.		Proper Fee.
8. Undertaking under section 49 of the Indian Divorce Act, 1869.	...	Fifty paise.
9. Mukhtarnama, Vakalatnama or any paper signed by an advocate signifying or intimating that he is retained for a party—	When presented for the conduct of any one case—	
	(a) to any Civil or Criminal Court other than the High Court, or to any Revenue Court, or to any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (b) and (c) of this number.	One rupee.
	(b) to the Board of Revenue or to any officer charged with the executive administration of a Division, not being the Chief Revenue or Executive Authority,	One rupee and fifty paise.
	(c) to the High Court.	Two rupees.
10. Every copy of power-of-attorney when filed in any suit or proceeding.	...	Seventy-five paise.
11. Memorandum of appeal from an order inclusive of an order determining any question under section 47 or section 144 of the Code of Civil Procedure, 1908, and not otherwise provided for —	When presented—	
	(i) to any Court other than the High Court or to any Executive Officer other than the Board of Revenue or Chief Executive Authority.	One rupee.
	(ii) to the Board of Revenue or Chief Executive Authority,	Two rupees.
	(iii) to the High Court—	
	(1) Where the order was passed by a Subordinate Court or other authority—	
	(a) if the order relates to a suit or proceeding, the value of which exceeds one thousand rupees,	Ten rupees.
	(b) in any other case.	Five rupees.
	(2) Where the appeal is under clause 15 of the Letters Patent—	
	(a) from an order passed in exercise of appellate jurisdiction,	Ten rupees.
	(b) from an order passed in exercise of original jurisdiction, which would be appealable under the Code of Civil Procedure, 1908 had it been passed by a Subordinate Court,	Ten rupees.
	(c) in any other case.	One hundred rupees.
	(3) Where the appeal is under section 45B of the Banking Companies Act, 1949.	One hundred rupees.
	(4) Where the appeal is under section 411A of the Code of Criminal Procedure, 1898.	Five rupees.
	(iv) to the Government in pursuance of a statutory right to appeal for which no court-fee is leviable under any other enactment.	Five rupees.

Number		Proper Fee
12. Memorandum of appeal under section 39 of the Arbitration Act, 1940.	(i) Where the appeal is from an order of a Munsiff's Court,	Fifteen rupees.
	(ii) in any other case	One hundred rupees.
13. Caveat	...	Ten rupees.
14. Application under Act No. X of 1859, section 26, or Bengal Act No. VI of 1862, section 9.	...	Five rupees.
15. Plaint or memorandum of appeal in each of the following suits:—		
(i) to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court,	...	Fifteen rupees.
(ii) to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates,	...	Twenty rupees.
(iii) to obtain a declaratory decree where no consequential relief is prayed,	...	Fifteen rupees.
(iv) to set aside an award,	...	Twenty rupees.
(v) to set aside an adoption,		Fifteen rupees.
(vi) every other suit where it is not possible to estimate at a money-value the subject-matter in dispute, and which is not otherwise provided for by this Act.		
16. Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908—	(i) when presented to any court subordinate to the High Court,	Ten rupees.
	(ii) when presented to the High Court.	One hundred rupees.
17. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866.	...	Five rupees.
18. Every petition under the Indian Divorce Act, 1869, except petitions under section 44 of the same Act, and every memorandum of appeal under section 55 of the same Act.	...	Twenty rupees.

Number.	Proper Fee.
19. Every petition for restitution of conjugal rights, judicial separation, divorce or divorce by mutual consent under the Special Marriage Act, 1954, and every memorandum of appeal under section 39 of the same Act.	Five rupees.
20. Every petition for restitution of conjugal rights, judicial separation or divorce under the Hindu Marriage Act, 1955, and every memorandum of appeal under section 28 of the same Act.	Five rupees.
21. Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865.	Twenty rupees.
22. Petitions under the Indian Christian Marriage Act, 1872.	Two rupees.
23. Plaint or memorandum of appeal when presented to a Court under the Indian Colonial Divorce Jurisdiction Act, 1926.	Fifty rupees.
24. Plaint or memorandum of appeal when presented to a Court under the Dissolution of Muslim Marriages Act, 1939.	Ten rupees.
25. Petition — (a) questioning the election of any person as a Municipal Commissioner, when presented to a District Judge under section 36 of the Bengal Municipal Act, 1932 or to the Chief Judge, Small Cause Court of Calcutta under section 73 of the Calcutta Municipal Act, 1951, or to the District Judge, Howrah under the same section of the same Act as amended by the Howrah Municipal Act, 1965.	Fifteen rupees.
(b) Questioning the validity of an election under the West Bengal Zilla Parishads Act, 1963,	Fifteen rupees.

Number		Proper Fee
when presented to a District Judge under section 102 of the said Act to decide dispute relating to such elections.		
26. Application or petition to the Court under sections 391, 439 or 522 of the Companies Act, 1956.	...	Fifty rupees.
Any other application or petition to the Court for judicial action or relief under the said Act, not otherwise provided for under this Act.	...	Ten rupees.

SCHEDULE III

ANNEXURE A

VALUATION OF THE MOVABLE AND IMMOVABLE PROPERTY OF , DECEASED.

	Rs.	P.
Cash in the house and at the banks, household goods, wearing apparel, books, plate, jewels, etc. (State estimated value according to best of Executor's or Administrator's belief.)		
Property in Government securities transferable at the Public Debt Office. (State description and value at the price of the day; also the interest separately, calculating it to the time of making the application.)		
Immovable property consisting of ... ... (State description, giving, in the case of houses, the assessed value, if any, and the number of year's assessment the market-value is estimated at, and, in the case of land, the area, the market-value and all rents that have accrued.)		
Leasehold property ... ... (If the deceased held any leases for years determinable, state the number of year's purchase the profit rents are estimated to be worth and the value of such, inserting separately arrears due at the date of death and all rents received or due since that date to the time of making the application.)		
Property in public companies ... ... (State the particulars and the value calculated at the price of the day; also the interest separately, calculating it to the time of making the application.)		
Policy of insurance upon life, money put on mortgage and other securities, such as bonds, mortgages, bills, notes and other securities for money. (State the amount of the whole; also the interest separately, calculating it to the time of making the application.)		
Book debts ... ... (Other than bad.)		
Stock in trade (State the estimated value, if any.)		
Other property not comprised under the foregoing heads ... (State the estimated value, if any.)		
Total ...		
Deduct—amount shown in Annexure B not subject to duty ...		
Net Total ...		

ANNEXURE B

SCHEDULE OF DEBTS, ETC.

	Rs.	P.
Amount of debts due and owing from the deceased, payable by law out of the estate.		
Amount of funeral expenses		
Amount of mortgage incumbrances		
Property held in trust not beneficially or with general power to confer a beneficial interest.		
Other property not subject to duty		
Total ...		

[THE] COURTS (COLONIAL) JURISDICTION ACT, 1874

(37 & 38 Vict., c. 27)

[The text of the Act printed here is as on 15-11-1969.]

[30th June, 1874]

An Act to regulate the Sentences imposed by Colonial Courts where jurisdiction to try is conferred by Imperial Acts.

[Preamble and enacting words.]

Repealed by S. L. R. (No. 2) 1893, (56 and 57 Vict., c. 54.)]

1. Short title.—This Act may be cited for all purposes as THE COURTS (COLONIAL) JURISDICTION ACT, 1874.

NOTE.—There is a difference of opinion between the Calcutta and the Bombay High Courts as to the effect of this statute. In (1912) 39 Cal 487 (490), the Calcutta High Court held that this statute does not authorise the punishment of an act which does not amount to an offence under the English law and that in every case the charge must be framed in terms of the English law though the procedure may be governed by the Indian law. In (1889) 14 Bom 227, however, the Bombay High Court held that both the substantive and procedural law in such cases shall be Indian.

2. Definition of the term "colony."—For the purposes of this Act, the term "colony" shall not include any places within the United Kingdom, the Isle of Man, *[the Channel Islands, British India †[* *] but shall include] any plantation, territory, or settlement situate elsewhere within Her Majesty's dominions, and subject to the same local Government and for the purposes of this Act all plantations, territories, and settlements under a central legislature shall be deemed to be one colony under the same local Government.

[*] These words were substituted by A. O. (P.) 1937 and S. R. and O. 1937/230, for the words "or the Channel Islands, but shall include such territories as may for the time being be vested in Her Majesty by virtue of an Act of Parliament for the Government of India, and."

[†] The words "or British Burma," repealed by Burma Independence Act, 1947 (11 Geo. 6, Ch. 3), Section 5 and Sch. II, Pt. I.

***2A. Application of Act to British India and British Burma.**—This Act applies in relation to each Governor's Province and Chief Commissioner's Province of British India †[* * *] as it applies in relation to a colony.

[*] This section was inserted by A. O. (P.), 1937: S.R. and O. 1937/230.

[†] The words "and to British Burma" repealed by Burma Independence Act, 1947 (11 Geo. 6, Ch. 3), Section 5 and Sch. II, Pt. I.

3. At trials in any colonial courts by virtue of imperial Acts, courts empowered to pass sentences as if crimes had been committed in the colony.—When, by virtue of any Act of Parliament now or hereafter to be passed, a person is tried in a Court of any colony for any crime or offence committed upon the high seas or elsewhere out of the territorial limits of such colony and of the local jurisdiction of such Court, or if committed within such local jurisdiction made punishable by that Act, such person shall, upon conviction, be liable to such punishment as might have been inflicted upon him if the crime or offence had been committed within the limits of such colony and of the local jurisdiction of the Court, and to no other, anything, in any Act to the contrary notwithstanding:

Provided always, that if the crime or offence is a crime or offence not punishable by the law of the colony in which the trial takes place, the person shall, on conviction, be liable to such punishment (other than capital punishment) as shall seem to the Court most nearly to correspond to the punishment to which such person would have been liable in case such crime or offence had been tried in England.

[THE INDIAN] CRIMINAL LAW AMENDMENT ACT, 1908

(ACT XIV OF 1908)

[The text of the Act printed here is as on 15-11-1969.]

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SECTIONS
1. Short title and extent.

PART I
[Repealed.]

PART II
15. Definitions.
16. Power to declare association unlawful.
17. Penalties.
17A. Power to notify and take possession of places used for the purposes of an unlawful association.
17B. Movable property found in a notified place.
17C. Trespass upon notified places.
17D. The relinquishment of property.
17E. Power to forfeit funds of unlawful association.
17F. Jurisdiction barred.
18. Continuance of association.

THE SCHEDULE
[Repealed.]

STATEMENT OF OBJECTS AND REASONS

"Recent events have demonstrated that it is expedient to provide for the more speedy trial of anarchical offence and for the suppression of associations dangerous to the public peace. This Bill has been prepared to meet these objects. * * *

Part II provides for the suppression of unlawful associations. Such persons as are members of or in any way assist an association which encourages or aids the commitment of acts of violence or intimidation, or of which the members habitually commit such acts, are made liable to punishment, and a severe punishment is provided for persons managing or promoting such associations. Further the Governor-General in Council is empowered to declare certain associations to be unlawful, and the same penalties are provided for persons who after this declaration maintain their connection with them.

The Bill extends in the first instance to the provinces of Bengal and Eastern Bengal and Assam, and the Governor-General in Council is empowered to extend it to other provinces".

—Gazette of India, 1908, Part IV, p. 203.

ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Amended by Act 23 of 1932.
—In Madras, by Mad. Act 11 of 1950.
—In Maharashtra, by Bom. Acts 6 of 1947; 24 of 1959.

Section 3 — Note 1

(1) The trial of a British seaman for an offence committed on a British ship on the high seas must be conducted under the Criminal P. C., though the offence charged must be an offence under the English law. "In the case of Reg. v. Mount, L. R. 6 P. C. 283, a question arose not as to the nature of the offence but as to the amount of punishment that should be inflicted. All doubts on that point are now settled by 37 and 38 Vict., c. 27". (1894) 21 Cal 782 (784).

—Adapted by A. O. 1937; A. C. A. O. 1948; A. L. O. 1950; 2 A. L. O. 1956.
—Extended by Acts 59 of 1949; 30 of 1950.
—Bombay Acts 4 of 1950; 24 of 1959.
—Madras Act 35 of 1949.
—Punjab Act 18 of 1962.
—Regulation 7 of 1963.
—Repealed in part and amended by Act 38 of 1920.
—Repealed in part by Act 5 of 1922.

[THE INDIAN] CRIMINAL LAW AMENDMENT ACT, 1908

(ACT XIV OF 1908)[*]

[11th December, 1908.]

An Act to provide for the more speedy trial of certain offences, and for the prohibition of associations dangerous to the public peace.

WHEREAS it is expedient to provide for the more speedy trial of certain offences, and for the prohibition of associations dangerous to the public peace; It is hereby enacted as follows :

[*] For Statement of Objects and Reasons, see Gaz. of Ind., 1908, Pt. IV, p. 203; and for proceedings in Council, see ibid, Pt. VI, p. 158.

1. Short title and extent.—(1) This Act may be called **THE INDIAN CRIMINAL LAW AMENDMENT ACT**, 1908.

[*][(2) It extends to the whole of India except [†]the territories which, immediately before the 1st November, 1956, were comprised in Part B States.

(3) It applies to Assam[‡] and to the territories which, immediately before the 1st November, 1956 were comprised in the State of West Bengal; but the State Government of any State may, at any time, by notification[§] in the Official Gazette, bring the whole or any part thereof into force in the territories under its administration to which this Act extends.]

*†[* * * *]

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[*] Sub-sections (2) and (3) were substituted for the former sub-section (2), by 2 A. L. O., 1956.

[†] Immediately before the 1st November 1956, the following were the Part B States in India — Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Pepsu, Rajasthan, Saurashira and Travancore-Cochin. Of these Part B States, Jammu and Kashmir, Mysore, Rajasthan and Travancore-Cochin (now known as Kerala) have become independent States under Act 37 of 1956; Hyderabad (Telengana area) has merged with Andhra to form Andhra Pradesh; Madhya Bharat, Pepsu and Saurashtra now form parts of Madhya Pradesh, Punjab and Gujarat, respectively.

[‡] Assam is now divided into two States—Assam and Nagaland, with effect from 1-12-1963. United Khasi-Jaintia Hills district and Garo Hills district of Assam have gone to Meghalaya Autonomous State.

[§] This Act has been extended, under this provision to—
Bombay Presidency—Gaz. Ind. Extra., dated 4 1-1910;
Madras Presidency, the United Provinces and the Central Provinces— Ibid, dated 13-1-1910 and Ibid, 1910, Pt. I; p. 95;
Punjab—Punj. Gaz., Extra., dated 23-6-1930;
State of Delhi—Gaz. Ind., Extra., dated 9-12-1920;
Ajmer-Merwara—Gaz. Ind., 1930, Pt. II-A, p. 515;
Coorg—Coorg Gaz., Extra., dated 11-1-1932.
To the States, merged in the Central Provinces — C. P. and Berar Gaz., 1948, Extra., p. 121.

It has been extended to Berar by the Berar Laws Act, 1941 and had also been declared to be in force in the Sonthal Paraganas by notification under the Sonthal Parganas Settlement Regulation (III of 1872), Section 3 (3) (a), see Cal. Gaz., 1909, Pt. I, p. 649; in the Khondmals District by the Khondmals Laws Regulation, 1936, S. 3 and Schedule and in the Angul District by the Angul Laws Regulation, 1936, Section 3 and Schedule. This Reg. 5 of 1936 has now been repealed by Orissa Act 19 of 1967 (15-9-1967). Angul District forms part of Dhenkanal District of Orissa State.

This Act has also been extended to the new Provinces and Merged States by the Merged States (Laws) Act, 1949 (59 of 1949), S. 3 (1-1-1950), and to the Union Territories of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (30 of 1950), S. 3 (16-4-1950). Vindhya Pradesh forms part of M. P. State now—see Act 37 of 1956, S. 9 (1) (e).

The Act has been extended to the States Merged in the State of Bombay by Bombay Act 4 of 1950 and to the Hyderabad and Saurashtra areas of the Bombay State by Bombay Act 24 of 1959, S. 7 (27-4-1959).

It has been extended to the States Merged in the State of Tamil Nadu by T. N. Act 35 of 1949 and to Pepsu by Punjab Act 18 of 1962, S. 4 (1-8-1962) and to the Union Territory of Pondicherry by Regulation 7 of 1963 (1-10-1963).

[[illegible]] Former sub-section (3) was repealed by the Indian Criminal Law Amendment Repealing Act, 1922 (5 of 1922), Section 3.

STATE AMENDMENTS

Gujarat

Amendments made are the same as those of Maharashtra—Act 11 of 1960, S. 87 (1-5-1960) and Guj. A. L. (State and Concurrent Subjects) Order, 1960.

Maharashtra

(i) In sub-section (2), after the words and letter "comprised in Part B States" insert the words, "other than the Hyderabad and Saurashtra areas of the State of Bombay."

(ii) To sub-section (3), add the following proviso, namely:

"Provided that on the date of the commencement of the Criminal Law Amendment (Bombay Amendment and Extension) Act, 1959, the whole of this Act shall come into force in that part of the State of Bombay in which it was not in force immediately before such date." — Bom. Act 24 of 1959, S. 8 (27-4-1959) and Maha. A. L. (Am.) O., 1961.

PART I

SPECIAL PROCEDURE

[Repealed by the Indian Criminal Law Amendment Repealing Act, 1922 (5 of 1922), S. 3.]

PART II

UNLAWFUL ASSOCIATIONS

15. Definitions.—In this Part—

(1) "association" means any combination or body of persons, whether the same be known by any distinctive name or not; and

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Section 15 — Note 1

(1) The provisions of Sections 15 and 16, Criminal Law Amendment Act, 1908 do not offend the fundamental right guaranteed by Article 19 (1) (c) of the Constitution of India. AIR 1952 Assam 167 (169) = ILR (1952) 4 Assam 18 = 1952 Cri L Jour 1659. (Even assuming those requirements can be regarded as restrictions on the right of the citizen that would not render the section invalid because they should be regarded only as reasonable restrictions.)

(2) Sub-section (2) (b) of the section as amended in Madras by the Criminal Law Amendment (Madras) Act, 1950 is unconstitutional and void because it imposes restrictions on the right of the citizen to form associations or unions which fall outside the scope of what is permitted under Clause (4) of Article 19 of the Constitution. **AIR 1952 SC 196 (201) = 1952 SCR 597 = 1952 Cri L Jour 966.** (AIR 1951 Mad 147, **Affirmed.**)

(3) Although Section 15 (2) (b) does not expressly confer power on the Provincial Government to declare an association unlawful and although the Criminal Law Amendment (Madras) Act of 1950 has omitted Section 16 which alone conferred such power from the Act it cannot be held that the State is powerless in the matter. On the contrary it must be taken that such power is implied in the very terms of the amended Section 15 (2) (b). **AIR 1951 Mad 147 (176) = 52 Cri L Jour 515 (FB).**

(2) "unlawful association" means an association—

(a) which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts, or

(b) which has been declared to be unlawful by the State Government under the powers hereby conferred.

STATE AMENDMENTS

Andhra Pradesh (Andhra Area)

Same as that of Tamil Nadu — Act 30 of 1953, S. 53: A. P. Act 9 of 1961, S. 3 and Sch.

Gujarat

Same as that of Maharashtra—Act 11 of 1960, S. 87 and Guj. A. L. O., 1960.

Maharashtra

In clause (2), delete the word "or" at the end of sub-clause (a) and the whole of sub-clause (b). — Bom. Act 24 of 1959, S. 2 (27-4-1959.)

Tamil Nadu

In sub-section (2), for clause (b), substitute the following:

"(b) which has been declared by the State Government by notification in the Official Gazette to be unlawful on the ground (to be specified in the notification) that such association—

(i) constitutes a danger to the public peace, or

(ii) has interfered or interferes with the maintenance of public order or has such interference for its object, or

(iii) has interfered or interferes with the administration of the law, or has such interference for its object." — T. N. Act 11 of 1950, S. 2 (12-8-1950): Tamil Nadu A. L. O. 1969.

16. Power to declare association unlawful.—*[(1)] If the ‡State Government is of opinion that any association interferes or has for its object interference with the administration of the law or with the maintenance of law and order, or that it constitutes a danger to the public peace, the ‡State Government may, by notification in the ‡Official Gazette, declare such association to be unlawful.

†[* * * * *].

[*] The original S. 16 was renumbered as sub-section (1) of that section by the Criminal Law Amendment Act, 1932 (23 of 1932), S. 11.

[†] Sub-section (2), which was inserted by Act 23 of 1932, Section 11, was repealed by the A. O., 1937.

[‡] Substituted for 'Provincial Government' by A. L. O., 1950 and for "Local Official Gazette" by A. O., 1937, respectively.

Section 16 — Note 1

(1) No association is unlawful till the date of publication in the Gazette of the notification declaring it unlawful; a person, therefore, arrested before that date is not guilty, even though he knew of the declaration prior to its publication. AIR 1931 Lah 107 (111) = 12 Lah 471 = 32 Cri L Jour 653.

(2) Government must not only insert the declaration in the official Gazette, but, must publish it in such a manner as to allow reasonable opportunity for all people concerned to see it. AIR 1931 Bom 132 (133) = 55 Bom 356 = 32 Cri L Jour 572 (DB).

(3) It is not necessary to issue the Gazette to the public; it is enough if the accused was shown a copy before his arrest. AIR 1931 Bom 203 (204) = 32 Cri L Jour 725 (DB).

(4) Where a general notification declared that all associations, by whatever name the associations might be known or whether they might be known by any distinctive name or not, which had the following objects or any one of them; namely, disobedience of laws and orders of Government., non-payment of taxes, boycott and picketing of liquor and foreign cloth shops, on the ground that they interfered with the administration of law and order and constituted a danger to the public peace — **Held,** that the notification sufficiently complied with the terms of Section 16 read with

STATE AMENDMENTS

Andhra Pradesh (Andhra area)

Same as that of Tamil Nadu.—Act 30 of 1953. S. 53: A. P. Act 9 of 1961, Sec. 3 and Schedule.

Gujarat

Same as that of Maharashtra.—Act 11 of 1960, S. 87 and Guj. A. L. O., 1960.

Maharashtra

Delete Section 16.—Bom. Act 24 of 1959, S. 3 (27-4-1959.)

Tamil Nadu

For Section 16, substitute the following sections:

"16. (1) A notification issued under clause (b) of sub-section (2) of Section 15 in respect of any association shall—

(a) specify the ground on which it is issued, the reasons for its issue, and such other particulars, if any, as may have a bearing on the necessity therefor; and

(b) fix a reasonable period for any office bearer or member of the association or any other person interested to make a representation to the State Government in respect of the issue of the notification.

(2) Nothing in sub-section (1) shall require the State Government to disclose any facts which it considers to be against the public interest to disclose.

16A. (1) After the expiry of the time fixed in the notification for the making of representations in respect of the issue thereof, the State Government shall place before an Advisory Board constituted under sub-section (2) a copy of the notification and also of the representations, if any, received before such expiry.

(2) The State Government shall, whenever necessary, constitute one or more Advisory Boards; and each such Board shall consist of three persons who are, or have been, or are qualified to be appointed as, Judges of the High Court, and one of them shall be its Chairman. The Chairman and the other members of each Board shall be appointed by the State Government.

(3) The Advisory Board shall, after considering the materials placed before it and, if necessary, after calling for such further information as it may deem fit from the State Government or from any office bearer or member of the association concerned or any other person, submit its reports to the State Government.

(4) The report of the Advisory Board shall specify in a separate part thereof its opinion or that of the majority of its members as to whether or not there was sufficient cause for the issue of the notification in respect of the association concerned.

(5) Nothing in this section shall entitle any person to attend in person or to appear by any legal representative in any matter connected with the reference to the Advisory Board, and the proceedings of the Advisory Board and its report, excepting that part thereof in which its opinion or that of the majority of its members is specified, shall be confidential.

Section 16 — Note 1 (contd.)
Section 15. AIR 1934 Cal 161 (162) = 35 Cri L Jour 605.

(5) Since the effect of a declaration under Section 16 is to enable the police to investigate a cognizable offence punishable under Section 17, the declaration stands on the same footing as an information of a cognizable offence under the Penal Code. AIR 1952 Assam 167 (168) = ILR (1952) 4 Assam 18 = 1952 Cri L Jour 1659.

(6) Section 16 which merely lays down certain requirements for making a valid declaration cannot be considered to impose any restrictions on the rights guaranteed by Article 19 (1) (c) of the Constitution and therefore, to have become void under the Constitution. AIR 1952 Assam 167 (168) = ILR (1952) 4 Assam 18 = 1952 Cri L Jour 1659.

[But see ILR (1952) 2 Cal 78 (79) (DB) ** AIR 1951 Cal 505 (506) = 52 Cri L Jour 1087 (DB). (Fact that Section 16 has become void under Article 13 of the Constitution does not affect validity of prosecutions launched under Section 17 (1) for acts committed before the Constitution came into force.)]

(6) In any case where the Advisory Board or a majority of its members has reported that there is no sufficient cause for the issue of the notification in respect of the association concerned, the State Government shall cancel the notification in respect of such association." — T. N. Act 11 of 1950, S. 3 (12-8-1950): Tamil Nadu A. L. O., 1969.

17. Penalties.—(1) Whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, in any way assists the operations of any such association shall be punished with imprisonment for a term which may extend to six months or with fine or with both.

(2) Whoever manages or assists in the management of an unlawful association or promotes or assists in promoting a meeting of any such association, or of any members thereof as such members, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

*[(3) An offence under sub-section (1) shall be cognizable by the police, and notwithstanding anything contained in the Code of Criminal Procedure, 1898, shall be non-bailable.]

[*] Inserted by the Criminal Law Amendment Act, 1932 (23 of 1932), S. 12.

Section 17 — Note 1

(1) Clause 1 of Section 17 is intended to deal with members and all other persons identifying themselves with any unlawful body and Clause (2) of Section 17 is directed against the leaders. AIR 1926 Lah 357 (359) = 27 Cri L Jour 913 = 7 Lah 348 (DB).

(2) Where an association has been declared unlawful and the only charge against a person is that he is a member thereof the appropriate course for the Government to adopt is to put him on his trial in a Court of law on such charge under this Act. Resort to the emergency powers conferred on the executive under the Public Safety Acts resulting in the denial of a trial to such a person would be indefensible and not tolerated by Courts. AIR 1949 East Punj 130 (133, 134) = ILR (1949) East Punj 208 = 50 Cri L Jour 370.

(3) The Court in the proceedings under Section 17, has only to ascertain whether the association in question has been declared unlawful and then examine the evidence as to whether the person facing trial took part in its activities in the manner prohibited by the section. It is not within the province of the Court to determine whether there was necessity for declaring the association unlawful. AIR 1950 Nag 12 (14) = ILR (1949) Nag 976 = 51 Cri L Jour 254. (For purposes of the section Courts take judicial notice of the notification declaring the association unlawful.)

(4) Where an association has been declared unlawful under Section 16 prosecution must prove some overt act or conduct on the part of the accused which establish this connexion with the association at some time subsequent to such declaration. AIR 1931 Lah 145 (152) = 32 Cri L Jour 700.

(5) On mere declaration of the association as unlawful the association comes to an end and no active step is required from members to sever their connections with that body. AIR 1931 Bom 129 (130) = 55 Bom 484 = 32 Cri L Jour 472 (DB).

(6) Powers given by Sections 16 and 17 of the Act are not intended to be used so as to make people liable to penalties for having been members of associations at a time when they were lawful. AIR 1931 Bom 129 (131) = 55 Bom 484 = 32 Cri L Jour 472 (DB).

(7) There is no presumption that a person, who was a member of a lawful association, continued as a member after it has been declared unlawful. On the contrary Courts must presume that he would cease to be a member after the declaration. AIR 1931 Bom 129 (130) = 55 Bom 484 = 32 Cri L Jour 472 (DB) ** AIR 1931 Lah 153 (156) = 32 Cri L Jour 708.

(8) The word "assists" in Section 17 (1) must be construed in a reasonable way and means "intentionally assists". The section is obviously not designed to punish persons who, acting quite innocently, happen, by accident, to do something which furthers the operation of an unlawful association. AIR 1933 Mad 123 (124, 125) = 34 Cri L Jour 90 ** AIR 1952 All 359 (360) = 1952 Cri L Jour 682 ** AIR 1933 Mad 369 (370, 371) = 34 Cri L Jour 823 ** AIR 1931 Bom 200 (200) = 55 Bom 442 = 32 Cri L Jour 717 (DB).

(9) Intention to assist the operation of an unlawful association can be inferred by an unambiguous overt act. AIR 1933 Mad 369 (370, 371) = 34 Cri L Jour 823.

(10) The acts of a person who assists and the operations of the association declared unlawful should be so connected together that it should be possible to infer from them the existence of a design or calculation. AIR 1952 All 359 (360) = 1952 Cri L Jour 682.

(11) The mere existence of a common aim between the accused and the unlaw-

Section 17 — Note 1 (contd.)

ful association is not enough to involve assistance. AIR 1931 Bom 200 (200) = 55 Bom 442 = 32 Cri L Jour 717 (DB) ** AIR 1932 Lah 613 (614) = 34 Cri L Jour 87 ** AIR 1932 Lah 578 (578) = 34 Cri L Jour 72.

(12) Words "in any way assists the operations of any such association" cover acts which assist, even without the co-operation of such associations. AIR 1931 Bom 206 (207) = 32 Cri L Jour 804 (DB).

(13) It is immaterial whether the person who renders help to an unlawful association has been authorised to do so or whether he acts purely on his own initiative. AIR 1926 Lah 357 (359) = 7 Lah 348 = 27 Cri L Jour 913 (DB).

(14) The mere display of a Congress flag over a shop, and refusal to take it down at the request of the police, does not amount to assisting the operations of an 'unlawful association' and is not an offence under Section 17 (1). AIR 1933 All 95 (96) = 34 Cri L Jour 22 ** AIR 1933 Cal 695 (695) = 34 Cri L Jour 925 (DB).

(15) Publication of notice in a newspaper stating that meeting of an unlawful association is to take place and giving its time and place is assisting the promoters and amounts to offence under Section 17 (1). AIR 1931 Bom 206 (207, 208) = 32 Cri L Jour 804 (DB).

(16) Where the accused reproduced in his newspaper an appeal to stop trading in foreign cloth made by a person describing himself as a president of the war council and he was charged under Section 17 (1) with assisting the operations of an unlawful association: **Held,** that the article did not advocate any unlawful action; it only expressed views on an economic question and no offence was made under Section 17 (1). AIR 1931 Bom 413 (415) = 32 Cri L Jour 1158 (DB).

(17) The mere fact that at a conference, people were asked to join the Congress and boycott of British goods was preached and also the civil disobedience movement was promoted, does not make the conference identical with the Congress which has been declared unlawful and a person who merely presided at such a conference cannot be convicted under Section 17 (1) or (2) of the Criminal Law Amendment Act. AIR 1932 Lah 615 (616) = 34 Cri L Jour 25.

(18) A person making a speech at a meeting of an unlawful assembly must be held to be assisting in promoting a meeting though the speech is not specially violent. AIR 1934 Cal 161 (162) = 35 Cri L Jour 605.

(19) Where the accused was charged as a Jathadar or the leader or controller of a Jatha of the Akali Dal who had addressed meetings—appealing to the Sikhs to organise themselves into jathas and he admitted he was a Jathadar, it amounted to his pleading guilty to an offence under Section 17. AIR 1926 Lah 406 (407) = 7 Lah 359 = 27 Cri L Jour 907 (DB).

(20) To constitute the offence of promoting or assisting meeting of an unlawful association (1) there must be an association already in existence and (2) it must be promoting or assisting to promote a meeting of the association. Urging people to form into Jathas is not promoting. AIR 1925 Lah 522 (522) = 6 Lah 349 = 26 Cri L Jour 1135.

(21) Exhorting Sikhs to enlist themselves for Shahida Jathas and to go out collecting funds for a committee declared unlawful is not an offence under Sections 17 (1) and 17 (2) but is an offence under Section 117, I. P. C. AIR 1926 Lah 115 (116) = 26 Cri L Jour 1374.

(22) One who organizes or assists in organizing a meeting is also promoting or assisting to promote it. AIR 1926 Lah 405 (405) = 7 Lah 357 = 27 Cri L Jour 911 (DB).

(23) Accused exhorted people to hold Diwans and to take steps to establish independent State — On his departure from the place unlawful association was formed — **Held,** accused instigated the formation of the association and abetted it and his act therefore, would come under Section 117, I. P. C. AIR 1924 Lah 440 (443, 444) = 5 Lah 1 = 26 Cri L Jour 1352 (DB).

(24) The leader of a party who induces certain boys to take out and publicly exhibit Congress flags, and clothes and some cash were agreed to be given in lieu of services rendered, is guilty under Section 17 (2). AIR 1933 Lah 387 (388) = 34 Cri L Jour 1178.

(25) A Police report that a certain person was assisting the volunteers by giving them shelter in his house was held not to make out a prima facie case of offence under Section 17 (2). AIR 1922 Cal 538 (539) = 24 Cri L Jour 1 (DB).

(26) Unless there is evidence regarding the management or assistance in the management or to the promotors of a body declared unlawful, merely being its members and parading through the town shouting its slogans does not justify a conviction under Section 17 (2), there can be conviction only under Section 17 (1) in such cases. AIR 1950 All 149 (149) = 51 Cri L Jour 458.

(27) Where a Pleader assists and promotes a meeting of an unlawful association, for which he is convicted under Section 17 (2), his action is nothing short of an open and defiant violation of law; by such conduct he makes himself liable to action under Section 12, Legal Practitioners' Act. AIR 1934 Cal 808 (809) (DB).

(28) An association called "Akhil Bharat Prabhat Feri Sangh" was declared unlawful. A Prabhat Feri procession was

*[**17A. Power to notify and take possession of places used for the purposes of an unlawful association.**—(1) The †State Government may, by notification in the ‡Official Gazette, notify any place which in its opinion is used for the purposes of an unlawful association.

Explanation.—For the purposes of this section "place" includes a house or building, or part thereof or a tent or vessel.

(2) The District Magistrate or in a Presidency-town the Commissioner of Police, or any officer authorised in this behalf in writing by the District Magistrate or Commissioner of Police, as the case may be, may thereupon take possession of the notified place evict therefrom any person found therein, and shall forthwith make a report of the taking possession to the †State Government:

Provided that where such place contains any apartment occupied by women or children, reasonable time and facilities shall be afforded for their withdrawal with the least possible inconvenience.

(3) A notified place whereof possession is taken under sub-section (2) shall be deemed to remain in the possession of Government so long as the notification under sub-section (1) in respect thereof remains in force.]

[*] Sections 17-A to 17-F were inserted by the Criminal Law Amendment Act, 1932 (23 of 1932), S. 13.

[†] Substituted for "Provincial Government" by A. L. O., 1950.

[‡] Substituted by A. O., 1937 for "Local Official Gazette."

OBJECTS AND REASONS

Sections 17A to 17F were inserted in this Act by Section 13 of the Criminal Law Amendment Act, 1932. In their Report on that Act the Select Committee observe:—"We have made extensive alterations in the amendments proposed in the Criminal Law Amendment Act, 1908, with the object of providing some sort of machinery for the hearing of appeals against an order of forfeiture. Mr. Jadhav was of opinion that the provision for forfeiture should be removed altogether. We have decided that it should be retained, but that in respect of movables seized in notified place, forfeiture, now to

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Section 17 — Note 1 (contd.)

taken out singing political songs: **Held,** that the persons taking part in such a procession were assisting the operations of the association. AIR 1931 Bom 202 (202) = 32 Cri L Jour 723 (DB).

(29) Where a person has been charged under Section 17 (1), Criminal Law Amendment Act, 1908 of picketing foreign cloth shops, and under Section 4 of Ordinance V of 1932 of molestation in respect of the said picketing and has been convicted under both the sections, it is illegal to award separate sentences in respect of each of the convictions. AIR 1933 Mad 337 (338) = 34 Cri L Jour 277.

(30) An offence of abetment under Section 17 (1) can be tried as a summons case. AIR 1931 Bom 199 (199) = 32 Cri L Jour 718 (DB).

(31) Section 17 (3) does not take away from a person accused of an offence under Section 17 (1), the right in suitable cases, to be released on bail. AIR 1950 Mad 391 (391) = 51 Cri L Jour 913.

(32) A conviction under Section 17 (1), for taking part before the Constitution came into force in a meeting of the Communist party which was declared an unlawful association under Section 16 of the Act, is not illegal although Section 16 of the Act has been held to be void under Section 13 of the Constitution. AIR 1951 Cal 505 (506) = 52 Cri L Jour 1087 (DB).

(33) Where an association has been declared to be unlawful by reason of the prejudicial activities of its members and a member is reasonably believed to have himself participated in such activities the use against him of the emergency powers of the executive for the prevention of such activities cannot be considered objectionable, merely because that person could have been, if the Government so desired, prosecuted under this section. AIR 1949 East Punj 130 (Pr 12) = ILR (1949) East Punj 208 = 50 Cri L Jour 370.

Section 17-A — Note 1

(1) Association declared unlawful by notification — Place used for — Possession of place taken — Notification withdrawn but possession not relinquished — Government and not its servants, is liable to pay damages to owner of premises — Order of possession made by District Magistrate in favour of tenants is not one of allotment under Section 7 of the U. P. (Temporary) Control of Rent and Eviction Act, 1947. AIR 1963 All 484 (485, 486) = 1963 All LJ 308.

be ordered by the District Magistrate or Commissioner of Police instead of by the Local Government, should only be ordered after an opportunity has been afforded to the owners of the articles to show either to the officer proposing to forfeit them or to a judicial officer that they are not liable to forfeiture. In the same way with respect to monies and securities we have provided that they shall be released from detention and shall not be forfeited if the owner establishes before judicial officer that they are not being used and are not intended to be used for the purposes of an unlawful association. We have also provided that information obtained in the enquiries which may be made during the proceedings with a view to seizure and forfeiture shall not be disclosed."

STATE AMENDMENTS

Andhra Pradesh (Andhra area)

Same as that of Tamil Nadu — Act 30 of 1953, S. 53: A. P. Act 9 of 1961, Section 3 and Schedule.

Gujarat

Same as that of Maharashtra.—Act 11 of 1960, S. 87 and Guj. A. L. O., 1960.

Maharashtra

Delete Section 17-A. — Bom. Act 24 of 1959, S. 3 (27-4-1959.)

Tamil Nadu

In Section 17A of the said Act, after sub-section (2), the following sub-sections shall be inserted, namely :—

"(2A) Any person aggrieved by a notification issued under sub-section (1) in respect of any place may, within thirty days from the date on which such notification is published in the Official Gazette, apply to the District Judge of the District in which such place is situated, or if such place is situated in the Presidency-town, to the Chief Judge of the Small Cause Court, for a declaration that the place has not been used for the purposes of any unlawful association and if such District Judge or Chief Judge makes such declaration, the State Government shall cancel the notification in respect of the place.

(2B) In disposing of an application under sub-section (2-A), the procedure to be followed shall be the procedure laid down in the Code of Civil Procedure, 1908, for the investigation of claims so far as it can be made to apply; and the decision of the District Judge or Chief Judge of the Small Cause Court, as the case may be, shall be final."—T. N. Act 11 of 1950, S. 4 (12-8-1950): Tamil Nadu A. L. O., 1969.

*[**17B. Movable property found in a notified place.**— (1) The District Magistrate, Commissioner of Police or officer taking possession of a notified place shall also take possession of all movable property found therein, and shall make a list thereof in the presence of two respectable witnesses.

(2) If, in the opinion of the District Magistrate, or in a Presidency-town the Commissioner of Police, any articles specified in the list are or may be used for the purposes of the unlawful association, he may proceed subject to the provisions hereafter contained in this section to order such articles to be forfeited to Government.

(3) All other articles specified in the list shall be delivered to the person whom he considers to be entitled to possession thereof, or, if no such person is found, shall be disposed of in such manner as the District Magistrate or Commissioner of Police, as the case may be, may direct.

(4) The District Magistrate or Commissioner of Police shall publish, as nearly as may be in the manner provided in Section 87 of the Code of Criminal Procedure, 1898, for the publication of a proclamation, a notice specifying the article which it is proposed to forfeit and calling upon any person claiming that any article is not liable to forfeiture to submit in writing within fifteen days any representation he desires to make against the forfeiture of the article.

(5) Where any such representation is accepted by the District Magistrate or Commissioner of Police, he shall deal with the article concerned in accordance with the provisions of sub-section (3).

(6) Where any such representation is rejected, the representation, with the decision thereon, shall be forwarded to the District Judge, in the case of a decision by a District Magistrate, or, to the Chief Judge of the Small Cause Court, in the case of a decision by the Commissioner of Police, and no order of forfeiture shall be made until the District Judge or Chief Judge of the Small Cause Court, as the case may be, has adjudicated upon the representation. Where the decision is not confirmed the articles shall be dealt with in accordance with the provisions of sub-section (3).

(7) In making an adjudication under sub-section (6) the procedure to be followed shall be the procedure laid down in the Code of Civil Procedure, 1908, for the investigation of claims so far as it can be made to apply, and the decision of the District Judge or Chief Judge of the Small Cause Court, as the case may be, shall be final.

(8) If the article seized is livestock or is of a perishable nature, the District Magistrate or Commissioner of Police may, if he thinks it expedient, order the immediate sale thereof, and the proceeds of the sale shall be disposed of in the manner herein provided for the disposal of other articles.]

[*] See (*) matter under Section 17-A

STATE AMENDMENTS

Gujarat

Same as that of Maharashtra — Act 11 of 1960. S. 87 and Guj. A. L. O., 1960.

Maharashtra

Delete Section 17-B.—Bom. Act 24 of 1959, S. 3 (27-4-1959) Maha. A. L. (Am.) O 1961.

*[**17C. Trespass upon notified places.**—Any person who enters or remains upon a notified place without the permission of the District Magistrate, or of an officer authorised by him in this behalf, shall be deemed to commit criminal trespass.]

[*] See (*) matter under Section 17-A.

STATE AMENDMENTS

Gujarat

Same as that of Maharashtra. Act 11 of 1960, S. 87 and Guj. A.L.O., 1960.

Maharashtra

Delete Section 17-C.—Bom. Act 24 of 1959 (27-4-1959).

*[**17D. The relinquishment of property.**—Before a notification under sub-section (1) of Section 17A is cancelled, the †[State Government] shall give such general or special directions as it may deem requisite regulating the relinquishment by Government of possession of notified places.]

[*] See (*) matter under Section 17-A.

[†] Substituted for "Provincial Government" by A. L. O., 1950.

STATE AMENDMENTS

Gujarat

Same as that of Maharashtra. Act 11 of 1960, S. 87 and Guj. A.L.O., 1960.

Maharashtra

Delete Section 17-D.—Bom. Act 24 of 1959, S. 3 (27-4-1959).

*[**17E. Power to forfeit funds of an unlawful association.**—(1) Where the ‡[State Government] is satisfied, after such inquiry as it may think fit, that any monies, securities or credits are being used or are intended to be used for the purposes of an unlawful association, the ‡[State Government] may, by order in writing, declare such monies, securities or credits to be forfeited to Government.

Section 17-D — Note 1

(1) Association declared unlawful by notification — Place used for — Possession of place taken — Notification withdrawn but possession not relinquished — Government and not its servants is liable to pay damages to owner of premises. AIR 1963 All 484 (485, 486).

(2) A copy of an order under sub-section (1) may be served on the person having custody of the monies, securities or credits, and on the service of such copy such person shall pay or deliver the monies, securities or credits to the order of the ‡[State Government]:

Provided that, in the case of monies or securities, a copy of the order may be endorsed for execution to such officer as the ‡[State Government] may select, and such officer shall have power to enter upon and search for such monies and securities in any premises where they may reasonably be suspected to be, and to seize the same.

(3) Before an order of forfeiture is made under sub-section (1) the ‡[State Government] shall give written notice to the person (if any) in whose custody the monies, securities or credits are found of its intention to forfeit, and any person aggrieved thereby may within fifteen days from the issue of such notice file an application to the District Judge in a district, or to the Chief Judge of the Small Cause Court in a presidency-town, to establish that the monies, securities or credits or any of them are not liable to forfeiture, and if any such application is made, no order of forfeiture shall be passed in respect of the monies, securities or credits concerned until such application has been disposed of, and unless the District Judge or Chief Judge of the Small Cause Court has decided that the monies, securities or credits are liable to forfeiture.

(4) In disposing of an application under sub-section (3) the procedure to be followed shall be the procedure laid down in the Code of Civil Procedure, 1908, for the investigation of claims so far as it can be made to apply, and the decision of the District Judge or Chief Judge of the Small Cause Court, as the case may be, shall be final.

(5) Where the ‡[State Government] has reason to believe that any person has custody of any monies, securities or credits which are being used or are intended to be used for the purposes of an unlawful association, the ‡[State Government] may, by order in writing, prohibit such person from paying, delivering, transferring or otherwise dealing in any manner whatsoever with the same, save in accordance with the written orders of the ‡[State Government]. A copy of such order shall be served upon the person to whom it is directed.

(6) The ‡[State Government] may endorse a copy of an order under †[sub-section (5)] for investigation to any officer it may select, and such copy shall be warrant whereunder such officer may enter upon any premises of the person to whom the order is directed, examine the books of such person, search for monies and securities, and make inquiries from such person, or any officer, agent or servant of such person, touching the origin of and dealings in any monies, securities or credits which the investigating officer may suspect are being used or are intended to be used for the purposes of an unlawful association.

(7) A copy of an order under this section may be served in the manner provided in the Code of Criminal Procedure, 1898, for the service of a summons, or, where the person to be served is a corporation, company, bank or association of persons, it may be served on any secretary, director or other officer or person concerned with the management thereof, or by leaving it or sending it by post addressed to the corporation, company, bank or association at its registered office, or, where there is no registered office, at the place where it carries on business.

(8) Where an order of forfeiture is made under sub-section (1) in respect of any monies, securities or credits in respect of which a prohibitory order has been made under †[sub-section (5)], such order of forfeiture shall have effect from the date of the prohibitory order, and the person to whom the prohibitory order was directed shall pay or deliver the whole of the monies, securities, or credits forfeited, to the order of the ‡[State Government].

(9) Where any person liable under this section to pay or deliver any monies, securities, or credits to the order of the ‡[State Government] refuses or fails to comply with any direction of the ‡[State Government] in this behalf, the ‡[State

Government] may recover from such person, as arrears of land-revenue or as a fine, the amount of such monies or credits or the market value of such securities.

(10) In this section, "security" includes a document whereby any person acknowledges that he is under a legal liability to pay money, or whereunder any person obtains a legal right to the payment of money; and the market value of any security means the value as fixed by any officer or person deputed by the ‡[State Government] in this behalf.

(11) Except so far as is necessary for the purposes of any proceeding under this section, no information obtained in the course of any investigation made under sub-section (6) shall be divulged by any Officer of Government, without the consent of the ‡[State Government].]

[*] See (*) matter under Section 17-A.

[†] Substituted by the Repealing and Amending Act, 1934 (24 of 1934), Sec. 2 and Sch. I, for "sub-section (3)."

[‡] Substituted for "Provincial Government" by A. L. O., 1950.

*[**17F. Jurisdiction barred.**—Every report of the taking possession of property and every declaration of forfeiture made, or purporting to be made under this Act, shall, as against all persons, be conclusive proof that the property specified therein has been taken possession of by Government or has been forfeited, as the case may be, and save as provided in Sections 17B and 17E no proceeding purporting to be taken under Sections 17A, 17B, 17C, 17D or 17E shall be called in question by any Court, and no civil or criminal proceeding shall be instituted against any person for anything in good faith done or intended to be done under the said sections or against Government or any person acting on behalf of or by authority of Government for any loss or damage caused to or in respect of any property whereof possession has been taken by Government under this Act.]

[*] See (*) matter under Section 17-A.

STATE AMENDMENTS

Andhra Pradesh (Andhra area)

Same as that of Tamil Nadu — Act 30 of 1953, S. 53 and A. P. Act 9 of 1961, Section 3 and Schedule

Gujarat

Same as that of Maharashtra.—Act 11 of 1960, S. 87 and Guj. A. L. O., 1960.

Maharashtra

For Section 17F, substitute the following:

> "17F. Every declaration of forfeiture made, or purporting to be made, under this Act, shall, as against all persons, be conclusive proof that the property specified therein has been forfeited and save as provided in Section 17E no proceeding purporting to be taken under that section shall be called in question by or in any Court, and no civil or criminal proceeding shall be instituted against any person for anything in good faith done or intended to be done under that section." — Bom. Act 24 of 1959, S. 4 (27-4-1959): Maha. A. L. (Am.) O., 1961.

Tamil Nadu

In Section 17F of the said Act, for the words figures and letters "save as provided in Sections 17B and 17E," substitute the words, figures and letters "save as provided in Sections 17A, 17B and 17E." — T. N. Act 11 of 1950, S. 5 (12-8-1950). Tamil Nadu A. L. O., 1969.

18. Continuance of association.—An association shall not be deemed to have ceased to exist by reason only of any formal act of dissolution or change of title,

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Section 17-F — Note 1

(1) Association declared unlawful by notification — Place used for — Possession of place taken — Notification withdrawn but possession not relinquished — Government, and not its servants, is liable to pay damages to owner of premises. AIR 1963 All 484 (485, 486).

but shall be deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof.

THE SCHEDULE.—[Repealed by the Indian Criminal Law Amendment Repealing Act, 1922 (5 of 1922), S. 3.]

[THE] CRIMINAL LAW AMENDMENT ACT, 1932
(ACT XXIII OF 1932)

[The text of the Act printed here is as on 30-6-1970.]

CONTENTS

SECTIONS

1. Short title, extent, duration and commencement.
2 to 4. [Repealed.]
5. Dissemination of contents of proscribed document.
6. [Repealed.]
7. Molesting a person to prejudice of employment or business.
8. [Repealed.]
9. Procedure in offences under the Act.
10. Power of State Government to make certain offences cognizable and non-bailable.
11 to 17. [Repealed.]
18. Adoption and continuance of action taken under Ordinance 10 of 1932.
19. Adoption and continuance of action taken under Act 23 of 1931 as amended by Ordinance 10 of 1932.
20. [Repealed.]

STATEMENT OF OBJECTS AND REASONS

"The Civil Disobedience Movement has made it necessary to supplement the Criminal Law by means of certain Ordinances promulgated by the Governor-General in exercise of his powers under Section 72 of the Government of India Act. The Special Powers Ordinance, which combines powers taken by the earlier ordinances, expires on the 29th December 1932. Though the Ordinances have enabled Local Governments and their officers to control the movement, its organisers have not yet abandoned their attempt to paralyse Government and to coerce law-abiding citizens. The experience of the last two years and of previous movements on the same lines shows that, in the absence of certain of the powers at present existing, it is no difficult matter to start or revive such subversive movements. The conditions prevailing at present as a result of measures taken by the Government of India and Local Governments are such as to render it unnecessary to assume for the whole of British India all the powers conferred by the Special Powers Ordinance now in force, and it is hoped that the powers conferred by Chapter II (Emergency Powers). Chapter IV (Special Courts) and Chapter V (Special provisions against instigation to the illegal refusal of the payment of certain liabilities) will only be needed in certain provinces. It is, therefore, intended by this Bill to take only those powers which a general review of the situation shows are required for the whole of India, and to leave it to the Local Governments to supplement these provisions by means of local legislation in order to meet local or emergent conditions.

The present Bill reproduces in the form of amendments to Acts already on the statute-book, certain provisions of the Special Powers Ordinance (10 of 1932) and includes:

(a) provisions against associations dangerous to the public peace.

(b) provisions against certain forms of intimidation.

(c) provisions to secure greater control over the Press".

—Gazette of India. 17-9-1932, Part V, page 206.

ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Amended by Act 24 of 1934.

—Amended in Madhya Pradesh, by M.P. Act 10 of 1967 in Maharashtra and Gujarat by Bom. Act 24 of 1959 in Goa, Daman and Diu by G. S. R. 863 of 1966; in Pondicherry, by G. S. R. 200 of 1967; in Punjab by Punj. Act 25 of 1964.

—Adapted by A. O., A. C. A. O., 1948; A. L. O., 1950; 3 A. L. O., 1956

—Extended by Acts 59 of 1949; 30 of 1950.

—Extended in Maharashtra and Gujarat by Bom. Acts 4 of 1950; 24 of 1959.

—Extended in Tamil Nadu by T. N. Acts 35 of 1949; 22 of 1957.

—Extended in Punjab by Punj. Acts 44 of 1957; 25 of 1964.

—Repealed in part and amended by Criminal Law Amendment Act, 1935.

—Repealed in part by Act 1 of 1938.

[THE] CRIMINAL LAW AMENDMENT ACT, 1932

(ACT XXIII OF 1932)*

[19th December, 1932.]

An Act to supplement the criminal law.

WHEREAS it is expedient to supplement the criminal law and to that end to amend the Indian Press (Emergency Powers) Act 1931† and further to amend ‡[*] the Indian Criminal Law Amendment Act, 1908, for the purposes hereinafter appearing;

It is hereby enacted as follows :—

[*] For Statement of Objects and Reasons, see Gazette of India, 17-9-1932, Pt. V, page 206; and for Report of Select Committee, see Gazette of India, 12-11-1932, Part V, page 225.

[†] The Indian Press (Emergency Powers) Act, 1931 was repealed by the Press (Objectionable Matter) Act, 1951 (56 of 1951), S. 37 (1).

[‡] The word "temporarily" was repealed by the Criminal Law Amendment Act, 1935, Section 3.

STATE AMENDMENTS

Goa, Daman and Diu

For Preamble substitute the following :

"Whereas it is expedient to supplement the Criminal Law for the purposes hereinafter appearing: It is hereby enacted as follows."—G. S. R. 863, Gaz. of Ind., 2-6-1966 Pt. II-S. 3 (i), Ext., p. 389.

Pondicherry

Same as that of Goa, Daman and Diu.—G. S. R. 200, Gaz. of Ind., Pt. II-S. 3 (i), D/- 18-2-1967 p. 230.

1. Short title, extent, duration and commencement.—(1) This Act may be called THE CRIMINAL LAW AMENDMENT ACT, 1932.

*[(2) It extends to the whole of India except †[the territories which, immediately before the 1st November, 1956, were comprised in Part B States].]

‡[* * * * *]

(4) The whole of the Act except §[* * *] Section 7 shall come into force at once, and the *† [State Government] may by notification*‡ in the *§[Official Gazette] direct that †‡[* * *] Section 7 shall come into force in any area on such date as may be specified in the notification.*‡

[*] Substituted for former sub-section (2), by A. L. O., 1950.

[†] Substituted for "Part B States," by 3 A. L. O., 1956. Immediately before the 1st November, 1956, the following were the Part B States in India: Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Pepus, Rajasthan, Saurashtra and Travancore-Cochin. Of these States, Jammu and Kashmir, Mysore, Rajasthan and Travancore-Cochin (Kerala) are full-fledged States now, under the States Reorganisation Act 1956. Rest of these States have been merged with adjoining States, e. g., Hyderabad with Andhra Pradesh; M. B. with Madhya Pradesh; Pepsu with Punjab and Saurashtra with Bombay and then Gujarat, after division of Bombay into Maharashtra and Gujarat.

[‡] Sub-section (3), limiting the duration of the Act to three years from commencement was repealed by Criminal Law Amendment Act, 1935, S. 2.

[§] The words and figure "Section 4 and" were repealed by S. 4, ibid.

Section 1 — Note 1

(1) Criminal Law Amendment Act of 1935 amending Act of 1932 is validly enacted by the Governor-General under the power vested in him under proviso to Section 67-B (2), Government of India Act, 1915. AIR 1951 Bom 459 (461) = 1952 Cri L Jour 37 (DB).

(2) When the Act of 1935 was repealed by Act 20 of 1937, sub-section (3) of Section 1 of the Act of 1932 which stood repealed under the former Act did not revive and bring into operation the three years duration prescribed by that sub-section. AIR 1951 Bom 459 (463) = 1952 Cri L Jour 37 (DB).

[°†] Substituted for "Provincial Government" by A. L. O., 1950.

[°‡] Section 7 was brought into force in—

Former Province of Bihar and Orissa from 26th December, 1932: see B. and O. Gazette Extraordinary, dated 26th December, 1932;

The Dehli Province from 24th December, 1932: see Gazette of India, Extraordinary, 1932, p. 429;

The City of Bombay, the Bombay Suburban district and the districts of Kaira, Ahmednagar, East Khandesh, West Khandesh, Ratnagiri and Kanara from 29th December, 1932: see Bombay Gazette, Extraordinary, dated 27th December, 1932 and Kutch, Saurashtra and Hyderabad areas of the State—see Bom. Gaz., 30-7-59, Pt. I (Central), p. 726.

Amritsar district from 31st December, 1932: see Punjab Gazette, Extraordinary, 1932, page 163;

The districts of Cachar, Goalpara, Kamrup, Darrang, Nowgong, Sibsagar and Lakhimpur from 7th January, 1933: see Assam Gazette, Extraordinary, dated 7th January, 1933;

Ajmer-Merwara from 30th September, 1933, see Gazette of India, 1933, Pt. II-A, page 716: Goa area of U. T. of G. D. D.—Goa Gaz., 30-6-66, Pt. I, p. 93 with immediate effect.

Districts of Deharadoon, Saharanpur, Basti, Muradabad, Mirzapur Deoria, Gorakhpur, Rampur, Aligarh and Muzaffarnagar—See U. P. Gaz. 20-1-68, Pt. 1, page 238.

This Act has been extended to the new Provinces and Merged States by the Merged States (Law) Act, 1949 (59 of 1949), S. 3 (1-1-1950): and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (30 of 1950), (16-4-1950): see also Manipur Gaz., Extra., 20-4-1960. Vindhya Pradesh now forms part of M. P. State — Act 37 of 1956, S. 9 (1) (e).

The Act has also been extended to the States Merged in the State of Bombay, by Bom. Act IV of 1950, and to the Hyderabad and Saurashtra areas of the Bombay State, by Bom. Act XXIV of 1959 and to the Central Provinces States—See C. P. and Berar Gaz., 1948, Extra., p. 121.

It has also been extended to the States Merged in the State of Madras, by Mad. Act XXXV of 1949 and to the Kanyakumari district and Shencottah taluk of Tirunelveli district, by Mad. Act XXII of 1957.

So much of this Act as was applicable to the territories which immediately before the 1st November, 1956 were comprised in the State of Punjab has been extended to the territories which immediately before the said date were comprised in the State of Pepsu, by Punjab Act XLIV of 1957.

[°§] Substituted by A. O., 1937.

[†‡] The words and figure "section 4 or" were repealed by the Criminal Law Amendment Act, 1935, Section 4.

STATE AMENDMENTS

Gujarat

In sub-sections (2) and (4) of Section 1 the words "State of Bombay" shall stand unmodified.—Guj. A. L. (8th Amendment) Order, 1961 (w. e. f. 1-5-1960).

Madhya Pradesh

For sub-section (2) of Section 1, in its application to the State of Madhya Pradesh, substitute the following :—

> "(2) It extends to the whole of India except the territories which immediately before the 1st November, 1956 were comprised in Part B States other than the Madhya Bharat and Sironj Regions of the State of Madhya Pradesh."—M. P. Act 10 of 1967, S. 2 (2-5-1967).

Maharashtra

(i) In sub-section (2), after the words and letter "comprised in Part B States" insert the words, "other than the Hyderabad and Saurashtra areas of the State of Bombay."

(ii) To sub-section (4), the following proviso shall be added, namely :—

"Provided that in the Hyderabad and Saurashtra areas of the State of Bombay this Act except Section 7 shall come into force on the date of the commencement of the Criminal Law Amendment (Bombay Amendment and Extension) Act, 1959". — Bom. Act XXIV of 1959, S. 10 (27-4-1959): Maha. A. L. O., 1960.

2. to 4. Dissuasion from enlistment. Tampering with public servants. Boycotting a public servant.—[Repealed by the Criminal Law Amendment Act, 1935, Section 2.]

5. Dissemination of contents of proscribed document.—(1) Whoever publishes, circulates or repeats in public any passage from a newspaper, book or other document copies whereof have been declared to be forfeited to *[Government] under any law for the time being in force, shall be punished with imprisonment for a term which may extend to six months, or with fine or with both.

(2) No Court shall take cognizance of an offence punishable under this section unless the †[State Government] has certified that the passage published, circulated or repeated contains, in the opinion of the †[State Government], seditious or other matter of the nature referred to in sub-section (1) of Section 99A of the Code of Criminal Procedure, 1898, or sub-section (1) of Section 4 of the Indian Press (Emergency Powers) Act, 1931.‡

[*] Substituted for "Her Majesty" by A. L. O., 1950.

[†] Substituted for "Provincial Government" by A. L. O., 1950.

[‡] This Act was repealed by Act 56 of 1951, S. 37 (1).

OBJECTS AND REASONS

"We are impressed by the danger that persons who inadvertently repeat a passage not harmful in itself from a newspaper which has been declared to be forfeited may be exposed to the mischief of this clause.

We have accordingly introduced by sub-clause (2) a provision which we think will be sufficient safeguard against this danger." — S. C. R.

STATE AMENDMENTS

Goa, Daman and Diu

Same as that in Maharashtra.—Gaz. of Ind., 2-6-1966, Extra., Pt. II-S. 3 (i), p. 389 (G. S. R. 863).

Gujarat

Same as that of Maharashtra.—See Act 11 of 1960, S. 87 and Guj. A. L. O., 1960.

Maharashtra

In S. 5, in sub-section (2), delete the words, brackets and figures "or sub-section (1) of Section 4 of the Indian Press (Emergency Powers) Act, 1931." — Bom. Act XXIV of 1959, S. 5, (27-4-1959).

Pondicherry

Same as in Maharashtra.—See G. S. R. 200, Gaz. of Ind., 18-2-1967, Pt. II-S. 3 (i) p. 230.

6. Dissemination of false rumours.—[Repealed by the Criminal Laws Amendment Act, 1935, Section 2.]

***7. Molesting a person to prejudice of employment or business.**—(1) Whoever—

(a) with intent to cause any person to abstain from doing or to do any act which such person has a right to do or to abstain from doing, obstructs

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Section 7 — Note 1

(1) Section 7 did not stand repealed as a result of the passing of the Repealing and Amending Act of 1937. AIR 1939 Mad 21 (24) = ILR (1939) Mad 87 = 40 Cri L Jour 224 (DB).

(2) Section 7 has not become void under Article 13 of the Constitution as being inconsistent with the fundamental rights guaranteed by Article 19 of the Constitution. AIR 1951 Bom 459 (464, 465) = 1952 Cri L Jour 37 (DB) ** AIR

or uses violence to or intimidates such person or any member of his family or person in his employ, or loiters at or near a place where such person or member or employed person resides or works or carries on business or happens to be, or persistently follows him from place to place, or interferes with any property owned or used by him or deprives him of or hinders him in the use thereof, or

(b) loiters or does any similar act at or near the place where a person carries on business, in such a way and with intent that any person may thereby be deterred from entering or approaching or dealing at such place,

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Section 7 — Note 1 (contd.)
1952 Mad 95 (96, 97) = ILR (1952) Mad 553.

(3) Section 7 cannot be condemned in its entirety as ultra vires the Constitution even if it can rightly be assumed that out of the prohibitions it has imposed against several acts some are unconstitutional. AIR 1956 All 56 (58) = ILR (1956) 2 All 527 = 1956 Cri L Jour 13 ** AIR 1961 All 531 (534) = 1961 (2) Cri LJ 586.

(4) The language employed in Sec. 7 is clear and admits of only one meaning and it is therefore unnecessary to speculate on the intention of the framers of the Act as being only to prevent picketing and nothing else. AIR 1939 Mad 21 (30) = 40 Cri L Jour 224 = ILR (1939) Mad 97 (DB).

(5) There is no indication within the Criminal Law Amendment Act, that a public servant whose house is picketed cannot claim the benefit of the section. There is no justification whatever for the plea that the offence contemplated by Section 7 (1) (a), when committed in respect of public official whether high or low, should go unpunished. AIR 1939 Mad 21 (25) = ILR (1939) Mad 87 = 40 Cri L Jour 224 (DB).

(6) Section 7 is not in conflict with Trade Unions Act. Apart from immunity from criminal conspiracy Trade Unions Act does not allow immunity from any criminal offences. AIR 1935 Nag 149 (152) = 36 Cri L Jour 1153 = 31 Nag LR 318.

(7) Section 7 can be applied to picketing in the course of trade disputes. AIR 1935 Nag 149 (151) = 31 Nag LR 318 = 36 Cri L Jour 1153 ** AIR 1951 Bom 459 (462) = 1952 Cri L Jour 37 (DB).

(8) Section 7 (a) does not infringe Article 14 of the Constitution. AIR 1961 All 522 (525) = 1961 (2) Cri LJ 443.

(9) Under Clauses (a) and (b) of subsection (1) the mere exercise of the right of freedom of movement is made penal under certain circumstances. The section as it stands requires apart from the mental state signified by the word 'intention' nothing more by way of an overt act than 'loitering' in the case of Cl. (a) and loitering in a particular way in the case of Clause (b). AIR 1951 Bom 459 (462) = 1952 Cri L Jour 37 (DB).

(10) "Loitering" to amount to an offence under Section 7 (1) must be accompanied by the specified intention the existence of which is a matter of proof. AIR 1951 Bom 459 (462) = 1952 Cri L Jour 37 (DB) ** AIR 1967 Orissa 52 (54) = 1967 Cri L Jour 570 = 32 Cut LT 577.

(11) In order to commit offence under Section 7 (b), loitering must be done with the intention that any person is deterred from entering or approaching or dealing at the particular place near which such loitering occurs. ('36) 37 Cri L Jour 10 (11, 12) (Nag) ** AIR 1967 Orissa 52 (54) = 1967 Cri LJ 570 = 32 Cut LT 577 ** 1968 Cri LJ 564 (565) = 33 Cut LT 414.

(12) Where the accused a member of a political party picketed in front of the shop of a North Indian trader and dissuaded intending customers from purchasing from the shop of a North Indian it was held that he should be convicted of the offence under Section 7 (1) (b). AIR 1952 Mad 95 (97) = ILR (1952) Mad 553.

(13) Prosecution for forcible closure of shop and obstruction to business — Accused closing shop of P. W. 1 by use of force — Examination of any customer is not necessary — **Held,** case clearly came within mischief of Section 7 (1) (b). AIR 1966 Orissa 211 (213).

(14) Procession passing through a mohalla having foreign cloth shops and halting for distributing hand-bills does not amount to loitering or deterring people from buying foreign cloth. ('36) 37 Cri L Jour 10 (11, 12) (Nag).

(15) This Act is a special law within the meaning of Section 41, I. P. C., and there can therefore, be an abetment of an offence under Section 7 (1) (a). AIR 1939 Mad 21 (26) = ILR (1939) Mad 87 = 40 Cri L Jour 224 (DB).

(16) Many offences punishable under Section 7, may be committed but no Magistrate can take cognizance of any one of those offences unless that particular offence is constituted by the facts set out in the Sub-Inspector's report. AIR 1943 Mad 572 (573) = 44 Cri L Jour 796.

Explanation.—Encouragement of indigenous industries or advocacy of temperance, without the commission of any of the acts prohibited by this section is not an offence under this section.

(2) No Court shall take cognizance of an offence punishable under this section except upon a report in writing of facts which constitute such offence made by a police officer not below the rank of officer in charge of a police station.

[*] Section 7 was enforced in Kutch, Saurashtra and Hyderabad areas of the State of Bombay from 24-8-1959: see Bom. Gaz. 30-7-1959, Pt. I, p. 726: It was also enforced in the districts of Dehra Dun, Saharanpur, Moradabad, Mirzapur, Basti, Gorakhpur, Deoria, Muzaffarnagar, Aligarh and Rampur: see U. P. Gaz. 20-1-1968, Part I, page 238: in Goa area of the Union Territory of Goa, Daman and Diu at once.—Goa Gaz., 30-6-1966, Srs. I, p. 93. See also foot-notes under S. 1.

OBJECTS AND REASONS

The explanation emphasises the fact that the section is not intended to hamper lawful advocacy of swadeshi or abstention from intoxicating liquor.—See S. C. R

8. Power to order parent or guardian to pay fine imposed on young person.—[Repealed by the Criminal Law Amendment Act, 1935, Section 2.]

9. Procedure in offences under the Act.—Notwithstanding anything contained in the Code of Criminal Procedure, 1898,—

(i) no Court inferior to that of a Presidency Magistrate‡ or Magistrate of the first class shall try any offence under this Act;

(ii) an offence punishable under sections *[* * *] 5 *[* * *] or 7 shall be cognizable by the police;

†[* * * * * *] and

(iv) an offence punishable under Section 7 shall be non-bailable.

[*] The figures '2', '3' and '6' were repealed by the Criminal Law Amendment Act, 1935, S. 5.

[†] Clause (iii) was repealed by S. 5, ibid.

[‡] Magistrates in the City of Ahmedabad have the powers and exercise the jurisdiction of a Presidency Magistrate — See Guj. Act 19 of 1961. S. 14 (3),

STATE AMENDMENTS

Punjab, Haryana and Chandigarh

In clause (i) of Section 9, for the words "Magistrate of the first class" substitute the words "Judicial Magistrate of the first class." — Punjab Act 25 of 1964, S. 2 and Sch., Pt. II (2-10-64); Act 31 of 1966, Ss. 29 and 89: Haryana A. L. O., 1968.

10. Power* of State Government to make certain offences cognizable and non-bailable.— (1) The †[State Government] may, by notification‡ in the §[Official Gazette], declare that any offence punishable under Sections 186, 188, 189, 190, 228, 295A, 298, 505, 506 or 507 of the Indian Penal Code, when committed in any area specified in the notification shall, notwithstanding anything contained in the Code of Crimial Procedure, 1898, be cognizable, and thereupon the Code of Criminal Procedure, 1898, shall, while such notification remains in force, be deemed to be amended accordingly.

Section 10 — Note 1

(1) A notification making the offence under Section 188, Penal Code a cognizable offence does not dispense with the necessity of a public authority filing a complaint in accordance with the provisions of Section 195, Criminal P. C. AIR 1951 Orissa 84 (85) = ILR (1950) Cut 545 (DB). (There is no conflict between this section and Section 195, Criminal P. C., in the essentialities.) ** AIR 1951 Orissa 138 (140) = ILR (1950) Cut 476.

(2) Notification of State Government issued in 1933 making certain non-cognisable offences, cognizable — Validity of such Notification could not be tested in terms of Republican Constitution enforced in 1950 when it was not shown that on a pre-Constitution law that Notification was unconstitutional. 1968 Cri LJ 675 (680) (DB) (Delhi).

(2) The †[State Government] may, in like manner and subject to the like conditions, and with the like effect, declare‡ that an offence punishable under Section 188 or Section 506 of the Indian Penal Code shall be non-bailable.

[°] In pursuance of clause (i) of Article 239 of the Constitution the President has directed that Lt. Governors of the Union Territories of Goa, Daman and Diu and Pondicherry shall, subject to control of President and until further orders, exercise the powers and discharge the functions of the State Government under this Act—See S. O. 1684, Gaz. Ind. 1966, Pt. II, S. 3 (ii), Ext., p. 925 and S. O. 531, Gaz. of Ind., 1967, Pt II, S. 3 (ii), p. 398.

[†] Substituted for "Provincial Government" by A. L. O., 1950.

[‡] For such notifications in respect of different sections of I.P.C. specified in sub-section (1) of S. 10, see footnotes given under respective sections in Schedule II of the Code of Criminal Procedure.

[§] Substituted for 'Local Gazette' by A. O., 1937.

11 to 14. Amendment of S. 16, Act 14 of 1908. Amendment of S. 17, Act 14 of 1908. Insertion of new Ss. 17A to 17F in Act 14 of 1908. Amendment of title and preamble of Act 23 of 1931.—[Repealed by the Repealing Act, 1938 (1 of 1938), S. 2 and Sch.]

15. Amendment of S. 1, Act 23 of 1931.—[Repealed by the Criminal Law Amendment Act, 1935, S. 2.]

16. Amendment of S. 4, Act 23 of 1931.—[Repealed by the Repealing Act, 1938 (1 of 1938), S. 2 and Sch.]

17. Cessation of effect of S. 62, Ordinance 10 of 1932.—[Repealed by the Criminal Law Amendment Act, 1935, S. 2.]

18. Adoption and continuance of action taken under Ordinance 10 of 1932.—Anything done or any proceedings commenced in pursuance of the provisions of Chapter VI of the Special Powers Ordinance, 1932, shall, upon the commencement of this Act, be deemed to have been done or to have been commenced in pursuance of the corresponding provisions of the Indian Criminal Law Amendment Act, 1908, as amended by this Act, and shall have effect as if this Act was already in force when such thing was done or such proceedings were commenced.

STATE AMENDMENTS

Goa, Daman and Diu

Omit Section 18.—**Gaz. of Ind., Extra., Pt. II, S. 3 (i), dated 2-6-1966, G. S. R.** 863.

Gujarat

Delete Section 18.—**Act 11 of 1960, S. 87 and Gujarat A. L. O., 1960, S. 3 and Schedule (1-5-1960).**

Maharashtra

Delete Section 18.—**Bom. Act XXIV of 1959, S. 6 (27-4-1959).**

Pondicherry

Same as Goa, Daman and Diu.—**Gaz. of Ind., Ext., Pt. II-S. 3 (i), dated 18-2-1967 (G. S. R. 200).**

19. Adoption and continuance of action taken under Act 23 of 1931 as amended by Ordinance 10 of 1932.—Anything done or any proceedings commenced in pursuance of the provisions of the Indian Press (Emergency Powers) Act, 1931, as amended by Section 77 of the Special Powers Ordinance, 1932, shall upon the commencement of this Act, be deemed to have been done or to have been commenced in pursuance of the corresponding provisions of the Indian Press (Emergency Powers) Act, 1931, as amended by this Act, and shall have effect as if this Act was already in force when such thing was done or such proceedings were commenced.

STATE AMENDMENTS

Goa, Daman and Diu

Omit Section 19.—Gaz. of Ind., Extra., Pt. II-S. 3 (i), dated 2-6-1966 (G. S. R. 863).

Gujarat

Delete Section 19.—Act 11 of 1960. S. 87 and Guj. A. L. O. 1960, Sec. 3 and Schedule (1-5-1960)

Maharashtra

Delete Section 19.—Bom. Act XXIV of 1959, S. 6 (27-4-1959).

Pondicherry

Same as Goa, Daman and Diu.—Gaz. of Ind., Extra., Pt. II-S. 3 (i), dated 18-2-1967 (G. S. R. 200).

20. Trial of, and completion of trials of, offences against Ordinance 10 of 1932.—[Repealed by the Criminal Law Amendment Act, 1935, S. 2.]

[THE] CRIMINAL LAW AMENDMENT ACT, 1938
(ACT XX OF 1938)

[The Act printed here is as on 30-6-1970.]

STATEMENT OF OBJECTS AND REASONS

"A large number of public speeches designed to dissuade persons from enlisting in the Defence Forces or, in the alternative, to incite would be recruits to commit acts of mutiny or insubordination after joining those Forces have come to notice during the past 18 months. The object of the speakers is clearly not the spread of pacifism, but to dissuade would be recruits from taking part in any war in which the British Empire may become engaged. The Bill is designed to penalise these activities." — Gazette of India, 13-8-1938, Part V, page 276.

ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Amended by Act 3 of 1951

—Adapted by A. L. O., 1950.

—Extended by Acts 59 of 1949; 30 of 1950: Regns. 6 of 1963; 7 of 1963; 8 of 1965.

" in Assam by Act 7 of 1955.

" in Bombay by Act 4 of 1950.

[THE] CRIMINAL LAW AMENDMENT ACT, 1938
(ACT XX OF 1938)*

[14th September, 1938.]

An Act to amend the criminal law.

WHEREAS it is expedient to supplement the criminal law by providing for the punishment of certain acts prejudicial to the recruitment of persons to serve in, and to the discipline of, †[the Armed Forces of the Union];

It is hereby enacted as follows:

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[*] For Statement of Objects and Reasons: see Gaz. of Ind., 13-8-1938, Part V, page 276.

This Act has been extended to the new Provinces and Merged States by the Merged States (Laws) Act, 1949 (59 of 1949), S. 3 (1-1-1950) and to the Union Territories of Manipur and Tripura by the Union Territories (Laws) Act, 1950 (30 of 1950), S. 3 (16-4-1950). Vindhya Pradesh to which also this Act was extended now forms part of the State of Madhya Pradesh—See Act 37 of 1956, S. 9 (1) (e).

It has been extended to Union Territory of—

(i) Dadra and Nagar Haveli by Regulation 6 of 1963.

(ii) Pondicherry by Regulation 7 of 1963 (1-10-1963) and

(iii) Laccadive, Minicoy and Amindivi Islands by Regulation 8 of 1965 (1-10-1967).

The Act has been extended also to the Autonomous Districts in the State of Assam by the Criminal Law Amendment (Extension to Autonomous Districts) Act, 1955 (Assam Act 7 of 1955), S. 2 (5-4-1955).

It has been extended also to States Merged in the States of Bombay: see Bombay Merged States (Laws) Act (4 of 1950), Sch. II, Part I (30-3-1950).

The Act has been declared in force in all partially excluded areas in Orissa by Orissa Regulation 1 of 1943.

[†] Substituted for "His Majesty's Forces" by A. L. O., 1950.

1. Short title, extent and commencement.—(1) This Act may be called THE CRIMINAL LAW AMENDMENT ACT, 1938.

(2) It extends to the whole of India °[° ° °]

(3) It shall come into force in a †State on such date‡ as the †State Government may, by notification in the Official Gazette, appoint in this behalf for such †State.

[°] The words "except Part B States" were omitted by the Part B States Laws Act, 1951 (3 of 1951), S. 3 and Sch. (1-4-1951).

[†] Substituted for 'Province' by A. L. O., 1950.

[‡] The Act came into force—

(i) in the States of Ajmer, Coorg and Delhi on 1-8-1954: see Gaz. of Ind. 24-7-1954, Pt. II-Sec. 3, page 1806;

(ii) in the State of Assam on 25-8-1954: see Assam Gaz. 25-8-1954, Pt. II-A, page 1809; Assam has been split up into 2 States — Assam and Nagaland;

(iii) in the State of Bombay on 31-8-1954: see Bom. Gaz. 2-9-1954, Pt. IV-A, page 360; Bombay has been divided into the States of Maharashtra and Gujarat;

(iv) in the State of Jammu and Kashmir on 1-7-1955: see J. and K. Gaz. 16-6-1955, Pt. III, page 74.

(v) in the State of Madhya Bharat on 10-12-1952: see M. B. Gaz. 11-12-1952, Pt. I-B, p. 592 (M. B. now forms part of Madhya Pradesh);

(vi) in the State Madhya Pradesh on 1-9-1954: see M. P. Gaz. 27-8-1954, Pt. 1, page 576;

(vii) in the State of Tamil Nadu on 1-11-1954: see G. O. M. No. 1960 published in the Gaz. of Ft. St. Geo., 3-11-1954, Pt. I, page 1435.

(viii) in the State of Mysore on 20-3-1953: see Mysore Gaz., 12-3-1953, Pt. 2-C, page 110;

(ix) in Pepsu on 1-6-1953: see Pepsu Gaz., Extra. 4-6-1953, Pt. I-Sec. I, p. 105;

(x) in the State of Travancore-Cochin on 1-9-1953: see T. C. Gaz. 1-9-1953, Pt. I, page 168 (now known as Kerala);

(xi) in the State of Uttar Pradesh on 20-8-1954: see U. P. Gaz., 1954, Pt. I, page 1041;

(xii) in the State of West Bengal on 1-10-1954: see Cal. Gaz., Extra., 1-10-1954. Notification No. 7461/2A-33/54, D/- 1-10-1954;

(xiii) in all the partially excluded areas in the State of Orissa with effect from 3-2-1940—see Orissa Regulation 1 of 1943, S. 2 and Sch. I.

2. Dissuasion from enlistment and instigation to mutiny or insubordination after enlistment.— Whoever—

(a) with intent to affect adversely the recruitment of persons to serve in the Military, Naval or Air Forces of *[the Union], wilfully dissuades or attempts to dissuade the public or any person from entering any such Forces; or

(b) without dissuading or attempting to dissuade any person from entering such Forces, instigates the public or any person to do, after entering any such Force, anything which is an offence punishable as mutiny or insubordination under Section 27 of the Indian Army Act,† 1911, or Sections 10 to 12 and 14 to 17 inclusive of ‡[* * *] the Indian Navy (Discipline) Act, 1934,§ or Sections 35 to 37 inclusive of the Indian Air Force Act,*† 1932, as the case may be,

shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

No person shall be prosecuted for any offence under this Act except with the provious sanction of the *‡State Government.*§

Exception 1.—The provisions of clause (a) of this section do not extend to comments on or criticism of the policy of Government in connection with the Military, Naval or Air Forces, made in good faith without any intention of dissuading from enlistment.

Exception 1.—The provisions of clause (a) of this section do not extend to the case in which advice is given in good faith for the benefit of the individual to whom it is given, or for the benefit of any member of his family or of any of his dependants.

[*] Substituted for "His Majesty," by A. L. O., 1950.

[†] Now see Ss. 35 and 42 of the Army Act, 1950 (46 of 1950). Also see Ss. 17 and 22 of the Border Security Force Act, 1968 (47 of 1968).

[‡] The words "the Naval Discipline Act as applied to the Indian Navy by" were omitted by A. L. O., 1950.

[§] Now see Ss. 42 to 45 and 47 of the Navy Act, 1957 (62 of 1957).

[*†] Now see the Air Force Act, 1950 (45 of 1950), Ss. 37 and 42.

[*‡] Substituted for 'Provincial Government' by A. L. O., 1950.

[*§] In pursuance of clause (1) of Art. 239 of the Constitution, the President has directed that the Chief Commissioners of Delhi, Ajmer and Coorg shall, subject to the control of the Central Government and until further orders, exercise the powers of the State Government under S. 2 of the Criminal Law Amendment Act, 1938 (20 of 1938) in the States of Delhi, Ajmer and Coorg respectively. See S. R. O. 2416, D/- 20-7-1954, published in Gaz. of Ind., 24-7-1954, Pt. II-Section 3, page 1806. Ajmer and Coorg have now merged with the States of Rajasthan and Mysore respectively.

NOTE.—"Mutiny" is a collective offence, that is to say, it cannot be committed by one man. It is an offence which deals with collective insubordination, collective defiance or disregard of authority or refusal to obey authority. "Insubordination" means a refusal to subordinate oneself to authority and it does not follow that a mere failure to obey an order amounts to insubordination: See (1957) 2 All ER 694 (696).]

[THE] CRIMINAL LAW AMENDMENT ACT, 1952

(ACT XLVI OF 1952)

[The Act printed here is as on 30-6-1970.]

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8A. Power to try summarily.
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STATEMENT OF OBJECTS AND REASONS

"The Government of India set up a Committee of Members of Parliament under the chairmanship of Dr. Bakhshi Tek Chand to review the working of the Special Police Establishment and to make recommendations for the improvement of the laws relating to bribery and corruption. The amendments proposed in the Bill are based on the recommendations of that Committee. They seek to make the offering of bribe a substantive offence by itself instead of, as at present, as mere abetment. The maximum punishment for an offence under Section 165, I. P. C. (acceptance by a public servant of a valuable thing without consideration from persons concerned in proceeding or business transacted by him), is considered to be light and is proposed to be to that prescribed for an offence under Section 161, I. P. C., namely, acceptance of a bribe. In view of certain practical difficulties in the prosecution of cases relating to bribery and corruption, the scope of Section 337 (1) of the Criminal P. C. for tendering pardon to accomplices has been proposed to be extended to bring such offences within its purview. A special forum for trial is also proposed for such cases in order to eliminate delay; this particular amendment has been given a limited life*. Opportunity has been taken to extend the applicability of Section 164, Criminal P. C. to Presidency towns.

(*) However, see Note given under Section 5 of this Act. — Gaz. of Ind., 12-7-1952, Pt. II—Sec. 2, page. 243.

ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Amended by Acts 50 of 1955; 2 of 1958 ; 40 of 1964; 47 of 1964; 22 of 1966; 17 of 1967 and 36 of 1967; Regns. 2 of 1962: 3 of 1962.

—Extended and Amended by G. S. R. 1634, D/- 19-10-1966: Amended in West Bengal by W. B. Act 21 of 1949. Extended by Regns. 6 of 1963, 7 of 1963.

—Repealed (in part) by Act 36 of 1957

[THE] CRIMINAL LAW AMENDMENT ACT, 1952
(ACT XLVI OF 1952)*

[28th July, 1952.]

An Act further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898, and to provide for a more speedy trial of certain offences.

BE it enacted by Parliament as follows :—

[*] For Statement of Objects and Reasons, see Gaz. of Ind., 12-7-1952, Pt. II-Sec. 2, page 243.

This Act has been extended to the Union Territory of Dadra and Nagar Haveli by Regulation 6 of 1963 (1-7-1965) and to Pondicherry by Regulation 7 of 1963 (1-10-1963): It has been extended to the Union Territory of Goa, Daman and Diu by G. S. R. 1634, G. I., 29-10-1966, Pt. II, Sec. 3 (i), page 1837.

1. **Short title.**—This Act may be called THE CRIMINAL LAW AMENDMENT ACT, 1952.

STATE AMENDMENT

Goa, Daman and Diu

Section 1-A.

In its application to the Union Territory of Goa, Daman and Diu, after Sec. 1, insert the following, namely :—

1A. Definitions. In this Act :—

(a) "Administrator means the Administrator of Goa, Daman and Diu, appointed by the President under Art. 239 of the Constitution of India;

(b) 'Goa, Daman and Diu' means the Union Territory of Goa, Daman and Diu;

Preamble — Note 1

(1) The provisions of the Act are not void as violative of Article 14 of the Constitution of India. **AIR 1957 SC 503 (508) = 1957 SCR 678 = 1957 Cri L Jour 605.** (AIR 1954 Bom 327 (DB), **Affirmed.)**

(c) Judicial Commissioner's Court means the Court of the Judicial Commissioner of Goa, Daman and Diu." — G. S. R. 1634, Gaz. of Ind., 29-10-1966, Pt. II, S. 3 (i), p. 1837.

2. Amendment of Section 165, Act 45 of 1860.—[Repealed by Repealing and Amending Act, 1957 (36 of 1957), S. 2 and Sch. I.]

3. Insertion of new Section 165A in Act 45 of 1860.—[Repealed by Repealing and Amending Act, 1957 (36 of 1957), S. 2 and Sch. I.]

4. Amendment of Section 164, Act 5 of 1898.—[Repealed by Repealing and Amending Act, 1957 (36 of 1957), S. 2 and Sch. I.]

5. Amendment of Section 337, Act 5 of 1898.—[Repealed by the Repealing and Amending Act, 1957 (36 of 1957), S. 2 and Sch. I.]

NOTE.—The amendments made by this section were for a period of two years only calculated from 28-7-1952. But now by S. 59 of the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955) these amendments have been incorporated in S. 337 of the Code of Criminal Procedure, 1898.

6. Power to appoint special Judges.—(1) The State Government may, by notification‡ in the Official Gazette, appoint as many Special Judges as may be necessary for such area or areas as may be specified in the notification to try the following offences namely :—

(a) an offence punishable under Section 161, *[Section 162, Section 163, Section 164] Section 165 or Section 165A of the Indian Penal Code or [* *]† Section 5 of the Prevention of Corruption Act, 1947;

(b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

(2) A person shall not be qualified for appointment as a special Judge under this Act unless he is, or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1898.

[*] Inserted by the Prevention of Corruption (Amendment) Act, 1955 (50 of 1955), S. 4 (1-1-1956).

[†] The words, brackets and figures "sub-section (2) of" were omitted by the Anti-Corruption Laws (Amendment) Act, 1964, (40 of 1964), Sec. 7 (19-12-1964).

Section 3 (Repealed) — Note 1

(1) Section 165-A which imposes a greater penalty for abetment of the offences under Sections 161 and 165 has no application to acts committed before its enactment. AIR 1954 Bom 327 (328) = ILR (1954) Bom 763 = 1954 Cri L Jour 952 (DB). (In such cases Section 161 read with Section 116, Penal Code would be available even after the enactment of the Criminal Law Amendment Act, 1952.)

(2) A special Judge has no power to act under Section 337, Criminal P. C., and tender a pardon to the accused. 1957 Cri L Jour 67 (69) (Madh B.)

(3) Case under Sections 161/116, Penal Code, distributed to Special Judge in West Bengal before Section 165-A, Penal Code, was included in Schedule of W. B. Criminal Law Amendment (Special Courts) Act, 21 of 1949 — Cognizance and conviction under Section 165-A, Penal Code by Special Judge held without jurisdiction — Defect of jurisdiction held could not be cured by Section 529 (e), Criminal P. C. — That section applied to Magistrates and did not apply to Special Judge. **AIR 1959 SC 8 (13) = 1959 Cr LJ 98.**

Section 6 — Note 1

(1) Section 6 is not discriminatory and does not offend against Article 14 of the Constitution of India. AIR 1957 Raj 1 (4) = ILR (1957) 7 Raj 111 = 1957 Cri L Jour 96. (There is no option left to State Government in the matter of appointing or not appointing a special Judge for any given area.) ** AIR 1965 Andh Pra 372 (386) = (1965) 2 Andh WR 44 = 1965 (2) Cri LJ 585 (DB).

(2) The power of the State Government to appoint a special Judge under Section 6 of this Act does not depend upon the applicability or otherwise of the provisions of the Criminal P. C. to that State. AIR 1956 Manipur 9 (11) = 1956 Cri L Jour 249.

(3) The section which has conferred authority upon the Government to appoint special Judges does not cast any obligation on the Government to make the appointment within any specified time.

[‡] District and Sessions Judge, Ambala, appointed as Special Judge with jurisdiction over the whole State of Haryana for trial of all cases investigated under S. 6 (1) (a) and (b) by the Delhi Special Police Establishment—See Haryana Gaz., 20-5-1967, Ext., p. 277.

STATE AMENDMENTS

Goa, Daman and Diu

In its aplication to the Union Territory of Goa, Daman and Diu, in sub-section (1) of Section 6, for the words "State Government," substitute the word "Administrator"—see G. S. R. 1634, Gaz. Ind., 29-10-1966, Pt. II, S. 3 (i), p. 1837.

Nagaland

In its application to Nagaland, for sub-section (2) of S. 6, substitute the following, namely :—

"(2) A person shall not be qualified for appointment as a Special Judge under this Act unless he has been—

(a) a Sessions Judge or an additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1898, or

(b) a Judicial Officer in Nagaland." — Reg. 3 of 1962, S. 2 (1-3-1962).

Section 6 — Note 1 (contd.)

AIR 1955 Assam 214 (216) = ILR (1954) 6 Assam 264 = 1955 Cri L Jour 1321 (DB).

(4) It is open to the Government under Section 6 to appoint more than one special Judge for the same area or appoint one and the same Judge to exercise jurisdiction in more than one area. AIR 1958 Raj 184 (185) = 1958 Cri L Jour 971.

(5) General Clauses Act (1897), Sec. 15 — Appointment of person as Special Judge by virtue of office is valid. AIR 1965 Andh Pra 372 (380, 381) = 1965 (2) Cri LJ 585 = (1965) 2 Andh WR 44 (DB).

(6) Trial of offences falling under Section 6 (1) — Appointment of more than one Special Judge for a particular area — Before a Judge can proceed with trial he must have been specified under Section 7 (2). 1964 (2) Cri LJ 486 (487) = (1963) 2 Mys LJ 548 (DB) (Mys).

(7) Special Judge to try offence under Section 165-A of Penal Code — Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge may be appointed by virtue of his office and not necessarily by name. AIR 1967 Orissa 31 (36).

(8) A special Judge appointed under this Act is not a Criminal Court within the provisions of the Criminal P. C. and the ambit of his powers is to be ascertained solely from the provisions of Sections 6 and 7 of the Act itself. ILR (1958) Andh Pra 791 (798).

(9) The power under Section 5-A of Prevention of Corruption Act (1947) is conferred on the Magistrate in a general term and hence there is no warrant to impose any limitation as to the area of his jurisdiction. 1968 Cr LJ 256 (260) (Mad).

(10) Several defalcations made at different times within course of one year can be joined together as one offence — Such charge can be joined with another charge under Section 477-A, Penal Code regarding false entries made for covering defalcations — Special Judge under Criminal Law (Amendment) Act, (1952) can try accused under Section 477-A, Penal Code by reason of Section 7 (3) of the Act as case falls under Section 235 (1), Criminal P. C. AIR 1963 Guj 15 (20) = 1963 (1) Cri LJ 162 (DB).

(11) A pre-requisite for the applicability of the procedure prescribed under Sections 6 and 7 of the Act is that the trial should be for offences enumerated under Section 6 itself. AIR 1954 Hyd 56 (64) = ILR (1953) Hyd 573 = 1954 Cri L Jour 464 (DB).

(12) Illegal amendment of notification appointing a special Judge — Section 16 of General Clauses Act, does not apply but Section 21 applies. AIR 1965 Andh Pra 372 (382) = 1965 (2) Cr LJ 585 (DB).

(13) A valid trial cannot be held by a special Judge where the offence charged is not one which is enumerated under Section 6 of the Act. 1955 All L Jour 655 (655). (Trial of offences under Section 162 or 163, Penal Code by special Judge is not valid.) ** AIR 1958 Orissa 150 (152) = ILR (1958) Cut 677 = 1958 Cri L Jour 916 ** ILR (1958) Andh Pra 791 (798). (Criminal conspiracy to commit offences under Sections 466, 467 and 420, Penal Code is not covered by the Prevention of Corruption Act and therefore, special Judge cannot try that offence.) ** AIR 1957 Tripura 18 (21) = 1957 Cri L Jour 394. (Offences punishable under Sections 342 and 384, Penal Code unless they form part of the charge for an offence also under Section 6 (1) of the Act cannot be tried by special Judge.) ** 1957 Cri L Jour 108 (112) (All). (Offence under Section 468, Penal Code unless it forms part of the same transaction which constitutes an offence enumerated under Section 6 of this Act cannot be tried by Special Judge.) ** AIR 1956 All 197 (199). (Cases of criminal breach of trust by public servants.)

NOTE.— (i) In this Regulation expression "Nagaland" has the meaning assigned to it by Reg. 2 of 1961. Nagaland is now a State under Act 27 of 1962.

(ii) Except in S. 9, in its application to Tuensang district references to Criminal Procedure Code in this Act shall be construed as references to corresponding law in that district.—See Ss. 3 and 4 of the said Regulation.

North East Frontier Agency

Amendment is the same as in Nagaland except clause (b) which is as follows :— "(b) a Judicial Officer, North East Frontier Agency." — Reg. 2 of 1962, S. 2 (1-3-1962).

NOTE.—In this Regulation, the expression 'North East Frontier Agency' has the meaning assigned to it in Reg. 1 of 1954 and except in S. 9, references to the Code of Criminal Procedure in the Act shall be construed as references to corresponding law for the time being in force in Nefa—See Ss. 3 and 4 of Reg. 2 of 1962.

West Bengal

Section 6 shall not apply to the State of West Bengal. — W. B. Act 21 of 1949, Section 13.

Section 6 — Note 1 (contd.)

(14) The words "Indian Penal Code" in the section must be construed as referring only to the Central Act and not to any Penal Code of a Part B State which instead of the Central Act was in force in that State at the time of the commission of the offence although the contents of the local Code were the same as of the Penal Code. AIR 1954 Madh B 83 (84) = ILR (1954) Madh B 411 = 1954 Cri L Jour 872.

(15) The competency of a special Judge to try some of the offences falling within Clauses (a) and (b) of Section 6 (1) of the Act can in no way be affected merely because the accused persons are not public servants. Therefore, the conviction of a public servant at a joint trial with others who are not public servants upon a charge of conspiracy under Section 120-B, Penal Code to commit offences falling under Clauses (c) and (d) of Section 5 (1) of the Prevention of Corruption Act is not invalid. AIR 1958 Bom 354 (358, 359) = 1953 Cri L Jour 1144.

(16) A special Judge ceases to have jurisdiction in a case under Section 161, Penal Code the moment he finds that the accused is not a public servant and as a consequence thereof also jurisdiction to try any other offence with which also the accused is charged. The dismissal of the complaint by the special Judge in such circumstances cannot be construed as an order of acquittal which could bar a trial under Section 403, Criminal P. C. for the other offence with which the accused was charged before the special Judge. AIR 1957 Madh Pra 224 (224, 225) = 1957 Cri L Jour 1410.

(17) The Act by itself, even where no special Judge has been actually appointed ousts the jurisdiction of the Magistrates from proceeding with the enquiry in cases which are exclusively triable by a special Judge. AIR 1955 Pat 88 (92) = 33 Pat 872 (DB). (AIR 1954 Pat 80, **Overruled.**)

(18) The Act applies even to pending cases and the appointment of a special Judge ousts the jurisdiction of the Magistrate to continue the trial and deliver a judgment. AIR 1954 Bom 327 (330) = ILR (1954) Bom 763 = 1954 Cri L Jour 952.

[But see contra in AIR 1954 Madh B 83.]

(19) A case exclusively triable by a special Judge, when transferred to a person who is both a special Judge and also a sessions Judge, must be transferred to him, in order that he should have jurisdiction to try it, in his capacity as a special Judge and not as a sessions Judge. AIR 1956 Pepsu 32 (32) = ILR (1955) Patiala 684 = 1956 Cri L Jour 414.

(20) Power to transfer case pending before special judge appointed under Act — Supreme Court has such power. **AIR 1966 SC 1418 (1422).**

(21) Jurisdiction of special Judge to try offences other than those mentioned in Section 6 — Though the special Judge has jurisdiction which he is competent to exercise under the Prevention of Corruption Act or the Criminal Law Amendment Act still as provided in Section 7 (3) he can try an accused for offences under Section 120-B read with Sections 466, 467 and 420, I. P. Code — Similarly other accused who are said to have abetted these offences could also be tried by him. **AIR 1961 SC 1241 (1244, 1245) = (1962) 1 SCR 194 = 1961 (2) Cr LJ 302.** (ILR (1958) Andh Pra 791, **Reversed.**)

(22) A special Judge appointed by the Government who admittedly does not possess the qualifications prescribed by Section 6 is incompetent to try an offence under the Act. AIR 1956 Manipur 9 (11) = 1956 Cri LJ 249.

(23) All cases and all accused coming under notification under Sections 6 and 7

7. Cases triable by special Judges.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, or in any other law the offences specified in sub-section (1) of Section 6 shall be triable by Special Judges only.

(2) Every offence specified in sub-section (1) of Section 6 shall be tried by the special Judge for the area within which it was committed, or where there are more Special Judges than one for such area, by such one of them as may be specified in this behalf by the State Government.[*]

(3) When trying any case, a Special Judge may also try any offence other than an offence specified in Section 6 with which the accused may, under the Code of Criminal Procedure, 1898, be charged at the same trial.

[*] For exercise of powers of State Government by the Lt. Governor of Himachal Pradesh and Chief Commissioners of Delhi, Manipur and Tripura, see Gaz. of Ind., 14-5-1960, Pt. II, Section 3 (ii), page 1460.

STATE AMENDMENT

Goa, Daman and Diu

In its application to the Union Territory of Goa, Daman and Diu, in sub-section (2) of Section 7, for the words "State Government," substitute the word "Administrator."—See G. S. R. 1634, Gaz. of Ind., 29-10-1966, Pt. II, S. 3 (ii), p. 1837.

West Bengal

Section 7 shall not apply to the State of West Bengal.—W. B. Act 21 of 1949, Section 13.

Section 6 — Note 1 (contd.)

are liable to be tried under same procedure and only by Special Judges. AIR 1965 Andh Pra 372 (385) = 1965 (2) Cri LJ 585 = (1965) 2 Andh WR 44 (DB).

(24) Notification appointing Special Judge on 25th March, 1961 found defective and amended by subsequent notification dated 12th February, 1962 — Original notification as amended takes effect from 12th February, 1962 and not retrospectively — Presentation of charge-sheet before Special Judge after 12th February, 1962 is valid presentation. AIR 1965 Andh Pra 372 (385) = 1965 (2) Cri LJ 585 = (1965) 2 Andh WR 44 (DB).

(25) Prevention of Corruption Act (1947), Section 6 — Sanction for prosecution obtained — Prosecution set aside due to invalidity of notification under Section 6, Criminal Law Amendment Act, appointing Special Judge to try the case — Subsequent valid notification — No fresh sanction is required. AIR 1965 Andh Pra 372 (381) = 1965 (2) Cri LJ 585 (DB).

(26) Power of State Government to appoint a judge out of various judges who are Special Judges for some offences arising in an area — Power confined to cases investigated by particular agency — Notification is valid under Section 6. AIR 1965 Andh Pra 372 (384, 385) = 1965 (2) Cri LJ 585 = (1965) 2 Andh WR 44 (DB).

(27) Under Section 6, the appointment of a Special Judge has to be in respect of an area or areas and not in respect of any particular case or a group of cases. AIR 1959 All 218 (219) = 1958 All WR (HC) 764 = 1959 Cr LJ 409 (DB).

(28) As regards conspiracy to commit an offence under Section 5 (2) of the Prevention of Corruption Act, this was an offence specified in Section 6 (1) of the Criminal Law Amendment Act, 1952, and under Section 7 (1) of that Act only a Special Judge could try it. The question whether Special Judge for Kerala had territoral jurisdiction had to be decided with reference to the rules in Ch. XV of Code of Criminal Procedure. AIR 1959 Ker 311 (315, 316) = 1959 Cr LJ 1172.

(29) Rules under Criminal P. C., Section 549, Rule 3 — Rule does not apply to a special Judge constituted under the Criminal Law Amendment Act (1952). **AIR 1961 SC 1762 (1773, 1774) = 1961 (2) Cr LJ 828.**

(30) "Any other law" — Meaning of — Army Act (1950) constitutes "any other law" — Accused charged with offences falling under Section 6 — Special Judge has jurisdiction to try such offences though the acts also constitute offences under Section 52 of the Army Act 1950. **AIR 1961 SC 1762 (1774) = 1961 (2) Cri LJ 828.**

(31) Magistrate is not deprived of his power by any provision of the Act to take cognizance of offence even where offence is exclusively triable by Special Judge. AIR 1967 Pat 416 (422) (DB).

Section 7 — Note 1

(1) Sections 6 and 7 are not in any manner violative of Article 14 of the Constitution of India. **AIR 1957 SC 503 (508) = 1957 SCR 678 = 1957 Cri L Jour 605.** (AIR 1954 Bom 327, Affirmed.) ** 1957 Cri L Jour 108 (113) (All). (Creation of Special Courts to try offences of particular type does not involve any uncon-

Section 7 — Note 1 (contd.)

stitutional discrimination and the section itself is not directed against any particular individual.)

(2) In the areas to which the Act applies the Government has no power to confer jurisdiction on ordinary Magistrates to try cases which are exclusively triable by Special Judges under the Act. AIR 1956 Manipur 9 (11) = 1956 Cri L Jour 249. (Act applies to territories of Manipur State — Trial of offence under Section 165-A, Penal Code can be only by Special Judge appointed under Act — Memo of Home Ministry directing trial to proceed before Extra Assistant Commissioner is not valid and operative in view of Articles 21 and 22 of the Constitution and is incapable of conferring jurisdiction on the Extra Assistant Commissioner.)

(3) The jurisdiction of a special judge is founded upon his appointment as such under Section 6 and where the judge has such jurisdiction the trial of a case by him will not be vitiated by any irregularity in the manner in which he came to assume and exercise such jurisdiction in that case. AIR 1955 Punj 65 (74, 75) = 1955 Cri L Jour 609 = ILR (1954) Punj 75 (DB). (Case pending before Sessions Judge as Special Judge — Appointment of all Additional Sessions Judges as Special Judges — Transfer of case by Sessions Judge to Additional Sessions Judge — Trial by latter not vitiated although case came to him by transfer from a Court which had no power to transfer the case.)

(4) Jurisdiction of special judge to try offences other than those mentioned in Section 6 — Though the special Judge has jurisdiction which he is competent to exercise under the Prevention of Corruption Act or the Criminal Law Amendment Act still as provided in Section 7 (3), he can try an accused for offences under Section 120-B read with Sections 466, 467 and 420, Penal Code — Similarly other accused who are said to have abetted these offences could also be tried by him. **AIR 1961 SC 1241 = 1961 (2) Cri LJ 302.** (ILR (1958) Andh Pra 791, **Reversed.)**

(5) Offence exclusively triable by Special Judge — Criminal P. C. (1898), Sections 526, 531 — Applicability — Special Judge having no territorial jurisdiction convicting accused — Conviction not illegal. **AIR 1961 SC 1629 (1631, 1632) = (1962) 2 SCR 50 = 1961 (2) Cr LJ 811.**

(6) A notification issued by the State under Section 6 appointing a Special Judge and authorising him to try all offences investigated by the police under the Delhi Special Police Establishment Act, 1946, can be interpreted only as conferring jurisdiction on that judge to try offences investigated under that Act if they fall within the ambit of this Act and not as conferring a jurisdiction to try independently any offence so investigated by the police even if it is not one of the enumerated offences. AIR 1958 Orissa 150 (153) = 1958 Cri L Jour 916.

(7) Power of State Government to appoint a Judge out of various Judges who are special Judges for some offences arising in an area — Power confined to cases investigated by particular agency — Notification is valid under Section 6. AIR 1965 Andh Pra 372 (384, 385) = 1965 (2) Cri LJ 585 (DB).

(8) In the case of an act or omission which is an offence both under the Penal Code and the Prevention of Corruption Act, the accused, unless the prosecution which has an option in the matter has actually charged him under the latter Act, cannot claim the benefit of a trial according to the procedure laid down in Section 7 of the Act. AIR 1954 Hyd 56 (64) = ILR (1953) Hyd 573 = 1954 Cri L Jour 464 (DB).

(9) A case under Section 409, Penal Code is not covered by the Act and therefore, it is not necessary to send it for trial according to the special procedure laid down in Criminal Law Amendment Act. AIR 1956 All 197 (199) ** AIR 1961 Pat 203 (206, 207) = 1961 (1) Cr LJ 694 (DB).

(10) By operation of Section 7, from the date of the commencement of this Act, a Magistrate becomes ipso facto divested of jurisdiction even over pending cases in which are involved offences which are governed by this Act. **AIR 1957 SC 503 (506, 507) = 1957 SCR 678 = 1957 Cri L Jour 605.** (AIR 1954 Bom 327, Affirmed.) ** AIR 1955 Pat 88 (92) = 33 Pat 872 = 1955 Cri L Jour 379 (DB). (Appointment of Special Judge not a condition precedent to the cessation of jurisdiction of the Magistrate by the operation of the Act — AIR 1954 Pat 80, **Overruled.)**

(11) Offence exclusively triable by Special Judge — Police officer submitting report to Magistrate — Magistrate's jurisdiction to take action by issuing summary report — A Magistrate who is empowered to take cognizance of any offence upon a written report by a Police officer has got jurisdiction to take action on the report submitted to him. AIR 1959 Bom 437 (441) = 1959 Cr LJ 1153 (DB).

(12) Taking cognizance and initiation of proceedings — Difference — A Magistrate, who is empowered to take cognizance of any offence upon a written report of a Police Officer has got jurisdiction to take action on the report, submitted to him under Section 178, Cr. P. C. AIR 1959 Bom 437 (442, 443) = 1959 Cr LJ 1153 (DB).

(13) A Special Judge who by the Act is equated with a Sessions Judge is not bound by the rules framed under Section 549, Criminal P. C. which prescribe only what a Magistrate has to do in

Section 7 — Note 1 (contd.)

cases where the accused is one who is governed by the military, naval or air force law. AIR 1958 Bom 354 (365. 367) = 1958 Cri LJ 1144 (DB).

(14) The accused under the Act as it stood unamended by Act 2 of 1958 was entitled to de novo trial where his conviction was based upon evidence partly recorded by one Special Judge and partly by his successor. AIR 1958 Mad 571 = ('58) 1958-2 Mad LJ (Cri) 665 = 1958 Cri LJ 1412 (FB). (Note. — Under the Amended Act Section 350, Criminal P. C. has been made applicable to special Courts. Now the matter is in the discretion of the Courts.)

(15) The additional jurisdiction of the Court under sub-section (3) of Section 7 would remain unaffected even if the trial suffered from misjoinder of charges. 1957 Cri LJ 108 (112) (All).

(16) Several defalcations made at different times within course of one year can be joined together as one offence—Such charge can be joined with another charge under Section 477-A, Penal Code regarding false entries made for covering defalcations — Special Judge can try accused under Section 477-A, Penal Code, by reason of Section 7 (3) of the Act as case falls under Section 235 (1), Criminal P. C. AIR 1963 Guj 15 (20) = 1963 (1) Cri LJ 162 (DB).

(17) If the Special Judge has no jurisdiction to try an offence punishable under Section 5 (2) of the Prevention of Corruption Act, he has no jurisdiction to try the other allied offences, such as one under Section 409, Penal Code. for which power has been conferred upon him under sub-section (3) of Section 7 of the Act. (1963) 2 Lab LJ 540 = (1963) 4 Guj LR 563 = 1963 (2) Cri LJ 556 (556, 557) (DB) (Guj) ** 1970 MLJ (Cri) 217.

(18) Offences under Section 5 (1), Prevention of Corruption Act, 1947 and Section 477-A, Penal Code, can be tried together by Special Judge. 1961 (1) Cr LJ 33 = AIR 1961 Andh Pra 3 (4, 5).

(19) As the Special Judge ceases to have jurisdiction to proceed with the case the moment he finds that the accused who is charged under S. 161, Penal Code is not a public servant he also loses consequential jurisdiction which he possesses under Section 7 (3) of the Act. AIR 1957 Madh Pra 224 (224, 225) = 1957 Cri LJ 1410.

(20) Under provisions of Section 7 (1) an offence of bribery under Section 161, Penal Code and Section 5 (2) of the Prevention of Corruption Act by a person, is exclusively triable by a Special Judge appointed under the provisions of Section 6. AIR 1960 All 618 (621, 622, 623) = 1960 Cri LJ 1290 (DB).

(21) The Court of a Special Judge is subordinate to the High Court and therefore the High Court has power to transfer a case from one Special Judge to another. AIR 1954 Punj 178 (179) = ILR (1954) Punj 938 = 1954 Cri LJ 1252 (DB).

(22) The transfer of a case to a Judge describing him by his designation of a Sessions Judge and not as a Special Judge is incapable of clothing him with authority to try the case. AIR 1956 Pepsu 32 (32) = ILR (1955) Patiala 684 = 1956 Cri LJ 414.

(23) The section confers upon the Government only a power to allot the cases arising in an area amongst the several Special Judges who had been appointed for that area and not also a power to transfer a pending case from one Special Judge to another. AIR 1954 Punj 178 (180) = ILR (1954) Punj 938 = 1954 Cri LJ 1252 (DB). (High Court in which the power to transfer pending case vests has not been divested of that power by the section.)

(24) Trial of offences falling under S. 6 (1)—Appointment of more than one special Judge for a particular area — Before a judge can proceed with the trial he must have been specified under Section 7 (2) — In the absence of specification a particular judge cannot claim jurisdiction to try an offence committed within his area. 1964 (2) Cr LJ 486 (487) (DB) (Mys).

(25) Section only confers on Government a power to allot cases arising in an area amongst several judges appointed for that area. It is not an exception to the general rule embodied in Section 177 of Cr. P. C. AIR 1959 Ker 311 (314) = 1959 Cr LJ 1172.

(26) More than one Special Judge for same area — Specification has to be made by Government. 1959 Raj LW 311 = ILR (1958) 8 Raj 653.

(27) A, who was a subordinate Judge and Assistant Sessions Judge in Lower Assam Districts with Headquarters at G was invested with powers of a Special Judge under the Act. In exercise of that power he took seisin of a case arising from district Y. Later on he was transferred to D and B was appointed his successor at G. Then by later notification B also was made a Special Judge. Sometime later their respective jurisdictions were allocated by another notification confining A's limit to district Y and B's to district Z. There was nothing in those notifications which indicated that B was authorised to take up cases pending on the file of A while at G as his successor irrespective of where they arise from. Nor was there an order of the High Court, transferring the particular case from A's file to him. In these circumstances it was held that A's jurisdiction over the case was not lost. AIR 1953 Assam 220 (223) = 1953 Cri LJ 1768.

(28) Section 7 does not affect the jurisdiction of a Court-martial to try a military officer for an offence even if it

8. Procedure and powers of special Judges.—(1) A Special Judge may take cognizance of offences without the accused being committed to him for trial, and in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1898, for the trial of warrant cases by Magistrates.

(2) A Special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof; and any pardon so tendered shall for the purposes of Sections 339 and 339A of the Code of Criminal Procedure, 1898, be deemed to have been tendered under Section 338 of that Code.

Section 7 — Note 1 (contd.)

is one which if committed by a civilian would be exclusively triable by a Special Judge under this Act. AIR 1958 Bom 354 (364) = 1958 Cri LJ 1144 (DB).

(29) A Sessions Court to which a case has been committed by a valid order of commitment passed before the commencement of the Act cannot be divested of its jurisdiction under Section 7. AIR 1953 Mad 451 (454) = ILR 1953 Mad 667 = 1953 Cri LJ 882. (Retrospective effect of Section 7 must be limited to extent indicated in Section 10. Act does not affect pending cases in Courts other than Magistrate Courts.) ** AIR 1953 All 694 (695) = 1953 Cri LJ 1546 (DB). (The accused who before the Act has acquired the valuable right of being tried with the aid of jury or assessors cannot be deprived of that right in the absence of anything clearly in the Act authorising such deprivation.)

(30) An offence under Section 165-A, Penal Code being only an abetment of an offence under Section 161 or 165 of that Code is not in substance an independent offence but is one which should be taken to be included when there is a mention of the original offences themselves. Therefore even though the offence under Section 165-A is not expressly enumerated in the Schedule to the unamended W. B. Criminal Law Amendment Act, 15 of 1949, it must be held that a Special Judge appointed under that Act was fully competent to take cognizance of an offence under Section 165-A of the Penal Code. AIR 1956 Cal 385 (388) = 1956 Cri LJ 991 (DB).

(31) Magistrate is not deprived of his power by any provision of the Act to take cognizance of offence even where offence is exclusively triable by Special Judge. AIR 1967 Pat 416 (422) (DB).

(32) Provisions of Prevention of Corruption Act in the matter of investigation not strictly complied with — Trial not necessarily bad. (1961) 2 Guj LR 664 = 1962 (1) Cr LJ 142 (146, 147) (DB).

(33) Appointment of Special Judge — Appointment for particular case — Subsequent order to hold Court in prison — Validity— The appointment has to be in respect of an area or areas and not in respect of any particular case or group of cases. Hence the court could not be held inside a prison. 1959 Cr LJ 409 = AIR 1959 All 218 (219) (DB).

(34) Barring that part of the Criminal Law (Amendment) Act which amends the Penal Code, the rest of the Act is procedural and therefore retrospective. The retrospectivity of a procedural statute will not however affect the substantive rights which have already vested in a citizen. AIR 1959 All 149 (152, 153, 154) = 1959 Cr LJ 268.

(35) 'Any other law' — Meaning of — Army Act (1950) constitutes 'any other law' — Accused charged with offences falling under Section 6 — Special Judge has jurisdiction to try such offences though the acts also constitute offences under Section 52 of the Army Act, 1950. **AIR 1961 SC 1762 (1774) = (1962) 2 SCR 195 = 1961 (2) Cr LJ 828.**

(36) Fact that some of the offences with which the accused persons are charged are not those enumerated in Section 6 of the Act does not take away the jurisdiction of the special Judge. **AIR SC 1762 (1774, 1778) = (1962) 2 SCR 195 = 1961 (2) Cr LJ 828.**

(37) Special Judge — Jurisdiction of, is exclusive only as to trial of an offence — So far as taking of cognizance of the offence is concerned a Magistrate as well as the Special Judge can take cognizance of the offence. AIR 1969 Delhi 26 (42) (DB).

(38) Offence under Sections 5 (1) (d) and 5 (2), Prevention of Corruption Act, committed in Varanasi District — Case disposed of by Special Judge sitting at Lucknow — Appeal — Forum — Appeal must be heard by the Bench sitting at Allahabad — Question of jurisdiction to be decided by reference to area in which offence was committed and not by reference only to place where the Judge deciding the case happened to sit. (1968) All Cri. R 15.

(39) Power to transfer case pending before special judge appointed under Act — Supreme Court has such power. **AIR 1966 SC 1418 (1422).**

Section 8 — Note 1

(1) The irregularity arising on the ground of the absence of proper authority

(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1898 shall, so far as they are not inconsistent with this Act, apply to the proceedings before a Special Judge; and for the purposes of the said provisions, the Court of the Special Judge shall be deemed to be a Court of Session trying cases without a jury or without the aid of assessors and the person conducting a prosecution before a Special Judge shall be deemed to be a public prosecutor.

*[(3A) In particular, and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of †[Sections 350 and 549] of the Code of Criminal Procedure, 1898, shall, so far as may be, apply to the proceedings before a Special Judge, and for the purposes of the said provisions a Special Judge shall be deemed to be a Magistrate."]

(4) A Special Judge may pass upon any person convicted by him any sentence authorised by law for the punishment of the offence of which such person is convicted.

[°] Inserted by the Criminal Law Amendment Act, 1958 (2 of 1958), S. 4 (27-2-1958).

[†] Substituted for 'Section 350' by the Criminal Law Amendment (Amending) Act, 1966 (22 of 1966), S. 2 (3-9-1966).

STATE AMENDMENT

West Bengal

Section 8 shall not apply to the State of West Bengal.—See W. B. Act 21 of 1949, Section 13.

Section 8 — Note 1 (contd.)

in the police officer investigating into an offence can neither affect the jurisdiction of the Special Judge to take cognizance of the offence on his report nor vitiate the trial held by him after taking such cognizance. AIR 1955 Pun 151 (153, 154) = ILR (1955) Punj 226 = 1955 Cri LJ 1101 (FB). (Cognizance taken upon report of police officer of a rank below Deputy Superintendent based on investigation made by him without an order from a first class Magistrate.)

(2) Section 191, Criminal P. C. is inconsistent with the provisions of Section 7 (2) of this Act under which the accused can have no choice of being tried by a Court other than of a special judge. Hence, Section 191 cannot apply to trial of cases governed by this Act. AIR 1955 Pat 317 (319) = 1955 Cri LJ 1089.

(3) Although it would be a serious mistake if a special Judge invokes the provisions of Section 337, Criminal P. C. to grant a pardon the pardon so granted will not be vitiated in view of the fact that he has similar power under sub-section (2) of this section. **1957 Cri LJ 67 (69)** (Madh B).

(4) Section 8 (2) — Power of special judge to tender pardon — Need not be moved by prosecution — Action on request of accused can be taken — Joining by prosecution to such request, however, essential. **AIR 1968 SC 594 (598, 599).**

(5) The conferment of power under sub-section (2) on special Judges to grant pardons to accused persons does not deprive the power of the District Magistrate under Section 337, Criminal P. C. and therefore there is no illegality in a pardon granted by him in a case before it went up to the special Judge. **AIR 1958 SC 350 (352, 353) = 1958 SCR 1218 = 1958 Cri LJ 698 = ILR (1958) Punj 1310.**

(6) Granting of pardon — Judical discretion — Case pending before Special Judge — District Magistrate passing order under Section 337 (1) — Special Judge cannot set it aside — District Magistrate can grant pardon in case pending before Special Judge. ('62) 40 Mys LJ 935 ** AIR 1959 Bom 437 (441) (DB).

(7) Offence of bribery triable exclusively by Special Judge— Final report under Section 173, Criminal P. C., can be accepted by District Magistrate — Departmental inquiry under Para 486 of Police Regulation is not barred. AIR 1960 All 618 (622, 623) 1960 Cri LJ 1290 (DB).

(7-A) Trial under Section 5 (3) of Prevention of Corruption Act (1947) — Provisions of Section 517 (3), Criminal P. C. apply — Section 8 (3) of Criminal Law Amendment Act (1952) does not render them inapplicable. AIR 1970 Manipur 40 (44).

(8) Under the Act (as it stood before its amendment by Act 2 of 1958) a conviction by a Special Judge based on evidence partly recorded by his predecessor was void. AIR 1958 Mad 571 (571) = 1958 Cri LJ 1412 (FB). (AIR 1954 Mad 350, **Overruled.**) ** AIR 1960 Andh Pra 151 (152, 153) ** 1960 Cr LJ 307.

[See also. AIR 1958 All 492 (499, 500) = ILR (1951) 1 All 11 = 1958 Cri LJ 834 ** AIR 1954 Pat 543 (544, 545) = 33

*[**8A. Power to try summarily.**—(1) Where a special Judge tries any offence specified in sub-section (1) of Section 6 alleged to have been committed by a public servant in relation to the contravention of any special order referred to in Section 12A of the Essential Commodities Act, 1955, then, notwithstanding anything contained in sub-section (1) of Section 8 of this Act or Section 260 of the Code of Criminal Procedure, 1898, the special Judge shall try the offence in a summary way, and the provisions of Sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

Section 8 — Note 1 (contd.)
Pat 331 = 1954 Cri LJ 1770 ** ('53) ILR (1953) Punj 677 (682).]

(9) By the amendment by Act 2 of 1958, Section 350, Criminal P. C. has been made applicable to trials held by Special Judges under this Act: See now Section 8 (3-A).

(10) (As amended by Act II of 1958), — Proceedings before Special Judge — Power of succeeding Judge to base judgment on evidence recorded by predecessor — Amending Act II of 1958 introducing Section 350, Criminal P. C. (V of 1898) — Section 350 applicable to pending cases. (1962) 2 An WR 312 = 1963 (1) Cri LJ 650 (656, 657).

(11-12) Section 8 (3-A) added by Act 2 of 1958 (making provisions of S. 350, Criminal P. C., applicable to a trial by Special Judge) has no retrospective effect. **1962 SCD 565 (567) = (1962) 3 SCR 328 = 1962 (1) Cr LJ 688 = AIR 1962 SC 690 (694).**

(13) A special Judge can exercise all such powers under Section 503, Criminal P. C. which a Sessions Judge can do under that section. AIR 1954 Punj 294 (295) = ILR (1955) Punj 354 = 1955 Cri LJ 72.

(14) Power to transfer case pending before special judge appointed under Act — Supreme Court has such power. **AIR 1966 SC 1418 (1422).**

(15) Offence exclusively triable by Special Judge — Criminal P. C. (1898), Sections 526, 531 — Applicability — Special Judge having no territorial jurisdiction convicting accused — Conviction not illegal — The provisions of S. 526 of the Cr. P. C. empowering the High Court to transfer any case from a Criminal Court subordinate to it to any other court competent to try it apply to a case before any Special Judge. **AIR 1961 SC 1629 (1631, 1632) = 1961 (2) Cri LJ 811.**

(16) Cases against accused persons subject to military law pending before but not 'tried' by Special Judge before 30-6-1966 — Accused persons should be tried by Court Martial and not by Special Judge. AIR 1967 Raj 221 (224).

(17) Rule does not apply to a special Judge constituted under the Criminal Law Amendment Act (1952) for trial of an army personnel. **AIR 1961 SC 1762 (1774) = (1962) 1 SCJ 231 = 1961 (2) Cr LJ 828.**

(18) Special Judge is empowered to take cognizance of certain offences without accused being committed. AIR 1959 Bom 437 (440, 441).

(19) Cognizance under not confined to police report — Offence under Section 5 (2) of Act 2 of 1947 — No investigation by officers specified in Section 5-A — Cognizance taken on complaint by Circle Inspector is valid. AIR 1966 Pat 15 (17) (DB).

(20) Court of Special Judge is Criminal Court inferior to High Court and its orders can be revised by High Court under Sections 435, 439, Criminal P. C. 1969 Cri LJ 557 (563) = 10 Guj LR 537.

(21) Section 193 Cr. P. C. (1898) can be invoked by special Judge — Collector of Customs can prefer complaint in respect of offence under Prevention of Corruption Act. AIR 1966 Mad 432 (434).

(22) Special Judge is Court of Session trying cases without jury or without the aid of assessors. AIR 1966 Mad 432 (433).

(23) Magistrate is not deprived of his power by any provision of the Act to take cognizance of offence even where offence is exclusively triable by Special Judge. AIR 1967 Pat 416 (422) (DB).

(24) Provisions of Cr. P. C. apply to proceeding before a Special Judge. Word 'proceedings' does not apply only to proceedings after cognizance has been taken. AIR 1959 Ker 311 (314) = 1959 Cri LJ 1172.

(25) Section does not confer exclusive jurisdiction on Special Judge in regard to taking cognizance of a case. AIR 1969 Delhi 26 (42, 43) (DB).

(26) The powers of a Special Judge to take cognizance of offences specified in Section 6 are wide and unlimited. He may act on a report submitted by a police officer. He may act on a private complaint or he may also act on the basis of any information derived from any source and also on his personal knowledge and suspicion. The Special Judge has been clothed with special authority to take cognizance of offences under Section 8 of the Act. AIR 1962 Bom 205 (208 to 214) = 1962 (2) Cr LJ 326 (DB).

(27) Provisions of Prevention of Corruption Act in the matter of investigation not strictly complied with — Trial not necessarily bad. 1962 (1) Cr LJ 142 (Guj) (DB).

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the special Judge to pass a sentence of imprisonment for a term not exceeding one year.

(2) Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1898, there shall be no appeal by a convicted person in any case tried summarily under this section in which the special Judge passes a sentence of imprisonment not exceeding one month, or of fine not exceeding two thousand rupees, or both, whether or not any order under Section 517 of the said Code is made in addition to such sentence, but an appeal shall lie where any sentence of imprisonment or fine in excess of the aforesaid limits is passed by the special Judge.

(3) Where any notification is issued under sub-section (1) of Section 12A of the Essential Commodities Act, 1955, in relation to a special order, all cases triable summarily under this section in relation to such special order and pending on the date of the issue of such notification shall, if no witnesses have been examined before the said date, be tried by the special Judge in a summary way under this section.]

[°] Inserted by Essential Commodities (Amendment) Act, 1964 (47 of 1964) (as amended by Act 14 of 1970), S. 3 (w. r. e. f. 5-11-1964): To be in force till 31-12-71.

9. Appeal and revision.—The High Court may exercise, so far as they be applicable, all the powers conferred by Chapters XXXI and XXXII of the Code of Criminal Procedure, 1898 on a High Court as if the Court of the Special Judge were a Court of Session trying cases without a jury within the local limits of the jurisdiction of the High Court.

STATE AMENDMENTS

Goa, Daman and Diu

In its application to the Union Territory of Goa, Daman and Diu, in Section 9, for the words 'High Court,' where they occur for the first and third time, substitute the words "Judicial Commissioner's Court."—See G. S. R. 1634. Gaz. of Ind., 29-10-1966, Pt. II, S. 3 (i), page 1837.

West Bengal

Section 9 shall not apply to the State of West Bengal.—See W. B. Act 21 of 1949, Section 13

10. Transfer of certain pending cases.—All cases triable by a Special Judge under Section 7 which, immediately before the commencement of this Act, were

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Section 9 — Note 1

(1) Section 9 is not a surplusage but it indicates the intention of the legislature to confer the status of a sessions Judge upon special Judges. Since the section has stated that the Court of special Judge shall be deemed to be a Court of session, it is incumbent on all Courts of law to follow the statutory direction without entering into any enquiry as to whether the special Judge is in essence a sessions Judge or not. AIR 1958 All 492 (499) = ILR (1958) 1 All 11 = 1958 Cri LJ 834.

(2) Rule 3 made by Central Government under S. 549, Criminal P. C. does not apply to a special judge constituted under the Criminal Law Amendment Act, 1952. **AIR 1961 SC 1762 (1774).**

(3) Court of Special Judge is Criminal Court inferior to High Court and its orders can be revised by High Court under Sections 435, 439 Cr. P. C. 1969 **Cr LJ** 557 (568) = ILR (1968) **Guj 67.**

Section 10 — Note 1

(1) Magistrate who at the commencement of this Act has before him a case governed by it has no option but to send it to the special Judge whether it is in the stage of enquiry or trial. AIR 1954 Pat 543 (544) = 33 Pat 331 = 1954 Cri LJ 1770 (DB).

(2) In cases triable by special Judges under Section 7 of this Act and which were pending before Magistrates the commencement of the Act ipso facto deprived them of jurisdiction to try the same any further. **AIR 1957 SC 503 (506, 507) = 1957 SCR 678 = 1957 Cri LJ 605** ** AIR 1955 Pat 88 (92) = 33 Pat 872 = 1955 Cri LJ 379 (DB). (Non-appointment of special Judge irrelevant to the question.)

(3) A case in which the Magistrate had not pronounced a judgment before the commencement of the Act was a case pending before him on the date of the Act which he must have forwarded to the special Judge. **AIR 1957 SC 503 (509)**

pending before any Magistrate shall, on such commencement* be forwarded for **trial** to the Special Judge having jurisdiction over such cases.

[*] That is, 28th July, 1952.

STATE AMENDMENT

West Bengal

Section 10 shall not apply to the State of West Bengal.—W. B. Act 21 of 1949, Section 10.

*[11. **Military, naval and air force laws not to be affected.**—(1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any Court or other authority under any military, naval or air force law.

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), the Court of the Special Judge shall be deemed to be a Court of ordinary criminal justice.]

[*] Inserted, and shall be deemed always to have been inserted, by the Criminal Law Amendment (Amending) Act, 1966 (22 of 1966), S. 3 (3-9-1966).

NOTE.—For validation and indemnity of proceedings under any military, naval or air force law before 30-6-1966 and of cases pending before a Special Judge

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Section 10 — Note 1 (contd.)
= **1957 SCR 678 = 1957 Cri LJ 605.** (AIR 1954 Bom 327, Affirmed.) ** AIR 1955 Assam 214 (216) = ILR (1954) 6 Assam 264 = 1955 Cri LJ 1321 (DB). (Note.— The view held in this case that a judgment pronounced by a Magistrate after the commencement of the Act but before the appointment of a special Judge was not one passed without jurisdiction must be considered to be overruled by AIR 1957 SC 503 which has held that the jurisdiction of the Magistrate ceases ipso facto with the commencement of the Act.)

(4) Section 10 did not purport to transfer cases pending in the Court of Session at the commencement of the Act to the Court of the Special Judge. Where a case was transferred to the Court of Session before the Act came into force and was pending before the Assistant Sessions Judge when the Act came into force, he has jurisdiction to try the case. **AIR 1959 SC 831 (832) = (1959) Supp (2) SCR 776 = 1959 Cr LJ 1120. (AIR 1957 SC 503, Foll.)**

(5) Transfer of pending case to Special Judge — "Pending" — Meaning of — Case in which order of commitment is passed before Act came into force — Not a pending case. **AIR 1962 SC 1573 (1578, 1579) = (1963) 1 SCR 121 = 1962 (2) Cri LJ 510.**

(6) In giving effect to the provisions of Section 10 which are mandatory the question of hardship to parties is irrelevant. AIR 1954 Pat 543 (544) = 33 Pat 331 = 1954 Cr LJ 1770 (DB).

(6a). A Court is not required to hear the parties before it acts under Section 10. AIR 1954 Pat 543 (544) = 33 Pat 331 = 1954 Cri LJ 1770 (DB).

(7) **Section 10 does not affect the jurisdiction of Courts other than magistrate's Courts over pending cases.** AIR 1953 Mad 451 (454) = ILR (1953) Mad 667 = 1953 Cri LJ 882.

(8) In the case of an act or omission in respect of which the prosecution have the option of charging a public servant either under the other provisions of the Penal Code or under the Prevention of Corruption Act and they have adopted the former course, Section 10 of this Act cannot be invoked to divest the Magistrate of his jurisdiction to continue the trial of the case. AIR 1954 Bom 549 (550) = ILR (1955) Bom 159 = 1954 Cri LJ 1745 (FB).

(9) Where an accused has been charged with other offences besides those covered by the Act the Magistrates' jurisdiction to try those other offences must be considered to be only under suspension when the case is forwarded to the special Judge under Section 10. Therefore, if the special Judge finds for some reason that he cannot take cognizance of the case and returns the case to the Magistrate for trial of the other offences the Magistrate could validly proceed to try those offences. AIR 1957 Tri 18 (21) = 1957 Cri LJ 394.

(10) Section 10 which is a law made by the Parliament is not rendered invalid by the fact that in its operation it amounts to retrospective legislation. AIR 1954 Madh B 206 (208) = 1954 Cri LJ 1739.

(11) The provisions of Section 526 of Cr. P. C. empowering the High Court to transfer any case from a Criminal Court subordinate to it to any other court competent to try it, apply to a case before any Special Judge. **AIR 1961 SC 1629 (1631) = 1961 (2) Cri LJ 811.**

(12) Magistrate is not deprived of his power by any provision of the Act to take cognizance of offence even where offence is exclusively triable by Special Judge. AIR 1967 Pat 415 (422) = 1967 Cri LJ 1677) (DB).

immediately before 30-6-66, see Ss. 4 and 5 of the Criminal Law Amendment (Amending) Act (22 of 1966).

[THE] CRIMINAL LAW AMENDMENT ACT, 1961
(ACT XXIII OF 1961)*

[The Act printed here is as on 15-11-1969.]

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1. Short title and extent.
2. Questioning the territorial integrity or frontiers of India in a manner prejudicial to the interests of safety and security of India.
3. Statements etc., in a notified area prejudicial to maintenance of public order, etc., therein or to safety or security of India and regulation of entry of persons in such area.
4. Power to declare certain publications forfeited and to issue search warrants for the same.
5. Application to High Court to set aside order of forfeiture.

Statement of Objects and Reasons

"Certain recent developments in the regions adjoining the borders of India and in other parts of the country likely to jeopardise the security of the country and its frontiers point to the necessity of placing curbs on such activities. The Criminal Law Amendment Bill, 1960, accordingly seeks to provide for punishment to persons who may question the territorial integrity or frontiers of India in a manner prejudicial to the safety and security of the country, and for other cognate matters."

—Gaz. of Ind., 1960, Extra, Pt. II-Section 2, p. 938.

ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Ext. by Regns. 12 of 1962; 6 of 1963; 7 of 1963.

[THE] CRIMINAL LAW AMENDMENT ACT, 1961
(ACT XXIII OF 1961)

[17th May, 1961.]

An Act to supplement the criminal law.

BE it enacted by Parliament in the Twelfth Year of the Republic of India as follows :—

[*] For Statement of Objects and Reasons, see Gaz. of India, 1960, Ext., Pt. II-Sec. 2, p. 938.

1. Short title and extent.—(1) This Act may be called THE CRIMINAL LAW AMENDMENT ACT, 1961.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

The Act has been extended to the Union Territory of (i) Goa, Daman and Diu by Regulation 12 of 1962 (1-1-1964) (ii) Dadra and Nagar Haveli, by Regn. 6 of 1963 (1-7-1965) and (iii) Pondicherry, by Regn. 7 of 1963, (1-10-1963).

2. Questioning the territorial integrity or frontiers of India in a manner prejudicial to the interests of safety and security of India.—Whoever by words either spoken or written, or by signs, or by visible representation or otherwise, questions the territorial integrity or frontiers of India in a manner which is, or is likely to be, prejudicial to the interests of the safety or security of India, shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

3. Statements, etc., in a notified area* prejudicial to maintenance of public order, etc., therein or to safety or security of India and regulation of entry

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Section 3 — Note 1

(1) Notified area under sub-section (3) —Petitioner granted permit to enter and remain in it for prescribed period — Subsequent cancellation of permit before expiry of period — Order passed arbitrarily and in violation of rules of fair play — Order quashed. AIR 1968 Delhi 49 (54).

of persons in such area.—(1) If the Cental Government considers that in the interests of the safety or security of India or in the public interest, it is necessary or expedient so to do, it may, by notification in the Official Gazette, declare any area adjoining the frontiers of India to be a notified area; and thereupon, for so long as the notification is in force, such area shall be a notified area for the purposes of this section.

(2) Whoever makes, publishes or circulates in any notified area any statement, rumour or report which is, or is likely to be, prejudicial to the maintenance of public order or essential supplies or services in the said area or to the interests of the safety or security of India, shall be punishable with imprisonment for a term which may extend to three years or with fine, or with both.

(3) On and after such day as may be specified in, and subject to any exemptions for which provision may be made by, a notification issued under sub-section (1), no person who was not immediately before the said day a resident in the area declared to be a notified area by the notification shall enter or attempt to enter that area or be therein except in accordance with the terms of a permit in writing granted to him by a person, not below the rank of a Magistrate of the first class, specified in the said notification.

(4) Any police officer, not below the rank of Sub-Inspector of Police, may search any person entering or attempting to enter, or being in, or leaving, a notified area and any vehicle, vessel, animal or article brought in by such person, and may, for the purpose of the search, detain such person, vehicle, vessel, animal or article:

Provided that no woman shall be searched in pursuance of this sub-section except by a woman authorised in this behalf by the police officer

(5) If any person is in a notified area in contravention of the provisions of sub-section (3), then, without prejudice to any other proceedings which may be taken against him, he may be removed therefrom by or under the direction of any police officer on duty in the notified area, not below the rank of Sub-Inspector of Police.

(6) If any person enters or attempts to enter a notified area or is therein in contravention of any of the provisions of sub-section (3), he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

[*] For declaration of certain areas adjacent to frontiers of India as notified areas in Himachal Pradesh and Uttar Pradesh, see G. S. R.s 377, 378, 379 and 380 dated 23-3-1962, published in Gaz. Ind., 31-3-1962, Pt. II, Section 3 (i), pp. 372, 373, 374. G. S. R.s 379 and 380 have been subsequently amended by G. S. R. 896, Gaz. Ind., 1963, Pt. II, S. 3 (i), p. 1021.

4. Power to declare certain publications forfeited and to issue search warrants for the same.—(1) Where any newspaper or book as defined in the Press and Registration of Books Act, 1867, or any other document, wherever printed, appears to the State Government to contain any matter the publication of which is punishable under Section 2 or sub-section (2) of Section 3, the State Government may, by notification in the Official Gazette, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter and every copy of such book or other document to be forfeited to the Government, and thereupon any police officer may seize the same wherever found and any Magistrate may by warrant authorise any police officer not below the rank of Sub-Inspector to enter upon and search for the same in any premises where any copy of such issue or any copy of such book or other document may be or may be reasonably suspected to be.

(2) The powers conferred by sub-section (1) on the State Government may also be exercised by the Central Government.

(3) In sub-section (1) "document" includes also any painting, drawing or photograph, or other visible representation.

5. Application to High Court to set aside order of forfeiture.—(1) Any person having any interest in any newspaper, book or other document in respect of which an order of forfeiture has been made under Section 4 may, within two months from the date of such order, apply to the High Court to set aside such order on the ground that the issue of the newspaper, or the book or other document in respect of which the order was made did not contain any matter of such a nature as is referred to in sub-section (1) of Section 4.

(2) The provisions of Sections 99C to 99F of the Code of Criminal Procedure, 1898 shall apply in relation to an application under sub-section (1) as they apply in relation to an application under Section 99B of that Code and the reference in Section 99D to seditious or other matter of such a nature as is referred to in sub-section (1) of Section 99A of that Code shall be construed as a reference to any matter of such a nature as is referred to in sub-section (1) of Section 4 of this Act.

(3) No order passed or action shall taken under Section 4 shall be called in question in any Court otherwise than in accordance with the provisions of this section.

[THE CODE OF] CRIMINAL PROCEDURE, 1898

(ACT V OF 1898)

[The text of the Code printed here is as on 30-11-1969.]

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CODE HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Amended by Acts 12 of 1899; 6 of 1900; 1 of 1903; 8 of 1913; 13 of 1916; 38 of 1920; 14 of 1922; 20 of 1923; 35 of 1923; 37 of 1923; 7 of 1924; 18 of 1924; 8 of 1925; 23 of 1925; 29 of 1925; 10 of 1926; 34 of 1926; 36 of 1926; 25 of 1927; 21 of 1932; 24 of 1934; 35 of 1934; 22 of 1939; 4 of 1940; 35 of 1940; 14 of 1941; 15 of 1941; 26 of 1943; 27 of 1943; 28 of 1943; 2 of 1945; 6 of 1945; 3 of 1946; 4 of 1946; 9 of 1949; 15 of 1949; 17 of 1949; 42 of 1949; 35 of 1950; 1 of 1951; 24 of 1951; 43 of 1951; 23 of 1952; 46 of 1952; 64 of 1952; 26 of 1955; 44 of 1955; 39 of 1956; 36 of 1957; 20 of 1958; 26 of 1958; 43 of 1958; 52 of 1959; 56 of 1960; 58 of 1960; 60 of 1960; 23 of 1961; 52 of 1962; 40 of 1964; 52 of 1964; 19 of 1969; 35 of 1969; 36 of 1969.

—Adapted by A. O., 1937; A. O., 1947; A. C. A. O., 1948; A. L. O., 1950; 2 A. L. O., 1956.

Andh. Pra. A. L. O., 1953 and 1957.

Bom. A. L. O., 1957.

—Extended 59 of 1949; 30 of 1950 (as Am. by 68 of 56) 67 of 1950; 36 of 1954: Regs. 3 of 1876; 12 of 1962; 6 of 1963; 7 of 1963; 8 of 1965. In Maharashtra by Bom. Act 97 of 1958.

—Repealed and amended by Acts 4 of 1900; 4 of 1909; 10 of 1914; 18 of 1919; 11 of 1923; 12 of 1923; 18 of 1923; 2 of 1926: 32 of 1925: 10 of 1927.

—Repealed in part by Acts 4 of 1909; 15 of 1910; 4 of 1912; 37 of 1925.

Code how affected in—

—Andhra Pradesh: Hyderabad Act 32 of 1951; A. P. Act 19 of 1964.

—Assam: Assam Acts 13 of 1964; 20 of 1966.

—Bihar: Bihar Acts 31 of 1948; 11 of 1962.

—Gujarat: Guj. A. L. (8th Am.) O., 1961; Guj. Acts 19 of 1961 (as Am. by Guj. Act 32 of 1961); 50 of 1963.

—Kerala: Presi. Act 5 of 1957; Ker. Acts 23 of 1958; 11 of 1963.

—Madhya Pradesh: C. P. B. Acts 19 of 1936 and 20 of 1948; M. P. Acts 50 of 1950; 23 of 1958; 7 of 1962.

—Maharashtra—Bom. Acts 4 of 1902; 29 of 1935; 12 of 1941; 30 of 1946; 32 of 1948; 46 of 1948; 71 of 1948; 78 of 1948; 28 of 1949; 20 of 1951; 22 of 1951; 23 of 1951; 39 of 1951; 6 of 1952; 34 of 1953; 8 of 1954; 21 of 1954; 71 of 1954; 18 of 1955; 29 of 1955; 39 of 1955; 20 of 1956; 17 of 1958; 97 of 1958; 54 of 1959; 59 of 1959; 63 of 1959; 22 of 1960: Maha. Acts 22 of 1960; 23 of 1961; 46 of 1962; 4 of 1965; 20 of 1966; 29 of 1969.

—Mysore—Mys. Acts 17 of 1961; 19 of 1964; 13 of 1965.

—Orissa—Reg. No. IV of 1937; Acts 21 of 1959; 13 of 1962.

—Punjab — Punj. Acts 10 of 1926; 1 of 1936; 11 of 1940; 28 of 1949; 25 of 1954; 30 of 1958; 30 of 1960; 25 of 1964.

—Saurashtra—Sau. Act 45 of 1955.

—Tamil Nadu—(Central) Act 5 of 1899; Madras Acts 34 of 1955; 31 of 1956; 22 of 1957; 25 of 1957; 21 of 1960; 25 of 1960; 39 of 1961.

—Uttar Pradesh—U. P. Acts 6 of 1938; 9 of 1940; 36 of 1948; 46 of 1948; 8 of 1949; 28 of 1951; 1 of 1952; 22 of 1955; 12 of 1957; 31 of 1961.

—West Bengal—Bengal Act 7 of 1944: Beng. Ordn. I of 1947 (Temp.)—West Bengal Acts 21 of 1949; 58 of 1950; 20 of 1953; 38 of 1954;

4 of 1955; 30 of 1955; 26 of 1956; 1 of 1957; 30 of 1959; 12 of 1966; Presi. Act 8 of 1968.

—Union Territories:—

—Andaman and Nicobar Islands—Regs. 3 of 1876; 1 of 1889 and 2 of 1950.

—H. P.—H. P. Act 33 of 1961.

—Laccadive, Minicoy and Amindivi Islands—Reg. 8 of 1965.

—All U. T.s (except Chandigarh) — C. A. 19 of 1969.

COGNATE ACTS AND PROVISIONS

(1) Abolition of Whipping Act, XLIV of 1955.
(2) Atomic Energy Act, XXXIII of 1962, S. 26.
(3) Cantonments (House Accommodation) Act, VI of 1923, S. 37.
(4) Cattle Trespass Act, I of 1877, Chapters V, VI.
(5) Children Act, LX of 1960, Ss. 23, 24, 25.
(6) Criminal Law Amendment Act, XIV of 1908.
(7) Criminal Law Amendment Act, XXIII of 1932.
(8) Criminal Law Amendment Act, XX of 1938.
(9) Criminal Law Amendment Act, XLVI of 1952.
(10) Criminal Law Amendment Act, XXIII of 1961.
(11) Criminal Law Amendment Ordinance, XXXVIII of 1944.
(12) Customs Act, LII of 1962, S. 138.
(13) Electricity Act, IX of 1910, S. 50.
(14) Essential Services Maintenance Act, LIX of 1968, S. 7.
(15) Explosive Substances Act, VI of 1908, S. 7.
(16) Extradition Act, XXXIV of 1962, S. 25.
(17) Forfeiture Act, IX of 1859.
(18) General Clauses Act, X of 1897, Ss. 25, 26.
(19) Gold Control Act, XLV of 1968, Ss. 69, 97, 98.
(20) Official Secrets Act, XIX of 1923, Ss. 12, 13.
(21) Post Office Act, VI of 1898, S. 72.
(22) Presidency Magistrates (Court-Fees) Act, IV of 1877, S. 57.
(23) Presidency Small Cause Courts Act, XV of 1882, Ch. XII.
(24) Presidency Towns Insolvency Act, III of 1909, Ss. 45, 100, 104.
(25) Prevention of Corruption Act, II of 1947.
(26) Prevention of Seditious Meetings Act, X of 1911, Ss. 4, 6.
(27) Probation of Offenders Act, XX of 1958
(28) Railways Act, IX of 1890, S. 130.
(29) Railways Property (Unlawful Possession) Act, XXIX of 1966, S. 5.
(30) Reformatory Schools Act, VIII of 1897.
(31) Special Criminal Courts (Jurisdiction) Act, XVIII of 1950.
(32) Stamp Act, II of 1899, S. 72.
(33) Unlawful Activities (Prevention) Act, XXXVII of 1967, S. 14.

[THE CODE OF] CRIMINAL PROCEDURE, 1898[°]

(ACT V OF 1898)

An Act to consolidate and amend the law relating to the Criminal Procedure.

WHEREAS it is expedient to consolidate and amend the law relating t riminal Procedure;

It is hereby enacted as follows:

[°] For Statement of Objects and Reasons, see Gazette of India, 1897, Pt. V, p. 363; for Report of the Select Committee, see ibid, 1898, Pt. V, p. 19; and for Proceedings in Council, see ibid., 1897, Pt. VI, pp. 238 and 254; and ibid., 1898, pp. 22, 101 and 175.

PREAMBLE — SYNOPSIS

1. Scheme and arrangement.
2. Police Rules and Regulations.
3. Construction of a penal statute.
4. Code, how far exhaustive.
5. Scope and object of the Code.

This Act has been declared to be in force in Sonthal Parganas (now forming part of the State of Bihar) with modifications, under the Sonthal Paraganas Settlement Regulation, 1872 (III of 1872), S. 3 and Sch. (as to the modifications see the Sonthal Parganas Justice Regulation, 1893 (V of 1893), S. 4); in Panth Piploda, by the Panth Piploda Laws Regulation, 1929 (1 of 1929), S. 2 and Schedule; in Khondmals District by the Khondmals Laws Regulation, 1936 (IV of 1936), Sec. 3 and Schedule and Angul District by the Angul Laws Regulation, 1936 (V of 1936), S. 3 and Sch.; Reg. V of 1936 has now been repealed by Orissa Act 19 of 1967; Angul district as formed under the repealed Regulation now forms part of the district of Dhenkanal in Orissa State. It has been extended to Berar by Act 4 of 1941.

It has been declared to be in force by notification under the Scheduled Districts Act, 1874 (XIV of 1874), S. 3 (a) in the Scheduled Districts in the Ganjam (now in Orissa State) and Vizigapatam (now in A. P. State)—see Ft. St. G. Gaz., 1898, Pt. I, p. 306, and Gazette of India, 1898, Pt. I, p. 869. For cesser of certain areas from this Agency from being part of Scheduled Areas, see the Madras Scheduled Areas (Cesser) Order, 1951 (C. O. 30, d. 22-6-1951) and the Andhra Scheduled Areas (Cesser) Order, 1955 (C. O. 50, d. 9-9-1955) published in Gaz. Ind. 1951, Pt. II, S. 3, Ext., p. 843 and Gaz. Ind. 1955, Pt. II, Section 3, Ext., p. 1997); and by notification under the same section and Section 5A in the following other Scheduled Districts, namely, the Districts of Hazaribagh, Lohardaga (now the Ranchi District—see Calcutta Gazette, 1899, Pt. I, p. 44), Manbhum and Palamau and in Pargana Dhalbhum and the Kolhan

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Preamble (contd.)

1. Scheme and arrangement. — (1) Where the language is ambiguous, it is permissible to construe the provisions of a particular section with reference to the scheme and arrangement of the Act. ('07) 31 Bom 480 (487) = 6 Cri LJ 47 (DB) ** ('68) 5 Bom HCR (Cr) 69 (73. 74) (FB) ** AIR 1920 Mad 337 (337, 338, 343) = 21 Cri LJ 402 (FB) ** ('81) 5 Bom 338 (347, 349) (FB).

(2) The division into chapters is an organic feature of the Criminal Procedure Code and all the sections falling under one chapter must be interpreted as having reference exclusively to matters within the purview of that chapter. ('06) 33 Cal 292 (294) = 3 Cri LJ 126 (DB) ** ('68) 5 Bom HCR 69 (74) (FB).

(3) Since all the provisions of an Act must be construed harmoniously, it is permissible to interpret a doubtful point occurring in one part by a consistent reference to the express provisions on similar points in other parts of the Act. AIR 1944 All 137 (142, 160) = 46 Cri LJ 38 (FB) ** ('71) 16 Suth WR Cr 28 (30) (DB).

2. Police Rules and Reguations. — (1) There is no section in the Code which gives the Executive Government power to make rules to supplement the Code. AIR 1938 All 625 (630) = 40 Cri LJ 132 (DB).

(2) The Code cannot be modified by any orders of the Local Government in a departmental Code such as the Police Regulations. AIR 1938 All 534 (535) = 39 Cri LJ 971.

(3) Departmental interpretation, such as is embodied, for instance, in Police Rules, is of some assistance in arriving at a correct construction of an operative section in the Code. ('47) 48 Cri LJ 774 (777) (Lah).

(4) Bihar and Orissa Police Manual (1930), Rule 50 (d) was framed not in pursuance of any power contained in Cr. P. C. (1898) but under Sections 7 and 12 of Police Act (1861). AIR 1967 Pat 416 (421) = 1967 Cri LJ 1677 = 1967 BLJR 385.

(5) Provisions contained in Criminal P. C., in respect of police investigation are neither affected nor modified by Sections 7, 12 or 46 of Police Act (1861). AIR 1967 Pat 416 (421) = 1967 Cri LJ 1677 = 1967 BLJR 385 (DB).

3. Construction of a penal statute. — (1) The Code of Criminal Procedure provides for a machinery for the punishment and prevention of offences against the substantive criminal law. ('89) 13 Bom 590 (598) (FB) ** ('89) 13 Bom 600 (606) (DB) ** ('92) 16 Bom 661 (669) (DB).

(2) A penal statute must be construed strictly. AIR 1953 Madh B 26 (Pr 13) = 1953 Cri LJ 253 (DB) ** AIR 1958 Bom 411 (416) = ILR (1957) Bom 163 (DB) ** AIR 1958 Ker 41 (43) = ILR (1957) Ker 989 = 1958 Cri LJ 177 (DB) ** AIR 1940 Rang 104 (108) = 41 Cri LJ 515 (DB) ** AIR 1939 Bom 339 (340) = 40 Cri LJ 891 (DB) ** AIR 1939 Lah 81 (85) = 40 Cri LJ 497 (FB).

(3) The rule of strict construction must yield to the paramount rule that every statute is to be expounded according to its express or manifest intention. AIR 1958 Ker 41 (43) = ILR (1957) Ker 989 = 1958 Cri LJ 177 (DB) ** AIR 1967 Punj 322 (324) = 1967 Cri LJ 917 (DB) ** AIR 1965 Guj 302 (306, 307) =

in the Singbhum District. All these districts and areas now form part of the State of Bihar.—See Calcutta Gazette, 1898, Pt. I, p. 714 and Gazette of India, 1899, Pt. I, p. 779. Note, Scheduled Districts Act, 1874, has ceased to have effect under the provisions of A. O., 1937.

As to its application in the Andaman and Nicobar Islands, see the Andaman and Nicobar Islands Regulation (III of 1876), S. 13 and the Andaman and Nicobar Islands Regulation, 1884 (I of 1884), S. 3 and the Andaman and Nicobar Islands (Amendment) Regulation, 1950 (II of 1950).

It has ceased to be in force, by notification under the Assam Frontier Tracts Regulation, 1880 (II of 1880), S. 2, in the Garo-Hills, the Khasi and Jaintia Hills, the Naga Hills, the North Cachar Sub-division of the Cachar District, the Mikir Hill tracts in the Nowgong District, the Dibrugarh Frontier Tracts in the Lakhimpur District, and the Lushai Hills (now known as Mizo District—see Act 18 of 1954)—see Assam Gazette, 1898, Pt. II, p. 788 and Assam Code, Vol. II, Appendix II-C. Naga Hills District now forms part of the State of Nagaland. As all the laws prevailing in the State of Assam apply to the State of Nagaland, Code of Criminal Procedure, 1898 would apply to the State of Nagaland as well—see Act 27 of 1962, S. 3 and Schedule and S. 26 (1-12-1963). United Khasi and Jaintia Hills district and the Garo Hills district together from the autonomous State of Meghalaya now—See Act 55 of 1969, S. 3 (1) (2-4-1970).

The provisions of the Act do not apply to trials or proceedings before Nyaya Panchayats in West Bengal and Andhra Pradesh—See W. B. Act I of 1957, S. 96 (b) and A. P. Act II of 1964, S. 172 (3).

Preamble — Note 3 (contd.)

1965 (2) Cri LJ 753 = (1964) 5 Guj LR 897 (DB).

(4) Nothing is to be regarded as within the meaning of the statute which is not within the letter or which is not expressly and intelligibly described in the very words of the statute itself. AIR 1939 Mad 963 (967) (DB) ** AIR 1927 Bom 369 (370) = 28 Cri LJ 1023 (DB) ** AIR 1937 Bom 28 (30) = 38 Cri LJ 145 (DB) ** AIR 1936 Nag 55 (62) = 37 Cri LJ 474 (DB) ** ('01) 1901 Pun Re (Cr) No. 24 p. 59 (65) (FB).

[See however AIR 1940 Rang 104 (108) = 41 Cri LJ 515 (DB).]

(5) A penal statute must be construed, in case of doubt or ambiguity in the language in favour of the subject. AIR 1944 All 137 (145) = 46 Cri LJ 38 (FB) ** **AIR 1959 SC 436 (439) = 1959 Cri LJ 527** ** AIR 1939 Lah 81 (85) = 40 Cri LJ 497 (FB) ** AIR 1923 Mad 523 (524) = 24 Cri LJ 599 (FB) ** ('87) 10 All 150 (154) (FB) ** ('01) 25 Bom 680 (693) (FB).

(6) Courts should not extend or narrow down the scope or meaning of a penal provision by loose or strained construction. AIR 1923 Mad 523 (531) = 24 Cri LJ 599 (FB) ** ('13) 19 Ind Cas 204 (206) = 14 Cri LJ 204 (DB) ** ('88) 10 All 150 (154) (FB) ** AIR 1931 Nag 177 (177) = 32 Cri LJ 1266 ** ILR (1966) Andh Pra 202. (Returns under Rule 126-F of Defence of India (Amendment) Rules, 1963 — Pawn-broker, also a dealer, need not submit returns about the ornaments held by him as pawnbroker.)

(7) In a penal statute it is the duty of the Courts to interpret words of ambiguous meaning in a broad and liberal sense so that they will not become traps for honest, unlearned (in the law) and unwary men. **AIR 1953 SC 278 (Pr 23) = 1953 SCR 825 = 1953 Cri LJ 1116.**

(8) The principle of construing a statute in order to suppress a mischief and to advance the object of the legislation does not apply to a penal statute. AIR 1953 Bom 347 (353) = ILR (1953) Bom 1007 = 1953 Cri LJ 1445 (FB).

(9) It is not competent to the Court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature. AIR 1953 Bom 347 (353) = ILR (1953) Bom 1007 = 1953 Cri LJ 1445 (FB).

(10) A penal statute must be construed according to its plain, natural grammatical meaning. AIR 1953 Bom 347 (353) = ILR (1953) Bom 1007 = 1953 Cri LJ 1445 (FB).

(11) When a matter is both within the letter and the spirit of the enactment, then a penal statute is to be construed like any other instrument and the Court is not to find or make any doubt or ambiguity in its language. AIR 1941 Sind 160 (164, 165) = 43 Cri LJ 82 (DB) ** AIR 1940 Lah 129 (132) = 41 Cri LJ 591 (FB) ** ('99) 23 Mad 164 (166) (SB) ** ('70) 7 Bom HCR (Cr) 39 (40) (FB) ** (1857) 7 Moo Ind App 72 (103) (PC).

(12) In construing the provisions of the Code, it need not be assumed that the principles of English criminal law, either substantive or procedural, were intended to be adhered to. AIR 1936 Cal 356 (367) = ILR (1937) 1 Cal 711 = 37 Cri LJ 758 (FB).

Preamble — Note 3 (contd.)

(13) The language of the Code is conclusive and must be construed according to ordinary principles so as to give effect to the plain meaning of the language used. In the case of ambiguity that meaning must be preferred which is more in accord with justice and convenience, but in general the words used read in context must prevail. **AIR 1938 PC 130 (133) = ILR (1938) 2 Cal 295 = 65 Ind App 158 = 32 Sind LR 476 = 39 Cri LJ 452.**

(14) The cardinal rule of interpretation is that every section of the Code is to be given a proper interpretation. AIR 1958 Raj 248 (249) = ILR (1957) 7 Raj 737 = 1958 Cri LJ 1243 (DB).

(15) In matters of criminal law retrospective effect can be given only by an Act of the Legislature and not by the executive orders of the Government. AIR 1943 Sind 39 (45) = 44 Cri LJ 293 (FB).

(16) Where there is a change in the law applicable, after a complaint is filed and, before it is disposed of, and the law relates to a matter of procedure it is only the law that is in force at the time when the case is decided that will apply. AIR 1952 Hyd 187 (Prs. 12, 14) = ILR (1952) Hyd 684 = 1952 Cri LJ 1740 (FB) ** AIR 1952 Hyd 135 (Prs 2, 6) = ILR (1952) Hyd 383 = 1952 Cri LJ 1299 (DB).

(17) For ascertainment of legislative intent of a statute the statute must be considered as a whole. AIR 1967 Punj 42 (44) = 1967 Cri LJ 251 = 1965 Pun LR (Supp) 140.

(18) Punctuation marks — Punctuation marks are not to be treated as forming part of a statute and they are, therefore to be disregarded for the purpose of interpretation. AIR 1967 Goa 40 (44) = 1967 Cri LJ 463 (DB).

(19) The juxtaposition of a proviso or a sub-section is not a safe guide for its interpretation. AIR 1967 Ker 216 (219) = 1967 Ker LT 258.

(20) If a reading of the proviso shows that it is intended as a proviso to the whole section or to a part thereof, it should be so read. The whole section along with the proviso should be read consistent with the legislative object, and in such a way as to give an intelligent meaning to the statutory provision. AIR 1967 Ker 216 (219) = 1967 Cr LJ 1334 = 1967 Ker LT 258.

(21) The nature of the mens rea that would be implied in a statute creating an offence depends on the object of the Act and the provisions thereof. **AIR 1966 SC 43 (45) = 1966 Cri LJ 71 = (1966) 2 SCJ 421.**

(22) Only where it is absolutely clear that the implementation of the object of the statute would otherwise be defeated that mens rea may, by necessary implication, be excluded from a statute. **AIR 1966 SC 43 (45) = 1966 Cri LJ 71 = (1966) 2 SCJ 421.**

4. Code, how far exhaustive. — (1) The Criminal Procedure Code is exhaustive only with regard to matters specifically dealt with by it. Absence of any provision on a particular matter does not mean that the Court has no power in regard thereto, and the Court may act on the principle that every procedure should be understood as permissible till it is shown to be prohibited by law. AIR 1940 Nag 390 (392) = 42 Cri LJ 208 ** AIR 1934 Cal 428 (429) = 61 Cal 498 = 35 Cri LJ 941 (DB) ** AIR 1923 Cal 724 (725) = 24 Cri LJ 677 (DB).

(2) The citizens of a former French possession in India possess a vested right to be governed by the provisions of the French law until such time as a competent authority introduces new patterns of legislation. (1965) 2 Mad LJ 332 = 1965 Mad LJ (Cri) 729.

(3) The correct principle is that in matters of procedure, a particular procedure should be considered to be permitted if it is not prohibited and not that every procedure should be taken as prohibited, unless it is provided for. AIR 1960 Raj 44 (46) = 1960 Cri LJ 278 (DB).

(4) A Magistrate cannot ask the accused to send any particular paper in his possession to the Magistrate. 1968 All Cri R 465 = 1968 All WR (HC) 729.

5. Scope and object of the Code.— (1) The Code lays down the procedure to be followed in every investigation, inquiry into, or trial for, every offence whether under the Indian Penal Code or under any other law. The Code also makes provisions for inquiries into certain specific matters. The procedure laid down for inquiring into the specific matters naturally cannot be applied to inquiring into other matters. AIR 1956 All 351 (353) = ILR (1956) 2 All 60 = 1956 Cri LJ 761 (DB).

(2) The Code is a Code of Procedure and, like all procedural laws, in designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord with notions of natural justice. **AIR 1956 SC 116 (121) = 1955-2 SCR 1140 = 1956 Cri LJ 291.**

(3) The Code itself does not define what is irregularity and what is illegality. Illegality can only mean an incurable irregularity, incurable because of the prejudice leading to failure of justice, and the question of prejudice being a question of fact has to be decided by Court in each particular case. AIR 1968 Mad 117 (132) = 1968 Cri LJ 493 = (1968) 1 Mad LJ 480 (DB).

(4) One has to see the effect, if any, of the breach of provisions of the Code,

PART I
PRELIMINARY
CHAPTER I

1. Short title, Commencement.—(1) This Act may be called THE CODE OF CRIMINAL PROCEDURE, 1898; and it shall come into force on the first day of July, 1898.

(2) **Extent.**—It extends* to †[the whole of India except the ‡[State of Jammu and Kashmir §[* * * *]]]; but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special

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Preamble — Note 5 (contd.)

in the advancement of justice, whether the illegality or irregularity is one that can be cured and whether the accused would be prejudiced by its presence. AIR 1968 Mad 117 (132) = 1968 Cri LJ 493 = (1968) 1 Mad LJ 480 (DB).

(5) The legislature has not expressly or impliedly provided that violation of the procedural provisions would render the conviction bad. AIR 1968 Bom 400 (413) = 1968 Cri LJ 1584 = 69 Bom LR 808 (DB).

(6) Merely because some provision of the Code is not observed if at all the application of Article 21 of the Constitution is not attracted. AIR 1968 Bom 400 (414) = 1968 Cri LJ 1584 = 69 Bom LR 808 (DB).

(7) Expression "statement made to a Police Officer" — Statement recovered by Police from pocket of accused when he was unconscious held did not fall within Section 162. AIR 1965 Guj 302 (306, 307, 308) = 1965 (2) Cri LJ 753 = (1964) 5 Guj LR 897 (DB).

(8) A second class Magistrate not specially empowered to record a statement under Section 164 is not entitled to give oral evidence of confession made to them. **AIR 1964 SC 358 (363, 364) = 1964 (1) Cri LJ 263 (2) (DB).**

(9) If a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner. **AIR 1964 SC 358 (361) = 1964 (1) Cri LJ 263 (2) (DB).**

(10) No provision in Code about acquittal or discharge of accused on failure of complainant to attend Court — This is no omission but a deliberate departure from Chapters on trial of summons and warrant cases — Intention appears to be that Magistrate should proceed with the inquiry — Else the Code would have said what would happen if the complainant remains absent. **AIR 1967 SC 983 (984, 985) = 1967 Cr LJ 943 = (1967) 1 SCR 807.**

SECTION 1 — SYNOPSIS

1. **Criminal procedure.**
2. **Extent — "The whole of India except the States of Jammu and Kashmir and Manipur."**
3. **"In the absence of any specific provision to the contrary."**
4. **Sub-s. (2) of this section and S. 5 (2).**
5. **Special law.**
6. **Local law.**
7. **Special jurisdiction.**
8. **Special powers.**
9. **Police in Presidency towns.**
10. **Village headman in Madras.**
11. **Village police officers in the State of Bombay.**
12. **Any special form of procedure.**

1. Criminal procedure.— (1) The Code of Criminal Procedure provides rules for the punishment and prevention of offences under the substantive criminal law. AIR 1922 Mad 443 (444) = 23 Cri LJ 691 ** ('69) 12 Suth WR 36 (37) (DB) ** ('95) 1895 Rat 776 (778) (DB) ** ('71) 15 Suth WR 71n (72n) (SB).

[See also AIR 1921 Sind 8 (8) = 25 Cri LJ 672 (DB).]

(2) The Criminal Courts are not to entertain matters which are properly within the jurisdiction of Civil Courts. AIR 1950 East Punj 155 (Prs. 5, 7) = 51 Cri LJ 736 ** AIR 1949 East Punj 334 (Pr 17) = 50 Cri LJ 840 (DB) ** AIR 1943 Sind 152 (155) = 44 Cri LJ 761 (DB) ** AIR 1939 Cal 45 (45) = 40 Cri LJ 216 (DB) ** AIR 1937 Oudh 207 (208) = 13 Luck 89 = 38 Cri LJ 147 ** AIR 1924 All 1 (7) = 24 Cri LJ 817.

(3) Criminal P. C. came into force in Goa on 1-11-1963 and Portuguese Criminal P. C. stood repealed by virtue of Ss. 3 and 4 of Goa, Daman and Diu (Laws) Regulation, 1962 — Offence punishable under R. 126-P, Defence of India Rules 1962, committed in Goa on 25-6-1963 — Offence is triable in accordance with Criminal P. C. and not Portuguese Cr. P. C. 1970 Cri LJ 421 (424) (Goa).

(4) The existence of a civil remedy is no reason for a Criminal Court to refuse trial of an offence where one has been committed. AIR 1933 All 42 (42) = 33 Cri LJ 884 ** 1961 Ker LT 318 = 1962 (1) Cr LJ 649 (650) (Ker) ** 1964 All WR (HC) 778.

(5) While in civil cases the Court will decide on the evidence that the parties

form of procedure prescribed, by any other law for the time being in force, or shall apply to—

(a) the Commissioners of Police in the towns of Calcutta, Madras and Bombay; or the police in the towns of Calcutta and Bombay;

(b) heads of villages in the *†[State of Madras as it existed immediately before the 1st November, 1956]; or

(c) village police-officers in the *‡[State of Bombay as it existed immediately before the 1st November, 1956]:

Provided that the *§[State Government] may, if it thinks fit, †‡[* * *] **by notification**†§ in the ‡§[Official Gazette], extend any of the provisions of **this Code,** with any necessary modifications, to such excepted persons.

[1882 — S. 1; 1872 — Ss. 1, 540, 541; 1861 — Ss. 1, 441, 442.]

[*] Even before the 1st April, 1951, the date of coming into force of the Code of Criminal Procedure (Amendment) Act, 1951 (1 of 1951), the provisions of the Code of Criminal Procedure, 1898, were extended to—

(a) the then Chief Commissioner's Provinces of Bhopal, Bilaspur, Himachal Pradesh and Kutch from the 1st January, 1950 by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 (1); Bhopal is now in the State of Madhya Pradesh—see Act 37 of 1956, S. 9: Bilaspur and Himachal Pradesh constitute the Union Territory of Himachal Pradesh—see Act 32 of 1954 and Act 37 of 1956, S. 12 and Constitution Sch. I as amended in 1956: Kutch forms part of the State of Gujarat now—see Act 11 of 1960, S. 3 (1-5-1960).

Section 1 — Note 1 (contd.) choose to produce, it is the duty of a Judge in a criminal case to see that all relevant evidence is brought before him. AIR 1949 East Punj 334 (Pr 18) = 50 Cri LJ 840 (DB) ** AIR 1921 All 202 (204) = 22 Cri LJ 210 (DB).

(6) In criminal cases the Judges have to apply the law to the best of their ability and cannot ignore points which strike their attention merely because counsel have omitted to argue them. AIR 1943 Nag 26 (33, 34) = 44 Cri LJ 345 (DB).

(7) The presence of counsel in a criminal trial does not absolve the Court from its primary and fundamental responsibility to ensure that all proper and necessary steps are taken to arrive at the truth. AIR 1949 East Punj 334 (Pr 15) = 50 Cri LJ 843 (DB).

(8) The Code lays down the procedure to be followed in every investigation, inquiry into, or trial for, every offence whether under the Indian Penal Code or under any other law. The procedure laid down for inquiring into the specific matters cannot be applied to inquiring into other matters. AIR 1956 All 351 (353) = ILR (1956) 2 All 60 = 1956 Cri LJ 671 (DB).

[See (1902) 29 Cal 707 (715) = 29 Ind App 196 (PC). (It is not the province of Judge to disregard or go outside the letter of the Code — Civil P. C.)]

(9) Laws of procedure are not meant to hamper the administration of justice. AIR 1933 Pat 242 (244) = 12 Pat 234 = 34 Cri LJ 1198 (DB).

(10) All rules of Court are nothing but provisions intended to secure the proper administration of justice and it is therefore, essential that they should be made to serve and be subordinate to that purpose. **AIR 1956 SC 116 (Prs 7, 8) = 1955-2 SCR 1140 = 1956 Cri L Jour 291.** (Per Bose J. and S. R. Das Actg. C. J.) ** **AIR 1922 PC 249 (250) = 48 Ind App 214 = 48 Cal 832.** (Case dealing with provisions in Civil P. C. relating to amendment of suit.)

(11) Internal arrangements of the High Court are dealt with by its rules and the Code does not decide what functions can be exercised by a single Judge or must be exercised by a Division Bench. AIR 1929 Cal 756 (759) = 57 Cal 1042 = 31 Cri L Jour 506 (FB).

(12) If particular officer has taken part in his executive capacity in a procedure ultimately leading to chargesheeting of accused, he cannot himself sit and try such accused person in his judicial capacity. 1965 All WR (HC) 836 = 1966 All Cr R 13.

(13) A police officer investigating into a prohibition offence does so under the provisions of the Criminal P. C. supplemented by the special provisions of the Prohibition Act. 1960 Mad WN 317.

(14) Administrative instructions do not override provisions of Criminal P. C. AIR 1965 Orissa 135 (136) = 1965 (2) Cr LJ 111 = 31 Cut LT 285.

2. Extent — "The whole of India except the States of Jammu and Kashmir and Manipur." — (1) Crime being in its essential nature local, the Indian Courts have jurisdiction to try any person for an offence committed within their respective jurisdiction in India. In exceptional

(b) the Merged States (as defined in Cl. 2 of the States Merger (Governor's Provinces) Order, 1949, which were then administered as part of an absorbing Province within the meaning of Cl. 2 of the said Order) from the 1st January, 1950. Further, the amendments, if any, made till then in the Code by the State Legislature of an absorbing Province were also deemed to be extended to the Merged States, subject to so much of the said amendments as related to matters with respect to which the Central Legislature had power to make laws for a Governor's Province—See the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 (2) and (3);

(c) the States of Tripura and Vindhya Pradesh from the 16th April, 1950, by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 (1). Tripura is now a Union Territory: Vindhya Pradesh now forms part of the State of Madhya Pradesh—see Act 37 of 1956, S. 9 (1) (e) (1-11-1956);

(d) Cooch-Behar area of the State of West Bengal from the 1st January, 1951, by the Cooch-Behar (Assimilation of Laws) Act, 1950 (LXVII of 1950), S. 3 (1) read with West Bengal Act LXIII of 1950.

Section 1 — Note 2 (contd.)

cases, however, provision has been made for dealing with offences committed outside India. Whenever, in either case, the criminal law is set in motion, in India, the law of procedure applicable is the Code of Criminal Procedure, subject to any special or local law or special jurisdiction as mentioned in this section. **('97) 25 Cal 20 (30) = 24 Ind App 137 (PC)** ** AIR 1959 Punj 110 (Pr 5) = 1959 Cri L Jour 362 (DB). (Offence committed by Pakistani national in Indian territory — Trial under the Code is legal.) ** ('76) 1 Mad 171 (172) (SB) ** AIR 1914 Cal 725 (725) = 15 Cri L Jour 537 (DB) ** AIR 1932 Cal 753 (755) = 34 Cri L Jour 245 (DB) ** ('67) 4 Bom HCR (Cr) 38 (39) (DB) ** ('06) 28 All 372 (374) = 3 Cri L Jour 247 (DB).

[See Sections 2, 3 and 4 of the Penal Code and Sections 54, 186 and 188, Criminal P. C.]

(2) Since the Code of Criminal Procedure has not been extended to the Manipur State, it cannot be said to be the 'existing law' of Manipur State within the meaning of Article 19 (2) and (3) of the Constitution of India and therefore, no provision of this Code can curtail the fundamental rights of the citizens within the Manipur State. AIR 1955 Manipur 41 (47) = 1955 Cri L Jour 1603.

(3) The expression Territorial waters denotes that part of the sea extending from the seashore to a distance of a marine league (three miles). This area is within the territorial limits of the State on which it abuts and is part of it for purposes of jurisdiction. **AIR 1916 PC 21 (25)** ** ('94) 18 Bom 636 (662, 663) (DB).

(4) The high seas are those parts of the seas which are beyond the limits of the territorial waters. It is a recognised principle of international law that a ship on the high seas is a floating island belonging to the State whose flag it is flying. By virtue of British Parliamentary Statutes extended to operate in British India the British Indian Courts have jurisdiction to try offences committed on the high seas by a British subject on a British ship, the procedure applicable being that of the Criminal Procedure Code. ('01) 25 Bom 636 (638) (DB) ** AIR 1936 Sind 3 (4, 5) = 37 Cri L Jour 314 (DB) ** AIR 1927 Mad 688 (688) = 28 Cri L Jour 543 (DB) ** ('11) 12 Cri L Jour 198 (204) = 5 Low Bur Rul 221 (FB) ** ('89) 16 Cal 238 (244) (SB) ** ('68) 1 Beng LR (Cri Cas) 1 (9, 10) (SB).

(5) Offences committed prior to 1-4-1951 in Part B State — Proceedings instituted after 1-4-1951 — Criminal P. C. (1898), is applicable. AIR 1964 Andh Pra 276 (276) = 1964 (1) Cr LJ 642 (DB). (AIR 1960 Andh Pra 375, **Overruled.**)

(6) There is no bar for person to take action against another by instituting Civil or Criminal Proceedings either simultaneously or one after the other. (1968) 2 Mad LJ 589 = 1968 Mad LW (Cri) 175.

(7) Existence of civil remedy does not exclude trial by criminal court of offence — Fact that complainant is entitled to both civil and criminal remedies does not disentitle him to take recourse to criminal remedy. AIR 1969 J & K 134 (136).

3. "In the absence of any specific provision to the contrary". — (1) The words mean and contemplate a provision specific in affecting the special or local law. This specific provision to the contrary need not be in the Code itself. It may be in the special or local law also. These words cannot be read as referring to any possible contrariety between a specific provision in the Code and a provision in a special statute. AIR 1942 Cal 593 (601, 602) = 44 Cri L Jour 145 (DB).

[See also AIR 1941 Bom 146 (148) = 42 Cri L Jour 519 (DB).]

(2) Section 162 of the Code is a "specific provision," and affects S. 27, Evidence Act.

(3) See also the following cases. AIR 1958 Mys 143 (146) = ILR (1958) Mys 74 = 1958 Cri LJ 1327 (DB). (State

After the 1st April, 1951, the date of coming into force of the Code of Criminal Procedure (Amendment) Act, 1951, the provisions of the Code of Criminal Procedure, 1898, as so amended, have been extended to and shall be in force in—

(i) Chandernagore in the State of West Bengal from the 2nd October, 1954 by the Chandernagore (Merger) Act, 1954 (XXXVI of 1954), S. 17 read with West Bengal Act IV of 1955;

(ii) the Union Territory of Manipur from the 1st January, 1957 by the Union Territories (Laws) Act, 1950 (XXX of 1950) as amended by Act LXVIII of 1956 (w. e. f. 1-1-1957);

(iii) the Union Territory of Goa, Daman and Diu from the 1st November, 1963 by the Goa, Daman and Diu (Laws) Regulation, 1962 (XII of 1962), S. 3 and Goa Govt. Gaz., 1963, p. 325 (w. e. f. 1-11-1963);

(iv) the Union Territory of Dadra and Nagar Haveli by the Dadra and Nagar Haveli (Laws) Regulation, 1963 (VI of 1963);

(v) the Union Territory of Pondicherry from the 1st October, 1963 by the Pondicherry (Laws) Regulation, 1963 (VII of 1963) (w. e. f. 1-10-1963);

(vi) the Union Territory of Laccadive, Amindivi and Minicoy Islands by the L. A. and M. (Laws) Regulation 1965 (VIII of 1965) (1-10-1967);

(vii) the specified Scheduled Areas in the districts of Darrang and Lakhimpur and Nowgong and Sibsagar in the State of Assam by Scheduled Areas (Assimilation of Laws) Acts 37 of 1951 and 16 of 1953 (w. e. f. 1-10-1951 and 1-9-1953);

Section 1 — Note 3 (contd.)

Legislature has competence to make law pertaining to taxes on sales or purchases and providing for punishments for non-compliance or contravention of the provisions of that law — It may also for the purposes of enforcement of that law, vest jurisdiction in Courts — Limits of jurisdiction may be prescribed by that law — AIR 1954 Mad 833, **Dissented from.)** ** AIR 1940 All 263 (269) = ILR (1940) All 396 = 41 Cri LJ 627 (DB). (Provision must clearly indicate itself and not to be drawn by implication.)

(4) Additional Deputy Commissioner can take no action under S. 145 in the territory of Cherra Siemship (Khasi and Jaintia Hills). AIR 1963 Assam 31 (33, 34) = 1963 (1) Cri LJ 417 (DB).

(5) Provisions of Criminal P. C. are applicable to proceedings before Special Judge under Criminal Law Amendment Act (1952). AIR 1959 Ker 311 (314) = 1959 Cri LJ 1172 = 1958 Ker LT 1079 (2).

(6) The Kerala General Sales Tax Act (11 of 1125) does not contain any special form of procedure for trial of offences under the Act. Therefore the Cr. P. C. will be applicable. AIR 1964 Mad 185 (187) = 1964 (1) Cri LJ 519.

(7) Prosecution under Section 59 (b), Mysore Prohibition Act for possession of country liquor — Report of Chemical Examiner as to contents of bottle admissible in evidence in view of S. 510 which is not excluded by Sections 86 and 109, Mysore Prohibition Act which deal with another type of offences. AIR 1966 Mys 75 (77) = 1966 Cri LJ 270.

4. Sub-s. (2) of this section and S. 5 (2). — (1) Sub-section (2) of this section does not have the effect of enacting anything in derogation of Section 5 (2). It only relates to the extent of the application of the Code of Criminal Procedure in the matter of territorial and other jurisdiction, etc., and by no means nullifies the effect of Section 5 (2). AIR 1954 Mad 833 (843) = 1954 Cri LJ 1267 = ILR (1955) Mad 184 (DB). **(Overruled** on another point in AIR 1958 Mad 544 (FB).)

[See also AIR 1958 Mys 143 (146) = ILR (1958) Mys 74 = 1958 Cri LJ 1327 (DB).]

(2) Code does not apply to Khasi and Jaintia Hills area — Spirit of the same is, however, applicable. 1961 (2) Cr LJ 577 (577) (Assam).

(3) Trial of accused for offence of murder — Deputy Commissioner (in the Garo Hills district) has jurisdiction to try the case. AIR 1962 Assam 62 (64, 65) = 1962 (1) Cri LJ 560.

(4) In view of Section 1 (2) and Section 5 of Code, provisions of search contained in Sec. 5, Public Gambling Act (1867), will prevail over Section 165, Criminal P. C.. AIR 1967 HP 18 (20) = 1957 All LJ 300 (302).

5. Special law. — (1) Sub-section (2) provides that nothing in the Code shall affect any special law. This provision is an application of the maxim generalia specialibus non derogant. AIR 1939 Mad 856 (858) = 41 Cri LJ 41 (DB).

(2) A special law is a law applicable to a particular subject. See definition in Section 41, Penal Code.

(viii) the Code as amended in the former Bombay State has been extended to the said State as formed under Act 37 of 1956 by Bombay Act 97 of 1958.

[1] Substituted by the Code of Criminal Procedure (Amendment) Act I of 1951, (Section 3) (1-4-1951) for "the whole of India except Part B States," which were substituted by A. L. O. 1950, for "all the Provinces of India."

Section 25 of the Code of Criminal Procedure (Amendment) Act (I of 1951), which came into force on 1-4-1951, is as follows—

"25. **Repeals and savings.**—(1) If immediately before the day on which this Act comes into force in a Part B State there is in force in that State any law which corresponds to the said Code, such corresponding law shall on that day stand repealed but not so as to restore any jurisdiction or form of procedure not then existing or followed or to render unlawful the continuance of any confinement which is then lawful.

(2) All notifications published, proclamations issued, powers conferred, forms prescribed, local limits defined, sentences passed and orders, rules and appointments made, under any corresponding law hereby repealed shall be deemed to have been respectively published, issued, conferred, prescribed, defined, passed and made under the corresponding provision of the said Code.

Section 1 — Note 5 (contd.)

(3) It is a special law laying down any special rules of Criminal Procedure for governing certain special cases. ('57) 1957 All LJ 300 (302) .

(4) A special law does not include local family law. AIR 1919 Mad 193 (194) = 20 Cri LJ 733 (DB) ** ('99) 22 Mad 246 (247) (DB).

(5) It does not include the English Common law. AIR 1925 Rang 345 (347) = 27 Cri LJ 321 (DB).

(6) For instances of special laws, see the following cases. This section enacts that nothing in the Code shall affect any special law in force. ('92) 16 Bom 159 (159) (DB). (The Coroners Act.) ** AIR 1955 Pat 1 (28, 29, 30) = 33 Pat 690 (SB). (The Bihar Land Encroachment Act (31 of 1950) is a special or local law and is not inconsistent with the provisions of Ch. 10, Criminal P. C. Both can operate side by side.) ** AIR 1933 All 440 (442) = 55 All 463 = 34 Cri LJ 875 (DB). (Evidence Act, 1872). ** ('86) 10 Bom 181 (182) (DB). (Bombay Act 5 of 1878, Sections 3 and 56.) ** AIR 1918 Bom 70 (71) = 20 Cri LJ 34 (DB) (Indian Extradition Act, Sections 8 and 8-A override Section 496, Cr. P. C.) ** AIR 1923 Mad 339 (339) = 24 Cri LJ 335 (DB). (Abkari Act, offence under — Criminal P. C., not applicable.) ** AIR 1927 Cal 509 (510) = 28 Cri LJ 407 (DB). (Proceeding under S. 363, Calcutta Municipal Act, not governed by Section 342, Cr. P. C.) ** AIR 1930 Oudh 497 (500) = 32 Cri LJ 104 (DB). (Salt Act.)

[See AIR 1920 Cal 321 (322) = 21 Cri LJ 173 (DB). (Calcutta Municipal Act 3 of 1899.)]

[See also AIR 1915 Mad 1159 (1160) = 16 Cri LJ 268 (DB). (Abkari Act, offence under — Criminal P. C. not applicable.)]

(7) The existence of a special law, does not exclude the operation of the Criminal P. C., unless the special law expressly or impliedly provides in that behalf. AIR 1953 Madh B 89 (Pr 4) = 1953 Cri LJ 629 ** AIR 1959 Cal 703 (704) = 1959 Cri LJ 1315. (Proceedings under Section 44, Divorce Act — Proceedings under Section 488, Cr. P. C. can continue.) ** AIR 1959 Ker 311 (Pr 10, 11) = ILR (1958) Ker 763 = 1959 Cri LJ 1172 ** AIR 1958 Bom 354 (Pr 15) = 1958 Cri LJ 1144 (DB). (Offences covered by Army Act—Sections 34 to 68 also falling under Penal Code — Jurisdiction of ordinary Criminal Court is not excluded — Criminal conspiracy falling under Section 52 (f), Army Act, falling within jurisdiction of Court Martial — Jurisdiction of Court of Special Judge under Criminal Law Amendment Act, 1952, is not excluded.) ** AIR 1957 All 88 (Pr 4) = 1957 Cri LJ 167 (DB). (S. 14 (b). U. P. Sales Tax Act merely constitutes offence — Act does not prescribe procedure — Trial is governed by Cr. P. C.) ** AIR 1957 Andh Pra 286 (Pr 8) = 1957 CriLJ 830. (Trial under the Madras Prohibition Act X of 1937), is governed by the provisions of the Cr. P. Code.) ** ('57) 1957 All LJ 300 (302). (Muslim Personal Law (Shariat) Application Act, 1937, does not lay down special rules of Criminal Procedure — In spite of the Act, S. 488, Cr. P. C. applies to Muslims also.) ** AIR 1950 Mad 391 (Pr 1) = 51 Cri LJ 913. (Section 17 (3) Criminal Law Amendment Act, 1908, does not take away right of accused to bail under Sections 497 and 498, Criminal P. C.) ** AIR 1942 Sind 9 (10) = 43 Cri LJ 304. (Special Act making special offence and special procedure — Prosecution not in accordance with such procedure is barred — Obiter.) ** AIR 1926 Cal 786 (788) = 27 Cri LJ 984 (DB) ** AIR 1946 Sind 67 (68) = 47

(3) The provisions of the said Code shall apply to all proceedings instituted after the coming into force of the said Code in any Part B State and, so far as may be, to all cases pending in any criminal Court in that State when the said Code comes into force therein.

(4) Where under any law in force in a Part B State immediately before the commencement of this Act, a Sessions Judge has been empowered to exercise all or any of the powers of a District Magistrate, then notwithstanding anything contained in sub-section (1), that law shall, in so far it purports to confer such powers on any Sessions Judge, continue to have effect as if enacted in the said Code, and nothing in the said Code shall be deemed to transfer to any District Magistrate in that State any of the powers so exercisable by a Sessions Judge."

[‡] The words "State of Jammu and Kashmir and the Union Territory of Manipur" were substituted for the words "States of Jammu and Kashmir and Manipur," by 2 A. L. O., 1956.

[§] The words "and the Union Territory of Manipur" were omitted by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 (2A) and Sch., Pt. B, as inserted by the Union Territories (Laws) (Amendment) Act, 1956 (LXVIII of 1956), S. 2 (b) (1-1-1957).

[*†] Substituted for the words "State of Madras," by 2 A. L. O., 1956 (now called 'Tamil Nadu'—See Act 53 of 1968.)

[*‡] Substituted for the words "State of Bombay", ibid. Divided into Maharashtra and Gujarat by Act 11 of 1960.

Section 1 — Note 5 (contd.)
Cri LJ 630 (DB) ** ('98) 22 Bom 596 (601) (DB) **. ('98) 2 Cal WN 702 (708) (DB) ** AIR 1943 Pat 245 (250) = 45 Cri LJ 177 (SB).

[See AIR 1944 Nag 149 (151) = ILR (1944) Nag 813 = 46 Cri LJ 247. (Offence under Defence of India Rules — Recognized principles on which laws are enforced are not altered.)]

[See also AIR 1949 FC 6 (Pr 17) = 1948 FCR 86 = 50 Cri LJ 294. (Section 257 applies to trials before Special Tribunals under Ordinance 29 of 1943 by virtue of Section 6 of the Ordinance.)]

(8) Where the special law expressly or impliedly provides for special cases the special law will apply. AIR 1949 Assam 69 (Prs 4, 5,6) = ILR (1949) 1 Assam 276 =51 Cri LJ 147 (DB) ** AIR 1945 Pat 69 (70) = 46 Cri LJ 420 (DB) ** ('46) 1946 Rang LR 209 (210, 211).

(9) Where there is a special enactment on specific subject such as the law of evidence, the special Act must be taken to govern the subject and not the Code, in the absence of a provision to the contrary. Section 27, Evidence Act is a special law within the meaning of Section 1 (2) and is not repealed by Section 162 of the Code. AIR 1942 Pat 156 (158) = 43 Cri LJ 615 (DB) ** AIR 1941 Bom 146 (148, 149) = 42 Cri LJ 519 (DB) ** AIR 1939 Mad 856 (858) = 41 Cri LJ 41 (DB) ** AIR 1939 Pat 577 (578) = 18 Pat 450 = 40 Cri LJ 625 (DB) ** ('12) 13 Cri LJ 305 (349) = 35 Mad 247 (SB).

[But see AIR 1940 All 263 (269) = ILR (1940) All 396 = 41 Cri LJ 627 (FB). (Section 162 is a specific provision to the contrary and affects Section 27, Evidence Act— AIR 1939 PC 47, Relied on; AIR 1928 Mad 1028 (FB), AIR 1932 Mad 391 (FB), AIR 1939 Pat 577; AIR 1939 Mad 840 and AIR 1939 Mad 856, **Dissented from;** AIR 1933 All 440, **Overruled.**)]

(10) An Ordinance passed by the Governor-General may also in effect modify the operation of this Code by enacting something repugnant to the provisions of the latter. AIR 1943 All 379 (385) = 45 Cri LJ 491 (FB) ** AIR 1943 Pat 245 (258) = 45 Cri LJ 177 (FB) ** AIR 1943 Pat 24 (28) = 44 Cri LJ 209 (FB) ** AIR 1943 Pat 18 (22) = 44 Cri LJ 273 (FB).

(11) The Code cannot be modified by any orders of the Local Government in a Departmental Code. AIR 1938 All 534 (535, 536) = 39 Cri LJ 971. (Police Regulations cannot modify Criminal P. C.)

[See also ('99) 26 Cal 827 (877). (Notification under Assam Frontier Tracts Regulation, 1880, Section 2, directing that the Code of Criminal Procedure should cease to be in force in North Cachar Hills vests all criminal authority in the District in Chief Commissioner.)

(12) It was held that Section 533 of the Code was a "special" law within the meaning of this sub-section. AIR 1936 Rang 350 (352) = 37 Cri LJ 920.

(13) The Bankers' Books Evidence Act of 1891 is a special Act within the meaning of this sub-section. AIR 1938 Bom 33 (35) = 39 Cri LJ 207 (SB).

(14) The Criminal Law Amendment Act 1952, does not exclude rules in the Criminal Procedure Code as to territorial

[°§] Substituted for 'Provincial Government' by A. L. O., 1950.

[†‡] The words "with the sanction of the Governor-General in Council," were omitted by the Devolution Act, 1920 (XXXVIII of 1920), S. 2 and Sch. I.

[†§] By its Notification No. 577J dated 25-1-1956 as amended by No. 1384J dated 24-2-1958, the State Government of West Bengal has extended Sections 154, 155, 156, 161, 162, 163, 172 and 173 to the Commissioner of Police and the Police in the town of Calcutta—See Cal. Gaz., 912-1956, Pt. I, p. 463 and ibid., 6-3-1958, Pt. I, p. 640.

[‡§] Substituted for 'local official Gazette' by A. L. O., 1937.

STATE AMENDMENT

Maharashtra

(I) In its application to the State of Maharashtra, in clause (a) of sub-section (2)—

(a) for the words "towns of Calcutta, Madras and Bombay," substitute the words "towns of Calcutta and Madras"; and

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Section 1 — Note 5 (contd.)

jurisdiction. The rules are not inconsistent with Section 7 (2) of the Criminal Law (Amendment) Act, 1952. AIR 1959 Ker 311 (Prs 10, 11) = ILR (1958) Ker 763 = 1959 Cri LJ 1172.

(15) The Cr P. C. will not apply of its own force to provide for an appeal against the order of the rent controller. AIR 1968 Cal 170 (173) = 1968 Cri LJ 478.

(16) Where a general and a special law operate upon the same field and there is conflict between the two, it is the special law which must prevail as against the general law. 1961 (2) Cri LJ 227 (228) = (1961) 2 Guj LR 218.

(17) Collector of Central Excise is not Court and is not bound by any procedure laid down by the Cr. P. C. 1963 (2) Cr LJ 467 (469) = 1962 Mys LJ (Sup) 451 (DB).

6. Local law. — (1) A local law is a law applicable only to a particular part of India. For definition of local law, see Section 42, Indian Penal Code.

(2) A local law does not necessarily include all the rules and bye-laws made thereunder. AIR 1929 Rang 75 (75) ** ('94) 1894 Pun Re Cr No. 23, p. 80 (81).

(3) For instances of local law, see the following cases. ('10) 7 Ind Cas 389 (389) = 11 Cri LJ 476. (Bengal Regulation 6 of 1825, S. 2.) ** AIR 1927 Cal 496 (504) (DB). (Bengal Criminal Law Amendment Act is only supplemental to the Criminal Procedure Code in Bengal.) ** AIR 1914 Sind 158 (159) = 16 Cri LJ 238 (239)(DB). (Section 6 (d) of Bombay Gambling Act, 4 of 1887.) ** AIR 1915 Lah 355 (356) = 16 Cri LJ 790. (The N. W. F. P. Crimes Regulation, 3 of 1901.)

[See AIR 1925 Rang 12 (13) = 26 Cri LJ 289. (Upper Burma Ruby Regulations of 1887, Section 6 — No provision for appeal and revision thereon — Criminal Procedure Code applies.)]

7. Special jurisdiction. — (1) A law dealing with a specific subject-matter and giving jurisdiction over it cannot be repealed by a general provision. ('72) 7 Mad HCR (App) vi (vi).

(2) The special jurisdiction created in the undermentioned instances is not to that extent affected by the provisions of the Criminal Procedure Code:

(a) The special jurisdiction conferred on the second class Magistrates over offences under the Bombay Abkari Act, 5 of 1878. ('86) 10 Bom 181 (182, 183) (DB).

(b) The jurisdiction of Magistrates under Sections 20 to 23 of the Cattle-Trespass Act, before the Code of 1898. ('07) 6 Cri LJ 363 (364) = 34 Cal 926 (DB) ** ('96) 23 Cal 300 (301) (DB) ** ('96) 23 Cal 442 (445) (DB).

(c) The special jurisdiction of the English Consular Court at Zanzibar over foreigners under the British Protection as also the jurisdiction of the Bombay High Court to try a Native Indian subject for murder at Zanzibar and the jurisdiction of British Courts over a "British protected person" under the China and Corea Order in Council. ('95) 19 Bom 741 (744) (DB) ** ('79) 3 Bom 334 (339) ** AIR 1914 PC 155 (157).

(d) The power of revision by the High Court under Charter Act, and of superintendence under S. 15 of the Charter Act. ('98) 26 Cal 188 (192, 193) (DB) ** ('08) 7 Cri LJ 499 (501) (DB) (Cal).

(e) The extraordinary original criminal jurisdiction of the High Court under Cl. 24 of the Letters Patent. AIR 1932 Cal 123 (123) = 33 Cri LJ 219 (DB).

(f) The jurisdiction of the Governor-General to pass Ordinances. AIR 1933 Bom 1 (3) = 34 Cri LJ 199 (SB) ** AIR 1933 Cal 537 (538) = 34 Cri LJ 1023 (DB).

[See AIR 1932 Cal 745 (747) = 33 Cri LJ 839 (SB) ** AIR 1933 Cal 364 (364) = 34 Cri LJ 320 (DB).]

[See also AIR 1920 PC 23 (26) = 21 Cri LJ 456.]

(b) for the words 'towns of Calcutta and Bombay' substitute the words 'town of Calcutta.' — Bom, Act XXII of 1951, S. 167 (3) and Sch. III (1-8-1951).

(II) In its application to the State of Maharashtra in clause (c) of sub-section (2), for the words 'State of Bombay' substitute the words "State of Maharashtra." — See Central Acts on State and Concurrent Subjects (Maha. Adaptation) (Amendment) Order, 1961 (w. e. f. 1-5-1960).

Section 1 — Note 7 (contd.)

(g) The special jurisdiction created by the Merchant Shipping Act. ('12) 13 Cri LJ 246 (246) = 39 Cal 487. (57 and 58 Vic., c. 60.)

(h) The jurisdiction of the High Court to issue a writ of certiorari. AIR 1919 PC 31 (35) = 20 Cri LJ 593.

[See AIR 1918 Mad 1266 (1268, 1269) = 18 Cri LJ 239 (SB).]

(i) The jurisdiction of special tribunals created under the Defence of India Act. AIR 1918 Pat 103 (107) = 19 Cri LJ 833 (FB) ** AIR 1917 Lah 138 (139) = 18 Cri LJ 927 (928, 929) (DB).

[See AIR 1918 Pat 155 (162) = 19 Cri LJ 281 (FB).]

(j) The power of a High Court to institute proceedings for contempt and punish where necessary is a special jurisdiction which is inherent in all Courts of record. **AIR 1954 SC 186 (187) = 1954 Cri LJ 460 = 1954 SCR 454** ** AIR 1966 Cal 411 (422, 423) = 1966 Cri LJ 883 = 70 Cal WN 579.

(3) It is desirable in the case of formal documents where jurisdiction depends upon special circumstances that such circumstances should appear on the face of the record. AIR 1958 Raj 184 (Pr 9) = 1958 Cri LJ 971 (DB).

(4) See also the following cases. ('68) 5 Bom HCR (Cr) 6 (6) (DB). (Special jurisdiction under S. 13 of Act 19 of 1838.) ** AIR 1958 Pat 585 (Pr 7) = 1958 Cri LJ 1339. (Of two offences, one falling within jurisdiction of Gram Cutcherry and other without — Court which can try both offences should try them.) ** AIR 1956 All 351 (354) = ILR (1956) 2 All 60 = 1956 Cri LJ 671 (DB). (A first class Magistrate exercising the special jurisdiction conferred by Section 247 (1), U. P. Municipalities Act is not an inferior Criminal Court within meaning of Section 435, Criminal P. C.) ** AIR 1925 Mad 465 (466) (Magisterial powers under Madras Village Courts Act 2 of 1920.)

(5) Bombay Village Panchayat Act is special law — Sessions Court hearing appeal under Section 78 of Bombay Act exercises special jurisdiction — General provision of Section 417 of the Code does not affect special provisions in Sections 78 and 79 of Bombay Act. AIR 1961 Mys 257 (259) = 1961 (2) Cri LJ 789 = 39 Mys LJ 638.

(6) Special court will always oust jurisdiction of ordinary court unless the competent authority has kept the jurisdiction of ordinary court intact — Special Magistrates for trial of offences under Motor Vehicles Act. AIR 1967 Madh Pra 94 (95) = 1967 Cri LJ 381 = 1966 MPLJ 1132.

(7) Special Courts for particular cases need not be created by statute. If competent authority appoints such a court, the Court can try the offence. AIR 1967 Madh Pra 94 (95) = 1967 Cri LJ 381 = 1966 MPLJ 1132.

(8) First Class Magistrate exercising powers of juvenile Court is competent to try offence under Bombay Children's Act (71 of 1948). (1961) 2 Cr LJ 227 (228, 229) = (1961) 2 Guj LR 218.

(9) Madras Children Act (1920), Section 44, Rule 7 — Offence committed by juvenile — Exclusively triable by Court of Session — Jurisdiction of Juvenile Court to try accused not taken away by Section 29-B. Criminal P. C. AIR 1960 Mad 308 (310) = 1960 Cri LJ 927 = (1961) 2 Mad LJ 459 (DB).

8. Special powers. — (1) The powers of the High Court under Section 491, Criminal Procedure Code, are only subject to the special power conferred on the Government under the Indian Extradition Act, 1903, in respect of the surrender of offenders. AIR 1933 Pat 295 (297) = 34 Cri LJ 932 (DB).

(2) The power of the High Court as a superior Court of Record to punish summarily for contempt is not affected by the Criminal Procedure Code. ('84) 10 Cal 109 (133) = 10 Ind App 171 (PC) ** AIR 1926 All 623 (626, 628, 638) (SB) ** AIR 1927 Lah 610 (611) = 28 Cri LJ 727 (SB) ** AIR 1926 Lah 1 (2) = 26 Cri LJ 1409 (SB) ** ('01) 24 Mad 523 (548n) (SB).

[See also AIR 1952 Nag 259 (Prs 17, 18) = ILR (1949) Nag 640 (DB). (Summons case procedure not applicable — Observations to contrary in AIR 1945 Nag 33 = ILR (1945) Nag 74 held obiter.) ** AIR 1956 All 258 (262) = ILR (1956) 1 All 656 = 1956 Cri LJ 679 (DB). (Proceedings for contempt are neither criminal nor civil but are sui generis — They are not governed by Criminal P. C. — AIR 1954 All 523 = 1954 Cri LJ 1141 = ILR (1954) 1 All 394 (FB), Rel. on.) ** AIR 1942 Lah 107 = 43 Cri LJ 599 (FB). (The Crimi-

Section 1 — Note 8 (contd.)
nal P. C. is not applicable to summary proceedings taken for punishing contempt.)]

(3) The Code of Criminal Procedure does not apply in matters of contempt triable by the High Court. The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself. **AIR 1954 SC 186 (190) = 1954 Cri LJ 460 = 1954 SCR 454.** (In re Pollard, (1868) 2 PC 106 = 16 ER 457; 27 Bom 394 and AIR 1926 Rang 188 = 27 Cri LJ 1241, Rel. on.)

(4) The liability to punishment under the penal law is not taken away by the fact that powers of departmental punishment have been exercised. ('11) 12 Cri LJ 143 (144) = 9 Ind Cas 831 (Lah) ** AIR 1915 Lah 350 (350) = 16 Cri LJ 788 (DB).

(5) The power of granting or dismissing a claim for compensation under Section 45 of the Bombay City Police Act (1902), given to the Chief Presidency Magistrate is as persona designata and not as a Criminal Court and consequently no revision or appeal from his order lies under the Criminal Procedure Code. AIR 1930 Bom 486 (486) = 32 Cri LJ 397 (DB).

(6) The provision in Section 10 (2) of Cr. P. C. is a specific provision to the contrary within the meaning of Section 1 (2). Therefore an Additional District Magistrate must be regarded as possessing powers of District Magistrate under any other law including U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947). **AIR 1961 SC 606 (608, 609) = 1961 (1) Cri LJ 740 = (1961) 3 SCR 495.** (1952 All LJ 486; AIR 1953 All 62, **Overruled.**)

9. Police in Presidency towns. — (1) This section bars the application of the Code to the Police in the Presidency town of Calcutta. AIR 1938 Cal 545 (546) ** AIR 1958 Cal 324 (Pr 5) = 1958 Cri LJ 865 (DB) ** AIR 1955 Cal 138 (140) = 1955 Cri LJ 441 (DB) ** ('88) 15 Cal 595 (606) (FB).

(2) The State Government may by notification in the Official Gazette, extend to the police in the town of Calcutta any of the provisions of the Criminal P. C. AIR 1958 Cal 324 (Pr 5) = 1958 Cri LJ 865 (DB). (Section 173 extended to Calcutta — S. 156 not so extended.)

(3) The section does not bar its application to a Magistrate who is not a police officer, for example, the Presidency Magistrate. AIR 1926 Pat 279 (282) = 27 Cri LJ 957 (DB).

[But see ('88) 15 Cal 595 (606) (FB) ** ('97) 21 Bom 495 (499).]

(4) The Code itself expressly makes certain sections applicable to the police at Calcutta, as for example, Section 55 which applies to the police in the town of Calcutta. ('04) 1 Cri LJ 535 (537) = 31 Cal 557 (DB).

(5) Various special Police Acts for the respective presidency towns govern the Police therein. AIR 1926 Cal 586 (588) = 27 Cri LJ 602 (DB) ** ('93) 20 Cal 670 (672. 673) (DB) ** AIR 1926 Cal 1121 (1127) = 27 Cri LJ 1201 (FB).

[See ('13) 14 Cri LJ 125 (127) = 40 Cal 470 (DB).]

[See also AIR 1933 Bom 63 (64) = 34 Cr LJ 225 (DB).]

Police at Bombay

(6) Section 167 (3), Bombay Police Act, 1951 repealed Section 1 (2) (a) of this Code so far as the police in the town of Bombay were concerned with the result that when this Act came into operation with effect from the 1st August 1951, the Bombay City Police were also governed by the provisions of Criminal P. C. thus bringing into operation the provisions of Section 162 thereof in the investigations conducted by the Bombay City Police. **AIR 1955 SC 104 (110) = 1955 Cri LJ 196 = 1955 SCR 903.**

10. Village headman in Madras. — (1) The powers and duties of the village headman in the State of Madras are mainly provided in various Madras Acts and Regulations. ('82) 5 Mad 268 (268) (DB). (Madras Regulation, 11 of 1816 and Regulation 4 of 1821.) ** ('83) 6 Mad 249 (250) (DB). (Regulation 4 of 1816.) ** ('83) 6 Mad 247 (248) (DB) ** ('01) 24 Mad 271 (273) (DB) ** ('04) 1 Cri LJ 426 (426) = 27 Mad 129 (DB). (Regulation 11 of 1816.) ** ('08) 9 Cri LJ 77 (79) = 31 Mad 506 (DB) ** ('09) 9 Cri LJ 170 (172) = 32 Mad 258 (FB).

(2) Clause (b) of sub-section (2) of this section lays down that nothing in the Code shall apply to the village headman, that is to say that, in proceedings which the headman takes as such, he is not governed by the Code. It does not mean, for example, that the village headman cannot be a complainant under the Code. AIR 1924 Mad 730 (730) = 25 Cri LJ 221 ** ('88) 11 Mad 375 (376) (DB).

(3) The village headman is not a Magistrate for the purposes of the Code except as provided therein, as for example, in sub-section (6) of Section 528. ('03) 26 Mad 394 (402) (SB) ** AIR 1959 Mad 175 (Pr 25) = 1959 Cri LJ 603 (DB). (Confession recorded by village Magistrate is not admissible.) ** ('02) 25 Mad 667 (668) (DB) ** AIR 1914 Ma

2. Repeal of enactments, notifications, etc., under repealed Acts; Pending cases.—[Repealed by the Repealing and Amending Act, 1914 (X of 1914).]

NOTE.—The repealed section ran as follows:

> "2. **Repeal of enactments.**—(1) On and from the first day of July, 1898, the enactments mentioned in the first schedule shall be repealed to the extent specified in the fourth column thereof, but not so as to restore any jurisdiction or form of procedure not then existing or followed, or to render unlawful the continuance of any confinement which is then lawful.
>
> (2) **Notifications, etc. under repealed Acts.**—All notifications published, proclamations issued, powers conferred, forms prescribed, local limits defined, sentences passed, and orders, rules and appointments made, under any enactment hereby repealed, or under any enactment repealed by any such enactment, and which are in force immediately before the first day of July, 1898, shall be deemed to have been respectively published, issued, conferred, prescribed, defined, passed and made under the corresponding section of this Code.
>
> (3) **Pending cases.**—The provisions of this Code shall apply to all proceedings instituted after the commencement of this Code, and so far as may be, to all cases pending in any Criminal Court when this Code comes into force."

[1882 — Ss. 2, 558; 1872 — S. 2.]

3. References to Code of Criminal Procedure and other repealed enactnents.—(1) In every enactment passed before this Code comes into force in vhich reference is made to, or to any chapter or section of, the Code of Crimimal Procedure, Act XXV of 1861 or Act X of 1872, or Act X of 1882, or to any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding chapter or section.

(2) **Expressions in former Acts.**—In every enactment passed before this Code comes into force the expressions "Officer exercising ('or having') the powers (or 'the full powers') of a Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall respectively be deemed to mean "Magistrate of the first class," "Magistrate of the second class" and "Magistrate of the third class," the expression "Magistrate of a division of a district" shall be deemed to mean "Sub-divisional Magistrate," the expression "Magistrate of the

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Section 1 — Note 10 (contd.)
694 (695. 696) = 15 Cri LJ 431 (DB) ** ('92) 15 Mad 131 (132) (DB).

11. Village police officers in the State of Bombay. — (1) The ancient village system of police regulated formerly by Regulation 4 of 1818, Regulation 12 of 1827, and later by the Bombay Village Police Act (8 of 1867), remains unaffected by the Code, except when the Code contains a specific provision to the contrary. ('95) 19 Bom 612 (613) (DB) ** AIR 1919 Bom 79 (79, 80) = 20 Cri LJ 315 (DB).

(2) The sub-section only means that the procedure laid down by the Code is not to govern the actions of village police officers as such and not that the provisions of the Code are not to apply in the case of a complaint against a village police officer. AIR 1938 Bom 489 (490) = 40 Cri LJ 116 (DB).

(3) See also the following cases as to the powers and duties of the village police officers in the State of Bombay. ('04) 1 Cri LJ 327 (327) (DB) (Bom) ** ('83) 1883 Rat Un Cri Cas 187 (188) (DB) ** ('84) 1884 Rat Un Cri Cas 196 (196) (DB) ** ('91) 1891 Rat Un Cri Cas 550 (550, 551) (DB) ** ('92) 1892 Rat Un Cri Cas 609 (609) (DB) ** ('92) 1892 Rat Un Cri Cas 610 (610) (DB) ** ('08) 8 Cri LJ 141 (143) (DB) (Bom).

12. Any special form of procedure. — (1) The special procedure in Bombay Prevention of Gambling Act, 4 of 1887, overrides the general law of procedure enacted in Section 342, Cr. P. C., whenever latter is inconsistent. AIR 1914 Sind 45 (46) = 16 Cri LJ 447 (DB).

(2) Even assuming that the Madras Prohibition Act prescribes a procedure slightly different from the procedure laid down in the Code of Criminal Procedure such procedure would not be, on that account, invalid as it is expressly saved by Section 1 (2), Criminal P. C. AIR 1954 Mad 993 (998) = 1954 Cri LJ 1521 = ILR (1955) Mad 887.

district" shall be deemed to mean "District Magistrate," the expression "Magistrate of Police" shall be deemed to mean "Presidency Magistrate," and the expression "Joint Sessions Judge" shall mean "Additional Sessions Judge."

[1882 — S. 3; 1872 — S. 2, Paras. 3 and 4.]

4. **Definitions.**—(1) In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context:—

[1882 and 1872 — S. 4, Para. 1; 1861 — S. 2.]

(a) **"Advocate-General".**— "Advocate-General" includes also a Government Advocate or where there is no Advocate-General or Government Advocate, such officer as the °[State Government] may, from time to time, appoint in this behalf:

[1882 — S. 4 (k).]

[°] Substituted for 'Provincial Government' by A. L. O., 1950.

(b) **"Bailable offence." "Non-bailable offence."**—"bailable offence" means an offence shown as bailable in the second schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence:

[1882 — S. 4 (r); 1872 — S. 4, Last two paras.]

(c) **"Charge."**—"Charge" includes any head of charge when the charge contains more heads than one.

Section 4 (1) — Note 1

(1) The meaning assigned to a word by this interpretation clause is the meaning of the word wherever it occurs in the Code unless a different intention appears from the subject or context. AIR 1943 All 6 (6, 7) = 44 Cri LJ 165 ** AIR 1956 Orissa 211 (211) = ILR (1956) Cut 470 = 1956 Cri LJ 1420 ** ('05) 2 Cri LJ 106 (109) = 32 Cal 379 (SB).

(2) When a definition "includes" certain persons or things, it does not exclude other persons or things not so included. ('96) 22 Bom 235 (237) (DB) ** ('78) 4 Cal 483 (492, 493) (FB).

(3) When it is intended to exhaust the signification of the word interpreted, the word "means" is used. ('78) 2 Mad 5 (7) (DB) ** AIR 1918 All 168 (170) = 19 Cri LJ 615 (DB).

(4) Word 'investigation' used in Section 157 of Evidence Act (1872) must carry its ordinary dictionary meaning in the sense of ascertainment of facts, sifting of materials, search for relevant data and not be given the narrow meaning used in Cr. P. C. AIR 1968 Orissa 20 (24) = 1968 Cri LJ 201 = 33 Cut LT 1193.

(5) Section 4 (2) of Criminal P. C. must be read as a continuation of Section 4 (1) and so read, the definitions in Penal Code incorporated in Criminal P. C. must be susceptible to variation depending on the subject or context. It cannot therefore be contended that the words "unless a different intention appears from the subject or context', in Section 4 (1) do not control the definitions incorporated in the Criminal P. C. by virtue of Section 4 (2) thereof. AIR 1967 Punj 189 (190) = 1967 Cri LJ 586.

(6) 'Investigation' includes all the proceedings under the Cr. P. C. for collection of evidence conducted by a police officer or any person (other than a Magistrate) who is authorised by a Magistrate in this behalf. Laying the trap is part of the investigation. **AIR 1968 SC 1292 (1295) = 1968 Cri LJ 1484 = 1968 Lab IC 1412 = (1968) 2 SCJ 749.**

(7) Illegality of investigation does not vitiate the jurisdiction of Court for trial — Prejudice has to be shown. **AIR 1968 SC 1292 (1295, 1296) = 1968 Cri LJ 1484 = 1968 Lab IC 1412.**

(8) Public servant not defined in Cr. P. C. — 'Public servant' can be construed as including a sarpanch who is deemed to be a public servant under Penal Code by virtue of Section 78 of Rajasthan Panchayat Act (21 of 1953). AIR 1964 Raj 174 (175) = 1964 (2) Cri LJ 339 = 1964 Raj LW 238 (DB).

(9) An offence is constituted as soon as acts which constitute that offence have been committed by person accused of offences and same remained offence whether triable by a Court or not. **AIR 1967 SC 528 (536) = 1967 Cri LJ 528 = (1967) 1 SCR 520.**

(10) Custom authorities not Court of law — Penalty imposed on a person by Custom authorities, after his acquittal from Criminal Court for same offence is lawful — Artical 20 (2) cannot be invoked. 1968 Cri LJ 1004 (1006) = (1968) 1 Mad LJ 211.

Section 4 (1) (c) — Note 1

(1) A charge is a precise formulation of the specific accusation made against a person who is entitled to know its

(d) **Chief Justice.**—(Repealed by the Repealing and Amending Act, 1923 (XI of 1923), Section 3 and Schedule II.)

NOTE.—The repealed clause ran as follows:

"(d) **"Chief Justice."**—'Chief Justice' includes also the Chief Judge of the Chief Court of the Punjab and the Chief or Senior Judge of the Chief Court of Lower Burma."

(e) **"Clerk of the State."**—°["Clerk of the State"] includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the °["Clerk of the State."]

[1882 — S. 4 (1).]

[°] Substituted by A. L. O., 1950 for 'Clerk of the Crown.'

STATE AMENDMENTS

Andhra Pradesh

Added Territories.—In its application to the territories added to the State of Andhra Pradesh under S. 3 of Central Act LVI of 1959 the amendment made in respect of clause (e) of Section 4 (1), made by Madras Act 34 of 1955, is repealed—Andh Pra A. L. O., 1961 (w. r. e. f. 1-4-1960).

Kerala

Malabar Area.—In its application to the Malabar area of the State of Kerala amendment in the section is the same as that of Tamil Nadu State.

Tamil Nadu

In its application to the State of Madras in S. 4 (1), omit clause (e).—T. N. Act XXXIV of 1955,° S. 2 (a) (1-1-1956): T. N. A. L. O., 1969.

[°] Note.—This Act does not seem to have been extended to the territories added to the State of Tamil Nadu under S. 3 of the Central Act LVI of 1959.

(f) **"Cognizable offence." "Cognizable case."**—"Cognizable offence" means an offence for, and "cognizable case" means a case in, which a police-officer, within or without the presidency-towns, may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant.°

[1882 — S. 4 (q), Para. (1); 1872 — S. 4, Para. 19.]

[°] Offences under the Customs Act, 1962 (52 of 1962) are not cognizable ones—See S. 104 (4) of that Act.

Section 4 (1) (c) — Note 1 (contd.)

nature at the earliest stage. ('01) 28 Cal 434 (437) (DB).

(2) Charge denotes a charge formulated after inquiry. AIR 1927 Bom 96 (96) = 28 Cri LJ 380 (DB).

(3) Commitment for offence under Section 307, I. P. C. — Death of injured person before trial — Accused tried and convicted under Section 302, I. P. C. — Alteration of charge held covered by Sections 226 and 227 — Fresh commitment not necessary; conviction held valid. AIR 1966 Ker 1 (4 and 5) = 1966 Cri LJ 22 = 1965 Ker LT 620 (FB).

(4) There is no requirement anywhere in law that the person affected by the false charge could not file his complaint in Court until the Police had decided that the charge was false. **AIR 1967 SC 528 (536) = 1967 Cri LJ 528 = (1967) 1 SCR 520.**

(5) Accused charged only under Section 5 of U. P. Act (I of 1956) — He could be convicted only thereunder — Conviction under Section 3 of the Act quashed. 1969 All WR (HC) 426 = 1969 All Cr R 274.

SECTION 4 (1) (f) — SYNOPSIS

1. **Cognizable offences.**
2. **Offences which are not cognizable.**

1. Cognizable offences. — (1) An offence is cognizable even if the offender can be arrested without warrant by a particular class of police officers only. AIR 1941 Nag 338 (339) = 43 Cri LJ 89 ** AIR 1926 Bom 195 (197) = 27 Cri LJ 503 (DB) ** AIR 1930 Bom 49 (50, 52) = 31 Cri LJ 633 (DB) ** AIR 1967 Delhi 151 (152, 153) = 1967 Cr LJ 1630 = 69 Pun LR (D) 207. (Offences under Sections 3 and 4 of Delhi Public Gambling Act (9 of 1955).)

[But see AIR 1942 Sind 106 (109, 110) = 43 Cri LJ 888 ** AIR 1932 Bom 610 (612) = 33 Cri LJ 733 (DB) ** AIR

Section 4 (1) (f) — Note 1 (contd.)

1935 Rang 181 (182) = 36 Cri LJ 998 (DB) ** 1965 All WR (HC) 115 = 1965 All LJ 68. (Offences under Public Gambling Act (1867), Sections 3 and 4 (U. P.).) ** AIR 1963 Guj 188 (190) = 1963 (2) Cri LJ 141 = (1963) 4 Guj LR 253. (Offence under Sections 4 and 5, Bombay Prevention of Gambling Act (4 of 1887).]

(2) The power of arrest referred to here must be an unqualified power and not a conditional power. AIR 1935 Rang 181 (183) = 36 Cri LJ 998 (DB) ** AIR 1925 Bom 131 (132, 133) = 26 Cri LJ 441 (DB).

(3) An offence under Section 19 (f) of the Arms Act which is punishable with imprisonment for three years is a cognizable offence. AIR 1934 Nag 71 (75) = 35 Cri LJ 1097.

[But see AIR 1969 Goa 104 (106) = 1969 Cri LJ 1131.]

(4) An offence under Section 9 of the Opium Act, 1 of 1878, punishable with imprisonment for less than three years is not a "cognizable one." AIR 1952 Him Pra 74 (Pr 20) = 1952 Cri LJ 1712.

(5) Offences punishable with fine only are not cognizable. AIR 1938 Rang 161 (163) = 39 Cri LJ 642 (DB).

(6) The words "or under any law for the time being in force" are wide enough to include an express or implied provision of any law or enactment. AIR 1930 Bom 49 (51) = 31 Cri LJ 633 (DB) ** AIR 1956 Raj 37 (38) = 1956 Cri LJ 269 = ILR (1955) 5 Raj 134.

(7) Since an offence under S. 161, Penal Code, has been made cognizable under Section 3, Prevention of Corruption Act, 1947, an offence under S. 161 read with Section 116, Penal Code must be held to be cognizable. AIR 1956 Raj 37 (38) = 1956 Cri LJ 269 = ILR (1955) 5 Raj 134 ** AIR 1965 Andh Pra 372 (377 to 379) = 1965 (2) Cri LJ 585 = (1965) 2 Andh WR 44 (DB).

(8) Offence under Section 161, I. P. Code is a cognizable offence. Its nature is not affected by either Section 3 or Section 5-A of the Prevention of Corruption Act (1947). The requirement that in a cognizable offence, a police officer should be able to arrest without warrant, is without any limitation and Section 5-A cannot be split up to mean that an offence can be cognizable in reference to one officer and not in reference to another. AIR 1962 Bom 263 (265) = 1962 (2) Cri LJ 598 = 64 Bom LR 274 (DB).

(9) Almost all the offences which may be alleged to have been committed by a public servant fall within Chapter IX and Chapter XI. The underlying policy in making these offences by public servants non-cognizable is to ensure the diligent discharge of their official functions without fear or favour. **AIR 1955 SC 196 (202) = 1955 SCR 1150 = 1955 Cri LJ 526 = ILR (1955) Punj 135.**

(10) Offence of accepting payment from debtor after he is deemed to have been discharged made cognizable offence —Governor was competent to make such provision. AIR 1967 Madh Pra 52 (56) = 1966 MPLJ 800 (DB).

(11) Section 18, Saurashtra Prevention of Prostitution Act is the only section which gives the police power to arrest without a warrant. All offences under this Act, except those to the extent mentioned in Section 18, are non-cognizable offences notwithstanding Sch. 2, Criminal Procedure Code. AIR 1956 Sau 116 (118) = 1956 Cri LJ 1442 (DB).

(12) The following offences are cognizable offences:—

(a) Offence under Rule 125 (9) of Defence of India Rules 1962. 1964 All LJ 954 = 1964 All WR (HC) 573 ** 1966 All Cr R 350 ** 1966 All LJ 754 ** (1967) 8 Guj LR 138 ** AIR 1968 Guj 23 (27) = 1968 Cri LJ 156. = 9 Guj LR 201 (DB).

(b) Offence of contravening clauses 4 and 5 of Iron and Steel Control Order 1956 which is covered by Section 7 (1) (a) (ii) of the Essential Commodities Act (1955). AIR 1967 Cal 352 (353, 354) = 1967 Cri LJ 858.

(bb) Complaint regarding offence under Section 7 of Essential Commodities Act — Offence punishable with three years' imprisonment— Is cognizable offence within meaning of Section 4 (1) (f). **AIR 1970 SC 267 (269).**

(c) Offence under Section 122 of Railways Act (1890). 1964 All WR (HC) 108.

(d) Offences under Sections 409 and 120-B of Indian Penal Code. AIR 1961 Andh Pra 448 (453) = 1961 (2) Cri LJ 605 = (1961) 1 An WR 153.

(13) The Code does not contemplate any case to be partly non-cognizable. Thus a case which includes cognizable offences and non-cognizable offences is a cognizable case. AIR 1961 Andh Pra 448 (453) = 1961 (2) Cri LJ 605 = (1965) 1 An WR 153.

(14) Accused informing police by phone that he had shot two persons in self-defence, but furnishing no particulars — Information conveyed does not disclose commission of a cognizable offence and no case can have been registered thereon — Held further, that police were quite right in proceeding to scene of occurrence and recording case on information supplied by deceased's party and that there was no basis for charge that police suppressed case of accused and favoured that of deceased's party. ILR (1967) 1 Ker 640 (DB).

(g) **"Commissioner of Police."**—"Commissioner of Police" includes a Deputy Commissioner of Police:

(h) **"Complaint."**—"Complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person whether known or unknown, has committed an offence, but it does not include the report of a police-officer:

[1882 — S. 4 (1) (a).]

Section 4 (1) (f) — Note 1 (contd.)

(15) Offence under Section 26 of Maharashtra Municipalities Act (46 of 1965) is cognizable. AIR 1970 Bom 240 (Prs 5 to 7).

2. Offences which are not cognizable. — (1) The following offences are not cognizable:—

(a) Offence under Section 39, Electricity Act. 1966 Cri LJ 479 = 1966 Ker LT 107.

(b) An offence under Section 12 of the Madras Gambling Act (3 of 1930) is not a cognizable offence. AIR 1958 Andh Pra 392 (393) = ILR (1958) Andh Pra 137 = 1958 Cri LJ 737 (DB).

(c) Failure to maintain account books properly — Offence falls under S. 3 (2) (i) and not under Section 3 (2) (d) of Essential Commodities Act (1955). AIR 1964 Raj 237 (239) = 1964 (2) Cri LJ 581 = 1964 Raj LW 275.

SECTION 4 (1) (h) — SYNOPSIS

1. **Scope of the definition.**
2. **Form of complaint.**
3. **Who may complain.**
4. **Statement in complaint, if privileged.**
5. **"To a Magistrate."**
6. **"With a view to his taking action."**
7. **"That some person has committed an offence."**
8. **"Some person whether known or unknown."**
9. **"Report of a police-officer."**
10. **Limitation.**
11. **Objection as to maintainability of complaint.**
12. **Complainant.**
13. **Action by Magistrate.**

1. Scope of the definition. — (1) A "complaint" must be distinguished from "information." AIR 1930 All 820 (820, 821) = 32 Cri LJ 306.

(2) There is nothing in the definition of "complaint" which requires it to be made only in a non-cognizable case. AIR 1930 All 820 (821) = 32 Cri LJ 306.

(3) A Police officer can make a complaint in a non-cognizable case. AIR 1952 Kutch 54 (Pr 4) = 1952 Cri LJ 1037.

(4) In criminal cases, it is the Crown which prosecutes in vindication of its peace. AIR 1919 Mad 851 (852) = 20 Cri LJ 101 ** AIR 1962 Raj 1 (2) = 1962 (1) Cri LJ 80 (DB) ** AIR 1960 Raj 150 (152) = 1960 Cri LJ 853.

[But see (1967) 1 Andh WR 443 = 1967 Mad LJ (Cri) 462 ** AIR 1967 Mad 390 (391) = 1967 Cri LJ 1525 = (1967) 1 Mad LJ 108 ** AIR 1965 Ker 59 (62) = 1965 (1) Cri LJ 178 = 1964 Ker LT 535 (DB) ** AIR 1961 All 377 (378, 379) = 1961 (2) Cri LJ 53 = 1961 All LJ 118 ** 1961 Ker LT 532.]

(5) Where A sells land to B and receives its price and, later on, it is discovered that a part of the land did not belong to A, a complaint under Section 420 by B is maintainable, even though there is an indemnity clause in the sale deed. 1957 Jab LJ 930 (931) ** AIR 1965 Pat 442 (446) = 1965 (2) Cri LJ 530 = 1965 BLJR 582.

(6) Definition of 'complaint' in Criminal P. C. cannot be made applicable to Police Rule, 1638. 1964 Cur LJ 150 (Punj).

(7) Question whether an allegation is a complaint must be decided on the basis of the definition of that term in Section 4 (1) (h). AIR 1969 Ker 111 (117) = 1969 Cri LJ 486 = 1969 Ker LT 351 (DB).

(8) Taking cognizance on invalid complaint — Can be treated as taking cognizance on information. AIR 1969 Ker 111 (117) = 1969 Cri LJ 486 = 1969 Ker LT 351.

(9) Meaning of the word 'complaint' in Section 48 of the Madras Prohibition Act (10 of 1937) is wider than that defined in Section 4 (1) (h) and includes a police report. 1960 Mad WN 317 (DB).

(10) Joint complaint by two or more if permissible — Section 4 (1) (h) is silent on this point — (Obiter). AIR 1969 Manipur 56 = 1969 Cri LJ 989.

(11) An application under Section 107 is not a complaint within Section 4 (1) (h). AIR 1968 Mad 225 (226) = 1968 Cri LJ 760 = 1967 Mad LW (Cri) 173.

(12) Provision of Section 247 is attracted only in cases in which summons are issued on complaint. ILR (1963) 13 Raj 164 = 1963 Raj LW 48 (DB).

(13) Complaint filed by public officer comes within definition of 'Complaint' in Section 4 (1) (h). (1960) 1 Ker LR 373 = 1960 Ker LT 481.

(14) A revision petition is not meant to be a complaint within Section 4 (1) (h) and Section 190 (1) (a). The facts in the petition may constitute information within Section 190 (1) (c). AIR 1960 Andh Pra 184 (186) = 1960 Cr LJ 455.

Section 4 (1) (h) — Note 1 (contd.)

(15) Application to Consolidation Officer to proceed against accused under Section 195 (1) (c) — Application is not a complaint and the applicant is not complainant within the meaning of Section 417 (3). AIR 1962 All 6 (7, 8) = 1962 (1) Cri LJ 1 = 1961 All LJ 557.

(16) Deposition of complainant as witness cannot also be taken as 'complaint'. 1968 Cri LJ 117 (120) = 8 Guj LR 290 (DB).

(17) The term 'complaint' used in Section 72 of the Post Office Act (1898) has to be read and understood as one contemplated by Section 4 (1) (h) of Criminal P. C. (1966) 7 Guj LR 698 = ILR (1966) Guj 576..

(18) Word complaint is used in the Mysore Police Act, Section 81, Proviso in the sense of some reliable or credible information and not in the same sense as defined in Section 4 (h) of Criminal P. C. 1969 MLJ (Cri) 366 = (1969) 1 Mys LJ 581.

(19) 'Complaint' and 'offence' in Section 190 have meaning as defined in Sections 4 (1) (h) and 4 (1) (o). 1968 Cri LJ 117 (119) = 8 Guj LR 290 (DB).

(20) The ingredients of a 'complaint', are (1) the allegation made orally or in writing to a Magistrate, (2) with a view to his taking action under the Code, and (3) stating that some person whether known or unknown has committed an offence. AIR 1965 All 508 (510) = 1965 (2) Cri LJ 455 = 1965 All LJ 558 (DB).

(21) A charge-sheet lodged by the police, whether in a non-cognizable or in a cognizable offence, does not amount to a 'complaint', so as to attract Section 247. AIR 1963 Madh Pra 125 (125, 126) = 1963 (1) Cri LJ 442 (2) = 1963 MPLJ 154 (DB).

(21-a) The words "complaint in writing" appearing in Sec. 195 (1) (a) refer to a formal complaint as defined in Section 4 (1) (h). 1969 Cri LJ 1459 (1460) = (1969) 2 Mys LJ 608.

2. Form of complaint. — (1) There is no particular form in which a complaint should be made. It is the substance of the complaint that is to be regarded. ('13) 14 Cri L Jour 425 (426) (All) ** AIR 1958 All 76 (79) = 1958 Cri L Jour 11.

(2) A complaint may be oral. AIR 1924 Rang 35 (36) = 25 Cri L Jour 229 ** ('08) 7 Cri L Jour 10 (15) = 35 Cal 141 (DB).

(3) Allegations not stated in the complaint do not form part of the complaint. AIR 1932 Pat 72 (75) = 33 Cri L Jour 349.

(4) A complaint should allege facts but it is not necessary to allege all the facts on which the accused is to be charged. AIR 1953 Tripura 1 (Pr 3) ** ('08) 9 Cri L Jour 108 (111) = 32 Mad 3 (DB).

(5) A mere endorsement made by a Superintendent of Police forwarding to a Magistrate the report made to the former by a Sub-Inspector of Police is not a complaint. AIR 1936 All 788 (791) = 38 Cri L Jour 57 (DB).

(6) A complaint may be sent by telegram. AIR 1936 Pesh 66 (68) = 37 Cri L Jour 604 (DB).

(7) The criminal Courts can entertain a prosecution by the liquidator in a form other than that prescribed by Companies Act. AIR 1955 Cal 29 (33) = 1955 Cri L Jour 107 (DB).

(8) Protest petition that investigating officer was not investigating case properly and that accused be summoned and put on trial can be treated as complaint. AIR 1966 Pat 473 (476 to 478) = 1967 Cri LJ 111 (DB) ** AIR 1969 Orissa 149 (150, 151) = 1969 Cri LJ 926 = 34 Cut LT 1237.

(9) Inspector of Factories is not bound to present the complaint personally or through lawyer. AIR 1960 Pat 514 (515) = 1960 Cri LJ 1483 = 1960 BLJR 480.

(10) Complaint should state facts constituting offence, but Magistrate has to decide what offence has been committed. AIR 1965 Pat 369 (371) = 1965 (2) Cri LJ 398 = 1964 BLJR 806 ** 1968 Cri LJ 117 (119) = 8 Guj LR 290 (DB).

(11) Application for restoration of his complaint discharged for default in appearance cannot be treated as a fresh complaint. AIR 1967 Punj 361 (362) = 1967 Cri LJ 1049 = (1966) 68 Pun LR (D) 341.

(12) Non-cognizable offence — Investigation by police without order of Magistrate — Charge-sheet disclosing offence of nature of summons case — Magistrate should treat charge-sheet as complaint. 1965 All WR (HC) 115 = 1965 All LJ 68.

(13) Complaint need not be signed by complainant. AIR 1967 Guj 15 (16) = 1967 Cri LJ 60.

(14) Report in writing under Section 14 (3) of the Employees' Provident Funds Act, 1952 is a 'Complaint' within the meaning of Criminal P. C. AIR 1967 Bom 126 (129, 130) = 1967 Cri LJ 605 = 68 Bom LR 689.

(15) A naraji against a final report submitted in a case investigated by the police on a first information report should be treated as a complaint, if the same satisfies its requirements in law. In the case of a naraji filed in a complaint case, the same may be treated as a second petition of complaint. AIR 1968 Cal 238 (241, 242) = 1968 Cri LJ 618.

3. Who may complain.— (1) Any person having knowledge of the commission of an offence may set the law in motion by complaint. AIR 1935 All 938 (939) = 37 Cri LJ 56 ** AIR 1933 Lah 884 (885) = 35 Cri LJ 86 ** AIR 1930 Bom 49 (51, 54) = 31 Cri LJ 633 (DB).

Section 4 (1) (h) — Note 3 (contd.)

(2) The person making the complaint need not have personal knowledge of the facts complained of. AIR 1921 Cal 561 (563) = 22 Cri L Jour 455 (DB) ** AIR 1923 Nag 156 (156) = 26 Cri L Jour 327 ** AIR 1931 Nag 98 (98, 99) = 32 Cri L Jour 896.

[But see (1906) 4 Cri L Jour 217 (218) (DB) (Cal) ** ('07) 5 Cri L Jour 13 (14) (DB) (Cal).]

(3) A complaint under Sections 196, 198 and 199 must be made by the persons specified therein. AIR 1935 All 938 (939) = 37 Cri L Jour 56 ** AIR 1955 Cal 29 (33) = 1955 Cri L Jour 107 (DB) ** AIR 1921 Cal 627 (629) = 22 Cri L Jour 494 (DB) ** 1969 Cri LJ 567 (568) = 9 Guj LR 963.

(4) A complaint in respect of the offences specified in Clauses (b) and (c) of Section 195, sub-section (1) can be made only by a Court. AIR 1915 Lah 259 (259) = 16 Cri L Jour 251 (DB) ** AIR 1914 Bom 138 (139) = 15 Cri L Jour 581 (FB).

(5) The report of a Prohibition Officer under the Madras Prohibition Act submitted to a Magistrate falls within the definition of complaint. AIR 1957 Andh Pra 977 (978) = 1957 Cri L Jour 1388 ** 1964 Ker LJ 937 = 1964 Ker LT 309.

(6) Complainant — Complaint filed by person authorised by local authority to file complaints — Such local authority is not a 'complainant'. AIR 1968 Raj 297 (300, 301, 304) = 1968 Cri LJ 1449 (DB).

(7) Offence under U. P. Entertainments and Betting Tax Act, 1937 is governed by Criminal P. C. 1965 All WR (HC) 724 = 1966 All LJ 7.

(8) Offence under Section 5, Import and Export (Control) Act prior to amendment by Act IV of 1960 — Cognizance held could not be taken on complaint by Superintendent of Central Excise and Land Customs, Silchar. AIR 1963 Manipur 35 (37, 38) = 1963 (2) Cri LJ 288.

(9) Complaint filed by two persons jointly — Magistrate taking it on file by treating it as filed by one person only — Procedure not irregular. AIR 1969 Manipur 56 (57) = 1969 Cri LJ 989.

(10) President and Directors of a Society defamed — Society natural aggrieved person — Complaint by Society is nullity. 1969 Cr LJ 701 (702) (Mys) = (1967) 2 Mys LJ 149.

(11) Neither Police Act nor Criminal P. C. prohibits filing of complaint by police officer. AIR 1960 Ker 315 (317) = 1960 Cri LJ 1334 = 1960 Ker LT 217 (DB).

(12) Offence referred to in Section 195 (1) (c) committed by person not party to proceedings — Presiding officer could file complaint before District Magistrate. 1965 (1) Cr LJ 387 (389) = 1963 Ker LT 563.

(13) Section 173 does not require the police officer to make a complaint as defined under Section 4 (1) (h). 1968 Cr LJ 1354 (1355) (Delhi).

4. Statement in complaint, if privileged. — (1) If a party to a judicial proceeding is prosecuted for defamation in respect of a statement therein, he is entitled only to the benefit of a qualified privilege mentioned in Section 499 of the Penal Code. AIR 1921 Cal 1 (14, 15) = 22 Cri L Jour 31 (SB) ** AIR 1926 Mad 906 (909) = 27 Cri L Jour 1026 (FB). (**Overruling** 36 Mad 216 (FB) and AIR 1914 Mad 472 = 13 Cri L Jour 293 (DB).)

(2) Complainant sued in Civil Court for damages for defamation in respect of statement made in the complaint. Statement is absolutely privileged. AIR 1940 Nag 125 (127) ** AIR 1921 Cal 1 (14, 15) = 22 Cri L Jour 31 (SB).

5. "To a Magistrate". — (1) The complaint must be made to a Magistrate as such. AIR 1936 All 788 (791) = 38 Cri L Jour 57 (DB) ** AIR 1959 Mys 106 (108) = 1959 Cri L Jour 498 = ILR (1958) Mys 254 (DB).

(2) A complaint by a Magistrate to his own Court is one made to a Magistrate and is not illegal. AIR 1926 Cal 470 (472, 477, 479) = 27 Cri L Jour 385 (FB).

(3) The expression 'complaint' in Section 4 (1) (h) refers only to a complaint made to a Magistrate and not to the Police or to the Village Munsiff. 1960 KLT 1186 (DB).

(4) Both in Section 199 and Section 238 (3) the word complaint can only mean a complaint made to a Magistrate. AIR 1965 All 508 (510) = 1965 (2) Cri LJ 455 = 1965 All LJ 558 (DB).

6. "With a view to his taking action". — (1) The test to decide whether an allegation amounts to a complaint is to see whether it is made with a view to the Magistrate's taking action under the Code. AIR 1958 Pat 10 (11) = 1958 Cri L Jour 70 (DB) ** AIR 1949 Cal 55 (56) = 49 Cri L Jour 635 (DB).

(2) The following have been held not to amount to complaints by reason of their not having been made with a view to action being taken by the Magistrate under this Code: —

(a) A request for a departmental enquiry or administrative action. ('03) 30 Cal 415 (417) ** AIR 1949 Cal 55 (56) = 49 Cri L Jour 635 (DB).

(b) An application for issue of process against a person not named in the petition of complaint. ('11) 12 Cri L Jour 2 (3) = 8 Ind Cas 1059 (SB) (Cal).

(c) An order merely sanctioning prosecution. ('68) 5 Bom HCR 48 (49) (DB) ** ('08) 7 Cri L Jour 10 (14) = 35 Cal 141 (DB) ** ('90) 1890

Section 4 (1) (h) — Note 6 (contd.)

Pun Re (Cr) No. 16 p. 33 (34, 35) (DB).

[But see ('08) 7 Cri L Jour 353 (354, 355) = 1908 Pun Re (Cr) No. 8 (DB).]

(d) A mere authorisation to prosecute under the Post Office Act, (6 of 1898). ('06) 4 Cri L Jour 170 (170) (DB) (Cal).

(e) Where a person while alleging an offence expressly says that he does not wish to make a complaint or to prosecute. ('13) 14 Cri L Jour 56 (56) = 35 All 102 ** ('02) 6 Cal WN 926 (926) (DB).

(f) The first information of the commission of offence given to village munsiff is not complaint. AIR 1959 Mad 32 (32) = 1959 Cri L Jour 203 (DB).

(g) Report of Police Officer about the commission of offence under Delhi Public Gambling Act (9 of 1955), should not be treated as complaint. AIR 1967 Delhi 151 (152, 153) = 1967 Cri LJ 1630 = 69 Pun LR (D) 207.

(3) The following have been construed as complaints, as alleging facts of an offence with a view to action being taken thereon—

(a) The submission of records, or of a report by a subordinate Magistrate, to the superior or District Magistrate, for the purpose of starting a case or for the trial of a person for an offence. ('04) 1 Cri L Jour 335 (337) ** AIR 1930 All 820 (822) = 32 Cri L Jour 306.

(b) A report of a Judicial Officer under Section 6 of the Child Marriage Restraint Act (19 of 1929). AIR 1933 Pat 87 (88) = 34 Cri LJ 237.

(c) A petition to the Magistrate impugning the correctness of a police inquiry and praying for the trial of the accused. ('87) 14 Cal 707 (716) (FB) ** AIR 1947 Cal 439 (439).

(d) Sending report of Sarpanch of Panchayati Adalat to Judicial Officer by Sub-Divisional Magistrate is filing complaint. AIR 1952 All 515 (Pr 1) = 1952 Cri L Jour 951.

(e) Protest petition by the informant challenging the report submitted or to be submitted by the police is in the nature of complaint. AIR 1958 Orissa 11 (13) = ILR (1957) Cut 551 = 1958 Cri L Jour 63.

[See also AIR 1958 Pat 11 (12) = 1958 Cri L Jour 71 (DB). (Where the protest petition does not contain prayer for any action it cannot be treated as complaint.)]

(f) Where the order of the Munsiff communicated to the District Magistrate was made with a view to action being taken under the Code and had set out the facts which constituted the offence, it would amount to 'a complaint'. (1965) 1 Cri LJ 387 (389) = 1963 Ker LT 563.

7. "That some person has committed an offence". — (1) Where no offence is disclosed upon the facts contained in the petition, there is no complaint. AIR 1951 Assam 54 (Pr 7) = ILR (1950) 2 Assam 249 = 52 Cri L Jour 394 ** ('47) 48 Cri L Jour 747 (750) (Cal).

(2) Applications for action under Section 106, Section 107, Section 110, Section 133 and Section 145 and petitions for maintenance under Section 488 are not complaints. AIR 1951 All 494 (Pr 6).

(3) It is nowhere insisted that the complainant must categorise the elements of the offence sought to be charged against the accused. AIR 1959 Ker 146 (148) = 1959 Cri L Jour 588 = ILR (1958) Ker 1249 (DB).

8. "Some person whether known or unknown". — (1) It is not necessary that the complainant should name all the accused persons specifically and in terms accuse any particular person of an offence or each person with a particular offence. ('12) 13 Cri L Jour 588 (589, (590) (DB) (All) ** ('99) 26 Cal 786 (789, 790) (DB) ** AIR 1933 Pat 297 (300) = 34 Cri L Jour 942 (DB) ** AIR 1969 Guj 14 (16, 17) = 1969 Cri LJ 63 = 9 Guj LR 925 ** AIR 1967 Bom 126 (130) = 1967 Cri LJ 605 = 68 Bom LR 689.

9. "Report of a police-officer". — (1) Mere countersigning of a report of the police by the District Magistrate does not in any way change its nature and does not convert it into a complaint by the District Magistrate. AIR 1950 Ajmer 23 (Prs 2, 3) = 51 Cri L Jour 935.

(2) If a police officer does investigate into an offence under Section 12 of the Madras Gaming Act, without the order of a Magistrate and files a charge-sheet, it is nonetheless to be treated as a "complaint" and not as a police report. AIR 1958 Andh Pra 392 (393) = ILR (1958) Andh Pra 137 = 1958 Cri L Jour 737 (DB).

(3) The charge-sheet submitted by the Excise Inspector under Section 25 of the U. P. Opium Smoking Act (3 of 1934) fulfils definition in Section 4 (1) (h). ('58) 1958 Cri L Jour 120 (121) (DB) (All).

(4) A report of a police-officer with regard to an offence under Sections 8 and 9, Motor Vehicles Act, constitutes a complaint under Section 4 (1) (h). AIR 1957 Trav-Co 132 (132) = 1957 Cri L Jour 549.

(5) Where a charge-sheet in the form of final police report under Section 173, Criminal P. C. is filed after investigation into a cognizable offence registered under Section 420, Penal Code but it relates to two offences namely under Section 420 and Section 294, Penal Code the same

Section 4 (1) (h) — Note 9 (contd.) document cannot be treated as both a report of a police officer and a complaint. AIR 1957 Andh Pra 987 (990) = 1957 Cri L Jour 1389.

(6) Where the case is one resulting from the report of a police officer it is a case instituted not upon a complaint but upon a report by a Police Officer. AIR 1959 Mys 106 (108) = 1959 Cri L Jour 498 = ILR (1958) Mys 254 (DB).

(7) Since the amendment of Section 190 (1) (b) a report by a police officer on even a non-cognizable offence is not a complaint within the meaning of Section 4 (1) (h). AIR 1959 Cal 640 (641) = 1959 Cri L Jour 1163 ** AIR 1963 Cal 191 (193) = 1963 (1) Cri LJ 424 (DB).

(8) A report by a competent excise officer under Section 60 of the M. B. Excise Act (14 of 1952) cannot be said to be a complaint. AIR 1959 Madh Pra 7 (7) = 1959 Cri L Jour 46 (DB).

(9) A police report sent to the Court against the accused under Section 173 is not a complaint. ILR (1966) Guj 576 = (1966) 7 Guj LR 698 ** AIR 1970 Pat 159 (Prs 5, 7. 8) ** 1969 Cr LJ 567 (568) = 9 Guj LR 963 ** 1965 (2) Cri LJ 165 (165) (Guj) ** 1963 Raj LW 48 = ILR (1963) 13 Raj 164 (DB).

(10) Charge-sheet by police is not complaint. (1962) 4 Orissa JD 353 = 29 Cut LT 157.

(11) Offence under Section 295-A, Penal Code — Order of State Government directing Commissioner of Police to depute an 'officer to make complaint' — Commissioner directing Sub-Inspector of Police to investigate — Investigation completed but no charge-sheet under Section 173 (1) (a) submitted — Sub-Inspector filing complaint on further direction by Commissioner — **Held**, that it was a complaint within Section 4 (1) (h). AIR 1963 Mad 160 (162) = 1963 (1) Cri LJ 772 = (1963) 1 Mad LJ 15 (DB). ** AIR 1963 Cal 191 (193) = (1963) 1 Cri LJ 424 (DB).

(12) Only the report of a Police Officer will not come within the meaning of the term 'complaint' under Section 4 (1) (h). 1964 Ker LT 309 ** 1970 Cri LJ 553 (555) (DB) (Punj) ** AIR 1963 Madh Pra 125 (125, 126) = 1963 (1) Cri LJ 442 (2) = 1963 MPLJ 154 (DB).

(13) The word 'complaint' in Section 89 of Bombay Village Panchayat Act is a complaint within Section 4 (h). 1962 Nag LJ 130.

(14) Report of Police Officer under Section 13, Public Gambling Act (1867) is not complaint under Section 4 (1) (h). AIR 1969 Goa 104 (105, 106) = 1969 Cri LJ 1131.

(15) Police Officer finding report to be false on investigation — "Complaint" by officer to Magistrate to take action for offence under Section 182, Penal Code — "Complaint" held not to be a police report. 1968 Cri LJ 1354 (1355, 1356) (Delhi).

10. Limitation. — (1) There is no limitation for preferring a complaint of a criminal offence, unless the penal law creating the offence prescribes any period within which a complaint may be made in respect thereof. 1891 Rat 549 (550) (DB) ** AIR 1956 Bom 247 (247) = 1956 Cri L Jour 502 (1) = ILR (1956) Bom 458.

(2) Delay in filing complaint — No ground by itself in dismissing complaint — Delay can be considered in arriving at final verdict. **AIR 1970 SC 962 (965).**

11. Objection as to maintainability of complaint. — (1) Where the objection goes to the very root of the maintainability of the complaint it is not only permissible but desirable that such objections should be raised at the earliest possible opportunity. AIR 1955 Mad 561 (561, 562) = 1955 Cri L Jour 1360. (AIR 1953 Mad 1008 = 1953 Cri L Jour 1894 and AIR 1953 Mad 226 = 1953 Cri L Jour 442, **Dissented from.**)

12. Complainant. — (1) A complainant is a person (of course other thana Police Officer) who moves the machinery of a Magisterial Court by making certain allegations before it for taking action against a person who has committed an offence. AIR 1969 Raj 61 (63) = 1969 Cri LJ 374 ** 1968 Pat LJR 618 (619) ** AIR 1964 All 497 (497) = 1964 (2) Cri LJ 502 = 1964 All WR (HC) 106.

(1A) Case instituted on police report — Person at whose instance police had moved the Magistrate — Such a person cannot be said to be a complainant filing a 'complaint'. 1970 Cri LJ 919 (920) (Guj).

(2) Complaint by Food Inspector under Section 7/16 of Prevention of Food Adulteration Act — Medical Officer endorsing on complaint for purposes of Section 20 of that Act — Medical Officer is not a complainant to file appeal against order of acquittal. AIR 1964 All 497 (497, 498) = 1964 (2) Cri LJ 502 = 1964 All WR (HC) 106.

(3) Case under Railways Act — Complaint by Asst. Commercial Officer — The officer was the complainant. AIR 1961 All 447 (449, 450) = 1961 (2) Cri LJ 185 = 1960 All LJ 880.

(4) Cause title of complaint petition describing the complainant — "The President and Directors of Society . . . . by its President Shri . . . . ." and Para 1 of petition stating that the complainant was a registered Society — Complainant was Society and not the President in his individual capacity. 1969 Cri LJ 701 (702) = (1967) 2 Mys LJ 149.

(5) Case being heard under Sec. 208 — No provision about acquittal or discharge of accused on failure of complainant to attend the Court — On death of complainant the case was held not to have abated and authorising of conduct

°[(i) **"High Court."**—"High Court," in relation to the Andaman and Nicobar Islands, means the High Court in Calcutta, and, in relation to any other local area, means the highest Court of criminal appeal for that area† (other than the Supreme Court) or, where no such Court is established under any law for the time being in force, such officer as the State Government may appoint in this behalf]:

[See also S. 266, 1882: S. 4 (i); 1872: S. 4, Paras. 14 and 15.]

[°] The original clause (i) related to "European British subject" and was repealed by S. 3 of the Criminal Law (Removal of Racial Discriminations) Act, 1949 (XVII of 1949), S. 3 (6-4-1949) and the present clause (i) was substituted for the original clause (j), by the Code of Criminal Procedure (Amendment) Act, 1951 (I of 1951), S. 4 (1-4-1951).

[†] The jurisdiction of the High Court at Madras is extended to Pondicherry from the 6th of November, 1962—The Pondicherry (Administration) Act, 1962 (XLIX of 1962), S. 9.

The jurisdiction of the High Court at Bombay is extended to Dadra and Nagar Haveli by the Dadra and Nagar Haveli Act, 1961 (35 of 1961), S. 11 (w. e. f. 1-7-1965); the Dadra and Nagar Haveli (Civil Courts and Miscellaneous Provisions) Regulation, 1963 (VIII of 1963), Ss. 2 (2) and 6 (w. e. f. 1-7-1965).

In the Union territory of Goa, Daman and Diu, the Judicial Commissioner's Court as constituted by the Goa, Daman and Diu (Judicial Commissioner's Court) Regulation, 1963 (X of 1963) has been declared as a High Court for the purposes of certain provisions of the Constitution, by Cent. Act XVI of 1964, S. 3 (w. e. f. 16-12-1963). Similarly the Judicial Commissioner's Courts in the Union Territories of Manipur and Tripura have been declared as High Courts by Act 15 of 1950. Jurisdiction of the Delhi High Court as constituted by Act 26 of 1966 extends to the Union Territories of Delhi and Himachal Pardesh, w. e. f. 31-10-1966 and 1-5-1967 respectively. Jurisdiction of the High Court of

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Section 4 (1) (h) — Note 12 (contd.)

of prosecution by complainant's mother was upheld. **AIR 1967 SC 983 (985, 986) = 1967 Cri LJ 943 = (1967) 1 SCR 807.** (AIR 1917 Lah 408, AIR 1919 Lah 409 and (1908) 7 Cr LJ 290 (Punj), **Held overruled** by AIR 1922 Lah 227 as interpreted in **AIR 1967 SC 983.)**

13. Action by Magistrate. — (1) The Magistrate, in the absence of a complaint within the meaning of Section 4 (1) (h) by the aggrieved woman was not competent to take cognizance of offences under Sections 493 to 496, Penal Code. 1969 Cr LJ 567 (568) = 9 Guj LR 963.

(2) Where a Magistrate takes cognizance of an offence upon a police report or upon a private complaint the accused may suggest arrangement for his identification by prosecution witnesses. AIR 1968 All 28 (32) = 1968 Cr LJ 9.

(3) Complaint to Magistrate who sends it for investigation under Section 156 (3) — No objection can be taken to the case being conducted by the Public Prosecutor on submission of charge-sheet by police. AIR 1969 Ker 97 (98) = 1968 Ker LT 547.

(4) Complaint about a non-cognizable offence against persons the complainant cannot trace — Magistrate is bound to cause an enquiry to be made by the Police before he can dismiss the complaint under Section 203. AIR 1969 Guj 14 (16, 17, 18) = 1969 Cri LJ 63 = 9 Guj LR 925.

(5) Magistrate cannot sanction filing of fresh complaint in view of Section 403. AIR 1967 Guj 15 (16) =1967 Cri LJ 60 = (1965) 6 Guj LR 867.

(6) It is not always essential that all the details should be given in the complaint petition, and if accusation has been made against a certain person that is sufficient for a Magistrate to take cognizance of the offence. 1966 Cri LJ 205 (207) (Cal).

(7) First complaint with detailed accusation filed for future reference — Second petition to take action against accused — Magistrate considering both petitions and taking cognizance of offence did not act illegally or irregularly. 1966 Cri LJ 205 (206, 207) (Cal).

Section 4 (1) (i) — Note 1

(1) Court of Judicial Commissioner is the highest Court of revision and appeal in Goa, Daman and Diu under Sec. 8 (1) of the Goa, Daman and Diu (Judicial Commissioner's Court) Regulation, 1963 and as such it satisfies the definition of 'High Court'. AIR 1967 Goa 60 (68) = 1967 Cri LJ 746 (DB).

(2) Provision in Legal Remembrancer's Manual of West Bengal does not enable Government of West Bengal to appoint any Public Prosecutor in respect of Central Territory of Andaman and Nicobar Islands. AIR 1970 Cal 162 (167) (DB).

Kerala has been extended to the Union Territory of Laccadive, Minicoy and Amindivi Islands by Act 37 of 1956, S. 60 (1-11-1956). Jurisdiction of Punjab and Haryana High Court extends to the Union Territory of Chandigarh—See Act 31 of 1966, S. 29 (1) (1-11-1966).

*[(j) **"India."**—"India" means the territories to which this Code extends]:

[*] Inserted by the Code of Criminal Procedure (Amendment) Act, 1951 (I of 1951), S. 4 (1-4-1951).

NOTE.—As to the territories to which this Code extends, see Section 1, Note 2.

(k) **"Inquiry."**—"Inquiry" includes every inquiry other than a trial conducted under this Code by a Magistrate or Court:

[1882: S. 4 (1) (k); 1872: S. 4, Paras 5 to 8; 1861: S. 9.]

SECTION 4 (1) (k) — SYNOPSIS

1. **"Inquiry".**
2. **"Trial".**
3. **Trial, when begins and ends.**

1. "Inquiry". — (1) This definition is not exhaustive. AIR 1919 Cal 59 (60) = 20 Cri L Jour 508 (DB) ** ('58) 1958 Andh LT 479 (481) ** (1963) 2 Cr LJ 109 (110) (Raj).

(2) An inquiry must be by a Magistrate or Court whereas an investigation is by a police officer or any person other than a Magistrate or Court. AIR 1942 Bom 42 (43) = 43 Cri L Jour 362 (DB) ** AIR 1954 Cal 350 (351) = 1954 Cri L Jour 961.

(3) The object of an inquiry is to determine the truth or falsity of certain facts in order to take further action thereon, while the object of an investigation is to collect evidence. AIR 1920 Pat 563 (565) = 21 Cri LJ 594.

(4) A "trial" is a judicial proceeding which ends in conviction or acquittal. All other proceedings are enquiries which have various endings according to circumstances. AIR 1929 Pat 644 (646, 647) = 31 Cri L Jour 961 (DB) ** AIR 1932 Oudh 298 (303) ** 34 Cri L Jour 58 (DB).

[See also AIR 1957 All 767 (769) (DB). (The word "inquiry" does not always mean a judicial inquiry.)]

(5) The word "trial" pre-supposes the idea of an offence, while an "inquiry" does not merely mean an "inquiry" into an offence but extends to matters which are not offences. AIR 1953 Madh B 1 (Pr 5) = ILR (1952) Madh B 89 = 1953 Cri L Jour 98 (DB) ** AIR 1920 Mad 337 (341) = 21 Cri L Jour 402 (FB).

(6) The term "inquiry" is not confined to proceedings in which an accused is actually placed before a Magistrate on a charge for an offence. AIR 1923 Lah 270 (271) = 24 Cri L Jour 941 (DB) ** AIR 1958 Pat 92 (94) = 36 Pat 1302 = 1958 Cri L Jour 207 (DB).

(7) An inquiry under Section 465 of the Code as to the state of mind of the accused is only an "inquiry" and not a "trial". AIR 1918 Pat 179 (181) = 19 Cri LJ 135 (SB).

(8) The definition in Section 4 (1) (k) puts it beyond doubt that an inquiry is something different from a trial, and that "inquiry" stops when trial begins. AIR 1957 Andh Pra 472 (473) = 1957 Cri L Jour 937.

[See also ('59) 1959-2 Andh WR 64 (66).]

(9) The term 'inquiry' as defined in Section 4 (1) (k) of Criminal P. C. does not include a 'trial' but only refers to a judicial inquiry into the matter by a Magistrate or other Court. AIR 1966 All 66 (68) = 1966 Cri LJ 115 = 1965 All WR (HC) 316 (DB).

(10) An inquiry under Section 476 by a Civil Court will be an inquiry under Section 4 (1) (k). AIR 1968 Pat 100 (104) = 1968 Cri LJ 354 = 1967 BLJR 941 (FB). ((1906) ILR 28 All 554 (FB). (1918) ILR 40 Cal 477 (FB) and AIR 1940 Mad 466 (FB), **Diss. from.**, AIR 1948 Pat 225 (FB), **Overruled.**)

(11) An enquiry may start with shadowy beginnings and vague rumours. AIR 1968 Mad 117 (126) = 1968 Cri LJ 493 = (1968) 1 Mad LJ 480 (DB).

(12) The proceedings which preeede the order of discharge under Section 251-A (2) are in the nature of an inquiry notwithstanding that they do not involve the taking of evidence. 1963 (2) Cri LJ 109 (110) = 1963 Raj LW 5.

(13) The definition 'enquiry' is in contra distinction to 'trial' and is not meant to cover cases of consideration of remissions in regard to lease amounts or the inspection of fields to find out whether the allegations as to the yield or the raising of a particular crop are true or not. (1959) MLJ (Cr) 550 = (1959) 2 Andh WR 64.

(14) Warrant case instituted on police report — Order of discharge of accused under Sec. 251-A (2) is not acquittal—Revisional Court can order further enquiry. AIR 1962 Andh Pra 236 (242, 243) = (1962) 2 Andh LT 1 (DB). (AIR 1960 Andh Pra 391, **Overruled.**)

(15) Inquiry — Process issued to accused and called to appear — It is stage of inquiry — Application under Section 540-A at that stage is not premature. AIR 1970 Raj 102 (103).

(l) "Investigation."—"Investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police-officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf:

[1882 — S. 4 (b); 1872 — S. 4, Para. 4.]

Section 4 (1) (k) (contd.)

2. "Trial". — (1) A "trial" means, a proceeding which commences when the case is called on, with the Judge or Magistrate on the Bench, the accused is in the dock, and the representatives for the prosecution, and for the defence, if the accused be defended, are present in Court for the hearing of the case. AIR 1937 Bom 55 (56) = 38 Cri L Jour 250 (DB) ** (1904) 1 Cri L Jour 605 (606, 607) = 27 All 25.

3. Trial, when begins and ends. — (1) There is a conflict of decisions as to when the trial before a Court of Session or High Court begins:

(a) According to one view, the trial begins with the framing of the charge. AIR 1943 Nag 36 (49, 69) = 44 Cri L Jour 237 (DB) ** AIR 1922 Lah 49 (53) = 23 Cri L Jour 330 (DB) ** ('09) 9 Cri L Jour 192 (196) = 32 Mad 220 (FB) ** AIR 1927 Bom 21 (21) = 28 Cri L Jour 5 ** AIR 1929 Pat 644 (647) = 31 Cri L Jour 961 (DB).

(b) But according to the other view, the trial begins only when the accused refuses to plead or does not plead or claims to be tried and the Court thereupon chooses the jurors or assessors. AIR 1931 Cal 341 (343) = 32 Cri L Jour 667 (DB) ** AIR 1925 Lah 446 (447) = 27 Cri L Jour 421 (DB) ** AIR 1927 Bom 161 (162) = 28 Cri L Jour 402.

c) In the undermentioned case, the view was expressed that the trial before a Court of Session begins with the arraignment of the accused. AIR 1936 Mad 353 (357) = 37 Cri L Jour 637 (FB).

(2) In warrant cases before Magistrates, the proceedings are only "inquiries" up to the time when the charge is drawn up, read and explained to the accused and he pleads thereto. Then the "inquiry" becomes a "trial". AIR 1953 Madh B 1 (Pr 7) = ILR (1952) Madh B 89 = 1953 Cri L Jour 98 (DB) ** AIR 1943 Nag 36 (49, 69) = 44 Cri L Jour 237 (DB).

[But see AIR 1953 Sau 151 (155) = 1953 Cri L Jour 1307 (DB) ** ('07) 5 Cri L Jour 417 (420) = 3 Low Bur Rul 280.]

(3) In summons cases before Magistrates, the "trial" begins when the accused is brought before the Magistrate, the particulars of the offence are stated to him and the Magistrate proceeds to hear the complainant and the prosecution evidence. AIR 1953 Madh B 1 (Pr 6) = ILR (1952) Madh B 89 = 1953 Cri L Jour 98 (DB) ** AIR 1943 Nag 36 (49, 69) = 44 Cri L Jour 237 (DB).

(4) A "trial" means all proceeding including the sentence. **AIR 1933 PC 218 (221) = 34 Cri L Jour 886.**

[See also AIR 1955 Assam 214 (216) = ILR (1954) 6 Assam 264 = 1955 Cri L Jour 1321.]

[But see AIR 1929 Mad 201 (202) = 30 Cri L Jour 908 ** AIR 1933 Mad 251 (251) = 34 Cri L Jour 117.]

(5) The trial continues till judgment is pronounced though the judgment is one of acquittal. AIR 1951 All 549 (549) = 52 Cri L Jour 221.

(6) The law does not contemplate the termination of a prosecution by the jurisdiction of the Court, which has seisin of the case, being cancelled. AIR 1954 All 721 (722) = 1954 Cri L Jour 1480.

(7) The words "tried" and "trial" have no fixed or universal meaning and they should not necessarily be limited in their connotation and significance when they are used in a different context. AIR 1957 **SC 389 (394, 395) = 1957 SCR 279 = 36 Pat 513 = 1957 Cri L Jour 567.**

Section 4 (1) (l) — Note 1

(1) The definition of the word "investigation" is not exhaustive. ('02) 26 Bom 533 (538) (DB) ** AIR 1919 Cal 59 (60) = 20 Cri LJ 508 (DB).

(2) Trap investigation — Demanding bribe is an offence — Laying trap is not prohibited in investigation — Investigating officer cannot be said to be thereby instigating or promoting commission of offence. 1969 Mad LW (Cri) 90.

(3) Under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence and (5) Formation of the opinion and taking necessary steps for filing charge-sheet under Section 173. **AIR 1955 SC 196 (201) = 1955 Cri LJ 526 = ILR (1955) Punj 135 = 1955 SCR 1150 ** AIR 1959 SC 707 (711) = 1959 Cri LJ 920.**

(4) The final step in the investigation, viz., the formation of the opinion is to be that of the officer in charge of the police station. There is no provision permitting delegation thereof. **AIR 1955 SC 196 (201) = 1955 Cri LJ 526 = ILR (1955) Punj 135 = 1955 SCR 1150.**

(5) An investigation by the customs authorities under the Sea Customs Act would satisfy the definition of "investigation" in the Code. AIR 1940 Cal 97 (103) = 41 Cri LJ 329 (DB).

(m) "Judicial proceeding."—"Judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath:

[1882 — S. 4 (d); 1872 — S. 4, Para. 9.]

OBJECTS AND REASONS

"Judicial proceedings,—We have added the words 'on oath' in this definition, because the power to take evidence on oath is the characteristic test of judicial proceedings. We have omitted the new words providing for consequent proceedings which the Bill as introduced proposed to add to the definition, as they appear to be too wide. On the other hand we have altered the word "means" at the commencement of the definition into 'includes' and have thus given the Courts a certain latitude of construction."—S. C. R.

Section 4 (1) (l) — Note 1 (contd.)

(6) Investigation under Chapter XIV of the Code is a proceeding; the word 'proceeding' is not necessarily confined to something done in a Court of law. AIR 1966 Ker 11 (13) = 1966 Cri LJ 26 = 1965 Ker LT 877 (FB) ** AIR 1965 Mys 214 (218) = 1965 (2) Cr LJ 225 (DB).

(7) Once a police officer forms a definite opinion that there are grounds for investigating a crime, an investigation under the Code has started. Anything said or done subsequently must be held to have been done or said during the investigation. AIR 1968 Mad 117 (126) = 1968 Cri LJ 493 = (1968) 1 Mad LJ 480 (DB).

(8) The word 'investigate' used in Section 157 of Evidence Act (1872) must be taken as a word of wide import and the meaning given to the word 'investigation' in Section 4 (1) (l) cannot be attached to it. (1961) 2 Cri LJ 71 (73, 74) (DB) ** AIR 1968 Orissa 20 (24) = 1968 Cri LJ 201 = 33 Cut LT 1193 (DB).

SECTION 4 (1) (m) — SYNOPSIS

1. **Scope and applicability of the definition.**
2. **Judicial proceedings, what are.**
3. **Non-judicial proceedings under the Code.**
4. **Proceedings under other laws which are not judicial proceedings within this definition.**
5. **Departmental enquiries.**
6. **Judge acting in his executive capacity.**
7. **Proceedings coram non judice.**

1. Scope and applicability of the definition.— (1) A judicial proceeding is one of which the object is to determine a jural relation between one person and another or a group of persons, or between him and the community generally or a step taken by a Court in the course of the administration. of justice in connection with a pending case. (1888) 12 Bom 36 (42) (DB) ** (1864) 2 Mad HCR 43 (46) (DB).

(2) The test whether a proceeding is or is not a "judicial proceeding" is whether, in the course of that proceeding, the presiding Judge has the power legally to take evidence on oath and not whether he has actually taken such evidence. (1910) 11 Cri LJ 90 (93) = 1910 Pun Re (Cri) No. 1 (DB).

[See also (1906) 4 Cri LJ 334 (345) = 30 Bom 523 (535, 536) = 33 Ind App 198 (PC).]

(3) The judicial proceedings continue until the accused is discharged or removed to custody. 1897 Pun Re (Cri) No. 16, p. 43 (44, 45) (DB).

(4) Where the Judge in the midst of judicial work turns his attention to his executive duties. that stage is not a judicial proceeding. 1881 Pun Re (Cri) No. 40, p. 101 (102) (DB).

(5) This definition is not applicable to the Penal Code or the Civil Procedure Code. AIR 1921 Bom 3 (8) = 22 Cri LJ 241 (FB) ** (1878) 2 Bom 553 (556) (DB).

(6) The acts of the Court which are passed judicially, that is after hearing the parties and which affect the rights of parties will be included under 'judicial proceeding.' AIR 1964 Mad 185 (187) = 1964 (1) Cri LJ 519.

(7) If particular officer has taken part in his executive capacity in a procedure ultimately leading to charge-sheeting of accused he should not himself sit and try such accused person in his judicial capacity. 1965 All WR (HC) 836 = 1966 All Cri R 13.

2. Judicial proceedings, what are. — (1) Under the Code the following have been held to be judicial proceedings:

(a) An inquiry under Section 96 or Section 100. ('88) 15 Cal 109 (120) (DB) ** AIR 1916 Lah 281 (285) = 17 Cri LJ 491 (DB).

(b) Proceedings under Section 117. ('81) 3 All 545 (554) (FB) ** ('04) 1 Cri LJ 99 (100) = 1903 Pun Re (Cri) No. 27.

(c) Proceedings under Section 122. ('04) 1 Cri LJ 190 (192) = 26 All 371 (DB) ** ('10) 11 Cri LJ 497 (498) = 4 Sind LR 18 (DB).

(d) Proceedings under Chapter X. ('71) 7 Beng LR 449 (481) (DB) ** ('75) 1875 Pun Re (Cri) No. 17, p. 23 (24) (DB) ** ('80) 1880 Pun Re (Cri) No. 2, p. 3 (7) (SB).

Section 4 (1) (m) — Note 2 (contd.)

(e) Inquiry under Section 145. ('67) 4 Bom HCR (AC) 153 (154) (DB) ** (1900) 25 Bom 179 (184) (DB)

(f) Proceedings under Section 164. ('06) 3 Cri LJ 370 (370) = 29 Mad 89 (DB) ** ('99) 22 All 115 (117) (DB) ** ('06) 4 Cri LJ 183 (190, 191) (DB) (Bom) ** AIR 1933 Mad 125 (125, 126) = 34 Cri LJ 92.

[But see AIR 1921 Bom 3 (8, 16) = 22 Cri LJ 241 (FB) ** ('93) 1893 Pun Re (Cri) No. 2, p. 23 (27, 29) (DB) ** ('32) AIR 1932 Lah 254 (254) = 33 Cri LJ 413.]

(g) Proceedings under S. 176. AIR 1928 Bom 390 (393) = 29 Cri LJ 1063 (DB).

[But see ('78) 3 Cal 742 (750) (DB).]

(h) Proceedings under S. 195. ('79) 2 All 205 (213) (FB) ** ('87) 10 Mad 232 (235) (FB).

[But see ('02) 7 Cal WN 423 (425) (DB).]

(i) Examination of a complainant under Section 200. ('72) 4 NWPH CR 6 (6).

(j) An inquiry under Section 202. AIR 1937 All 90 (96) (DB) ** ('09) 9 Cri LJ 295 (296) = 36 Cal 72 (DB).

[But see ('96) 2 Weir 167 (167. 168) (DB).]

(k) Dismissal of a complaint under Section 203. ('98) 2 Cal WN 290 (292) ** ('05) 2 Cal LJ 65n (65n) (DB).

(l) Receiving of a complaint and issuing process under Section 204. ('68) 5 Bom HCR (Cr) 29 (30, 31) (DB) ** ('77) 2 Bom 481 (487) (DB).

(m) Recording of further evidence under Section 428. ('71) 15 Suth WR (Cr) 64 (66) (FB).

(n) Order under Section 435. ('02) 25 Mad 659 (661) (DB).

(o) A preliminary enquiry under S. 476. ('82) 1882 All WN 229 (230) ** ('06) 4 Cri LJ 460 (463) = 34 Cal 42 (DB) ** ('10) 11 Cri LJ 45 (46) = 37 Cal 52 (DB).

[But see ('82) 1882 All WN 92 (92) (DB) ** ('93-1900) 1893-1900 Low Bur Rul 388 (390).]

(p) Maintenance proceedings under Section 488. ('82) 5 All 224 (226) ** AIR 1917 Cal 799 (800) = 18 Cri LJ 556 (557) (DB).

(q) Proceedings on an application for bail under Section 497. (1865) 2 Mad HCR 396 (397) (DB) ** AIR 1956 All 417 (417) = 1956 Cri LJ 852 (DB) ** ('82) 6 Mad 63 (64) (DB).

(r) Proceedings under S. 514. ('98) 25 Cal 440 (444) (DB).

(s) An enquiry under Section 88. AIR 1957 All 121 (122) = ILR (1957) 1 All 506 = 1957 Cri LJ 169 (DB).

(t) Proceedings under Section 512. AIR 1969 Mys 114 (117) = 1969 Cri LJ 496 = (1967) 2 Mys LJ 470.

(u) Magistrate issuing warrant addressed to Chief Presidency Magistrate, Madras for endorsement and execution under Section 387 Criminal P. C. — Endorsement of warrant by Chief Presidency Magistrate under Section 387 is judicial order. AIR 1964 Mad 185 (190) = 1964 (1) Cri LJ 519.

(v) Proceedings by Magistrate under Sections 167 and 173. AIR 1969 Andh Pra 281 (288 to 291) = 1969 Cri LJ 1025 = (1969) 1 Andh LT 174 (DB).

(2) Under other laws. — The following have been held to be judicial proceedings.

(a) Enquiry under Section 49 of the Stamp Act. ('82) 5 All 17 (21, 24) (DB).

(b) Proceedings under Section 33 (2) of the Presidency-Towns Insolvency Act (1909). AIR 1958 Mad 69 (70) = ILR (1958) Mad 87 = 1958 Cri LJ 197.

(c) Proceedings under Section 113 of the Railways Act. AIR 1933 Bom 59 (61) = 34 Cri LJ 239 (DB).

3. Non-judicial proceedings under the Code. — (1) The following proceedings under the Code have been held not to be judicial proceedings:

(a) Proceedings under Section 125. ('10) 11 Cri LJ 147 (147) = 37 Cal 72 (DB).

(b) Inquest under Section 174. ('96) 1896 Rat Un Cri Cas 843 (843, 844) (DB).

(c) Recording of confession under Section 164 during investigation is not judicial proceeding. AIR 1968 Mys 95 (97) = 1968 Cri LJ 521 = (1967) 2 Mys LJ 377.

(2) Even if a Magistrate can legally administer oath to a person before recording a statement under Section 164, the investigation does not become a judicial proceeding. AIR 1964 All 290 (294) = 1964 (2) Cri LJ 1 = 1963 All LJ 1128.

4. Proceedings under other laws which are not judicial proceedings within this definition. — (1) The following are not judicial proceedings:

(a) Proceedings under Section 83, Transfer of Property Act. ('95) 1895 All WN 145 (146, 147).

(b) Application for return of documents under Order 13, Civil Procedure Code. AIR 1921 Cal 433 (434) (DB).

(c) Proceedings of a Collector or of a Deputy Collector under the Land Acquisition Act. ('05) 1 Cal LJ 227 (230, 231) = 32 Ind App 93

(n) "Non-cognizable offence," "Non-cognizable case."—Non-cognizable offence" means an offence for, and "non-cognizable case" means a case in, which a police officer, within or without a presidency-town,° may not arrest without warrant.

[1882: S. 4 (q), Para. 2; 1872: S. 4, Para. 20.]

[°] For definition of presidency town, see General Clauses Act, 1897 (X of 1897), S. 3 (44).

(o) "Offence."—"Offence" means any act or omission made punishable by any law for the time being in force;

it also includes any act in respect of which a complaint may be made under Section 20 of the Cattle Trespass Act, 1871.

[1882: S. 4 (p).]

STATE AMENDMENT

Kerala

In its application to the State of Kerala, in clause (o) of sub-section (1) of Section 4, for the words and figures "Section 20 of the Cattle Trespass Act, 1871" substitute the words and figures "Section 19 of the Kerala Cattle Trespass Act, 1961."—Ker. Act XI of 1963, S. 2 (1-4-1963).

Section 4 (1) (m) — Note 4 (contd.)

(PC) ** AIR 1927 Cal 621 (623) = 28 Cri LJ 809 (DB).

[But see AIR 1919 Mad 583 (584) (DB).]

(d) Enquiry by a Collector or a Deputy Collector under the Stamp Act for the purpose of determining who should be called upon to pay stamp duty. ('03) 7 Cal WN 795 (797) (DB).

(e) An enquiry by a receiver appointed under the Provincial Insolvency Act. AIR 1919 Cal 965 (967) (DB).

(f) Demarcation of land by Nyaya Panchayat officials under Himachal Pradesh Panchayat Raj Act (6 of 1953) was not a judicial proceeding. AIR 1965 Him Pra 25 (27, 28) = 1965 (1) Cri LJ 550.

(g) Recording of statements of persons giving documentary evidence in complaint case only after dismissal of the complaint. 1966 All Cri R 479 = 1966 All WR (HC) 761.

5. Departmental enquiries. — (1) The following departmental enquiries are not judicial proceedings:

(a) A proceeding before a Forest Officer who is not empowered by law to hold an enquiry. ('75) 12 Bom HCR 1 (6) (DB).

(b) An enquiry by the Registrar, High Court, into the conduct of a clerk. ('87) 12 Bom 36 (42) (DB).

(c) An enquiry by a Collector and Magistrate on charges of bribery or misconduct against a Revenue Officer. ('98) 22 Bom 936 (939) (DB) ** ('06) 3 Cri LJ 376 (378) = 29 Mad 100 (DB).

(d) An enquiry by a District Registrar against a Sub-Registrar. ('06) 3 Cri LJ 112 (114) (DB) (Cal).

6. Judge acting in his executive capacity. — (1) Where a Judge or a Magistrate acts in his executive capacity, his action is not a judicial proceeding. ('07) 5 Cri LJ 476 (477) = 29 All 563 ** AIR 1918 Mad 1266 (1270, 1277) = 18 Cri LJ 239 (SB) ** AIR 1922 Pat 269 (269, 273) (FB).

7. Proceedings coram non judice. — (1) Where the proceedings are coram non judice, i.e., without jurisdiction or not before the proper Judge, they are not judicial proceedings. (1900) 4 Cal WN 351 (352) ** AIR 1921 Pat 302 (303) = 22 Cri LJ 735 ** ('90) 1890 All WN 100 (101) (SB) ** AIR 1915 All 457 (458) = 16 Cri LJ 807 ** AIR 1918 Mad 398 (399, 400) = 18 Cri LJ 785.

Section 4 (1) (n) — Note 1

(1) Offences under Sections 3 and 4 of Public Gambling Act (1867) — Arrest without warrant by police officer below the rank of D. S. P. not permissible — Offences are 'non-cognizable offences.' AIR 1968 All 55 (57) = 1968 Cri LJ 223 = 1968 All WR (HC) 189.

(2) Offences under Section 5, Prevention of Corruption Act (1947) are cognizable offences by virtue of S. 5-A, under all circumstances. AIR 1965 Andh Pra 372 (377, 378, 379) = 1965 (2) Cri LJ 585 = (1965) 2 Andh WR 44 (DB).

(3) The offences under Sections 78 and 79 of the Trade and Merchandise Marks Act (1958) are non-cognizable ones. AIR 1969 Guj 14 (16) = 1969 Cri LJ 63 = 9 Guj LR 925.

Section 4 (1) (o) — Note 1

(1) This definition does not govern the definition of offences under other Acts. ('03) 26 Mad 607 (614, 615, 625) (SB).

Section 4 (1) (o) — Note 1 (contd.)

(2) The definition does not apply where a different intention appears from the subject or context. AIR 1947 Pat 381 (384) = 25 Pat 806 (DB).

(3) A single act of firing at two persons can be regarded as one offence only. **AIR 1952 SC 45 (Pr 6) = 1952 SCR 371 = 1952 Cri LJ 323.**

(4) It is the act and not the transaction that constitutes an offence. AIR 1949 All 392 (Pr 5) = ILR (1949) All 715 = 50 Cri LJ 595.

(5) An act or omission is an offence only if it is made punishable by any law for the time being in force. AIR 1953 Cal 85 (Pr 16) = 1953 Cri LJ 294 (DB) ** AIR 1931 Pat 369 (375) = 32 Cri LJ 1256 (FB) ** AIR 1931 PC 94 (99) = 32 Cr LJ 899 ** ('82) 4 All 212 (212, 213) (FB).

(6) There is an essential distinction between an offence and the prosecution for an offence — The former forms part of the substantive law and the latter of procedural law. An offence is an aggregate of acts or omissions punishable by law while prosecution signifies the procedure for obtaining an adjudication of the Court in respect of such acts or omissions. **AIR 1958 SC 993 (997) = 1959 SCR 250 = 1958 Cri LJ 1558.**

(7) An order to pay maintenance under Section 488 of the Code is not a conviction for an offence. But a breach of such an order or disobedience thereof, being punishable with imprisonment, is an offence. ('67) 7 Suth WR (Cr) 10 (11) (DB) ** AIR 1955 Bom 108 (109) = 1955 Cri LJ 357 = ILR (1955) Bom 6.

(8) Neglect to maintain wife is not offence within the meaning of Sec. 4 (1) (o). AIR 1965 Manipur 49 (51) = 1965 (2) Cr LJ 785.

(9) An order by a Magistrate directing the demolition or alteration of work which has been unlawfully erected, under the Municipal Acts, is not a conviction for an "offence" under the Acts, though a disobedience of such an order is an "offence". AIR 1927 Cal 509 (510, 511) = 28 Cri LJ 407 (DB)** ('10) 11 Cri LJ 183 (184) = 37 Cal 384 (DB).

(10) The mere use of a house as a brothel or a disorderly house is not an offence; but when a Magistrate passes an order prohibiting the use of the house as brothel, the disobedience of such an order is an offence. ('10) 11 Cri LJ 112 (112, 113) = 37 Cal 287 (DB) ** AIR 1929 Pat 406 (406) ** ('13) 14 Cri LJ 320 (320) = 6 Sind LR 254 (DB).

(11) Where an enactment provides for the imposition of a fine for a certain act, it may he held that the enactment makes the act an offence. AIR 1953 Cal 85 (Pr 11) = 1953 Cri LJ 294 (DB).

(12) An Ordinance is a "law for the time being in force" and an infringement of its provisions is an offence within the meaning of this definition. AIR 1916 Lah 207 (207, 208) = 17 Cri LJ 225.

(13) The words "law for the time being in force" necessarily postulate that the law must be in force in the territories of India. AIR 1955 Nag 236 (237) = 1955 Cri LJ 1275 = ILR (1955) Nag 613 (DB).

(14) The words "any law" would include not only the Penal Code but also all local or special laws which create offences. AIR 1931 Pat 369 (375) = 32 Cri LJ 1256 (FB) ** AIR 1949 Nag 137 (Pr 8) = ILR (1949) Nag 18 (FB) ** AIR 1941 Mad 897 (897) ** ('82) 4 All 216 (217) (FB) ** AIR 1953 Cal 85 (Pr 12) = 1953 Cri LJ 294 (DB) ** AIR 1921 All 277 (278) = 21 Cri LJ 724.

(15) An act in respect of which a complaint may be made under Section 20 of the Cattle Trespass Act, is an offence. AIR 1920 Bom 85 (85) = 21 Cri LJ 95 (DB) ** AIR 1959 Orissa 116 (117) = ILR (1958) Cut 549 = 1959 Cri LJ 884 (DB) ** AIR 1957 Mad 742 (742) = 1957 Cri LJ 1295 (2) ** AIR 1927 Mad 396 (397) = 28 Cri LJ 301.

(16) Although under Section 4 (1) (o) offence includes any act in respect of which a complaint is made under S. 20 of the Cattle Trespass Act (1871) the proceeding under Section 22 is not criminal. AIR 1962 Madh Pra 273 (273, 274) = (1962) 2 Cri LJ 375 = 1962 MPLJ 302.

(17) A fine levied by a pound-keeper under Section 12 of the Cattle Trespass Act is not a punishment imposed on conviction for an offence within the meaning of this definition. ('70) 7 Bom HCR (Cr) 55 (56) (DB).

(18) The offence created by Section 14 (G), U. P. Sales Tax Act (15 of 1948) is an offence as defined by S. 4 (1) (o) Criminal P. C. AIR 1957 All 88 (89) = 1957 Cri LJ 167 (DB).

(19) The offence under Section 21 (8) read with Section 21 (2) (d) of the West Bengal Premises Tenancy Act (12 of 1956) is a statutory offence. It is not a criminal offence within the meaning of Sec. 4 (1) (o). AIR 1967 Cal 145 (146, 147) = 1967 Cri LJ 342.

(20) Contention that offence mentioned in Section 195 did not come into existence, unless complaint under that section was made, was not correct. **AIR 1967 SC 528 (536) = 1967 Cri LJ 528 = (1967) 1 SCR 520.** (AIR 1927 Sind 10, **Overruled.)**

(21) Scope of misconduct is wider than that of criminal offence e.g. theft —Mere fact that case was sent to Criminal Court could not bar domestic enquiry. AIR 1970 All 210 (214).

(p) "Officer in charge of a police-station."—"Officer in charge of a police-station" includes, when the officer in charge of the police-station is absent from the station-house or unable from illness or other cause to perform his duties, the police-officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the [*][State Government] so directs, any other police-officer so present:

[1882: S. 4 (o), Part 2.]

[*] Substituted for "Provincial Government" by A. L. O., 1950.

(q) "Place."—"Place" includes also a house, building, tent and vessel:

[1882: S. 4 (1) (w).]

(r) "Pleader."—"Pleader," used with reference to any proceeding, in any Court, means a pleader [*][or a mukhtar] authorized under any law[†] for the time being in force to practise in such Court, and includes (1) an advocate, a vakil and an attorney of a High Court so authorized, and (2) any [‡][* * *] other person appointed with the permission of the Court to act in such proceeding:

[1882 — S. 4 (n).]

[*] These words were inserted by the Code of Criminal Procedure (Further Amendment) Act, (XXXV of 1923), S. 2.

[†] See Advocates Act, 1961, (XXV of 1961).

[‡] The words "mukhtar or" were omitted by Act XXXV of 1923, S. 2.

Section 4 (1) (p) — Note 1

(1) The object of the definition is to permit the discharge of the duties of an officer in charge of a police-station by some other person, when such officer is absent from the station-house or is unable from illness or other cause to attend to his duties. AIR 1919 Mad 226 (227) = 20 Cri LJ 422 (DB) ** AIR 1923 Pat 547 (549) = 24 Cri LJ 375.

(2) When the officer in charge of a police station is present in the station-house and able to attend to his duties, the other persons mentioned in the definition cannot wield the powers of an officer in charge of a police-station. AIR 1928 Cal 771 (772) = 30 Cri LJ 803 (DB).

(3) The expression "present at the station-house" refers to the time when charge is assumed. AIR 1919 Mad 226 (227. 228) = 20 Cri LJ 422 (DB).

(4) The section empowers the State Government to authorise even a police officer of lower rank to officiate. ('11) 12 Cri LJ 190 (192) (DB) (Mad).

[See also ('55) 1955 Andh WR 882 (884) ** AIR 1953 Trav-Co 466 (469) = ILR (1952) Trav-Co 937 = 1953 Cri LJ 1670 (DB).]

(5) The fact that the police officer who is ordinarily in charge of a police station had left for attending to a raid would not lead to the inference that after his return from the raid he was not in charge of the police station. AIR 1956 Bom 195 (196) = 1956 Cri LJ 481 (DB).

(6) 'Officer in charge of a police station' — Definition in Sec. 4 (1) (p) is inclusive — Police officer present at station house, next in rank to officer in charge of police station and above rank of constable can do duties of officer in charge in his absence. (1969) 35 Cut LT 291 (DB).

(7) Officer of Railway Protection Force is not police officer properly so called. AIR 1969 Cal 594 (597).

(8) Offences mentioned in Section 5-A of Prevention of Corruption Act (1947) — Investigation by P. S. Inspector of Anti-Corruption Department even after obtaining sanction under Section 5-A, Prevention of Corruption Act, is illegal. 1962 (1) Cr LJ 142 (DB) (Guj).

Section 4 (1) (r) — Note 1

(1) The words "any other person . . . . . . in such proceeding" are not to be read ejusdem generis with the previous words and do not refer to advocates, pleaders or mukhtars authorised under any law to practise. AIR 1934 Bom 212 (213) = 35 Cri LJ 1035 (DB).

(2) A person not enrolled as a legal practitioner but appointed by a party with the permission of the Court to represent him would be a "pleader" for the purpose of the proceeding. AIR 1934 Bom 212 (213) = 35 Cri LJ 1035 (DB) ** AIR 1930 Nag 150 (151) = 31 Cri LJ 419.

(3) Private vakils can be allowed to appear as pleaders in criminal cases. (1874) 7 Mad HCR (App) 37 (37).

[See however AIR 1943 Mad 470 (471) = 44 Cri LJ 662.]

(4) The condition of appointment by the party and permission by Court does not apply to the first category of plea-

Section 4 (1) (r) — Note 1 (contd.)

ders and hence the pleader of the first category need not be appointed as such by the accused. AIR 1951 Him Pra 31 (Pr 3) = 1952 Cri LJ 280.

(5) The discretion of the Court in permitting persons to appear as "pleaders" must be exercised judicially with due regard to the interest of the party engaging him. AIR 1918 Upp Bur 56 (56) = 18 Cri LJ 345 ** (1969) 1 MLJ 99 = (1968) Mad WR (Cri) 208 ** (1964) 2 Mad LJ 194 (DB).

(6) The character of the person appointed is one of the factors to be considered in granting permission. (1911) 12 Cri LJ 111 (112) = 38 Cal 488 (DB).

(7) The discretion, must be exercised in each case. A general order prohibiting a particular class of persons from appearing is not legal. AIR 1928 Bom 33 (34) = 29 Cri LJ 226 (DB).

(8) A Court cannot pass an order prohibiting a certain person from appearing in any case in that Court. (1908) 4 Mad LT 91 (91).

(9) Unless a person has been appointed by a party, the Court cannot sanction his appearance as a pleader in a case. AIR 1930 Nag 150 (151) = 31 Cri LJ 419.

(10) A person appointed by the party and permitted by the Court to act for the party is a 'pleader' only from the date of the granting of permission and not before. 1948 Bur LR (SC) 249 (253).

(11) Persons who have been enrolled as pleaders, advocates, vakils or attorneys but who are not entitled to practise in the particular Court in question cannot appear as "pleaders" in criminal cases as a matter of right, but can do so only with the permission of the Court. (1911) 12 Cri LJ 118 (119) = 4 Sind LR 207 (DB) ** AIR 1918 Upp Bur 56 (56) = 18 Cri LJ 345.

(12) Where under the Bombay High Court Rules (Appellate Side) advocates on the appellate side are precluded from appearing in the Sessions Court, they are not "peaders" quoad that Court. AIR 1934 Bom 70 (71) (FB).

(13) Persons who claim to be entitled to practise as vakils of a High Court, must show that they are "authorised to do so." AIR 1943 Mad 470 (470. 471) = 44 Cri LJ 662.

(14) A mukhtar authorised to practise in the Court in question, is not required to take the permission of the Court in each case before appearing in it as a pleader. But in provinces in which mukhtars are not recognised they can appear by getting the permission of the Court in each case. AIR 1928 Bom 33 (33) = 29 Cri LJ 226 (DB).

(15) Where one accused, out of others, who are produced before the Magistrate, does not appear due to sudden illness, he can appoint a private person or even a co-accused to appear in his stead, under Section 4 (1) (r) read with Section 205 (1). AIR 1962 Pat 244 (246) = 1962 (1) Cri LJ 743 = 1962 BLJR 20.

(16) Provision under, does not purport to affect general right of person to carry on occupation of being power-of-attorney agent of others. AIR 1967 Mad 276 (278) = 1967 Cri LJ 1020 = (1967) 1 Mad LJ 27.

(17) Previous permission to act as a pleader — Not an interference with fundamental rights of accused under Article 19 (1) (f). AIR 1967 Mad 276 (277) = 1967 Cri LJ 1020 = (1967) 1 Mad LJ 27.

(18) Any person even if he be a lawyer, but not on rolls of Advocates, who seeks to plead on behalf of an accused can do so only with the permission of the Court. AIR 1967 Mad 276 (277) = 1967 Cri LJ 1020 = (1967) 1 Mad LJ 27.

(19) Definition of pleader is exhaustive and refers only to an Advocate, Vakil or attorney on the rolls of Advocates. AIR 1967 Mad 276 (277) = 1967 Cri LJ 1020 = (1967) 1 Mad LJ 27.

(20) Court has power under Section 4 (1) (r) (2) Criminal P. C. to grant permission to any person other than an Advocate etc. mentioned in the section. AIR 1965 Andh Pra 320 (321) = 1965 (2) Cri LJ 347 = (1965) 1 Andh WR 468.

(21) In Pondicherry State, the Court will have the unfettered judicial discretion to permit 'any other person' to act for a party in criminal proceedings under Section 4 (1) (r) (2). (1964) 2 Mad LJ 194 = 77 Mad LW 132.

(22) An Additional Public Prosecutor appointed for a specified period or specified cases does not cease to be an 'Advocate' and there is no prohibition for his appearing in any case for a party as an Advocate if the Government permits him to do so during his period of service as Additional Public Prosecutor. (1969) 1 Mad LJ 99 = 1968 Mad LW (Cri) 208.

(23) An Assistant Public Prosecutor being a full time Government servant cannot appear for any person in any case as a practising advocate. (1969) 1 MLJ 99 = 1968 Mad LW (Cri) 208 ** AIR 1965 Andh Pra 320 (321) = 1965 (2) Cri LJ 347= (1965) 1 Andh WR 468.

(24) The Assistant Public Prosecutor cannot appear for an accused in a private case even though so authorised by the Collector or the Commissioner of Police. (1969) 1 MLJ 99 = 1968 Mad LW (Cri) 208 ** AIR 1965 Andh Pra 320 (321) = 1965 (2) Cri LJ 347 = (1965) 1 Andh WR 468.

(25) As per Cl. (2) of Section 4 (1) (r), an Assistant Public Prosecutor can appear in any case if the Court before whom he seeks permission to act in any specific proceedings, gives such permis-

(s) **"Police-station."**—"Police-station" means any post or place declared, generally or specially, by the *[State Government] to be a police station and includes any local area specified by the *[State Government] in this behalf:

[1882: S. 4 (o) Part I.]

[*] Substituted for 'Provincial Government' by A. L. O., 1950.

(t) **"Public Prosecutor."**—"Public Prosecutor" means any person appointed under Section 492, and includes any person acting under the directions of a Public Prosecutor and any person conducting a prosecution on behalf of *[Government] in any High Court in the exercise of its original criminal jurisdiction:

[1882: S. 4 (m).]

[*] Substituted for 'Her Majesty' by A. L. O., 1950.

STATE AMENDMENTS

Andhra Pradesh

Added Territories.—In its application to the territories added to the State of Andhra Pradesh under Section 3 of the Central Act LVI of 1959, the amendment made in clause (t) by T. N. Act XXXIV of 1955 is repealed.—Andh. Pra. A. L. O., 1961 (w. r. e. f. 1-4-1960).

Tamil Nadu

In its application to the State of Tamil Nadu in clause (t) omit the words "and any person conducting a prosecution on behalf of Government in any High Court in the exercise of its original criminal jurisdiction."—T. N. Act XXXIV of 1955,* Section 2 (1-1-1956): Tamil Nadu A. L. O., 1969.

[*] This Act does not seem to have been extended to the territories added to the State of Tamil Nadu under S. 3 of the Central Act LVI of 1959.

Section 4 (1) (r) — Note 1 (contd.)

sion. (1969) 1 MLJ 99 = 1968 Mad LW (Cri) 208.

Section 4 (1) (s) — Note 1

(1) A beat-house, unless it is declared generally or specially by the State Government to be a police station, cannot be held to be a police station. AIR 1960 Cal 519 (520) = 1960 Cri LJ 1078 (DB).

(2) An outpost is not a police station. (1969) 35 Cut LT 291 (DB).

(3) Unless the State Government gives the midstream of the river passing through two districts as a boundary of the local limits of a police station, the local area of that station cannot go on changing according to the everchanging course of the river. AIR 1960 Pat 342 (343, 344) = 1960 Cri LJ 1128 (DB).

(4) Territorial limits of Magistrate's jurisdiction are to be determined with reference to area comprised in police stations of particular sub-division over which Magistrate presides. (1966) All Cri R 322 = 1966 All WR (HC) 548.

(5) There is no provision in the Code that in respect of the same area there cannot be two police stations having concurrent jurisdiction. ILR (1968) Cut 418 = 1969 Cr LJ 339 (341) = 34 Cut LT 841.

(6) The Vigilance Police Station at Cuttack has jurisdiction to investigate into both Vigilance Police Case and a general Police station case. 1969 Cr LJ 339 (341) = 34 Cut LT 811.

Section 4 (1) (t) — Note 1

(1) The Advocate-General, the Standing Counsel and the Government Solicitor, are not "Public Prosecutors" within the meaning of this section. AIR 1949 Pat 344 (346) = 28 Pat 70 = 50 Cri LJ 699 (DB).

[But see 1966 Raj LW 300.]

(2) Section 4 (1) (t) is to be read with Section 498, which leads to the conclusion that even in a case where a person is engaged and briefed by a private person to instruct the Public Prosecutor the prosecution is to be conducted by the Public Prosecutor himself. AIR 1959 Andh Pra 477 (485) = 1959 Cri LJ 1045 (DB).

(3) Definition of Public Prosecutor expressly includes a counsel on behalf of the Government irrespective of his manner of appointment. AIR 1968 Cal 38 (43) = 1968 Cri LJ 40 (DB).

(4) Complaint under Section 198-B — — Transfer of case — Charge of case handed over to another prosecutor — Such prosecutor to whom the charge of the case is given must be deemed to be complainant. AIR 1969 Raj 61 (63, 64) = 1969 Cri LJ 314.

*[(tt) * * * *]

[*] Clause (tt) was inserted after clause (t), by A. L. O., 1950 but is omitted by S. 4 of the Code of Criminal Procedure (Amendment) (Act 1 of 1951), (1-4-1951). The omitted clause was as follows :—

"(tt) 'State' means a Part A State or a Part C State, and 'States' means all the territories for the time being comprised within Part A States and Part C States."

(u) **"Sub-division."**—"Sub-division" means a sub-division of a district:

[1882 — S. 4 (f).]

(v) **"Summons-case."**—"Summons-case" means a case relating to an offence, and not being a warrant-case; and

[1882: S. 4 (t); 1872: S. 4, Para. 21.]

(w) **"Warrant-case."**—"Warrant-case" means a case relating to an offence punishable with death, *[imprisonment for life or imprisonment for a term exceeding one year.]

[1882 — S. 4 (s); 1872 — S. 4, Para. 22.]

[*] Substituted for the words "transportation or imprisonment for a term exceeding six months", by Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), S. 2 (1-1-1956).

Section 4 (1) (t) — Note 1 (contd.)

(5) Assistant Public Prosecutor is unknown to law. AIR 1969 Cal 321 (326) (DB).

(6) Public Prosecutor is one who is so appointed under Section 492 of the Code and is also one who is acting under the directions of the Public Prosecutor. AIR 1969 Cal 321 (333) (DB) ** AIR 1961 Andh Pra 190 (192) = (1961) 1 Cri LJ 601 = 1960 Andh LT 1036 (DB).

(7) Additional District Magistrate 'engaging' lawyers on behalf of State does not amount to appointing a lawyer as Public Prosecutor. AIR 1969 Cal 321 (327) (DB).

(8) Public Prosecutor generally appointed by State for 24 Parganas is in charge of all the prosecution cases, particularly sessions cases and he has the duty to give directions in all such cases. AIR 1969 Cal 321 (340) (DB).

(9) There are four categories of Public Prosecutors: (1) Public Prosecutor appointed under S. 492 (1). (2) Public Prosecutor, appointed for any case under Section 492 (2). (3) Person engaged by a Public Prosecutor to act under his direction. (4) Any person conducting a prosecution on behalf of Government in High Court in exercise of its Original Criminal Jurisdiction. AIR 1965 Cal 79 (82) = 1965 (1) Cri LJ 150 ** AIR 1965 Raj 196 (199) = 1965 (2) Cri LJ 677 = 1965 Raj LW 311.

(10) Section 495 does not control the definition of a 'Public Prosecutor' as contained in S. 4 (1) (t). AIR 1965 Raj 196 (199) = 1965 (2) Cri LJ 677 = 1965 Raj LW 311.

(11) An Advocate engaged by the Collector of Customs, Calcutta, with the approval of the office of the Superintendent and Remembrancer of Legal Affairs, West Bengal, to conduct a prosecution under the Sea Customs Act, in the Court of the Presidency Magistrate, Calcutta, is not a Public Prosecutor under Section 492 nor a person included in the definition of 'Public Prosecutor' in Section 4 (1) (t). AIR 1965 Cal 79 (87) = 1965 (1) Cri LJ 150.

(12) Engagement by the Government, either State Government or Central Government, to conduct prosecution makes a person Public Prosecutor only in High Court in its Original Criminal Jurisdiction and not in any other Court. AIR 1965 Cal 79 (82) = 1965 (1) Cri LJ 150.

(13) A person acting under the directions of a Public Prosecutor is obviously a person engaged by the Public Prosecutor. AIR 1965 Cal 79 (85) = 1965 (1) Cri LJ 150.

(14) Office of Public Prosecutor is a public Office. AIR 1970 Mad 63 (67) (DB).

Section 4 (1) (v) — Note 1

(1) Offence under Section 3 (2) (i) of Essential Commodities Act (1955) is a non-cognizable offence and must be tried as a summons case. AIR 1964 Raj 237 (239) = 1964 (2) Cri LJ 581 = 1964 Raj LW 275.

(2) Trial of warrant case as a summons case — Irregularity is curable under Section 537, when accused is not prejudiced. AIR 1961 All 590 (594, 595) = 1961 (2) Cri LJ 737 = 1961 All LJ 483 (FB).

(3) Offence under Rule 17 of A. P. Motor Vehicles Taxation Rules is triable as summons case within Section 4 (1) (v). Order of discharge therefrom is really one of acquittal. AIR 1970 Andh Pra 176 (177).

Section 4 (1) (w) — Note 1

(1) Where the Code deals with offences only, it divides them into cognizable and non-cognizable offences but when it deals with procedure it speaks of cases, as a

(2) **Words referring to acts.**—Words which refer to acts done, extend also to illegal omissions; and

Words to have same meaning as in Indian Penal Code.—All words and expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code.

[1882 — S .4, last two paras.]

5. **Trial of offences under Penal Code.**—(1) All offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

Section 4 (1) (w) — Note 1 (contd.)

summons-case or as a warrant-case. AIR 1918 Mad 371 (373) = 19 Cri L Jour 613 (DB).

(2) A case becomes a "summons-case" or a "warrant-case" according to the nature and the measure of punishment which the law attaches to the offence. AIR 1938 Cal 205 (205) = 39 Cri L Jour 438 ** AIR 1956 Nag 71 (73) = 1956 Cri L Jour 260 = ILR (1955) Nag 779 ** AIR 1932 Nag 111 (111) = 33 Cri L Jour 573 ** (1967) 33 Cut LT 1047 = ILR (1967) Cut 967.

(3) Where there is a charge of abetment of a specific offence, the abetment is a summons case or a warrant case according as the specific offence is a summons or a warrant case. AIR 1931 Bom 199 (199) = 32 Cri L Jour 718 (DB).

(4) Where the charge is in respect of two offences, the sentences which can be awarded, in respect of those offences cannot be combined to determine whether it is a summons case or a warrant case. AIR 1956 Bom 168 (170) = 1956 Cri L Jour 382 (DB).

(5) Offence under Section 54, Rajasthan Excise Act (1950), is punishable with imprisonment which may extend to 2 years and is triable as warrant case. ILR (1958) 8 Raj 1206.

(6) An offence under Section 7 (1) (a) (ii) of the Essential Commodities Act (1955) is punishable with a sentence of imprisonment of three years and thus relates to a warrant case. (1967) 33 Cut LT 1047 = ILR (1967) Cut 967.

(7) Offence under Section 7 of the Essential Commodities Act is punishable with imprisonment for a term upto three years in case of violation of any order made with reference to clauses other than Clauses (h) and (i) of Section 3 (2). The case relating to the offence is a warrant case. AIR 1969 Pat 105 (106) = 1969 Cri LJ 435 = 1968 BLJR 902.

(8) Possession of wash fit for distillation — Offence comes not under Section 8 (1) (a) but under Sec. 8 (1) (g) of Travancore-Cochin Prohibition Act (13 of 1950), and is triable as a warrant case. (1961) 1 Ker LR 190.

(9) Offence under Section 16 (1) (ii) of Prevention of Food Adulteration Act (1954), being punishable with imprisonment which extends to two years must be tried as a warrant case. AIR 1961 All 590 (594) = 1961 (2) Cri LJ 737 = 1961 All LJ 483 (FB).

Section 4 (2) — Note 1

(1) The words "force" and "criminal force" used in Section 522 must be interpreted according to the definitions of those words in Sections 349 and 350 of the Penal Code. AIR 1921 Pat 391 (392) = 22 Cri L Jour 329 ** ('03) 25 All 341 (342, 343) ** (1900) 27 Cal 174 (175) (DB).

(2) The words "special law" in Section 1, sub-section (2), "injury" in Section 545, "punishable" in Section 4, sub-section (1) (o) and "Judge" in Sec. 539 in this Code have the meanings given to them in Sections 41, 44, 53 and 19 of the Penal Code, respectively. AIR 1940 Lah 129 (131, 132) = 41 Cri L Jour 591 (FB) ** AIR 1954 Him Pra 57 (58) = 1954 Cri L Jour 1221 ** ('98) 21 Mad 74 (76) (FB).

(3) "Adultery" in Section 488 means intercourse by a husband or wife with another, and is not limited to the meaning of the word in Section 497 of the Penal Code. (1897) 20 Mad 470 (474, 475) (FB). **(Overruling** 17 Mad 260.)

(4) Where the word "attached" is used with reference to "moveable property", the latter includes debts and choses in action, but where the words "distress and sale" are used, then "moveable property" means only tangible or corporeal property and does not include debts or choses in action. AIR 1917 Mad 748 (748, 749) = 18 Cri L Jour 1 (DB).

(5) 'Month' must be given meaning as assigned to it in Section 49. It is to be reckoned according to the British calendar. 1964 All WR (HC) 269.

(6) Chief Executive Officer, State Road Transport Corporation is public servant. AIR 1963 Andh Pra 491 (491) = (1963) 1 Andh LT 282 (DB).

(7) Chairman, Municipal Board by reason of Sections 22 and 43 of Rajasthan Town Municipalities Act (23 of 1951) is a public servant. AIR 1960 Raj 173 (174) = 1960 Cri LJ 996.

SECTION 5 — SYNOPSIS

1. **Scope and applicability.**
2. **"Otherwise dealt with."**
3. **"Enactment".**

(2) **Trial of offences against other laws.**—All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiry into, trying or otherwise dealing with such offences.

[1882: S. 5; 1872: Ss. 6, 7, 8; Para. 1; 63 Expl.; 1861: S. 21.]

STATE AMENDMENT

West Bengal

In sub-section (2) of Section 5, for the words "but subject to any enactment", substitute the words "but, save as otherwise provided by this Code, subject to any enactment."—W. B. Act 8 of 1970, S. 3 and Sch., item 2.

Section 5 — Synopsis (contd.)

4. **"Any other law."**
5. **Offences against other laws — Sub-section (2).**

1. Scope and applicability.— (1) The section applies both to the tribunal by which a crime is to be tried as well as the procedure to be followed. AIR 1953 Madh B 89 (Pr. 4) = 1953 Cri L Jour 629 ** AIR 1953 All 179 (Prs. 2, 5) = 1953 Cri L Jour 444.

(2) In criminal proceedings, the question is not alone whether substantial justice has been done according to law. All proceedings in poenam are strictissimmi juris. AIR 1925 Oudh 1 (8) = 25 Cri L Jour 49.

(3) It is the duty of the presiding officer in criminal trials to see that the procedure as laid down in the Code is strictly and fully complied with. AIR 1927 Cal 936 (936) = 28 Cri L Jour 478 (DB) ** AIR 1927 Cal 631 (632) = 28 Cri L Jour 742 (DB) ** AIR 1932 Mad 502 (505) = 33 Cri L Jour 765.

(4) The section shows that the provisions of the Code relating to place of trial assume the existence of substantive liability under the Indian Penal Code or under any other law. **AIR 1957 SC 857 (867) = 1958 SCR 328 = 1957 Cri L Jour 1346.**

(5) Code came into force in Goa on 1-11-1963 and Portuguese Criminal P. C. stood repealed by virtue of Sections 3 and 4 of Goa, Daman and Diu (Laws) Regulation 1962 — Offence punishable under Rule 126-P, Defence of India Rules, 1962 committed in Goa on 25-6-1963 — Offence is triable in accordance with Criminal P. C. and not Portuguese Criminal P. C. 1970 Cri LJ 421 (424, 425) (Goa).

(6) Offences under Sections 408, 477-A Penal Code — Sanction of Registrar of Co-operative Societies under Madras Co-operative Societies Act (6 of 1932) is not necessary. ILR (1958) Cut 140 (148).

(7) The words "investigated, enquired into, tried and otherwise dealt with" refer to offences and therefore an order for disposal of property under Sec. 523 (1) is not an order dealing with an offence. AIR 1964 Pat 416 (417) = 1964 (2) Cr LJ 331 = 1964 BLJR 578.

2. "Otherwise dealt with."— (1) An offence may be said to be "otherwise dealt with" in the following cases:

(1) Where offenders liable to be tried by a Court-martial are delivered over to military authorities under Section 549.

(2) Where a case is transferred from one Panchayat Court to another under Section 526. AIR 1927 All 199 (200) = 28 Cri L Jour 94.

(2) The word "otherwise" points to the fact that the expression "dealt with" is all-comprehensive, and that investigation, inquiry and trial were same aspects of 'dealing with' the offences. **AIR 1962 SC 63 (67) = 1962 (1) Cri LJ 106 = (1962) 2 SCR 694.** (Offence under Suppression of Immoral Traffic in Women and Girls Act (1956) can be investigated only by Special Police Officer and not by other police officer — Majority view.) ** AIR 1962 Punj 91 (92, 93) = 1962 (1) Cr LJ 361.

(3) The provisions of Chapters IV and V of the Code fall under provisions pertaining to otherwise dealing with offences under the Code. 1964 (1) Cri LJ 224 (228) = (1964) 4 SCR 204 (SC).

(4) Expression "otherwise dealt with" in Section 5 includes provisions for disposal of property under Chapter 43 of the Code. AIR 1969 Ker 151 (152) = 1969 Cri LJ 731. It directly enacted by the Legislature.

(5) Order under S. 476-B of the Code by Civil Court is revisable under S. 439 of the Code. AIR 1968 Pat 100 (105) = 1968 Cri LJ 354 = 1967 BLJR 941 (FB).

3. "Enactment." — (1) The word "enactment" applies only to provisions

Section 5 — Note 3 (contd.)
directly enacted by the Legislature. It does not include a rule framed under the provisions of an Act. AIR 1921 Cal 708 (711) = 22 Cri L Jour 354 (DB) ** ('94) 1894 Pun Re (Cr) No. 23, p. 80 (81).

[But see AIR 1953 Cal 414 (Pr. 3).]

4. "Any other law."— (1) A notification issued under an Act is a law within the meaning of this section: as for example one made under Section 30 of the Police Act (5 of 1861). AIR 1923 Pat 1 (3, 4) = 23 Cri L Jour 625 (SB).

(2) An "ordinance" is a "law" within the meaning of this section. AIR 1916 Lah 207 (208) = 17 Cri L Jour 225 (226).

5. Offences against other laws — Sub-section (2) — (1) Under this provision a special law creating offence may also create special procedure for dealing with them. AIR 1950 Pat 332 (Pr. 22) = 29 Pat 410 = 51 Cri L Jour 1251 (DB).

(1-A) Prosecution of accused under Official Secrets Act — Accused cannot claim copies of documents referred to in Section 173 Cr. P. C., as of right — Special procedure of complaint provided in Act. AIR 1969 Cal 535 (538) (DB).

(2) Where an offence is one under a special or local law but there is no enactment prescribing any procedure for dealing with the offence, the procedure laid down in this Code must be followed. **AIR 1955 SC 435 (438) = 1955 Cri L Jour 1010 = 1955 SCR 1444 = ILR (1955) 1 All 602** ** AIR 1936 All 830 (831) = 38 Cr L Jour 111 (FB) ** AIR 1969 Bom 302 (303, 304) = 1969 Cri LJ 1109 = 71 Bom LR 409. (Offences under Copyright Act, 1957 — Place of trial to be determined in accordance with provisions of Sections 177 and 188, Criminal P. C.) ** AIR 1964 Mad 185 (187) = 1964 (1) Cri LJ 519 ** (1963) 4 Guj LR 717 (718) ** AIR 1961 Raj 48 (49) = 1961 (1) Cri LJ 433 = 1961 Raj LW 583. (Prosecution under Section 86-D of Companies Act is not valid if no necessary approval is sought from Central Government.) ** ILR (1958) 8 Raj 1206.

(3) Where a complete procedure is provided in any enactment for the trial, etc., of such offences, it is that procedure that must be followed and not the one prescribed by this Code. AIR 1953 Cal 414 (Pr. 3) ** AIR 1956 Punj 210 (213) = ILR (1955) Punj 208 (DB) ** AIR 1926 Cal 586 (588) = 27 Cri L Jour 602 (DB).

(4) Where an enactment provides a special procedure only for some matters, its provisions must apply in regard to those matters and the provisions of this Code will apply for the matters on which the enactment is silent. AIR 1958 Mad 544 (552) = ILR (1958) Mad 750 = 1958 Cri L Jour 1413 (FB) ** AIR 1959 All 206 (208) = 1959 Cri L Jour 286 (DB) ** **AIR 1961 SC 1 (4) = (1961) 1 SCR 458.** (Prevention of Food Adulteration Act (1954), Section 20 (1) — Consent for prosecution — Non-specification of complainant — Not fatal — AIR 1960 Bom 244. **Reversed.) ** AIR 1965 SC 1 (5) = 1965 (1) Cri LJ 100 = (1967) 7 SCR 724** ** AIR 1968 Bom 433 (439) = 1968 Cr LJ 1617 ** 70 Bom LR 231 ** AIR 1969 Ker 151 (153) = 1969 Cri LJ 731 ** AIR 1969 Ker 111 (119) = 1968 Ker LJ 335 = 1969 Ker LT 351 ** (1968) 70 Bom LR 757 (764) = 1969 Mah LJ 199. (Offence under Rule 131-B is cognizable.) ** AIR 1968 Guj 23 (27) = 9 Guj LR 201 = 1968 Cr LJ 156 (DB). (Offence under Rule 125 (9) (a) is cognizable.) ** AIR 1968 Orissa 67 = 1968 Cri LJ 528 = 33 Cut LT 936 ** AIR 1967 Him Pra 18 (20) = 1967 Cri LJ 376 (2) ** AIR 1967 Mys 231 (235) = 1967 Cri LJ 1661 = (1967) 1 Mys LJ 347 ** AIR 1965 Cal 215 (216) = 1965 (1) Cri LJ 426 ** AIR 1965 Mys 274 (275) = 1965 (2) Cri LJ 654 ** AIR 1960 Bom 107 (108) = 1960 Cr LJ 324 = 61 Bom LR 684.

(5) Proceedings under other Acts which are of a quasi-criminal nature, such as proceedings under Section 535 of the Calcutta Municipal Act, 3 of 1923, will be governed by Section 5 where the Act in question has not laid down any special procedure to be followed. ('57) 1957 Cri L Jour 63 (64) (Cal).

(6) Contempt of Court is not an offence within the meaning of this sub-section and consequently the procedure under this Code is not applicable to such proceedings. **AIR 1954 SC 186 (188) = 1954 Cri L Jour 460 = 1954 SCR 454. (Overruling** AIR 1945 All 1 = 46 Cri L Jour 272.) ** AIR 1954 All 523 (537) = 1954 Cri L Jour 1141 = ILR (1954) All 394 (FB) ** AIR 1942 Lah 105 (107) = 43 Cri L Jour 599 (FB).

(7) Sub-section (2) of Section 1, Criminal Procedure Code. does not have the effect of enacting anything in derogation of Section 5 (2). It only relates to the extent of the application of the Code of Criminal Procedure in the matter of territorial and other jurisdiction etc., and by no means nullifies the effect of Section 5 (2). AIR 1954 Mad 833 (844) = 1954 Cri L Jour 1267 = ILR (1955) Mad 184 (DB). **(Overruled** on another point in AIR 1958 Mad 544 (FB).)

(8) The words "dealing with offences" in Section 5 (2) have to be distinguished from investigating the offences. But the same words in Sec. 13 (1) of Suppression of Immoral Traffic in Women and Girls Act, 1956 must necessarily include investigation. AIR 1962 Cal 189 (190) = 1962 (1) Cr LJ 405 ** AIR 1965 All 372 (373) = 1965 (2) Cri LJ 179 = 1964 All LJ 61. (Magistrate could not

PART II

CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES

CHAPTER II

OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES

A — Classes Of Criminal Courts

6. Classes of Criminal Courts.—Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in *[India], namely:

I.—Courts of Session:

II.—Presidency Magistrates:

Section 5 — Note 5 (contd.)
take cognizance of the report of ordinary police officer in respect of offence under Suppression of Immoral Traffic in Women and Girls Act.)

(9) Cognizance of offence under Suppression of Immoral Traffic in Women and Girls Act (1956) can be taken on complaint filed by Magistrate — Section 13 is no bar. AIR 1961 All 633 (635) = 1961 (2) Cri LJ 754 = 1961 All LJ 470.

(10) Section 20 of Suppression of Immoral Traffic in Women and Girls Act (1956), does not deal with offences at all and hence sub-sec. (2) of the Code does not apply. AIR 1963 All 71 (74) = 1963 (1) Cri LJ 138 = 1962 All LJ 793.

(11) Section 22-A of Forward Contracts (Regulation) Act (1952), relates to the manner or place of investigation spoken of by Section 5 (2) of the Code — It is not a provision conferring jurisdiction. AIR 1968 All 338 (341) = 1968 Cri LJ 1325.

(12) Section 11 of Cattle Licensing Act does not expressly supersede the provision under Section 190 of the Code and therefore the Magistrate could take cognizance of offence under the Act by virtue of Section 190 (1) (c) of the Code. (1966) 70 Cal WN 779 (785).

(13) There is difference between regulating the manner and place of trial and regulating the tribunal which will hold the trial. If so when the enactment provides for a tribunal for such trials which is not a Court under Criminal Procedure Code as mentioned in Schedule 2 that Code would not be attracted on its own force unless the enactment itself provides therefor. AIR 1968 Cal 170 (172) = 1968 Cri LJ 478.

(14) The only conditions for cognizance being taken of offences under Sections 161, 165 and 165-A of the Penal Code and Section 5 of the Prevention of Corruption Act are those mentioned in Sections 5-A and 6 of the Prevention of Corruption Act. These provisions cannot be affected by anything contained in the C. P. and Berar Act (17 of 1947) or the notifications made thereunder. 1961 Jab LJ 1280 (1282).

(15) Section 5 (2) is nothing more than a statutory recognition of a cardinal rule of construction of statutes that the Courts vested with general jurisdiction to try all offences cannot have their jurisdiction ousted except by the most clear and unambiguous words or by necessary implication. AIR 1960 Bom 523 (525, 526) = 1960 Cri LJ 1572 = 62 Bom LR 178 ** AIR 1960 Raj 288 (289, 290) = 1960 Cri LJ 1661 = 1960 Raj LW 363.

(16) When a statute other than the Penal Code creates an offence and specifies a person who is not a Criminal Court and who is not a Magistrate to try such offence or to inquire into it, Section 5 (2) is attracted, but only to keep away the Code's provisions to the contrary because of the exception in the second part of Section 5 (2). AIR 1967 Cal 145 (149) = 1967 Cri LJ 342.

(17) Report of Chemical Examiner as to contents of bottle is admissible in evidence in view of Section 510 which being general is not excluded by Sections 86 and 109, Mysore Prohibition Act. AIR 1966 Mys 75 (77) = 1966 Cri LJ 270.

(18) A complaint of interference with municipal property in contravention of a bye-law framed by virtue of the power given to the municipal board under Section 298-J (c) of Municipalities Act is not in the nature of an information and therefore the proceeding before the Magistrate upon that complaint has to be proceeded with as upon a complaint. 1958 All WR (HC) 741 (743) = 1958 All LJ 657.

(19) Summary trial — Sentence of imprisonment not exceeding three months under Section 262 (2) — Applies only to offences under Section 260 and not to offences under any special enactment. AIR 1970 Andh Pra 47 (53, 54) (DB).

SECTION 6 — SYNOPSIS

1. **Criminal Court.**
2. **Magistrate acting in executive or administrative capacity.**

III.—Magistrates of the first class:

IV.—Magistrates of the second class:

V.—Magistrates of the third class.

[1882: S. 6; 1872: Ss. 5, 19; 1861: Nil.]

[*] Substituted for "the States," by the Code of Criminal Procedure (Amendment) Act, 1951 (I of 1951), S. 2 (1-4-1951).

STATE AMENDMENTS

Gujarat

In its application to the State of Gujarat the amendment made in Section 6 is the same as that made in Maharashtra, subject to the adaptation that for the words "State of Bombay" the words "State of Gujarat" are to be substituted.—Cent. Act XI of 1960, S. 87 and Guj. A. L. O. (8th Am.) 1961 (w. r. e. f. 1-5-1960).

Maharashtra

In its application to State of Maharashtra, for S. 6 the following section was substituted, namely,—

"6. **Classes of Criminal Courts.**—Besides the High Court and the Courts constituted under any law other than this Code for the time being in force,

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Section 6 — Synopsis (contd.)

3. Courts enumerated in the section are different from each other.

4. Criminal Courts constituted under other laws.

1. Criminal Court. — (1) This section divides the Criminal Courts in India into several groups, and the second, third, fourth and fifth groups are "Magistrates." This, however does not mean that a Magistrate is always a Court whatever he is doing. He has executive as well as judicial duties to perform. **AIR 1919 PC 31 (34) = 20 Cri L Jour 593** ** ('09) 2 Ind Cas 436 (439) = 36 Cal 433 (SB).

(2) The section can only mean that among the Criminal Courts in India are Magistrates, and that when the latter act judicially they are Criminal Courts. AIR 1928 Mad 1108 (1109) = 30 Cri L Jour 119.

(3) The fact that Magistrates have sometimes to perform executive functions will not in itself debar them from acting as Courts as provided in this section. AIR 1954 Pat 203 (206, 207) = 1954 Cri L Jour 533 = ILR 32 Pat 1069 (DB).

(4) For the sake of brevity the Code uses the terms 'Court' and 'Magistrates', generally if not always, as covertible terms. ('12) 16 Ind Cas 501 (508) = 13 Cri L Jour 693 (PC) ** AIR 1953 Mad 953 (954) = 1953 Cri L Jour 1737.

(5) A committing Magistrate is not a Judge, and his Court not a "Court of justice." It is, however, clear that he is engaged in a judicial proceeding and is therefore a Criminal Court. ('87) 10 Mad 154 (156) (DB) ** AIR 1926 Pat 214 (217) = 27 Cri L Jour 499 (DB) ** ('97) 20 Mad 189 (206) (FB).

(6) The Code was employed the term "Magistrates" as equivalent to Magistrate's Court. AIR 1959 Andh Pra 129 (133) = 1959 Cri L Jour 290 (DB).

(7) After the Code of Criminal Procedure (Mysore Amendment Act 13 of 1965) came into force, there are two sets of Magistrate's Courts in each District of the State viz., Judicial Magistrate Courts and Sub-Divisional Magistrates. The First Class Magistrate i.e., the Judicial Magistrates (First Class) are subordinate to the Sessions Judge, while the Sub-Divisional Magistrates and Taluka Magistrates are subordinate to the District Magistrate. AIR 1969 Mys 181 (183) = 1969 Cri LJ 752 = (1969) 1 Mys LJ 1.

(8) The Magistrate holding an enquiry under Extradition Act (15 of 1903), Section 7 is a Criminal Court within the meaning of Section 6 of the Code and his orders will be revisable under Section 439, Cri. P. C. 1962 (2) Cr LJ 697 (698, 699) = (1962) 2 Mad LJ 256.

(9) Enquiry under Section 476 by Civil Court — Will be a criminal proceeding though such Civil Court will not be one of the classes of Criminal Courts enumerated in the section. AIR 1968 Pat 100 (104, 105, 106) = 1968 Cri LJ 354 = 1967 BLJR 941 (FB).

(10) Neither Rent Controller acting under Section 30 or Section 31 of W. B. Act 12 of 1956, nor appellate Authority under Section 29 of the said Act is a Court under Criminal Procedure Code. AIR 1968 Cal 170 (171) = 1968 Cri LJ 478.

there shall be two classes of Criminal Courts in the State of *[Maharashtra] namely,—

I.—Courts of Session

II.—Courts of Magistrates."

—Bom. Act XXIII of 1951,† S. 2 and Sch. (1-7-1953): Bom. Act XCVII of 1958, S. 2 (d) (1-9-1959).

[*] Substituted the words "State of Bombay" by—Maha. A. L. (Am.) O., 1961 (w. e. f. 1-5-1960).

Mysore

Same as in Maharashtra with Mysore substituted for 'Maharashtra'—Mys. Act 13 of 1965, S. 3 (1-10-1965).

Punjab: Haryana: Chandigarh

In its application to the States of Punjab and Haryana and Union Territory of Chandigarh the following section shall be substituted, namely,—

"6. **Classes of Criminal Courts.**—Besides the High Court and the Courts constituted under any law other than this Code for the time being in force, there shall be two classes of Criminal Courts in the State of Punjab, namely :—

(1) Courts of Session.

(2) Courts of Magistrates."

—Punj. Act XXV of 1964, S. 2 and Sch., Pt. I, item (1) (2-10-1964) and Act 31 of 1966, Ss. 29, 88 (1-11-1966).

Section 6 — Note 1 (contd.)

(11) To constitute a Criminal Court it is not sufficient that it is one of the Courts mentioned in Section 6, Cr. P. Code. It must be acting as a Criminal Court. Therefore the direction of Magistrate specifying arrears of Sales Tax as recoverable as fine is an order of an inferior Criminal Court revisable under Section 435, Cr. P. C. AIR 1964 Mad 185 (187, 190) = 1964 (1) Cri LJ 519.

(12) Magistrate, seized of committal proceedings, is a Court within Section 6, Criminal P. C. AIR 1966 All 495 (498) = 1966 Cri LJ 1106.

(13) Order of Sub-divisional Magistrate in proceedings under Section 133, Criminal P. C. — Not revisable by the High Court. AIR 1967 Guj 225 (227, 228) = 1967 Cri LJ 1325 = (1966) 7 Guj LR 1085.

(14) Collector of Central Excise is not Court — Discharges quasi-judicial function — High Court cannot interfere. (1963) 2 Cri LJ 467 (469) (Mys) (DB).

2. Magistrate acting in executive or administrative capacity. — (1) The making of a departmental inquiry under the orders of the Government is an executive act. ('95) 19 Bom 51 (69) (DB).

[See however ('05) 28 All 89 (90) = 2 Cri L Jour 454.]

(2) An order under Section 96 of the Code is a judicial order. ('12) 13 Cri L Jour 693 (701) = 39 Ind App 163 (PC).

(3) An order under Section 145 of the Code is a judicial order. ('01) 28 Cal 709 (713) (DB).

(4) An order passed by a Magistrate under Section 421 (2), Calcutta Municipal Act, 1923, is a judicial order. AIR 1950 Cal 36 (Prs. 44, 65, 76, 84) = ILR (1950) 2 Cal 301 = 51 Cri L Jour 346 (DB).

(5) In making an order under Section 49 (2) of the M. B. Police Act 76 of 1950, the District Magistrate acts as an executive officer and not in his capacity as a presiding officer of the Court of a Magistrate under the Code. AIR 1957 Madh Pra 97 (98) = 1957 Cri L Jour 854.

3. Courts enumerated in the section are different from each other.— (1) Each class of Courts enumerated in the section is distinct and different from the others. Thus, a High Court is not a Court of Session, even when exercising original criminal jurisdiction. AIR 1925 Cal 384 (385) = 26 Cri L Jour 385.

(2) A Court of Session is not a Magistrate under any circumstances. ('10) 1910 Pun LR No. 184, p. 527 (528) = 11 Cri L Jour 330 (DB).

(3) A Presidency Magistrate is not a Magistrate of the First Class. ('07) 31 Bom 611 (623) = 6 Cri L Jour 240 (DB) ** ('97) 24 Cal 551 (555) (DB) ** ('06) 3 Cri L Jour 329 (331) (DB) (Cal).

Rajasthan

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendment made in S. 6 is the same as that made in Maharashtra.—Cent. Act XXXVII of 1956, S. 119 (1-11-1956).

Union Territories (except Chandigarh)

In its application to the Union Territories, for Section 6 the following sections shall be substituted:—

"6. **Classes of Criminal Courts.**—Besides the High Court and the Courts constituted under any law other than this Code for the time being in force, there shall be two classes of Criminal Courts, namely:—

I. Courts of Session.

II. Courts of Magistrates.

—Act 19 of 1969, S. 3 and Sch., Item 1. Enforced in the Union Territory of Delhi from 2-10-1969—Gaz. of Ind., 17-9-69, Pt. II, S. 3 (ii), p. 1073.

NOTE.—This Act is yet to be enforced in other Union Territories. Hence the Goa, Daman and Diu (Separation of Judicial and Executive Functions) Order, 1963 continues to be in force in that Union territory. For text of the said Order—see Goa, Govt. Gaz., 28-11-1963, Sr. I, p. 411 (1-11-1963).

West Bengal

For Section 6 substitute the following section:—

6. (1) Same as in Maharashtra.

(2) There shall be following classes of Magistrates, namely:—

I. Judicial Magistrates—
  - (a) Sub-divisional Judicial Magistrates;
  - (b) Judicial Magistrates of the first class;
  - (c) J. M. of second class;
  - (d) Executive Magistrates of the second class;
  - (e) Special Judicial Magistrates.
  - (f) Presidency Magistrates.

II. Executive Magistrates—
  - (a) District Magistrates;
  - (b) Sub. Executive Magistrates;
  - (c) Executive Magistrates of the 1st class;
  - (d) Executive Magistrates of the 2nd class;

Section 6 — Note 3 (contd.)

(4) The Code does not recognise any such Court as the "Court of a District Magistrate" or the "Court of a Sub-Divisional Magistrate" or the "Court of a Deputy Magistrate" or the "Court of a Special Magistrate." ('81) 3 All 563 (566) (FB) ** AIR 1929 Nag 97 (98) = 30 Cri L Jour 550 (FB) ** ('77) 2 Bom 384 (386) (DB).

(5) The five classes of Criminal Courts mentioned in the section are arranged in a certain order; the Sessions Court being the highest and the Court of the Magistrate, third class, being the lowest Court. AIR 1956 All 351 (354) = ILR (1956) 2 All 60 = 1956 Cri L Jour 671 (DB).

(6) All Magistrates, whether judicial or Executive are inferior Criminal Courts qua the Court of Sessions. AIR 1967 Punj 482 (486) = 1967 Cri LJ 1690 = 66 Cur LJ 886.

(7) There are some Courts which are permanent such as the Courts of Session, the Courts of the District Magistrate and the Courts of Sub-Divisional Magistrate. In the case of remaining Courts, such as the Courts of Magistrates of second class and Magistrates of the third class, they are not created independently of the appointment of the Magistrates. AIR 1960 All 350 (351, 352) = 1960 Cri LJ 774 = 1960 All LJ 7.

(8) Sub-divisional Magistrate — Not subordinate to High Court — Section does not refer to Courts but to classes of Magistrates. AIR 1967 Guj 225 = 1967 Cri LJ 1325 = (1966) 7 Guj LR 1035.

4. Criminal Courts constituted under other laws.— (1) The following Courts

(e) Executive Magistrates of the 3rd class;
(f) Special Executive Magistrates;
(g) Special Presidency Magistrates.—W. B. Act 8 of 1970, S. 3 and Schedule, item 3.

STATE AMENDMENTS

Section 6.A

Gujarat

(1) In its application to the State of Gujarat, S. 6-A is the same as that of Maharashtra.

—Central Act XI of 1960, S. 87 and Guj. A. L. (8th Amdt.) O. 1961 (w. r. e. f. 1-5-1960).

(2) For the powers and jurisdiction of Magistrates appointed for the City of Ahmedabad, see the Ahmedabad City Courts Act, 1961.—Guj. XIX of 1961, S. 14 (3) (4-11-1961).

Maharashtra

In its application to the State of Maharashtra, after S. 6, the following shall be inserted, namely:—

"A-1. Classes of Magistrates.

6A. Classes of Magistrates.—There shall be the following classes of Magistrates, namely :—

I. Judicial Magistrates.

(1) Presidency Magistrates.
(2) Magistrates of the first class.

Section 6 — Note 4 (contd.)

constituted under other laws have been held to be criminal Courts:

(a) The Court of a Municipal Magistrate of Calcutta. AIR 1950 Cal 36 (Pr. 7) = ILR (1950) 2 Cal 301 = 51 Cri L Jour 346 (DB) ** AIR 1925 Cal 1251 (1252, 1253) = 26 Cri L Jour 1533 (DB) ** AIR 1920 Cal 321 (322) = 21 Cri L Jour 173 (DB).

(b) The Court of the village headman under the Burma Village Act 3 of 1889. AIR 1924 Rang 23 (23) = 25 Cri L Jour 233.

(c) The Court of a village panchayat constituted under U. P. Village Panchayat Act 6 of 1920. AIR 1926 All 27 (28) = 27 Cri L Jour 19 (DB) ** AIR 1927 All 199 (200) = 28 Cri L Jour 94 (DB).

[But see AIR 1924 All 265 (266) = 25 Cri L Jour 1390 (DB) ** AIR 1939 Oudh 143 (144) = 40 Cri L Jour 338 = 14 Luck 592 (DB).]

(d) The Court of a village panchayat constituted under the Punjab Village Panchayat Act 11 of 1939. AIR 1950 Him Pra 40 (Pr. 7) = 51 Cri L Jour 1109.

(2) A police patel under the Bombay Village Police Act 8 of 1867 is not a criminal Court. ('80) 4 Bom 479 (481) (DB) ** ('87) 1887 Rat 317 (317) (DB).

(3) Offence committed by juvenile — Exclusively triable by Court of Session — Jurisdiction of Juvenile Court to try accused not taken away by Sec. 29-B. Criminal P. C. AIR 1960 Mad 308 (310) = 1960 Cri LJ 927 = (1961) 2 Mad LJ 457 (DB).

(4) Children Act (60 of 1960), Sec. 5 (2) — Court under — It is criminal Court. (1965) 67 Pun LR 149 (DB).

(5) Sub-Collector acting under Section 6 of Andhra Pradesh Revenue Malversation Regulation (9 of 1822) is not acting as a criminal Court. (1966) 1 Andh WR 495.

(6) Order passed by Magistrate for search and delivery under Section 49 (5) of the Travancore-Cochin Co-operative Societies Act is judicial — Magistrate in passing the order does not function as persona designata. 1963 Ker LJ 585.

(7) West Bengal Premises Rent Control Rules, Rule 9 is ultra vires in so far as it made Civil P. C. applicable to enquiries into offences created by Act. AIR 1961 Cal 199 (214) = 1961 (1) Cri LJ 472 = 64 Cal WN 899 (SB).

Section 6-A (as amended in Bombay) Note 1

(1) Classification of Executive and Judicial Magistrates — Enquiry under Sections 133 to 140 is judicial even though it is before executive Magistrate and is subject to revisional powers of High Court. 70 Bom LR 588 = 1968 Mah LJ 909 (DB).

(3) Magistrates of the second class.
(4) Magistrates of the third class.
(5) Special Judicial Magistrates.

II. Executive Magistrates.

(1) District Magistrates.
(2) Sub-Divisional Magistrates.
(3) Taluka Magistrates.
(4) Presidency Magistrates specially empowered by the State Government.
(5) Special Executive Magistrates."

—Bom. Act XXIII of 1951* S. 2 and schedule. [1-7-1953].

[*] After the reorganization of the State of Bombay in 1956, this Bombay Act was extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958, S. 2.

Mysore

S. 6A in Mysore is the same as in Maharashtra except for Presidency Magistrates in both the categories. —Mys. Act 13 of 1965, S. 4 [1-10-1965].

Punjab, Haryana and Chandigarh

In its application to the States of Punjab, Haryana and U. T. of Chandigarh after S. 6 the following section shall be inserted namely:—

"A-I. Classes of Magistrates.

6-A. Classes of Magistrates.—There shall be the following classes of Magistrates, namely :—

I. Judicial Magistrates.

(1) Chief Judicial Magistrates.
(2) Judicial Magistrates of the first class.
(3) Judicial Magistrates of the second class
(4) Special Judicial Magistrates.

II. Executive Magistrates.

(1) District Magistrates.
(2) Sub-divisional Magistrates.
(3) Executive Magistrates of the first class.
(4) Executive Magistrates of the second class."

—Punj. Act XXV of 1964, S. 2 and Sch. Pt. I, item (2) [2-10-1964] and Act 31 of 1966, Ss. 29 and 88 [1-11-1966].

Rajasthan

Abu Area.—In its application to the Abu area of the State of Rajasthan after S. 6 new S. 6-A, shall be inserted as that in Maharashtra.

—Central Act XXXVII of 1956, S. 119 (1-11-1956).

Union Territories (except Chandigarh.)

After Section 6 insert the following namely :—

A1.—Classes of Magistrates

6A. Classes of Magistrates.—There shall be the following classes of Magistrates, namely :—

I. Judicial Magistrates:

(1) Chief Judicial Magistrates.
(2) Judicial Magistrates of the first class.
(3) Judicial Magistrates of the second class.

II. Executive Magistrates.

(1) District Magistrates.
(2) Sub-divisional Magistrates.

Section 6-A — Note 1 (contd.)

(2) District Magistrate is one of Executive Magistrates and is subordinate to Court of Session within Section 476-B. 1970 Cri LJ 399 (402, 403) (Bom).

(3) Under Section 37 (3) Cri. P. C. a District Magistrate cannot be authorised to invest any Executive Magistrate subordinate to him with powers under Sections 143, 144, 145, 147, 164, 524 and 107 of Criminal Procedure Code. AIR 1969 Bom 189 (193, 194) = 1969 Cri LJ 706 = 71 Bom LR 105 (DB).

(3) Executive Magistrates of the first class.
(4) Executive Magistrates of the second class.
(5) Special Executive Magistrates."

—Act 19 of 1969, S. 3 and Sch. (in Delhi from 2-10-1969).

The Act has not been enforced elsewhere than in Delhi as yet. Hence in the Union territory of Goa, Daman and Diu, Goa, Daman and Diu (Separation of Judicial and Executive Functions) Order, 1963 shall continue to be in force.

For powers of Judicial and Executive Magistrates in Goa, see clauses 7 and 8 of that order which is published in Goa Gaz., dated 28-11-1963, p. 411 (1-11-1963).

B.—Territorial Divisions,

7. **Sessions divisions and districts.**—(1) Every *[State] (excluding the presidency-towns) shall be a sessions division or shall consist of sessions divisions; and every sessions division shall, for the purposes of this Code, be a district or consist of districts.

(2) **Power to alter divisions and districts.**—The *[State Governments] may alter the limits or †[* * *] the number of such divisions and districts.

(3) **Existing divisions and districts maintained till altered.**—The sessions divisions and districts existing when this Code comes into force shall be sessions divisions and districts respectively, unless and until they are so altered.

SECTION 7 — SYNOPSIS

1. **Scope and object.**
2. **"Presidency-town."**
3. **"District."**
4. **Sessions division.**

1. Scope and object.— (1) The object of sub-section (1) of this section is not to enable the State Government to constitute sessions divisions out of districts but to lay down a rule governing the relation between sessions divisions and districts. AIR 1943 Sind 39 (42) = 44 Cri L Jour 293 (FB) ** AIR 1931 Mad 697 (698) = 32 Cri L Jour 1095 (FB).

(2) A sessions division shall not consist of half a district or even one and a half district but shall consist of one district or a plurality of whole districts. AIR 1931 Mad 697 (698) = 32 Cri L Jour 1095 (FB).

(3) The want of a formal notification defining the territorial limits of a newly separated sessions division or establishing a Court of Session therein, will not deprive the Court of Session which actually comes into existence in such division of its jurisdiction, where the meaning and substance of the Government Order is clear and the intention of the Government to reform a sessions division under this section is beyond doubt. AIR 1943 Sind 39 (42, 45) = 44 Cri L Jour 293 (FB).

2. "Presidency-town."— (1) The expression "presidency-town" as defined in Section 3 (44), General Clauses Act, means the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Calcutta, Madras and Bombay — See Section 3 (44) of the General Clauses Act, 1897; See also Clause 11 of the Letters Patent for Madras, Bombay and Calcutta for the local limits of the original civil jurisdiction of the High Court.

3. "District."— (1) The "district" referred to in this section is not the same thing as a revenue district, though very often they are co-extensive and conterminous, but means a district for the purpose of criminal administration. AIR 1931 Mad 697 (698) = 32 Cri L Jour 1095 (FB). (Jackson, J., contra at p. 701.) ** 1970 Cri LJ 920 (921) (Ker) = ILR (1969) 2 Ker 570 (DB).

[See also AIR 1943 Sind 39 (41) = 44 Cri L Jour 293 (FB).]

(2) Where, under sub-section (2) of the section the Government notified that the "deep stream" of the river Gogra was to be the boundary between two districts, X and Y but after the date of the notification, the river divided into two branches and the question arose as to whether the land between the two branches formed part of the district X or district Y, it was held that the "deep stream" spoken of in the notification must be the deep stream as it existed at the time of the notification. (1898) ILR 25 Cal 858 (859) (DB).

[But see AIR 1953 All 24 (Pr. 4) = 1953 Cri L Jour 186 ** AIR 1918 Oudh 158 (159) = 19 Cri L Jour 671.]

(3) This section applies only to a situation where there are fixed boundaries and where nature does not introduce an element of uncertainty. ('54) 33 Pat 927 (933). (Paragraph 130 of the Settlement Report fixing boundary of the criminal jurisdiction as middle stream of Ganges held was not in conflict with this section).

(4) The mid stream of a river passing between two districts cannot be the test for ascertaining the criminal jurisdiction.

(4) **Presidency-towns to be deemed districts.**—Every presidency-town[‡] shall, for the purposes of this Code, be deemed to be a district.

[1882 — Ss. 7, 12, 13 and 14.]

[*] Substituted for 'Province' and 'Provincial Government' by A. L. O., 1950.

[†] The words "with the previous sanction of the Governor-General in Council" were repealed by the Devolution Act, 1920 (XXXVIII of 1920), Sec. 2 and Sch. I.

[‡] For definition of 'presidency-town', see General Clauses Act, 1897 (X of 1897), Section 3 (44).

STATE AMENDMENTS

Andhra Pradesh

Added territories.—In its application to the territories added under Sec. 3 of the Central Act LVI of 1959, the amendments made in S. 7 by Tamil Nadu Act XXXIV of 1955 shall stand repealed. Andh. Pra. A. L. O., 1961 (w. r. e. f. 1-4-1960).

Gujarat

(1) In its application to the State of Gujarat, Section 7 as substituted is the same as that of Maharashtra subject to the following adaptations, namely,—

(a) for the words "State of Bombay" the words "State of Gujarat" are to be substituted—see Guj. A. L. (8th Am.) O., 1961 (w. r. e. f. 1-5-1960); and Bom. Act XCVII of 1958;

(b) in sub-section (2) of Section 7 as substituted for the words "Greater Bombay" the words "City of Ahmedabad" are to be substituted.—Cent. Act XI of 1960, S. 87 and Guj. Act XIX of 1961, S. 15 (4-11-1961).

(2) For the powers and jurisdiction of Magistrates appointed for the city of Ahmedabad, see the Ahmedabad City Courts Act, 1961 (Guj. XIX of 1961), Ss. 13 and 14 and for the notification issued under S. 7 (3) altering the limits of the district of Ahmedabad—see No. CCC. 1061/4166 (ii)-D dated 27-10-1961 published in Guj. Govt. Gaz., 1961, Pt. IV-A, page 271.

Maharashtra

In its application to the pre-reorganised State of Bombay, S. 7 was substituted as follows, namely,—

"7. **Sessions divisions and districts.**—(1) The State of Bombay* shall consist of sessions divisions; and every sessions division shall, for the purposes of this Code, be a district or consist of districts.

(2) For the purposes of this Code, Greater Bombay shall be a sessions division and be deemed to be a district.

(3) The State Government may alter the limits or the number of such divisions and districts.

(4) The sessions divisions and districts existing when the Bombay Separation of Judicial and Executive Functions Act, 1951, comes into force shall be

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Section 7 — Note 3 (contd.)
The police-station is the lowest unit for the exercise of criminal jurisdiction. If Section 7 is read with Section 4 (1) (s), it will be seen that the limits of the police stations are fixed by notifications under Section 4 (1) (s). AIR 1960 Pat 342 (343, 344) = 1960 Cri LJ 1128 = ILR 38 Pat 288 (DB).

4. Sessions division.— (1) The formation of two sessions divisions in the same revenue district, i.e., in the same Collectorate is not unwarranted by law. ('07) 30 Mad 136 (137) = 4 Cri L Jour 443 (DB).

[See ('12) 17 Ind Cas 786 (788) = 13 Cri L Jour 850 (DB) (Mad).]

(2) By virtue of the words "every sessions division shall for the purposes of this Code be a district," each of the sessions divisions so formed will become a "district" for the purposes of criminal administration. AIR 1931 Mad 697 (698, 699) = 32 Cri L Jour 1095 (FB).

sessions divisions and districts respectively, unless and until they are so altered."—Bom. Act XXIII of 1951,† S. 2 and Sch. (w. e. f. 1-7-1963):

[*] For the words "State of Bombay" substitute the words "State of Maharashtra."—Maha. A. L. (Am.) O., 1961 (w r. e. f. 1-5-1960).

[†] After the reorganization of the State of Bombay in 1956, this Bombay Act was extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Mysore

For Section 7 of the principal Act, substitute the following section :—

"7. **Sessions Divisions and Districts.**—(1) The State of Mysore shall consist of Sessions Divisions; and every Sessions Division shall, for the purposes of this Code, be a district or consist of districts.

(2) The State Government may alter the limits or the number of such divisions and districts.

(3) The Sessions Divisions and districts existing when the Code of Criminal Procedure (Mysore Amendment) Act, 1965, comes into force shall be sessions divisions and districts respectively, unless and until they are so altered.—Mys Act XIII of 1965, S. 5 (1-10-1965).

Punjab, Haryana and Chandigarh

In its application to the States of Punjab and Haryana and the U. T. of Chandigarh, for S. 7 the following shall be substituted, namely,—

"7. **Sessions divisions and districts.**—(1) The State of Punjab shall consist of sessions divisions; and every sessions division shall, for the purposes of this Code, be a district or a part of the district or consist of districts.

(2) The State Government, in consultation with the High Court may alter the limits or the number of such divisions and districts.

(3) The sessions divisions and districts existing when the Punjab Separation of Judicial and Executive Functions Act, 1964, comes into force shall be sessions divisions and districts respectively, unless and until they are so altered."—Punj. Act XXV of 1964, S. 2 and Sch., Pt. I, item (3) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Rajasthan

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendment made in Sec. 7 is the same as that made in Maharashtra.—Cent. Act XXXVII of 1956, S. 119 (1-1-1956).

Tamil Nadu

In its application to the State of Tamil Nadu, in Section 7—

(i) in sub-section (1) omit the brackets and words "(excluding the presidency-towns)" and

(ii) after sub-section (1), insert the following, namely,—

"(1A) For the purposes of the Code, the presidency-town of Madras, shall be a sessions division."—Tamil Nadu Act XXXIV of 1955, S. 3 (w. e. f. 1-1-1956) and Tamil Nadu A. L. O., 1969.

Union Territories (except Chandigarh)

In their application to all the Union Territories except Chandigarh, for sub-sections (2) and (3) substitute the following, namely :—

"(2) The State Government, in consultation with the High Court, may alter the limits, or the number, of such divisions and districts.

(3) The sessions divisions and districts existing in any Union territory immediately before the commencement of the Union Territories (Separation of Judicial and Executive Functions) Act, 1969 in that Union territory shall be sessions divisions and districts respectively, unless and until they are

altered as provided in sub-section (2)."—Act 19 of 1969, S. 3 and Sch., Item 2.

NOTE.—The Act has not been enforced: Hence in the Union Territory of Goa, Daman and Diu, G. D. D. (Separation of Judicial and Executive Functions) Order 1963 shall continue to be in force. For the Order—see G. D. D. Gaz., dated 28-11-1963, p. 411.

West Bengal

(1) In its application to the State of West Bengal, for S. 7 substitute the following :—

"7. **Sessions divisions and districts.**—(1) The State of West Bengal shall consist of sessions divisions; and every sessions division shall, for the purposes of this Code, be a district or consist of districts.

(2) The State Government, in consultation with the High Court, may alter the limits or the number of such divisions and districts.

(3) The sessions divisions and districts existing when the W. B. Separation of Judicial and Executive Functions Act, 1970, comes into force shall be sessions divisions and districts, respectively, unless and until they are so altered."—W. B. Act 8 of 1970, S. 3 and Sch., item 4.

8. Power to divide districts into sub-divisions.—(1) The *[State Government] may divide any district outside the presidency-towns into sub-sections, or make any portion of any such district a sub-division and may alter the limits of any sub-division.

(2) **Existing sub-divisions maintained.**—All existing sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

[1882 — S. 8; 1872 — S. 39; 1861 Nil.]

[*] Substituted for 'Provincial Government' by A. L. O., 1950.

STATE AMENDMENTS

Gujarat

In its application to the City of Ahmedabad in the State of Gujarat the amendment made in sub-section (1) of Section 8 is the same as that made in Maharashtra subject to the adaptation that for the words "Greater Bombay" the words "City of Ahmedabad" are to be substituted.—Cent. Act XI of 1960 S. 87 and Guj. Act XIX of 1961, S. 15 (4-11-1961).

Maharashtra

In its application to the State of Maharashtra :—

(i) in sub-section (1), for the words "outside the presidency-town" substitute the words "outside Greater Bombay."—Bom. Act XXIII of 1951, S. 2 and Sch. (1-7-1953).

(ii) After the reorganisation of the State of Bombay in 1956, this Bombay Act was extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bombay Act XCVII of 1958.

Section 8 — Note 1

(1) See the following case. AIR 1958 Andh Pra 351 (Pr. 10) = ILR (1958) Andh Pra 198 = 1958 Cri L Jour 730 (DB). (Held after considering the relevant notifications of the Madras and Andhra Governments under Section 8. that the Court of the Judicial 1st Class Magistrate, Yellamanchili, is the same Court or successor Court to the Court of the Sub-Divisional Magistrate, Yellamanchili, which post was abolished.)

(2) Territorial limits of Magistrate's jurisdiction — Such limits are to be determined with reference to area comprised in police stations of particular sub-division over which Magistrate presides. 1966 All WR (HC) 548 = (1966) All Cri R 322.

Rajasthan

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendment made in Sec. 8 is the same as that made in Maharashtra.—Cent. Act XXXVII of 1956, S. 119 (1-11-1956).

C.—Courts and Offices outside the presidency-towns.

9. **Court of Session.**—(1) The °[State Government] shall establish a Court of Session for every sessions division, and appoint a Judge of such Court.

†[(2) The State Government may, by general or special order in the Official Gazette, direct at what place or places the Court of Session shall ordinarily hold its sitting; but if, in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sitting at any other place in the sessions division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein.]

(3) The °[State Government] may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

(4) A Sessions Judge of one sessions division may be appointed by the °[State Government] to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in either division as the °[State Government] may direct.

SECTION 9 — SYNOPSIS

1. **Scope.**
2. **Court of Session.**
3. **Jurisdiction of Judges appointed under this section.**
4. **Power to direct place or places of sitting.**
5. **Courts constituted under other laws.**

1. Scope.— (1) Under the scheme of the Code the general framework of the administration of justice such as the division of the State into sessions divisions and their boundaries and places of sitting, the appointment of Sessions Judges and the classification of offences into those triable by jury and those triable with the aid of assessors is left by Sections 7 to 9 and Section 269 of the Code to the State Government. AIR 1931 Bom 313 (316) = 32 Cri L Jour 1147 (SB).

(2) This section deals with the power of the State Government to establish Courts of Session, to appoint Judges thereto and to direct at what place or places such Court shall hold its sitting. AIR 1931 Cal 190 (191) = 32 Cri L Jour 842 (DB) ** AIR 1957 Mad 351 (Pr. 2) = ILR (1957) Mad 597 = 1957 Cri L Jour 642 (DB) ** AIR 1931 Bom 313 (319) = 32 Cri L Jour 1147 (SB).

(3) The section itself does not require formal publication of a notification relating to establishment of a Court of Session in the Government Gazette. Such publication, though desirable is not, therefore, essential. AIR 1943 Sind 39 (45) = 44 Cri L Jour 293 (FB).

(4) The State Government may, under sub-section (3), appoint one and the same person to be an Additional Sessions Judge or an Assistant Sessions Judge of more than one Court of Session, and, in that case, the person so appointed can exercise jurisdiction in each of such Courts. AIR 1957 Pat 375 (Pr. 18) = 36 Pat 995 = 1957 Cri L Jour 879 (FB).

[See AIR 1957 Mad 351 (Pr. 2) = ILR (1957) Mad 597 = 1957 Cri L Jour 642 (DB).]

2. Court of Session.— (1) The State Government is bound under this section to establish the Court of Session for every sessions division in the State. ('86) 10 Bom 258 (262) (DB).

(2) The words "Court of Session," wherever they are used in the Code, mean a Court established under this section. AIR 1925 Cal 384 (385) = 26 Cri L Jour 385.

(3) A High Court exercising original criminal jurisdiction or a Court established under a special or local law with powers similar to a Court of Session under the Code, is not a Court of Session within the meaning of the Code. AIR 1925 Cal 384 (385) = 26 Cri L Jour 385 ** AIR 1932 Cal 867 (868) = 34 Cri L Jour 107 ** ('86) 10 Bom 263 (271, 272) (DB). (Political Resident at Aden is not a Judge of Court of Session for that Island.)

(4) There can be only one Court of Session for every sessions division though it may be manned by several Judges; it would be inaccurate to use the expression "Court of the Sessions Judge" or "Court of the Additional or Assistant Sessions Judge." AIR 1957 Pat 375 (Prs. 18, 19, 20 and 26) = 36 Pat 995 = 1957 Cri L Jour 879 (FB). (Per Sahai J.) ** ('54) Madh BL Jour 1954

(5) All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

[1882 — S. 9; 1872 — Ss. 15, 16, 17, 18.]

[*] Substituted for 'Provincial Government' by A. L. O., 1950.

[†] Substituted by the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), S. 3 (1-1-1956).

OBJECTS AND REASONS

With reference to the amendment made by Act 26 of 1955 the Joint Committee observed:

> "The Committee apprehend that the accused will not be able to obtain competent legal assistance if the trial takes place at an out of the way place and this would involve a financial strain on him. It is also feared that where there is only one Sessions Judge, his absence on tour would delay the disposal of other cases. The Committee feel that it would be much better if the change in the venue of trial is left to the discretion of the Sessions Judge depending on the general convenience of parties and witnesses for the purpose of a fair trial after the consent of the accused and of the prosecution was taken."— J. C. R.

STATE AMENDMENTS

Andhra Pradesh

Added Territories.—In its application to the territories added to the State of Andhra Pradesh under the Central Act LVI of 1959 the amendment made in the heading "C" occurring before Section 9 by Madras Act XXXIV of 1955 is repealed.—Andh. Pra. A. L. O., 1961 (w. r. e. f. 1-4-1960).

Gujarat

(1) In its application to the State of Gujarat, the amendments are the same as those made in Maharashtra, subject to the following adaptation, namely,—

(a) in its application to the City of Ahmedabad, for the words "Greater Bombay" the words "City of Ahmedabad" are to be substituted.—Cent. Act XI of 1960, S. 87 and Guj. Act XIX of 1961, S. 15 (4-11-1961).

Section 9 — Note 2 (contd.)
HCR 394 (395) ** ('91) 1 Mad L Jour 397 (400) (FB).

(5) Where a Court of Session is the Court of Appeal from a certain Magistrate, an Additional Sessions Judge of the Court is also a Court of Appeal from such Magistrate. AIR 1936 Cal 185 (186) = 37 Cri L Jour 541.

(6) It was held that the words "Court of Session" in Section 408 refer only to the Court of Session presided over by the Sessions Judge and an Additional Sessions Judge or an Assistant Sessions Judge, as a Judge of the Court of Session has no power to receive and admit appeals filed in the Court of Session. AIR 1957 Pat 375 (Pr. 6) = 36 Pat 995 = 1957 Cri L Jour 879 (FB).

(7) An Additional Sessions Judge can grant bail to an accused person under Section 498 though he is not invested under Section 17 with powers to grant or cancel bail. ('54) Madh B L Jour 1954 HCR 394. (AIR 1930 Rang 335 = 32 Cri L Jour 148, Dissented from.)

(8) The High Court of Bombay has, however, held that the Sessions Judge and the Additional and the Assistant Sessions Judges, though exercising jurisdiction as a Sessions Court are, while exercising such jurisdiction, different Courts for the purpose of Sections 487 and 526 of the Code. ('74) 11 Bom HCR 98 (101) (SB) ** ('75) 12 Bom HCR 1 (8) (DB) ** AIR 1931 Bom 313 (320, 321) = 32 Cri L Jour 1147 (SB).

(9) An officer appointed as Joint Sessions Judge under the 1882 Code becomes invested with the powers of Additional Sessions Judge under the Code of 1898. ('98) Rat 972 (972, 973) (DB).

(10) The expression "Sessions Judge" occurring in Section 89, Madhya Bharat Panchayat Vidhan includes Additional Sessions Judge. AIR 1957 Madh Pra 58 (Pr. 4) = ILR (1957) Madh Pra 57 = 1957 Cri L Jour 759 (DB).

3. Jurisdiction of Judges appointed under this section.— (1) A person not appointed under this section as a Sessions Judge or as an Additional or Assistant Sessions Judge, has no jurisdiction to act as such under the Code and if he does so act, the acts would be void. AIR 1941 Mad 681 (681) ** (1864) 1 Bom HCR 107 (111, 112) (SB) ** ('85) 9 Bom 288 (295, 299) (FB).

(2) For notification issued by the State Government under S. 7 and S. 9 (2) constituting the sessions division of Ahmedabad and the places where it is to hold its sittings from 4-11-1961, see Notification No. CCC. 1061/4166-(iii)-D dated 27-10-1961 published in Guj. Govt. Gaz., 1961, Pt. IV-A, p. 272.

Maharashtra

In its application to the pre-reorganised State of Bombay—

(a) for the heading "C — Courts and Offices outside the Presidency-towns" occurring before S. 9 the heading "C — Court of Sessions for Greater Bombay and Courts and Offices outside Greater Bombay" is substituted.—Bom. Act XXXII of 1948[*] S. 3 (10-4-1948);

NOTE.—This amendment is extended to and declared to be in force in the States merged in the State of Bombay.—Cent. Act LIX of 1949, S. 3 (3) (1-1-1950) and Bom. Act IV of 1950 (30-3-1950).

(b) in Section 9—

- (i) in sub-section (1), after the words "sessions division, and" insert the words "in consultation with the High Court;"
- (ii) in sub-section (3), after the words "may also" insert the words "in consultation with the High Court;"
- (iii) in sub-section (4), after the words "sessions division may" insert the words "in consultation with the High Court."—Bom. Act XXIII of 1951,[*] S. 2 and Sch. (1-7-1953).

[*] After the reorganization of the State of Bombay in 1956, these Bombay Acts were extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bombay Act XCVII of 1958.

Punjab, Haryana and Chandigarh

In its application to the States of Punjab and Haryana and the Union Territory of Chandigarh, in Section 9,—

- (i) in sub-section (1), after the words "sessions divisions and," insert the words "in consultation with the High Court;"
- (ii) in sub-section (2), after the words "State Government" insert the words "in consultation with the High Court;"
- (iii) in sub-section (3) after the words, "may also" insert the words "in consultation with the High Court;"
- (iv) in sub-section (4), after the words "State Government," occurring twice, insert the words "in consultation with the High Court."—Punj. Act XXV of 1964, Sec. 2 and Sch., Pt. I, item (4) (2-10-1964): Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Section 9 — Note 3 (contd.)

(2) Appointment to post of Civil and Additional Sessions Judge — Applicability of Articles 233 and 234 — Post falls within definition of District Judge. **AIR 1967 SC 1599 (1604, 1605) = 1967 Cri LJ 1569 = (1967) 3 SCR 186.**

(3) Additional and Assistant Sessions Judge may be appointed who could be empowered to exercise jurisdiction in one or more Sessions Courts which means Sessions Courts of different Sessions divisions. There is no reference to one or more Sessions Courts in the same Session division. (1964) 66 Bom LR 17. (DB).

(4) Additional or Assistant Sessions Judge can exercise jurisdiction throughout Sessions Division, in spite of notification to the contrary — He can, however, hear only those cases that are handed over to him for trial or hearing. 1965 All Cri R 182 = 1964 All WR (HC) 269.

(5) There is only one Court of Session manned by several Judges. A Sessions Judge is therefore competent to make a complaint in respect of an offence committed before the Additional Sessions Judge. AIR 1931 Cal 190 (191) = 32 Cri L Jour 842 (DB) ** AIR 1922 All 387 (388) = 23 Cri L Jour 107 (DB).

(6) The exercise of jurisdiction by the Additional and Assistant Sessions Judges is, limited by several sections of the Code e.g., Sections 193 and 409. AIR 1920 Bom 415 (416) ** 21 Cri L Jour 382 (DB) ** ('95) Rat 830 (831) (FB).

(7) Under Section 193 of the Code Additional and Asssitant Sessions Judges

Rajasthan

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendments made in Section 9 are the same as those made in Maharashtra.—Cent. Act XXXVII of 1956, S. 119 (1-11-1956).

Tamil Nadu

In its application to the State of Tamil Nadu, for the heading occurring before S. 9, substitute the heading "C—Court of Session for the Presidency-town of Madras and Courts and Offices outside the Presidency-town of Madras."—T. N. Act XXXIV of 1955, S. 4 (1-1-1956): Act 58 of 1968 and Tamil Nadu A. L. O., 1969 (w. e. f. 14-1-1969).

Union Territories (except Chandigarh)

In its application to the Union territories except Chandigarh in Section 9,—

(i) in sub-section (1), after the words "sessions division, and," substitute the words "in consultation with the High Court,"

(ii) in sub-section (2), after the words "State Government," substitute the words "in consultation with the High Court,"

(iii) in sub-section (3), after the words "may also," substitute the words "in consultation with the High Court," and

(iv) in sub-section (4), after the words "State Government," wherever they occur, insert the words "in consultation with the High Court."—Act 19 of 1969, S. 3 and Sch., item 3 (in Delhi, on 2-10-1969).

NOTE.—The Act has not been enforced so far and hence the Goa, Daman and Diu (Separation of Judicial and Executive Functions) Order, 1963 shall continue to be in force in that territory. For text of the order, see Goa Govt. Gaz., 28-11-1963, p. 411.

Section 9 — Note 3 (contd.)

can try only such "cases" as the State Government may, by special or general order, direct, or as the Sessions Judge of the division may, by such order, make over to them for trial. AIR 1920 Bom 415 (416) = 21 Cri L Jour 382 (DB) ** ('91) 1 Mad L Jour 397 (400) (FB) ** ('03) 1903 All WN 28 (28, 29) (DB).

(8) Under Section 409 of the Code, an appeal to the Court of Session can be tried by the Sessions Judge or Additional Sessions Judge but the latter can hear only such appeals as the State Government may, by general or special order, direct, or as the Sessions Judge may make over to him for trial. AIR 1942 Oudh 50 (54) = 43 Cri L Jour 50.

(9) An Assistant Sessions Judge has no power to hear any appeal and the Sessions Judge has therefore no power to transfer an appeal filed in his Court to an Assistant Sessions Judge for hearing. AIR 1915 All 101 (102) = 16 Cri L Jour 316 ** ('05) 28 All 93 (94) (DB).

(10) Appellate Order passed by Assistant Sessions Judge — Assistant Sessions Judge is inferior to Court of Session — Practice of High Court not to entertain revision directly — Court of Session to be approached first — Revision admitted in High Court — There is mere departure from practice and not illegality. AIR 1962 All 450 (455) = 1962 (2) Cri LJ 449 = 1962 All LJ 215.

(11) A Sessions Judge has jurisdiction to exercise his powers only by virtue of his appointment to a particular Sessions division. A Sessions Judge who has ceased to be the Sessions Judge of one division and has not become the Sessions Judge of another, has no powers to exercise as a Sessions Judge simpliciter. AIR 1947 Mad 248 (252) = ILR (1947) Mad 365 = 48 Cri L Jour 81 (DB).

(12) Retirement of Sessions Judge cannot amount to unavoidable absence — Retiring Sessions Judge cannot confer power under Section 17 (4). In such case, power can be conferred only by Government under Section 9 (4). 1968 Cri LJ 419 (421) = (1967) 1 Mys LJ 238.

(13) A Sessions Judge can exercise jurisdiction only in his division and therefore cannot direct a stay of proceedings in a case pending before a Magistrate outside his sessions division, although the case has arisen out of a sanction granted by a Magistrate within such division. He can, however under Section 438, refer the proceedings of the latter to the High Court. ('03) 26 Mad 137 (139).

(14) See also the following case. **AIR 1937 PC 119 (120) = 38 Cri L Jour 498** (Additional Sessions Judge at Secunderabad can exercise the discretion of dispensing with jury or assessors, equally with the Sessions Judge empowered under Section 268, Criminal Procedure Code, as modified by Notification No. 260-1 dated 24th April 1929 in exercise of power conferred by the Indian Foreign Jurisdiction Order in Council, 1902.)

West Bengal

(1) In its application to the State of West Bengal, in the heading occurring before S. 9 "C — Courts and offices outside the Presidency-towns" omit the words "outside the Presidency-towns." — W. B. Act XX* of 1953, S. 17 and Sch. II (23-2-1957); and

(2) In sub-section (1), for the words "and appoint" substitute the words "and, in consultation with the High Court, appoint."—W. B. Act 8 of 1970, Section 3 and Sch., item 5.

(3) In sub-sections (2), (3) and (4), for the words 'State Government' wherever they occur, substitute the words "State Government, in consultation with the High Court."—Presi. Act VIII of 1968, S. 3 and Sch., item 3.

[*] This W. B. Act is extended to (a) Chandernagore by Cent. Act XXXVI of 1954, Section 17 read with W. B. Act V of 1955; and (b) to territories transferred to the State of West Bengal under Cent. Act XL of 1958 from 1-7-1959 by W. B. Act XIX of 1958.

10. District Magistrate.—(1) In every district outside the presidency-towns the *[State Government] shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

(2) The *[State Government] may appoint any Magistrate of the first class to be an Additional District Magistrate †[* * *] and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code, or ‡[under any other law for the time being in force], as the *[State Government] may direct.

Section 9 (contd.)

4. Power to direct place or places of sitting.— (1) The power to direct at what place or places the Court of Session shall hold its sitting does not affect the powers of the High Court to transfer cases from one Court to another under Section 526. AIR 1931 Bom 313 (316) = 32 Cri L Jour 1147 (SB).

(2) In the absence of any order by the State Government, the hearing or trial of a case should be held within the area of the sessions division and not outside it. ('94) 17 All 36 (37) (FB). (Such a hearing is only an irregularity curable under Section 531.)

[See AIR 1934 Pat 643 (643) = 36 Cri L Jour 371 ** ('86) 10 Bom 274 (283, 284) (DB).]

5. Courts constituted under other laws.— (1) Where a Court has been established under a special law and a Judge appointed for such Court, the State Government cannot establish a Court under this section and appoint a Judge therefor so as to affect the jurisdiction of the Court established under the special law. ('86) 10 Bom 263 (272) (DB).

(2) Appointment of a person as a Special Judge under Section 6, Criminal Law Amendment Act 1952, without reference to any area whatsoever in which or over which his jurisdiction as a Special Judge is to be operative is invalid. AIR 1959 All 218 (Pr. 5) = 1959 Cri L Jour 409 (DB).

SECTION 10 — SYNOPSIS

1. **District Magistrate.**
2. **Additional District Magistrate.**
3. **Powers of Additional District Magistrate.**

1. District Magistrate.— (1) A Presidency Magistrate is not a 'District Magistrate' within the meaning of the Code. The reason is that he is not appointed a Magistrate in a district outside the presidency-town. ('07) 31 Bom 611 (623) = 6 Cri L Jour 240 (DB) ** ('09) 10 Cri L Jour 393 (394) = 32 Mad 303 (DB).

(2) An officer who succeeds temporarily to the chief executive administration of a district, and who is able to exercise all the powers and perform all the duties conferred and imposed by the Code of Criminal Procedure on a District Magistrate, has been held to be a District Magistrate for the purposes of Section 87-A of the U. P. Municipalities Act (2 of 1916). AIR 1953 All 664 (665) = ILR (1954) 1 All 280 (DB).

(3) The Code does not prescribe the qualifications that should be possessed by an appointee, nor does the Constitution prescribe any conditions as regards appointment to the office of District Magistrate. AIR 1958 Mad 53 (62) = ILR (1958) Mad 158.

(4) One officer can be appointed as District Magistrate for two or more districts. But no Magistrate can be appointed as District Magistrate to a non-existent district. AIR 1931 Mad 697 (700) = 32 Cri L Jour 1095 (FB).

(5) There can be only one person in the District who can be District Magistrate. AIR 1944 Nag 84 (87) = 45 Cri L Jour 296 (DB) ** AIR 1921 Cal 347 (348) (DB) ** ('97) 19 All 114 (119) (DB).

‡[(3) For the purposes of Sections 192, sub-section (1), §[* * *] and 528, sub-sections (2) and (3) such Additional District Magistrate shall be deemed to be subordinate to the District Magistrate.]

[1882 — S. 10; 1872 — S. 35; 1861 — Nil.]

[*] Substituted for 'Provincial Government' by A. L. O., 1950.

[†] The words "for a period not exceeding six months" were repealed by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 2.

[‡] Inserted, ibid.

[§] The figures, word and brackets "407, sub-section (2)" were omitted by the Repealing and Amending Act, 1957 (XXXVI of 1957), S. 3 and Sch. II (17-9-1957).

STATE AMENDMENTS

Assam

In its application to the State of Assam, in S. 10, for the words "an Additional District Magistrate" occurring between the words 'be' and 'and,' substitute the words "one or more Additional District Magistrates," and for the words "such Additional District Magistrate" occurring, between the words 'and' and 'shall,' substitute the words "an Additional District Magistrate."—Assam Act XX of 1966, Section 2.

Gujarat

In its application to the State of Gujarat the amendments made in S. 10 are the same as those made in Maharashtra, subject, however, to the adaptation that in its application to the City of Ahmedabad for the words "Greater Bombay" the words "City of Ahmedabad" are to be substituted.—Cent. Act XI of 1960, S. 87 and Guj. Act XIX of 1961, Section 15 (4-11-1961).

Maharashtra

(1) In its application to the State of Maharashtra, in Section 10—

(i) in sub-section (1)—

(a) for the words "outside the presidency-towns" substitute the words "outside Greater Bombay;"

(b) delete the words "Magistrate of the first class, who shall be called the";

Section 10 — Note 1 (contd.)

(6) There is nothing in Section 10 which debars a person acting as a District Magistrate, to be appointed as Additional District Magistrate in another district. AIR 1955 All 705 (706).

(7) The Disrict Magistrate is primarily responsible for the peace of the district. AIR 1914 All 158 (160) = 15 Cri L Jour 39 (DB) ** AIR 1914 Mad 613 (619) = 14 Cri L Jour 546 (FB) ** ('12) 13 Cri L Jour 693 (699, 701) = 39 Ind App 163 (PC) ** ('07) 34 Cal 1 (3) = 4 Cri L Jour 399 (FB).

(8) The District Magistrate exercises general control over the police force. ('05) 3 Cri L Jour 256 (262) (DB) (Cal).

(9) The District Magistrate is the Court of Appeal from the orders of First Class Magistrates in proceedings under Chapter VIII. AIR 1914 All 158 (160) = 15 Cri L Jour 39 (DB).

(10) The District Magistrate is the principal representative of the law for most purposes in the eyes of the people and occupies a position of great power and responsibility. ('06) 3 Cri L Jour 169 (177) (DB) (Cal).

(10-A) Executive instructions cannot deprive the District Magistrate of his powers given to him under the section. 1970 Cri LJ 922 (924) (DB) (Madh Pra).

(11) District Magistrate has to see that all Magistrates in the District exercise their powers in an equitable and rational manner. ('99) 29 Mad 126 (148) = 3 Cri L Jour 274 (FB). (Per Moor, J.).

(12) A District Magistrate as Collector has to perform functions not covered by the Criminal P. C. AIR 1940 Cal 30 (31) = 41 Cri L Jour 442 (DB) ** 1959 Raj LW 528 = ILR (1959) 9 Raj 594.

(13) The jurisdiction of a District Magistrate extends over the whole of the district. 1968 Cri LJ 256 (261) = 1967 Mad LW 35.

(14) The Deputy Commissioner of the District in the Mysore State is not lower in rank than a District Magistrate. (1966) 1 Mys LJ 85 = (1966) 5 Law Rep 108.

(15) Section 14 of Bombay General Clauses Act (1 of 1904) does not prohibit appointment of District Magistrate in anticipation of vacancy. (1967) 8 Guj LR 265 (DB).

(16) District Magistrate mentioned in Section 3 of U. P. Act is not a persona

(ii) in sub-section (2)—

(a) delete the words "any Magistrate of the first class to be;"

(b) for the words "an Additional District Magistrate" substitute the words "one or more Additional District Magistrates;"

(c) for the words "such Additional District Magistrate" substitute the words "an Additional District Magistrate;"

(iii) after sub-section (2), add the following new sub-section (2A)—

"(2-A) For the purposes of sub-section (3) of Section 528, such Additional District Magistrate shall be deemed to be subordinate to the District Magistrate;"

(iv) after sub-section (2-A) in place of sub-section (3) which was deleted by Bom. Act XXIII of 1951 insert the following:

"(3) For the purposes of sub-section (3) of S. 192, S. 406B and sub-section (3-A) of S. 528, an Additional District Magistrate shall be deemed to be subordinate to the District Magistrate." — Bombay Acts XXIII of 1951, S. 2 and Sch. (1-7-1953); VIII of 1954, S. 2 and Sch. (10-2-1954) and XXI of 1954, S. 3 and Sch. II (8-4-1954).

(2) After the reorganization of the State of Bombay in 1956, the amendments made in Section 10 by all the above-mentioned Bombay Acts have been extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Section 10 — Note 1 (contd.)
designata but would also include Additional District Magistrate. **AIR 1961 SC 606 (608, 609) = 1961 (1) Cri LJ 740 = (1961) 3 SCR 495.** (AIR 1953 All 62, **Overruled.)**

[See AIR 1956 All 187 (190) (DB).]

2. Additional District Magistrate.— (1) The object of the appointment of an Additional District Magistrate is to relieve the District Magistrate of some of his duties and not to place the former on the footing of the latter. AIR 1944 Nag 84 (87) = 45 Cri L Jour 296 (DB) ** ('08) 9 Cri L Jour 104 (104) = 1908 Pun Re (Cri) No. 25, p. 70 (71, 72) (DB).

(2) The scope of the powers conferred under sub-section (2) extends to all powers which the District Magistrate is empowered to exercise at the date of a particular notification appointing an Additional District Magistrate and conferring on him all the powers of a District Magistrate. AIR 1923 Mad 338 (338) = 24 Cri L Jour 116.

[See also AIR 1951 All 828 (829) = 52 Cri L Jour 1508.]

(3) Section 10 (2) empowers the State Government to invest the Additional District Magistrate with all or any of the powers of a District Magistrate; not only under the existing laws but under any other laws which may be passed in future. AIR 1953 Bom 401 (401, 402) = 1953 Cri L Jour 1576 = ILR (1953) Bom 793 (DB).

(4) By virtue of sub-section 2 an Additional District Magistrate could pass orders under Section 4 of the Punjab Safety Act (2 of 1947). AIR 1950 Ajmer 12 (Pr. 4) = 51 Cri L Jour 771.

(5) The power of a District Magistrate under Section 160 of the U. P. Municipalities Act (2 of 1916) can be exercised by the Additional District Magistrate. AIR 1956 All 258 (266) = ILR (1956) 1 All 656 = 1956 Cri L Jour 679 (DB).

(6) An appointment of a person as an Additional District Magistrate does not imply and carry with it an appointment as a Magistrate of the First Class. So the appointment of a person as additional District Magistrate without first appointing him first class Magistrate, is invalid. AIR 1957 Cal 667 (671) (DB).

(7) The powers conferred upon the Additional District Magistrate under sub-section (2) of this section did not include the powers delegated to a District Magistrate by a notification of the Provincial Government under Section 2 (5) of the Defence of India Act (since repealed by Act 2 of 1948). AIR 1944 Nag 84 (86, 89) = 45 Cri L Jour 296 (DB) ** AIR 1943 Nag 26 (34) = 44 Cri L Jour 345 (DB).

(8) Where a notification under Section 10 (2) shows that the sanctioning Additional District Magistrate was invested with the powers of a District Magistrate only under this Code, he cannot exercise the powers of a District Magistrate under Section 29 of the Arms Act. AIR 1959 Manipur 15 (15) = 1959 Cri L Jour 211.

(9) Person duly appointed as Additional District Magistrate — Appointment as such extended by proper order of State Government — Conferment of powers of Magistrate of first class not needed afresh at time of such extension. AIR 1968 Cal 257 (261) = 1968 Cri LJ 732.

Mysore

In its application to the State of Mysore, in Section 10—

(i) in sub-section (1), omit the words "Magistrate of the first class, who shall be called the;"

(ii) in sub-section (2), for the words "any Magistrate of the first class to be an Additional District Magistrate," substitute the words "one or more Additional District Magistrates" and for the words "such Additional District Magistrate," substitute the words an Additional District Magistrate;"

(iii) for sub-section (3) substitute the following—

"(3) For the purposes of sub-section (3) of Section 192, and sub-sections (3) and (3A) of Section 528, an Additional District Magistrate shall be deemed to be subordinate to the District Magistrate."—Mys. Act XIII of 1965, Section 6 (1-10-1965).

Punjab, Haryana and Chandigarh

In its application to the States of Punjab and Haryana and Union Territory of Chandigarh, in Section 10—

(i) in sub-section (1) for the words "a Magistrate," substitute the words "Executive Magistrate;"

(ii) after the amended sub-section the following sub-section shall be inserted, namely,—

"(1A) In every district the High Court shall invest a Judicial Magistrate of the first class with the powers of a Chief Judicial Magistrate under this Code or any other law for the time being in force.";

(iii) in sub-section (2), for the words "any Magistrate, of the first class to be an Additional District Magistrate," substitute the words "any executive Magistrate of the first class to be an Additional District Magistrate;" and

(iv) the marginal heading shall be substituted as follows, namely — "District Magistrate and Chief Judicial Magistrate." — Punj. Act XXV of 1964, Section 2 and Sch., Pt. I, item (5) (2-10-1964): Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Section 10 — Note 2 (contd.)

(10) Letters of Deputy Secretary extending period of re-employment of A. D. M. — Letters held were executive action within Article 166 (1) — Letters not couched in form of order of Governor — Subsequent formal order in name of Governor — No retrospective effect given by formal order. See Constitution of India, Article 166 (1). AIR 1968 Cal 257 (261) = 1968 Cri LJ 732.

(11) Notification under — Need not recite in terms that it was made under Section 10 (1) — Order of State Government appointing an officer District Magistrate of a district is sufficient. **AIR 1965 SC 1619 (1623) = 1965 (2) Cri LJ 553 = (1965) 2 SCR 845.**

(12) Order vesting powers of Magistrate of first class printed subsequent to printing of order of appointment as Additional District Magistrate — Appointment held not invalid. AIR 1968 Cal 257 (259, 260) = 1968 Cri LJ 732.

(13) Additional District Magistrate invested with all powers of District Magistrate by Section 10 (2) and on temporary vacancy of District Magistrate's post exercising District Magistrate's powers under Section 11 — He is not District Magistrate in law — Nor he is of District Magistrate's rank but below that rank. **AIR 1965 SC 1619 = 1965 (2) Cri LJ 553 = (1965) 2 SCR 845.** (AIR 1965 Punj 113, **Reversed.**)

(14) Notification under Section 40, Defence of India Act (1962) empowering District Magistrate to exercise powers under Section 29 — Additional District Magistrate empowered under Section 10 (2), Criminal P. C. not competent to requisition property as such powers are of a drastic nature and involve the fundamental rights. **AIR 1969 SC 483 (487) = 1969 Cri LJ 803 = (1969) 1 SCJ 872.** (AIR 1966 Punj 141 (DB), **Reversed.**)

(15) Khasi and Jaintia Hills — Territory of Cherra Siemship — Additional Deputy Commissioner can take no action under Section 145, Criminal P. C. unless there was any order in force modifying the terms of the section. AIR 1963 Assam 31 (34) = 1963 (1) Cri LJ 417 (DB).

(16) Where the Central Government delegates its powers under Section 3 (1) of the Essential Commodities Act (1955) by a specification under Section 5 to

Rajasthan

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendments made in Section 10 are the same as those made in (1) of Maharashtra.—Cent. Act XXXVII of 1956; S. 119 (1-11-1956).

Union Territories (except Chandigarh)

In its application to the Union territories, in Section 10—

(i) for the marginal heading, substitute the following marginal heading, namely :—

"District Magistrate and Chief Judicial Magistrate.";

(ii) in sub-section (1), for the words "a Magistrate," substitute the words "an Executive Magistrate;"

(iii) in sub-section (2), for the words "any Magistrate of the first class," substitute the words "any Executive Magistrate of the first class" and after that sub-section as so amended, insert the following sub-sections, namely :—

"(2A) In every district the State Government shall, in consultation with the High Court, invest a Judicial Magistrate of the first class with the powers of a Chief Judicial Magistrate under this Code or any other law for the time being in force.

(2B) The State Government may, in consultation with the High Court, appoint any Judicial Magistrate of the first class to be an Additional Chief Judicial Magistrate and such Additional Chief Judicial Magistrate shall have all or any of the powers of a Chief Judicial Magistrate referred to in sub-section (2A) as the State Government may, in consultation with the High Court, direct;"

Section 10 — Note 2 (contd.)

District Magistrate such delegated power cannot be exercised by an Additional District Magistrate. AIR 1966 Cal 577 (580) = 1966 Cri LJ 1248.

(17) Prosecution under Section 25 (1) (a). Arms Act (1959) — Sanction by Additional District Magistrate under Section 39 not empowered by State Government under Section 10 (2), Criminal P. C. — Sanction is invalid. 1968 All LJ 431 = 1968 All WR (HC) 183 ** 1967 All WR (HC) 633 (634) = 1967 All Cr R 403.

(18) District Magistrate in Section 29, Arms Act (1878) means District Magistrate as understood under Criminal P. C. AIR 1962 Bom 188 (189) = 1962 (2) Cri LJ 176 = 64 Bom LR 24 (DB) ** 1968 All WR (HC) 223 = 1968 All Cr R 146 (147) ** 1962 Ker LT 642 ** (1961) 39 Mys LJ 1030 ** AIR 1960 Assam 45 (46) = 1960 Cri LJ 320 = ILR (1959) 11 Assam 145 (DB).

(19) Additional District Magistrate 'engaging' lawyer on behalf of State — Does not amount to appointing lawyer as Public Prosecutor — Conduct of case by such lawyer is illegal. AIR 1969 Cal 321 (326, 337) (DB).

(20) Sessions Judge directing District Magistrate to deliver proceeds of sale of subject matter of offence to accused on his furnishing security bond to the satisfaction of the District Magistrate — Additional District Magistrate can accept the bond. **AIR 1969 SC 189 (192) = 1969 Cri LJ 401 = (1969) 1 SCJ 533** (Criminal Misc. Case No. 28 of 1964, D/- 16-6-1964 (Cal), **Reversed.)**

(21) Person holding office of Addl. Sessions Judge and of Addl. District Magistrate — Transfer of case from one Magistrate to another as Addl. Sessions Judge — Order held valid. 1961 (1) Cri LJ 461 (463) (Andh Pra) (DB).

(22) Madras Government Order No. 3106, dated 9th September, 1949 granting power to Additional District Magistrate (Independent) to grant pardon in a case pending inquiry before District Magistrate (Judicial) — Pardon granted bona fide is fully protected by Section 529. **AIR 1963 SC 1850 (1871) = 1963 (2) Cri LJ 671 = (1964) 2 SCA 38.**

(23) First Class Magistrate (Executive) can tender pardon on sanction granted by Additional District Magistrate — Appointment of Additional District Magistrate by State conferring all powers of District Magistrate — Sanction granted by Additional District Magistrate is valid. 1968 Cri LJ 1667 (1668) = (1968) 1 Mad LJ 255.

3. Powers of Additional District Magistrate. — (1) Additional District Magistrate though subordinate to District Magistrate for the purposes of Sec. 192 (1), has power to transfer cases. AIR 1965 Madh Pra 53 (54) = 1965 (1) Cri LJ 298 = 1965 Jab LJ 117.

(2) Additional District Magistrate empowered under the section — Cannot entertain appeal against order under Section 514 — Can be entertained only by the District Magistrate. AIR 1967

(iv) for sub-section (3), substitute the following sub-section, namely:—

"(3) For the purposes of Section 88, sub-section (6C), Section 406B and Section 528, sub-sections (2B) and (3), such Additional District Magistrate shall be deemed to be subordinate to the District Magistrate; and for the purposes of Section 88, sub-section (6-C), Section 192, sub-section (1), Section 406B and Section 528, sub-sections (2) and (2A), such Additional Chief Judicial Magistrate shall be deemed to be subordinate to the Chief Judicial Magistrate." — Act 19 of 1969, S. 3 and Sch., item 4 (in Delhi on 2-10-1969).

NOTE.—The Act has not so far been enforced and hence corresponding amendments and modifications, if any, prevailing in the Union territories or parts thereof shall continue to apply.

West Bengal

In its application to the State of West Bengal, in Section 10—

(i) in sub-section (1), for the words 'a Magistrate,' substitute 'an Executive Magistrate;'

(ii) in sub-section (2), for the words 'any Magistrate,' substitute 'any Executive Magistrate;"

(iii) in sub-section (3), for the words 'Section 192, sub-section (1),' substitute the figures, words, brackets and letter, "Sections 88, sub-section (6C), 124, 125 192, sub-section (1)."—W. B. Act 8 of 1970, S. 3 and Sch., item 6.

(iv) After sub-section 2, insert the following sub-section, namely:—

"(2A) A District Magistrate may, by a general or a special order, authorise an Additional District Magistrate to do any act or take any action required

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Section 10 — Note 3 (contd.)

Cal 440 (440, 441) = 1967 Cri LJ 1133 (DB).

(3) Section 10 (2) read with Section 515 authorises Additional District Magistrate to exercise all functions of the District Magistrate under Section 515 — Additional District Magistrate can hear appeals against orders of inferior Courts — Additional District Magistrate not inferior to District Magistrate. AIR 1967 Cal 314 (316, 317) = 1967 Cr LJ 735. (AIR 1921 Cal 347 and Rev. Case No. 6 of 1965 (Cal), correctness doubted.)

(4) Accused directed to be released on bail to the satisfaction of the District Magistrate — Additional District Magistrate also competent to accept bail bond and ultimately draw up proceedings under Section 514 and to impose penalty — Section 10 (2-A) (Calcutta Amendment) appears redundant. AIR 1967 Cal 314 (317) = 1967 Cr LJ 735.

(5) Magistrate, first class appointed as Additional District Magistrate under Section 10 (2) and empowered to exercise all powers of District Magistrate — Has jurisdiction to hear appeal under Section 515. ('63) 65 Pun LR 322.

(6) When an Additional District Magistrate exercises any judicial power of the District Magistrate which is specifically conferred on him by the State Government under Section 10 (2), he is not subordinate to the District Magistrate, who is an officer exercising concurrent jurisdiction. 1959 Raj LW 528 = ILR (1959) 9 Raj 594.

(7) Government of Orissa Home Department Notification No. 1741-SJE/7-2-69, H. C. dated 25th Jan. 1963 — Notification under Section 10 (2), Criminal P. C. — Notification does not confer power on Additional District Magistrate (Judicial) Cuttack to withdraw cases under Section 528 (2). AIR 1966 Orissa 219 (222, 223) = 1966 Cri LJ 1301 = 32 Cut LT 751.

(8) Additional District Magistrate invested, under Section 10 (2), Criminal P. C., with all powers of District Magistrate — A. D. M. is competent to deal with appeals against assessment as Magistrate within Section 84. AIR 1962 Punj 490 (492) = 64 Punj LR 456.

(9) Additional District Magistrate appointed under Section 10 (2) and invested with powers of District Magistrate — Can exercise power under Section 435, Criminal P. C. (1898). 1963 (1) Cri LJ 112 (114) (Assam) (DB).

(10) Government issuing instruction regarding allocation of work in pursuance of policy of separation of executive and judiciary — Criminal P. C., not amended — Instructions are only administrative — Magistrate exercising powers under Code though under administrative instructions they were to be exercised by another — Exercise of power is not illegal. 29 Cut LT 164 = ILR (1962) Cut 830.

(11) Additional District Magistrate (Judicial) has no jurisdiction to revise an order of Executive Magistrate — Executive instructions issued after separation of judiciary and executive have statutory force. ILR (1963) Cut 670.

by a Court or other competent authority to be done or taken by the District Magistrate, if such act or action is within the powers conferred on the Additional District Magistrate under sub-section 2, except where the District Magistrate is directed, expressly or by necessary implication, to do such act or take such action himself."—W. B. Act XII of 1966, S. 3 (11-5-1966).

11. Officers temporarily succeeding to vacancies in office of District Magistrate.—Whenever in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the district, such officer shall, pending the orders of the *[State Government], exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

[1882 — S. 11; 1872 — S. 55; 1861 — Nil.]

[*] Substituted for the words 'Provincial Government' by A. L. O., 1950.

12. Subordinate Magistrates.—(1) The *[State Government] may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any district outside the presidency-towns; and the *[State Government] or the District Magistrate, subject to the control of the *[State Government] may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

Section 11 — Note 1

(1) An officer who assumes charge of the current duties of the office during the absence on casual leave of the District Magistrate, cannot exercise all the powers or perform all the duties of a District Magistrate. Thus, he cannot transfer a case from one Magistrate to another. AIR 1921 Oudh 162 (162, 163) = 22 Cri L Jour 713.

(2) The officer succeeding temporarily to the chief executive administration of the district has all the powers and should perform all the duties of a District Magistrate. AIR 1919 Mad 24 (25, 26) = 20 Cri L Jour 129 (DB).

(3) Additional District Magistrate invested with all powers of D. M. by Section 10 (2), Criminal P. C., and on temporary vacancy of D. M.'s post exercising D. M.'s powers under Section 11 Criminal P. C. — He is not District Magistrate in law — Nor he is of D. M.'s rank but below that rank — Detention order under Rule 30 (1) (b) of D. I. Rules passed by him is without authority. **AIR 1965 SC 1619 (1622, 1623) = 1965 (2) Cri LJ 553 = (1965) 2 SCR 845.** (AIR 1965 Punj 118, **Reversed.**)

Section 12 — Note 1

(1) Where a Magistrate is appointed for a particular period, the term imposed is ultra vires the powers of the Government and his jurisdiction to try cases extends even after the expiry of the period, in the absence of an order cancelling his appointment. AIR 1930 Nag 96 (97) = 31 Cri L Jour 24.

(2) Special Magistrates are appointed by State Government for a specified term and they are as good Magistrates as anybody else, enjoying the first, second or third class powers as the case may be. 1968 All WR (HC) 281 = 1968 All Cri R 180.

(3) The fact that a Subordinate Judge duly invested with powers of a Magistrate of the First Class is later on invested with higher powers of the Additional Judge of the Court of Session does not divest him of the powers of the Magistrate of the First Class unless the powers as a Magistrate are withdrawn under Section 41. AIR 1956 Nag 67 (69) = ILR (1954) Nag 963 = 1956 Cri L Jour 256 (DB).

(4) The word "appoint" in Section 12 has reference only to conferment of magisterial powers. Such an appointment does not imply that the person so appointed as a Magistrate is appointed to a civil post or he becomes a member of a civil service different from that which he was holding prior to the appointment. AIR 1957 Mad 41 (43) = ILR (1956) Mad 1338 (DB).

(5) The words "local area" in this section contemplate some area within a District. ('01) 1901 Pun Re No. 24 Cr 59 (62) (FB).

(6) Offence under Section 161, Penal Code, committed outside local area of First Class Magistrate — Order for investigation under Section 5-A by such Magistrate — Not illegal. AIR 1960 Mys 242 (243) = 1960 Cri LJ 1226 (2) = 38 Mys LJ 529.

(7) 'District' means the District in normal use of the word. AIR 1965 Bom 107 (108) = 1965 (2) Cri LJ 73 = 66 Bom LR 741.

(8) Section 12 has no reference whatsoever to sub-divisional Magistrates. AIR 1958 Madh Pra 184 (186) = 1958 Cri L Jour 897 (DB).

(9) Where the jurisdiction of a Magistrate stationed at a particular place is

(2) Local limits of their jurisdiction.—Except as otherwise provided by such **definition, the** jurisdiction and powers of such persons shall extend throughout **such district.**

[1882 — S. 12; 1872 — S. 37, Para. 1 and S. 49; 1861 — S. 23.]

[*] Substituted for the words 'Provincial Government' by A. L. O., 1950.

STATE AMENDMENTS

Gujarat

In its application to the State of Gujarat, the amendments made in Section 12 are the same as those made in Maharashtra, subject, however, to the adaptation that in its application to the City of Ahmedabad for the words "Greater Bombay" the words "City of Ahmedabad" are to be substituted--Cent. Act XI of 1960, S. 87 and Guj. Act XIX of 1961, S. 15 (4-11-1961).

Maharashtra

(1) In its application to the State of Maharashtra, in Section 12—

(i) In sub-section (1) :—

(a) delete the words "besides the District Magistrate;"

(b) for the words "outside the presidency-towns" substitute the words "outside Greater Bombay;"

(c) delete the words "the State Government or the District Magistrate, subject to the control of the State Government."—Bom. Act XXIII of 1951, S. 2 and Sch.

(d) for the words "may from time to time" substitute the words "the Sessions Judge, subject to the control of the High Court, may, from time to time."—Bom. Act XXXIV of 1953, S. 2.

(ii) After sub-section (1), the following sub-section shall be inserted, namely :—

"(1-A). The power of appointment of Magistrates under sub-section (1) shall on the issue of public notification under Article 237 of the Constitution, be exercised subject to the terms of the said notification."

(iii) for the marginal note to the said section, substitute the following: "Judicial Magistrate." — Bom. Act XXIII of 1951, S. 2 and Sch. (1-7-1953).

Section 12 — Note 1 (contd.)

not defined under sub-section (1), his jurisdiction will extend throughout the district. AIR 1952 Cal 91 (Pr 3) = 1953 Cri L Jour 82 (DB) ** AIR 1958 Madh Pra 184 (186) = 1958 Cri L Jour 897 (DB) ** AIR 1945 Nag 56 (57) = ILR (1944) Nag 836 = 46 Cri L Jour 654 ** AIR 1965 Madh Pra 53 (55) = 1965 (1) Cri LJ 298 = 1965 Jab LJ 117 ** AIR 1961 Pat 94 (95) = 1961 (1) Cri LJ 304 = 1960 Pat LR 150.

(10) The mere definition of areas of jurisdiction or the appointment of a Magistrate to a certain sub-division cannot be taken as a provision excluding the jurisdiction of the Magistrate in the rest of the district and in the absence of some provision expressly or by necessary implication excluding such jurisdiction, the Magistrate must be held to have jurisdiction throughout the district. AIR 1959 Raj 196 (197) = 1959 Cri L Jour 1114 = ILR (1959) 9 Raj 358 ** 1957 Cri L Jour 153 (155) (Pat) ** AIR 1955 Nag 189 (190, 191) = ILR (1955) Nag 58 = 1955 Cri L Jour 1084 (DB) ** AIR 1962 All 157 (158) = 1962 (1) Cri LJ 388 = 1961 All LJ 761 (DB). (AIR 1921 All 123, **Overruled.)** ** 1962 (1) Cri LJ 40 (40, 41) = 1961 Ker LT 690.

(11) Delimitation of area of jurisdiction — Permission granted by District Magistrate is valid. 1968 Cri LJ 256 = 1968 Mad LW (Cri) 35.

(12) Section 488 (8) has to be read alone with Section 12 and proceeding under Section 488 will lie only before such Magistrate as has jurisdiction over local area where husband lives or where parties last resided together. (1966) 2 Mad LJ 326 = 1966 Mad LW (Cr) 152.

(13) Though the State Government has power to define local limits of the exercise of jurisdiction, it cannot under Section 12 restrict the other powers invested in a Magistrate. 1964 All WR (HC) 660 = 1964 All LJ 304.

(14) Sub-divisional Magistrate also First Class Magistrate — Parties residing in the district but outside sub-division — Sub-divisional Magistrate as First Class Magistrate is competent to demand security. 1962 (1) Cri LJ 386 (387) (All).

(15) The mere fact that a Magistrate is placed in charge of sub-division under

(2) After the reorganization of the State of Bombay in 1956, the amendments made in Section 12 by all the above-mentioned Bombay Acts have been extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Mysore

In its application to the State of Mysore, for Section 12, substitute the following:—

"12. **Judicial Magistrates.**—(1) The State Government may appoint as many persons as it thinks fit, to be Magistrates of the first, second or third class in any district, and the Sessions Judge, subject to the control of the High Court, may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code :

Provided that the power of appointment of Magistrates under this sub-section shall on the issue of a public notification under Article 237 of the Constitution, be exercised subject to the terms of the said notification.

(2) Except as otherwise provided by such definition, the jurisdiction and powers of such Magistrates shall extend throughout such district."—Mys. Act XIII of 1965, S. 7 (1-10-1965).

Punjab: Haryana: Chandigarh

In its application to the States of Punjab and Haryana and the Union Territory of Chandigarh for S. 12 the following shall be substituted, namely :—

"12. **Executive and Judicial Magistrates.**—(1) The State Government may appoint as many persons as it thinks fit besides the District Magistrate, to be Executive Magistrates of the first or second class in any district, and the State Government or the District Magistrate, subject to the control of the State Gov-

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Section 12 — Note 1 (contd.)

Section 13 is, in the absence of anything to the contrary, no ground for holding that his jurisdiction over the rest of the district is excluded. ('12) 13 Cri L Jour 716 (716) = 34 All 597 ** AIR 1954 Madh B 101 (105) = 1954 Cri L Jour 966 ** AIR 1935 Bom 409 (410) = 37 Cri L Jour 514 (DB).

[But see AIR 1938 Nag 448 (448, 449) = 39 Cri L Jour 810 ** AIR 1921 All 123 (124) = 22 Cri L Jour 122.]

(16) Courts of concurrent jurisdiction can proceed to try the same offence and simply because one Court has seisin of the case, the jurisdiction of the other is not ousted. AIR 1933 Lah 852 (853) = 14 Lah 820 = 35 Cri L Jour 171.

(17) The Legislature does not contemplate the exercise of jurisdiction by any Magistrate outside the limits of an area called a district in which he might be appointed by the State Government. ('85) 9 Bom 40 (44, 45) (DB) ** AIR 1921 All 61 (62) = 22 Cri L Jour 567 (DB) ** ('84) 1884 Pun Re No. 15 Cr p. 20 (20, 21) (DB).

(18) Where a Magistrate is transferred from one local area to another within the same district, he does not thereby cease to have jurisdiction in the former area. ('98) 22 Mad 47 (48) (DB) ** AIR 1920 All 177 (179) = 21 Cri L Jour 746 ** ('12) 13 Cri L Jour 203 (204) = 34 All 203.

[But see ('04) 1 All L Jour 315 (316.]

(19) When a Magistrate is transferred from one district to another and he hands over charge to his successor, he has no jurisdiction thereafter in the former area and a judgment pronounced by him after handing over charge is bad in law. AIR 1932 All 582 (582) = 34 Cri L Jour 112 (DB) ** ('81) 3 All 563 (565, 566) (FB) ** ('97) 19 All 114 (117) (DB) ** AIR 1924 Cal 192 (193) = 25 Cri L Jour 192 (DB).

(20) First Class Magistrate exercising enhanced powers under Section 30 in district K transferred to district G — Fresh notification under Section 12 by State Government appointing him first class Magistrate in that district — Magistrate cannot exercise enhanced powers in District G. AIR 1956 Punj 252 (252) = ILR (1956) Punj 1119 = 1956 Cri L Jour 1429.

(21) The scheme of separation of the Judiciary from the Executive had been extended to the District of Bellary as per the Notification of the Governor of Madras in exercise of the powers conferred by Section 12 (1) and Section 37 of the Criminal Procedure Code. In pursuance of that scheme the power of

ernment, may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

(2) The High Court may confer on any person who is a member of the Punjab Civil Service (Judicial Branch) the powers of any class of a Judicial Magistrate in any district; and the High Court or the Chief Judicial Magistrate, subject to the control of the High Court, may, from time to time, define local areas within which he may exercise all or any of the powers with which he may be invested under this Code.

(3) The State Government in consultation with the High Court, may, for such period not exceeding six months from the commencement of the Punjab Separation of Judicial and Executive Functions Act, 1964, as it may think fit, appoint as many persons, who are members of the Punjab Civil Service (Executive Branch), as may be considered necessary to be Judicial Magistrates in any district; and the State Government, in consultation with the High Court, may define local areas within which such persons may exercise all or any of the powers with which they may, respectively, be invested under this Code.

(4) Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such district.

(5) The power of appointment of Judicial Magistrates under sub-sections (2) and (3) shall, on the issue of a public notification under Article 237 of the Constitution of India, be exercised subject to the terms of the said notification."—Punj. Act XXV of 1964, S. 2 and Sch., Pt. I, item (6) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Section 12 — Note 1 (contd.)

posting of the Sub-Divisional Magistrates and other Judicial Magistrates had been delegated to the High Court by a Notification under Article 237 of the Constitution. Consequently the High Court had power to post not merely the members of the Judicial service as such but also the Magistrates in the District. AIR 1959 Mys 199 (200) = 1959 Cri L Jour 1005.

(22) Government issuing instructions regarding allocation of work in pursuance of policy of separation of executive and judiciary — Criminal P. C. not amended — Instructions are only administrative — Magistrate exercising powers under Code, though under administrative instructions they were to be exercised by another — Exercise of power is not illegal. ILR (1962) Cut 830.

(23) Power of State Government to appoint a judge out of various judges who are special judges, for some offences arising in an area — Power confined to cases investigated by particular agency — Appointment is covered by notification under Section 6, Criminal Law Amendment Act, 1952. AIR 1965 Andh Pra 372 (384, 385) = 1965 (2) Cri LJ 585 = (1965) 2 Andh WR 44 (DB).

(24) Person appointed as temporary A. S. D. O. and invested with Magisterial powers by separate notification of even date — Temporary appointment continued by subsequent notifications — Person confirmed as Deputy Collector and empowered to act as Magistrate as well — Fresh notification under section 12 or Section 39 held not necessary. 1963 (2) Cri LJ 721 (722, 723) (Tripura).

(25) Even though the Chief Commissioner has restricted the powers of the Commandant of 6th Battalion of Assam Rifles while appointing him under Section 12 (1) of the Criminal P. C. his appointment as a Magistrate, first class for the purpose of enquiring into or trying any offence committed by a Rifleman and punishable under the Assam Rifles Act or under any other law for the time being in force has been validly made under Section 12 (1), Criminal P. C. AIR 1963 Tripura 31 (33, 34) = 1963 (2) Cri LJ 322.

(26) Section 15 (1) of Payment of Wages Act (1936) — Notification appointing City Magistrates to decide cases under Act — City Magistrate not persona designata — Additional City Magistrate has jurisdiction to function under the Act. AIR 1960 All 200 (202, 203).

(27) Unless person is appointed as Magistrate of first class, order of appointment as Additional Magistrate cannot be made. AIR 1968 Cal 257 (259) = 1968 Cri LJ 732.

(28) Appointment as Additional District Magistrate — Extension of — Conferment of powers of Magistrate of first class not needed afresh at the time of extension. AIR 1968 Cal 257 (261) = 1968 Cri LJ 732.

(29) Person performing duties of Honorary Magistrate — Sar Panch of Nyaya Panchayat is not such a person and is not disqualified from being elect-

Rajasthan

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendments made in S. 12 are the same as those made in (1) of Maharashtra.—Cent. Act XXXVII of 1956, S. 119 (1-11-1956).

Union Territories (except Chandigarh)

In its application to the Union territories, for Section 12, substitute following, namely :—

"12. **Executive Magistrates and Judicial Magistrates.**—(1) The State Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Executive Magistrates of the first or second class in any district, and the State Government or the District Magistrate, subject to the control of the State Government, may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may, respectively, be invested under this Code.

(2) The State Government in consultation with the High Court, may confer on any person who is a civil Judge or a member of the Judicial Service of a Union territory or a group of such territories, the powers of any class of Judicial Magistrates in any district; and the State Government, in consultation with the High Court, or the Chief Judicial Magistrate subject to the control of the High Court may, from time to time, define local areas within which he may exercise all or any of the powers with which he may be invested under this Code.

(3) The State Government, in consultation with the High Court, may, for such period not exceeding three years from the commencement of the Union Territories (Separation of Judicial and Executive Functions) Act, 1969, as it may think fit, appoint as many persons, who are members of a Civil Service in any Union territory or in any State and who are or have been exercising the powers of a Magistrate in such territory or State at or before the commencement of the said Act, as may be considered necessary to be Judicial Magistrates in any district, and the State Government, in consultation with the High Court, may define local areas within which such persons may exercise all or any of the powers with which they may, respectively, be invested under this Code.

(4) Except as otherwise provided by any such definition as is referred to in sub-section (1), (2) or (3), the jurisdiction and powers of such persons shall extend throughout such district." — Act 19 of 1969, S. 3 and Sch., item 5 (in Delhi, 2-10-1969.)

NOTE.—The Act has not been enforced in other territories so far and hence earlier Acts or provisions prevailing in certain territories or parts thereof continue to apply thereat e. g., Goa, Daman and Diu (Separation of the Judicial and Executive Functions) Order 1963, Goa Gaz., 28-11-1963, p. 411.

West Bengal

In its application to the State of West Bengal, for S. 12, substitute the following, namely :—

"12. **Subordinate Executive and Judicial Magistrates.**—(1) The State Government may appoint as many persons as it thinks fit, besides the District Magistrates, to be Executive Magistrates of the first, second or third class in any district outside the presidency-town, and the State Government or the District Magistrate, subject to the control of the State Government, may, from time to time,

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Section 12 — Note 1 (contd.)
ed as Adhyaksha of Z. P. AIR 1969 All 65 (66, 67) (DB).

(30) Khasi and Jaintia Hills — Territory of Cherra Siemship — Additional Deputy Commissioner can take no action under Section 145 since 'Addl. Deputy Commissioner' is not defined by Section 12. AIR 1963 Assam 31 (34) = 1963 (1) Cri LJ 417 (DB).

define the local areas within which such Executive Magistrates may exercise all or any of the powers with which they may respectively be invested under this Code.

(2) The State Government may, in consultation with the High Court, appoint as many persons as it thinks fit, from among the members of the Judicial Service of the State, to be Judicial Magistrates of the first, second or third class in any district, outside the presidency-town, and the State Government in consultation with the High Court or Sessions' Court, subject to the control of the State Government acting in consultation with the High Court, may, from time to time, define the local areas within which such persons may exercise all or any of powers with which they may be invested under this Code.

(3) Notwithstanding anything contained in sub-section (1), the State Government may, in consultation with the High Court, appoint for such period not exceeding five years from the commencement of West Bengal Separation of Judicial and Executive Functions Act, 1970 in any district outside the presidency-town as many persons as it considers necessary, who are or have been members of the West Bengal Civil Service (Executive) or the West Bengal Junior Civil Service, to be Judicial Magistrates in such district, and the State Government in consultation with the High Court of the Sessions Judge, subject to the control of the State Government acting in consultation with the High Court, may define the local areas within which such persons may exercise all or any of the powers with which they may be invested under this Code.

(4) Except as otherwise provided under sub-sections (1), (2) and (3), the jurisdiction and powers of Executive Magistrates and Judicial Magistrates shall extend throughout the district.

(5) Appointment and control of Judicial Magistrates under sub-sections (2) and (3) shall, on the issue of a public notification published under Article 237 of the Constitution of India, be in accordance with the said notification."—W. B. Act 8 of 1970, Section 3 and Sch., item 7.

13. Power to put Magistrate in charge of sub-division.—(1) The *[State Government] may place any Magistrate of the first or second class in charge of a sub-division, and relieve him of the charge as occasion requires.

Delegation of powers to District Magistrate.

(2) Such Magistrates shall be called Sub-Divisional Magistrates.

(3) The *[State Government] may delegate its powers under this section to the District Magistrate.

[1882 — S. 13; 1872 — S. 40.]

[*] Substituted for 'Provincial Government' by A. L. O., 1950.

STATE AMENDMENTS

Assam

In its application to the State of Assam, for S. 13, substitute the following section, namely :—

"13. (1) The State Government may appoint as many persons as it thinks fit to be Sub-divisional Magistrates in any district in the State of Assam.

SECTION 13

1. Scope.— (1) There is apparent conflict between the provisions of Sec. 12 and this section, but there is none. This section applies to a case where the State Government divided a district into sub-divisions, while the power conferred under Section 12 is exercisable by the Government generally not only in the absence of sub-divisions but also when they exist. AIR 1958 Andhra Pra 351 (Pr. 8) = ILR (1958) Andhra Pra 198 = 1958 Cri L Jour 730 (DB).

(2) The language of Section 13 (1) is quite different from that used in Section 10 or Section 12. The effect of sub-section (1) of Section 12 read with Section 12 (2), is that unless the powers of a Magistrate have been restricted to a local area, his jurisdiction under Section 12 (2) extends over the whole district. Under Section 13 (1), there is no question of defining the local limits of the jurisdiction of a Sub-Divisional Magistrate or of his powers. A First or Second Class Magistrate becomes a

(2) The State Government, or subject to the control of the State Government, the District Magistrate may place one or more Sub-divisional Magistrates in charge of a sub-division." — Assam Act XIII of 1964, S. 2 (3-7-1964).

Gujarat

In its application to the State of Gujarat, S. 13 is the same as the one substituted in Maharashtra, subject, however, to the adaptation that in its application to the City of Ahmedabad for the words "Greater Bombay" the words "City of Ahmedabad" are to be substituted.—Cent. Act XI of 1960, S. 87 and Guj. Act XIX of 1961, S. 15 (4-11-1961).

Maharashtra

(1) In its application to the State of Maharashtra, for S. 13 substitute the following section, namely,—

> "13. (1) The State Government may appoint as many persons as it thinks fit to be Sub-Divisional Magistrates and Taluka Magistrates in any district outside Greater Bombay.
>
> (2) The State Government, or subject to the control of the State Government, the District Magistrate may place :—
>
> (a) one or more Sub-Divisional Magistrates in charge of a sub-division, and
>
> (b) one or more Taluka Magistrates in charge of a taluka or mahal." — Bom. Acts XXXIV of 1953, S. 3 and VIII of 1954, S. 2 and Sch. (10-2-1954).

(2) After the reorganisation of the State of Bombay in 1956, S. 13 as substituted by the above-mentioned Bombay Acts was extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Section 13 — Note 1 (contd.)
Sub-Divisional Magistrate when he is placed in charge of a Sub-Division and thereupon he automatically exercises jurisdiction throughout the sub-division and all the powers which are vested in him under Section 36 of the Code itself. AIR 1958 Madh Pra 184 (Pr. 4) = 1958 Cri L Jour 897 (DB) ** AIR 1962 All 165 (165, 166) = 1962 (1) Cri LJ 389 = 1961 All LJ 875 (DB).

(3) Appointment of a sub-Divisional Magistrate necessarily implies that his jurisdiction is confined to his sub-division and does not extend beyond it. AIR 1938 Nag 448 (448, 449) = ILR (1939) Nag 158 = 39 Cr LJ 810.

[See however AIR 1962 All 157 (158) = 1962 (1) Cri LJ 388 = 1961 All LJ 761 (DB). (AIR 1921 All 123, **Overruled.**)]

(4) When a First or Second Class Magistrate is placed in charge of a sub-division, he is statutorily designated sub-Divisional Magistrate. The fact that the Government chooses to call such a Magistrate a Judicial First Class Magistrate or by any other name does not make him any the less a sub-Divisional Magistrate for the Government cannot in law change the statutory label given to a First or Second Class Magistrate placed in charge of a sub-division. AIR 1958 Andh Pra 351 (Pr. 8) = ILR (1958) Andh Pra 198 = 1958 Cri L Jour 730 (DB).

(5) On the language of Section 13, the scheme of the Criminal Procedure Code and the system of the district administration, there can be only one Sub-Divisional Magistrate in a sub-division. AIR 1958 Madh Pra 184 (Pr. 4) = 1958 Cri L Jour 897 (DB).

(6) Additional Sub-Divisional Magistrate is subordinate to Sub-Divisional Magistrate — Transfer of case by Sub-Divisional Magistrate to Additional Sub-Divisional Magistrate is legal. 1965 All LJ 1126 = 1965 All WR (HC) 833.

2. Power of District Magistrate to appoint Sub-Divisional Magistrate.— (1) It is competent to a District Magistrate to whom the powers of the State Government have been delegated under sub-section (3) of this section, to appoint a Sub-Divisional Magistrate for a particular period without relieving the permanent incumbent. Mere authority from the District Magistrate to be in charge of the Sub-Divisional Officer's file at headquarters so long as he is on tour amounts to an appointment within the meaning of this section, though it is limited to a particular kind of work and to a particular occasion. AIR 1938 Cal 195 (197) = 39 Cri L Jour 417 (DB).

Mysore

In its application to the State of Mysore, for S. 13, substitute the following :—

13. Appointment of Sub-Divisional Magistrates and Taluk Magistrates and their Jurisdiction.—(1) The State Government may appoint as many persons as it thinks fit to be Sub-Divisional Magistrates and Taluk Magistrates in any district.

(2) The State Government, or, subject to the control of the State Government, the District Magistrate, may place,—

(i) one or more Sub-Divisional Magistrates in charge of a Sub-Division, and

(ii) one or more Taluk Magistrates in charge of a Taluk."—Mys. Act XIII of 1965, S. 7 (1-10-1965).

Punjab; Haryana: Chandigarh

In its application to the States of Punjab and Haryana and Union Territory of Chandigarh in S. 13 in sub-section (1) for the word "Magistrate," substitute the word "Executive Magistrate." — Punj. Act XXV of 1964, S. 2 and Sch., Pt. I, item 7 (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Rajasthan

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendment made in S. 13 is the same as that made in (1) of Maharashtra.—Cent. Act XXXVII of 1956, S. 119 (1-11-1956).

Union Territories (except Chandigarh)

In its application to the Union territories, in S. 13, for the word 'Magistrate,' substitute the words "Executive Magistrate."—Act 19 of 1969, S. 3 and Sch., item 6 (in Delhi, on 2-10-1969).

NOTE.—The Act has not been enforced in other territories so far and hence Acts or other provisions having application in the Union territories, if any, shall continue to be in force: e. g., in Goa, Daman and Diu, there is an order dealing with the subject, published in Goa Gaz., dated 28-11-1963, Sr. I, p. 411.

STATE AMENDMENT

Section 13-A.

West Bengal

In its application to the State of West Bengal, after Sec. 13, insert the following section, namely :—

"13A. **Appointment of Sub-divisional Judicial Magistrates.**—(1) The High Court may place any Judicial Magistrate of the first or second class, in charge of a sub-division, and relieve him of the charge as occasion requires.

(2) Such Judicial Magistrates shall be called Sub-divisional Judicial Magistrates.

(3) The High Court may delegate its powers under this section to the Sessions Judge of the district where the appointment is to be made, subject to such conditions, if any, as it thinks fit."—W. B. Act VIII of 1970, Section 3 and Sch., item 5.

14. Special Magistrates.—The *[State Government] may confer upon any person †[who holds or has held any judicial post under the Union or a State or possesses such other qualifications as may, in consultation with the High Court,

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SECTION 14 — SYNOPSIS

1. Scope.
2. "Local area."
3. "Case," meaning of.
4. Appointment to try — Power to commit.
5. Trial by police-officer.
6. Appeal.

1. Scope.— (1) The connotation of a Special Magistrate appointed under this section is that he should have (a) specified powers conferrable by the State be specified in this behalf by the State Government by notification in the official Gazette] all or any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally in any local area outside the presidency towns.‡

(2) Such Mgistrates shall be called Special Magistrates, and shall be appointed for such term as the *[State Government] may by general or special order direct.

(3) §[* * *] The State Government may delegate, with such limitations as it thinks fit, to any officer under its control the powers conferred by sub-section (1).

(4) No powers shall be conferred under this section on any police-officer below the grade of Assistant District Superintendent, and no powers shall be conferred on a police-officer except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

[1882 — S. 14; 1872 — S. 42; 1861 — Nil.]

[*] Substituted for 'Provincial Government' by A. L. O., 1950.

[†] Inserted by the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), S. 4 (1-1-1956); this amendment is not retrospective—ibid, S. 116 (a).

[‡] For definition of a Presidency Town, see General Clauses Act (X of 1897), S. 3 (44).

[§] The words "with the previous sanction of the Governor-General in Council" were repealed by the Devolution Act, 1920 (XXXVIII of 1920), S. 2 and Sch. I.

Section 14 — Note 1 (contd.)

Government on a Magistrate, (b) a local area within which to exercise those powers, and the jurisdiction to try particular cases or a particular class of cases generally. ('50) 54 Cal WN (2 DR) 157 (184) (DB). (Magistrate can be appointed to try particular case.) ** ('01) 1901 Pun Re No. 24 Cr. p. 59 (73) (FB).

(2) As regards the respective scopes of the powers under Section 197 (2) and Section 14 the one relates to the Court and the other to the person. Under sub-section (2) of Section 197, the sanctioning Government may specify a Court for the trial of the case but is not bound to do so. The word 'Court' in sub-section (2) of Section 197 cannot be treated as being the same as a 'person' in sub-section (1) of Section 14. **AIR 1954 SC 362 (363) = 1955 SCR 168 = 1954 Cri L Jour 1012.**

(3) Under this section the State Government cannot transfer a case from one Court to another. ('50) 54 Cal WN (2 DR) 157 (184) (DB).

(4) Where a judicial officer is invested with the powers to try summarily certain offences as a Special Magistrate for a period of six months, he cannot exercise these powers after the expiry of the period without any further orders. AIR 1951 All 488 (Pr. 4).

(5) Where the Special Magistrate under this section has to try the case entirely under the normal procedure, no question of discrimination arises. A law vesting discretion in an authority under such circumstances cannot be said to be discriminatory as such, and is, therefore, not hit by Article 14 of the Constitution. **AIR 1954 SC 362 (363) = 1955 SCR 168 = 1954 Cri L Jour 1012** ** AIR 1959 All 82 (Prs. 44, 35, 36) = 1959 Cri L Jour 113.

(6) Certain persons appointed for a period of two years as Judges of the village Panchayat Court and invested with the ordinary powers of a Magistrate of the Second Class and directed to sit as members of the Bench Magistrates' Court under Section 14 Criminal P. C. — The term of appointment of two of them having expired they were not reappointed — **Held** that by virtue of the amended and renumbered Rule 10 the old Magistrates continued in office until their successors had taken charge and they had jurisdiction to sit and hear cases. AIR 1963 Ker 200 = ILR (1962) 2 Ker 531 (DB).

(7) Special magistrates are appointed by State Government for a specified term and they are as good magistrates as anybody else, enjoying the first, second or third class powers as the case may be. (1968) All WR (HC) 281 = 1968 All Cri R 180.

(8) Creation of special Courts for particular class of cases — Special Court will always oust jurisdiction of ordinary Court unless the competent authority has kept the jurisdiction of ordi-

STATE AMENDMENTS

Gujarat

In its application to the State of Gujarat, S. 14 is the same as the one substituted in Maharashtra—see Cent. Act XI of 1960, S. 87.

Maharashtra

(1) In its application to the State of Maharashtra—

(a) for Section 14 substitute the following section, namely,—

"14. **Special Magistrates.**—(1) The State Government may, in consultation with the High Court, confer upon any person who holds or has held any judicial post under the Union or a State, or possesses such other qualifications as may, in consultation with the High Court, be specified in this behalf by the State Government by notification in the Official Gazette, all or any of the powers conferred or conferrable by or under this Code on a Judicial Magistrate in respect to particular cases or to a particular class or classes of cases, or in regard to cases generally in any local area. Such Magistrates shall be called Special Judicial Magistrates and shall be appointed for such term as the State Government may in consultation with the High Court by general or special order, direct.

(2) The State Government may also appoint executive Magistrates for particular areas or for the performance of particular functions and confer upon them such powers as it deems fit. Such Magistrates shall be called Special Executive Magistrates and shall be appointed for such term as the State Government may, by general or special order, direct:

Section 14 — Note 1 (contd.)

nary Court intact. AIR 1967 Madh Pra 94 (95) = 1967 Cri LJ 381 = 1966 MPLJ 1132.

(9) Appointment of Commandant 6th Battalion Assam Rifles, as First Class Magistrate under Section 12 (1) by virtue of office — Appointment cannot be deemed to have been under Section 14. AIR 1963 Tripura 31 (35) =1963 (2) Cri LJ 322.

(10) No qualification prescribed — Chief Executive Officer of municipality can be appointed as Magistrate — Qualification being that he is officer of municipality in manner provided in Section 187, M. B. Municipalities Act (1 of 1954). AIR 1960 Madh Pra 20 (21, 22) = 1960 Cri LJ 82 = 1960 MPLJ 372.

(11) A person appointed as a Special First Class Magistrate under Section 14 (1) for a certain period holds a civil post within the meaning of Article 311, Constitution of India. 1961 (1) Cri LJ 657 (658) = 1960 Ker LT 708.

(12) Presiding Officer of Industrial Tribunal appointed First Class Magistrate for trying offences under Labour enactments in entire State by Notification under Section 14, Criminal P. C. — Conferment of powers is legal. AIR 1964 Andh Pra 471 (474) = 1964 (2) Cri LJ 378 = (1963) 2 Andh WR 410.

(13) Notification under Section 14 appointing Special Magistrate with powers of Presidency Magistrate having jurisdiction over Greater Bombay and Ratnagiri District — Notification valid. **AIR 1963 SC 728 (731) = 1963 (1) Cri L 639.**

(14) A police officer to be empowered with Magisterial powers is not required to have requisite qualifications mentioned in sub-section (1). (1968) 2 Andh WR 514 (519).

(15) Sar Panch of Nyaya Panchayat is not a person performing duties of Honorary Magistrate under Cr. P. C. and is not disqualified from being elected as Adhyaksha of Zilla Parishad. AIR 1969 All 65 (67) (DB).

(16) Powers of a Presidency Magistrate conferred on a Special Judicial Magistrate as such — State Government can confer such powers. 66 Bom LR 17 (DB).

(17) By the amendment in Section 14, Cr. P. C. by Act 26 of 1955 the scope of 'any person' in sub-section (4) has been narrowed down as sub-section (4) is subject to the provisions of sub-section (1) and no police officer who does not possess the qualifications given in sub-section (1) can be appointed as a Magistrate. (1968) 2 Andh WR 514 (518).

(18) The post of Deputy Superintendent of Police and Assistant District Superintendent of Police are of equal grade and hence a power can validly be delegated to the Deputy Superintendent of Police under Section 14 (4), Cr. P. C. (1968) 2 Andh WR 514 (519).

2. "Local area."— (1) In this section the term "local area" is wide enough to permit the inclusion of a whole State (except the presidency-towns) within the jurisdiction of a Special Magistrate. ('01) 1901 Pun Re No. 24 Cr. p. 59 (62

Provided that no powers shall be conferred under this sub-section on any police officer below the grade of Assistant °[or Deputy] Superintendent and no power shall be conferred on a police officer except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

(3) The State Government may delegate, with such limitations as it may think fit, to any other officer under its control the powers conferred by sub-section (2)".—Bom. Acts XXIII of 1951 (1-7-1953); XXXIX of 1955; and XX of 1956 (18-4-1956).

[°] Inserted by Bom. Act XX of 1956, S. 2 (18-4-1956).

(b) excluding the transferred territories, and to the Saurashtra area of the State of Bombay, in sub-section (3) of Section 14 for the word, brackets and figure "sub-section (2)" the words, brackets and figures "sub-section (1) or sub-section (2)" shall be substituted.—Bom. Act XVII of 1958, S. 2 (13-2-1958).

(2) After the reorganisation of the State of Bombay in 1956, S. 14 as substituted and amended by the above-mentioned Bombay Acts was extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959.—Bom. Act XCVII of 1958.

Section 14 — Note 2 (contd.)
64, 68, 70, 78) (FB) ** AIR 1959 All 82 (Pr. 47) = 1959 Cri L Jour 113.

(2) The term includes and was intended to include a "district". ('98) 25 Cal 858 (862) (DB).

(3) "Local area" means any specified area which may be specified in the order. AIR 1959 All 82 (Pr. 47) = 1959 Cri L Jour 113.

(4) Where the Government of the Punjab appointed a Special Magistrate under this section with all the powers of a Magistrate of the first class in regard to cases generally throughout the Punjab, it was held that the appointment was not ultra vires, inasmuch as the words "local area" could be extended to cover the whole province. AIR 1918 Lah 196 (197) = 19 Cri L Jour 310 (DB).

(5) The words "local area" cannot be interpreted as including areas outside the State. ('01) 1901 Pun Re (Cr) No. 24, p. 59 (69) (FB). (Per Clark, C. J.)

(6) Though the expression "local area" is wide enough to include the entire State, the Code contemplates appointment of a Special Magistrate having jurisdiction within an entire district or a certain area within it; and a person on whom are conferred magisterial powers in the entire area of the State would be considered to be a District Special Magistrate for each district. AIR 1952 All 70 (Pr. 5) = 1952 Cri L Jour 199.

(7) It is incumbent upon a State Government conferring powers under this section to define the local area within which the Special Magistrate is to exercise the power. ('01) 1901 Pun Re No. 24, Cr. P. 59 (62, 69, 73) (FB) ** AIR 1959 All 82 (Pr. 49) = 1959 Cri L Jour 113.

(8) It is within the ambit of the power under Article 154 of the Constitution conferred upon the Governor, that he may direct at what place or places the officers of the Government shall perform their duties, including the place or places at which a Special Magistrate shall exercise powers conferred upon him by a notification under this section. AIR 1956 All 448 (Pr. 4) (DB).

3. "Case," meaning of.— (1) The word 'case' in this section does not necessarily mean a single charge; it comprises all charges or classes of charges. AIR 1927 Bom 501 (503, 508) = 28 Cri L Jour 1012 (DB) ** AIR 1931 Bom 517 (519) = 33 Cri L Jour 68 (DB).

(2) Power of a Presidency Magistrate conferred on a Special Magistrate in respect of a case — Power is in respect of the whole of the information referred to there. 66 Bom LR 17 (DB).

(3) Where the Government appointed a Special Magistrate under this section "to try the case relating to the prosecution of Mr. C." it was held that the Magistrate was empowered to try all the charges that may be laid against that person in that prosecution. AIR 1927 Bom 501 (503, 508) = 28 Cri L Jour 1012 (DB).

(4) The Court of Special Magistrate for the district of Indore appointed under the Law Department's Notification No. 190 (5) J 840-4-52 dated 14th October, 1954 which has been published in the Madhya Bharat Government Gazette dated 31st October, 1954, has no jurisdiction to try offences under the Indore Penal Code. AIR 1957 Madh B 115 (Pr. 6) = 1957 Cri L Jour 449.

(5) A judge who has been empowered by the Local Government to try cases

Mysore

In its application to the State of Mysore, for Section 14, substitute the following :—

"**14. Special Magistrates.**—(1) The State Government may, in consultation with the High Court confer upon any person who holds or has held any judicial post under the Union or a State, or possesses such other qualifications as may, in consultation with the High Court, be specified in this behalf by the State Government by notification in the Official Gazette, all or any of the powers conferred or conferrable by or under this Code, on a Judicial Magistrate in respect to particular cases or to a particular class or classes of cases, or in regard to cases generally in any local area. Such Magistrates shall be called Special Judicial Magistrates and shall be appointed for such term as the State Government may, in consultation with the High Court, by general or special order, direct.

(2) The State Government may also appoint Executive Magistrates for particular areas or for the performance of particular functions and confer upon them such powers as it deems fit. Such Magistrates shall be called Special Executive Magistrates and shall be appointed for such term as the State Government may, by general or special order, direct :

Provided that no powers shall be conferred under this sub-section on any police officer below the grade of Assistant or Deputy Superintendent and no power shall be conferred on a police officer, except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

(3) The State Government may delegate, with such limitations as it may think fit, to any other officer under its control the powers conferred by sub-section (2)."—Mys Act 13 of 1965, S. 7 (1-10-1965).

Punjab: Haryana: Chandigarh

In its application to the States of Punjab and Haryana and Union Territory of Chandigarh, for Section 14 substitute the following section, namely :—

"**14. Special Judicial Magistrates.**—The State Government may, in consultation with the High Court, confer upon any person who holds or has held any judicial post under the Union or a State or possesses such other qualifications as may, in consultation with the High Court, be specified in this behalf by the State

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Section 14 — Note 3 (contd.)

under Ss. 121-A, 122, 121 and 396, Penal Code, cannot try a case under Sec. 395, Penal Code under the special procedure. AIR 1933 Rang 116 (117) = 34 Cri L Jour 929 (DB).

4. Appointment to try — Power to commit.— (1) The power to 'try a case' would necessarily include the power to take cognizance. Therefore, where a Magistrate is appointed under this section to try a case, he can commit the accused for trial before a Court of Session. AIR 1931 Bom 517 (518, 520) = 33 Cri L Jour 68 (DB).

5. Trial by police-officer.— (1) Sub-section (4) expressly prohibits a police-officer from being vested with powers to try cases. Where a District Superintendent of Police in charge of the police of a district who was appointed a Special Magistrate tried a case, it was held that the trial was illegal. ('92-96) 1 Upp Bur Rul p. 10 (10).

(2) Section 16 (2) of the Central Reserve Police Force Act (1949) provides that notwithstanding anything contained in the Code of Criminal Procedure, 1898, the Central Government may invest the Commandant or an Assistant Commandant with the powers of a Magistrate of any class for the purpose of inquiry into or trying any offence committed by a member of the Force and punishable under that Act or any offence committed by a member of the Force against the person or property of another member. The proviso to the section then provides for inquiry and trial by ordinary criminal Courts in certain cases. See Central Reserve Police Force Act (66 of 1949), Section 16 (2).

6. Appeal.— (1) An appeal from an order of a Special Magistrate appointed under this section for a whole State, lies to the Sessions Judge within the local limits of whose jurisdiction the Special Magistrate holds his Court in disposing of the case. AIR 1918 Lah 196 (197) = 19 Cri L Jour 310 (DB).

Government by notification in the Official Gazette, all or any of the powers conferred or conferrable by or under this Code on a Judicial Magistrate in respect to particular cases or to a particular class of cases, or in regard to cases generally in any local area. Such Magistrates shall be called Special Judicial Magistrates and shall be appointed for such term as the State Government may, in consultation with the High Court, by general or special order direct."—Punjab Act XXV of 1964, S. 2 and Sch., Pt. I, item 8 (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Rajasthan

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendment made in S. 14 is the same as that made in (1) (a) of Maharashtra.—Cent. Act XXXVII of 1956, S. 119 (1-11-1956).

Union Territories (except Chandigarh)

In its application to the Union territories, for Section 14 substitute the following, namely :—

"14. **Special Executive Magistrates.**—The State Government may appoint Executive Magistrates for particular areas or for the performance of particular functions and confer on them such powers as it deems fit. Such Magistrates shall be called Special Executive Magistrates and shall be appointed for such term as the State Government may, by general or special order, direct." — Act 19 of 1969, S. 3 and Sch., item 7 (in Delhi on 2-10-1969).

NOTE.—In other Union territories the Act has not been enforced so far. In Goa, Daman and Diu G. D. and D. (Separation of the Judicial and Executive Functions) Order, 1963, published in Goa Gaz., 28-11-1963, Sr. I, p. 411 shall continue to have force. Other Acts, if any, having force in Union territories or their part shall also continue to be so thereat.

West Bengal

In its application to the State of West Bengal, for S. 14, substitute the following namely :—

"14. Special Executive and Judicial Magistrates:

(1) The State Government may confer upon any person who possesses such qualifications as may be specified in this behalf by the State Government, by notification in the Official Gazette, all or any of the powers conferred or conferrable by or under this Code, on an Executive Magistrate of the first, second or third class for a particular purpose or for particular purposes in any local area, outside the Presidency-town.

(2) Such Magistrates shall be called Special Executive Magistrates and shall be appointed for such term as the State Government may, by general or special order, direct.

(3) The State Government may delegate, with such limitation as it thinks fit, to any officer under its control the powers conferred by sub-section (1).

(4) The State Government may, in consultation with the High Court, confer upon any person who holds or has held any judicial post under the Union or a State, or possesses such other qualifications, as may, in consultation with the High Court, be specified in this behalf by the State Government by notification in the Official Gazette, all or any of the powers conferred or conferrable by or under this Code, on a Judicial Magistrate of the first, second or third class in regard to particular cases or to a particular class or particular classes of cases, or in regard to cases generally, in any local area, outside the Presidency-town.

(5) Such Magistrates shall be called Special Judicial Magistrates and shall be appointed for such term as the State Government may, in consultation with the High Court, by general or special order, direct.

(6) No powers shall be conferred under this section on any police-officer below the grade of Assistant District Superintendent, and no powers shall be conferred on a police-officer except so far as may be necessary for preserving

the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before the appropriate Magistrate and for the performance by the officer of any other duties imposed upon him by any law for the time being in force."—W. B. Act VIII of 1970, S. 3 and Sch., item 10.

15. Benches of Magistrates.—(1) The *[State Government] may direct any two or more Magistrates in any place outside the Presidency-towns† to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrable by or under this Code on a Magistate of the first, second or third class, and direct it to exercise such powers in such cases, or, such classes of cases only, and within such local limits, as the *[State Government] thinks fit.

(2) **Powers exercisable by Bench in absence of special direction.**—Except as otherwise provided by any order under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members, who is present taking part in the proceedings as a member of the Bench, belongs, and as far as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

[1882 — S. 15; 1872 — Ss. 50 and 51; 1861 — Nil.]

[*] Substituted for 'Provincial Government' by A. L. O., 1950.

[†] For definition of Presidency-town, see General Clauses Act (X of 1897), S. 3 (44).

STATE AMENDMENTS

Gujarat

In its application to the State of Gujarat, the amendment made in S. 15 is the same as that made in Maharashtra, subject however to the adaptation that in its appli-

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SECTION 15 — SYNOPSIS

1. **Scope and object.**
2. **Powers of Benches.**
3. **Local limits.**
4. **Constitution of Bench — Effect on decision.** See Section 350-A.
5. **Classes of cases to be tried.** See Section 16.
6. **Difference of opinion.** See Section 16.

1. Scope and object.— (1) When a number of Magistrates in a place are directed under this section to "sit together" as a Bench, it does not mean that all of them should sit together in session and that only when they do so they can exercise the powers conferred on the Bench under this section. The powers can be exercised by any Bench that is constituted under the next section out of the Magistrates directed to "sit together" as a Bench under this section. AIR 1934 Bom 176 (177, 178) = 36 Cri L Jour 592 (DB).

[See also 1958 Cri L Jour 572 (Pr. 8) (Cal). (Bench means two or more members constituting the Bench.)]

(2) The object of constituting a Bench of Magistrates is that the Magistrates composing the Bench should individually and collectively give their attention and apply their minds to the hearing of the evidence and the determination of the points at issue and arrive at an independent judgment in regard to the merits of the case. AIR 1943 Pat 381 (382) = 45 Cri L Jour 88 ** AIR 1922 Oudh 21 (22) = 23 Cri L Jour 696.

[See also ('58) 1958 Cri L Jour 572 (Pr. 4) (Cal). (Bench of two under Bengal Village Self-Government Act (5 of 1919) — Conviction based on inspection and report by only one of them is not legal.)]

(3) Where in a trial before a Bench of two Magistrates, one of them recorded the evidence, while the other was attending to some other case and a joint judgment was delivered with the signatures of both, it was held that such a procedure defeated the very object with which a Bench is constituted, and the judgment was set aside. AIR 1922 Oudh 21 (22) = 23 Cri L Jour 696.

(4) The mere fact that one of the two Magistrates constituting a Bench did not sign the statement of witnesses and the chargesheet does not show that he was absent or was not paying attention to the proceedings and cannot serve as a ground for setting aside the conviction. AIR 1942 Oudh 423 (423) = 43 Cri L Jour 646.

(5) Bench of Magistrates is under the Code of Criminal Procedure, subordinate to the District Magistrate. AIR 1961 Ker 194 (196) = 1961 (2) Cri LJ 89 = 1961 Ker LT 130.

2. Powers of Benches.— (1) A Bench composed of Magistrates having third class magisterial powers may be invested with the ordinary or additional powers of second class Magistrate. AIR 1928 Sind 1 (5) = 28 Cri L Jour 913 cation to the City of Ahmedabad for the words "Greater Bombay" the words "City of Ahmedabad" be substituted.—Cent. Act XI of 1960, S. 87 and Guj. Act XIX of 1961 S. 15 (4-11-1961)

Maharashtra

(1) In its application to the State of Maharashtra in sub-section (1), for the words "the State Government may direct any two or more Magistrates in any place outside the Presidency-towns" substitute the words "the State Government may, in consultation with the High Court, direct any two or more Judicial Magistrates in any place outside Greater Bombay."—Bombay Act XXIII of 1951, S. 2 and Sch. (1-7-1953).

(2) After the reorganisation of the State of Bombay in 1956, the amendment made in Section 15 by the above-mentioned Bombay Act is extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha of the new State of Bombay as from 1-9-1959 by Bombay Act XCVII of 1958.

Mysore

In sub-section (1), for the word "Magistrates". substitute the word "Judicial Magistrates". — Mys. Act XIII of 1965, S. 8 (1-10-1965).

Punjab: Haryana: Chandigarh

In its application to the States of Punjab and Haryana and the Union Territory of Chandigarh, for sub-section (1) of S. 15 following sub-section shall be substituted, namely—

> "(1) The High Court may direct any two or more Judicial Magistrates in any place in the State of Punjab to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrable by or under this Code on a Judicial Magistrate of the first or second class, and direct it to

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Section 15 — Note 2 (contd.)

(FB). (Aston and DeSouza, A. J. Cs., **Dissenting.)**

(2) It is not competent to the State Government to invest a Bench of Magistrates with the incidental or ordinary powers of a second class Magistrate without having powers to try second class cases or to invest a Bench with the additional powers of a second class Magistrate without having other powers conferred by the Code on a second class Magistrate. AIR 1928 Sind 1 (5, 8) = 28 Cri L Jour 913 (FB).

(3) Where a notification of a Provincial Government issued under this section purported to invest a Bench of Magistrates, individuals of which had third class powers, with the ordinary powers of a second class Magistrate, but did not expressly invest the Bench with jurisdiction to try offences cognizable by a Magistrate of the second class, it was held that the Court could supply the omission in the notification and that the Bench must be taken to have been invested with powers to try offences triable by second class magistrates. AIR 1928 Sind 1 (7, 9) = 28 Cri L Jour 913 (FB). (Aston and DeSouza, A. J. Cs., **Dissenting.)**

(4) A Magistrate who is a member of a Bench cannot act independently unless he is so authorized. For instance, he cannot, by himself, record a statement under Section 164. ('02) 29 Cal 483 (486) (DB).

[See also ('58) 1958 Cri L Jour 572 (573) (Cal). (Bench of two, under Bengal Village Self-Government Act (5 of 1919) — Conviction of accused on local inspection and report of only one member of Bench — Conviction is illegal.)]

(5) Where a Bench of two Magistrates invested with first class powers but neither of whom individually had such powers, began the hearing of a case triable by a Magistrate of the first class and at an adjourned hearing only one of them was present, it was held that he was not competent to try the case alone. ('78) 2 Cal L Rep 348 (349) (DB).

(6) Where the accused was charged under Section 430 Indian Penal Code but the Bench Magistrates had no jurisdiction to try an offence under that section, they can try him for a lesser offence under Section 426 Indian Penal Code for which they had jurisdiction. AIR 1931 Mad 494 (495) = 32 Cri L Jour 971.

(7) It is only in cases where the Government constitute a Bench in a particular locality, without naming it as a first, second or third class Bench that the provision contained in Clause (2) of Section 15 would apply. It follows that if the Government constitute a particular Bench as a second class Bench, it will always be a second class Bench, even though one of the Magistrates who sits on the Bench is a Special Magistrate invested with First Class powers. AIR 1963 Ker 200 (201, 202) = 1963 (2) Cri LJ 21 = 1962 Ker LT 975 (DB).

exercise such powers in such cases, or, such classes of cases only, and within such local limits, as the High Court thinks fit."—Punj. Act XXV of 1964, S. 2 and Sch., Pt. I, Item 9 (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Rajasthan

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendment made in Section 15 is the same as that made in (1) of Maharashtra.—Cent. Act XXXVII of 1956, S. 119 (1-11-1956).

Union Territories (except Chandigarh)

In its application to the Union territories, in S. 15, for sub-section (1), substitute the following, namely—

"(1) **Benches of Judicial Magistrates.**—The State Government in consultation with the High Court, may direct any two or more Judicial Magistrates in any place in a Union territory to sit together as a Bench and may by order invest such Bench with any of the powers conferred or conferrable by or under this Code on a Judicial Magistrate of the first or second class, and direct it to exercise such powers in such cases, or, such classes of cases only and within such local limits as the State Government, in consultation with the High Court, thinks fit."—Act 19 of 1969, S. 3 and Sch., Item 8 (in Delhi on 2-10-1969).

West Bengal

In its application to the State of West Bengal, in Section 15—

(a) in the marginal note, for the words "Benches of Magistrates", substitute "Benches of Judicial Magistrates";

(b) (i) in sub-section (1), after the words "State Government" in the two places they occur, insert the words "in consultation with the High Court".

(ii) for the words "or more Magistrates" substitute "or more Judicial Magistrates";

(iii) for the words "a Magistrate" substitute "a Judicial Magistrate";

(c) for the words "a Magistrate" in the two places they occur, substitute "a Judicial Magistrate."—W. B. Act 8 of 1970, S. 3 and Sch., item 11.

16. Power to frame rules for guidance of Benches.—The *[State Government] may, or, subject to the control of the *[State Government], the District Magistrate may, from time to time, make rules consistent with this Code for the guidance of Magistrates' Benches in any district respecting the following subjects :—

(a) the classes of cases to be tried;

(b) the times and places of sitting;

Section 15 (contd.)

3. Local Limits.— (1) The limits of the jurisdiction of the Benches are to be determined by the order of the State Government made under this section; and the District Magistrate cannot under Section 16 make rules fixing the territorial jurisdiction of Benches of Magistrates. ('74) 21 Suth WR 45 (46) (DB).

4. Constitution of Bench — Effect on decision.— See Section 350-A.

5. Classes of cases to be tried.— See Section 16.

6. Difference of opinion.— See Section 16.

Section 16 — Note 1

(1) It is not desirable to place before a Bench of Magistrates cases involving difficult questions of fact or law, though the Provincial Government or the District Magistrate has the power to do so. ('76) 2 Cal 23 (32) (DB) ** AIR 1925 Mad 64 (67) = 25 Cri L Jour 1070.

(2) An offence under Section 3, sub-section (12) of the Madras Towns Nuisances Act (3 of 1889) falls within R. 1, Clause (2) of the rules framed by the Madras Government under this section, and is therefore triable by a Bench of Magistrates. AIR 1923 Mad 191 (192) = 24 Cri L Jour 110.

(3) The Government of Bengal framed a rule under this section in 1906 providing that when the number of members of a Bench is even and they are equally divided in opinion, the case shall be referred back to the District Magistrate or the Sub-Divisional Magistrate. AIR 1918 Cal 304 (305) = 19 Cri L Jour 312 (DB).

(4) According to the rules made by the Government of the United Provinces, where an even number of Magistrates constituting a Bench is

(c) the constitution of the Bench for conducting trials;

(d) the mode of settling differences of opinion which may arise between the Magistrates in session.

[1882 — S. 16; 1872 — Ss. 52, 53; 1861 — Nil.]

[*] Substituted for 'Provincial Government' by A. L. O., 1950.

STATE AMENDMENTS

Gujarat

In its application to the State of Gujarat, the amendment made in S. 16 is the same as that made in Maharashtra.—See Cent. Act XI of 1960, S. 87.

Maharashtra

(1) In its application to the State of Maharashtra in S. 16 for the words "the State Government may, or, subject to the control of the State Government, the District Magistrate" substitute the words "the High Court, subject to the sanction of the State Government."—Bom. Act XXIII of 1951, S. 2 and Schedule (1-7-1953).

(2) After the reorganization of the State of Bombay in 1956, the amendment made in S. 16 by the above-mentioned Bombay Act is extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Mysore

In Section 16 of the principal Act, for the words "the State Government may, or, subject to the control of the State Government, the District Magistrate", the words "the High Court, subject to the approval of the State Government" shall be substituted —Mys Act XIII of 1965, S. 9 (1-10-1965).

Punjab: Haryana: Chandigarh

In its application to the States of Punjab and Haryana and Union Territory of Chandigarh, in Section 16,—

(i) for the words "the State may, or, subject to the control of the State Government, the District Magistrate" substitute the words "the High Court, subject to the approval of the State Government";

Section 16 — Note 1 (contd.)

equally divided in opinion, the accused is entitled to an acquittal. AIR 1917 All 317 (318) = 18 Cri L Jour 506 (507).

[See also AIR 1915 All 96 (97) = 16 Cri L Jour 113. (Principle of this rule should be applied even to a case to which this rule has not been expressly made applicable.)]

(5) In the absence of a rule, a Bench of Magistrates equally divided in its opinion about the guilt of the accused cannot acquit the accused just because the Government have recommended the adoption of a rule containing such a clause. The correct order for the Court to pass in such a contingency is to adjourn the case and have it retried before a reconstituted Court. 1950 All L Jour 741 (743).

(6) The giving of the vote by the President of the Bench on the question of the sentence of the accused found guilty by a majority, though he was one of the minority who thought the accused was not guilty, is not illegal. AIR 1927 Mad 500 (500, 501) = 28 Cri L Jour 310.

(7) Executive power of Governor under Article 154 of Constitution — It includes superintendence, direction and control of civil Government — It is within the ambit of this power that Governor may direct at what place or places special Magistrate shall exercise powers conferred upon him by notification under Section 14, Criminal P. C. — Provisions of Section 16 are not inconsistent with this view as that section is concerned only with the power to frame rules. AIR 1956 All 448 (448) (DB).

(8) Cases of defamation are technical and ordinarily should not be tried by a Bench of Honorary Magistrates. 1937 AMLJ 121 (122).

(9) Travancore Regulation (5 of 1967) — Rules under — Rule 10 as renumbered in 1938 — Judges of Village Panchayat Court appointed for period of two years — These Judges invested with powers of Second Class Magistrates and directed to sit on Bench Court — Term of some of them expired — They continue in office until their successors have taken charge — Such members have jurisdiction to sit in trial and hear and decide cases. AIR 1963 Ker 200 (202) = 1963 (2) Cri LJ 21 = 1962 Ker LT 975 (DB).

(10) See also under Sections 350-A and 367.

(ii) for the words "Magistrates' Benches" substitute the words "Judicial Magistrates' Benches".—Punj. Act XXV of 1964, S. 2 and Sch., Pt. I, item (10) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Rajastha

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendment made in S. 16 is the same as that made in (1) of Maharashtra. — Cent. Act XXXVII of 1956, S. 119 (1-11-1956).

Union Territories (except Chandigarh)

In its application to the Union territories, in Section 16—

(i) for the words "State Government....District Magistrate", substitute the words "the High Court, subject to the approval of the State Government"; and

(ii) for the words "Magistrates' Benches", substitute "Judicial Magistrates' Benches."—Act 19 of 1969, S. 3 and Sch., item 9 (in Delhi on 2-10-1969).

West Bengal

In its application to the State of West Bengal, in S. 16,—

(i) for the words "State Government....the District Magistrate", substitute the words "High Court, with the previous approval of the State Government";

(ii) for the words "Magistrates' Benches" substitute the words "Benches of Judicial Magistrates"; and

(iii) for the words "Magistrates in Sessions", substitute "Judicial Magistrates in Session."—W. B. Act VIII of 1970, S. 3 and Sch., item 12.

17. Subordination of Magistrates and Benches to District Magistrate.—(1) All Magistrates appointed under Sections 12, 13 and 14, and all Benches constituted under Section 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business among such Magistrates and Benches; and

(2) **To Sub-divisional Magistrate.**—Every Magistrate (other than a Sub-divisional Magistrate) and every Bench exercising powers in a sub-division shall also

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Section 17 — Note 1

(1) Subordination of one Court to another is a matter of statutory provision and not dependant upon any general rule such as that a Court is subordinate to that Court to which appeals would ordinarily lie from its judgments and orders or which exercises revisional or supervisory jurisdiction. AIR 1957 All 495 (502).

(2) The subordination of a Magistrate to the Magistrate of the District is not only in respect of his executive, but is also in respect of his judicial functions. ('78) 2 All 205 (207, 212) (SB) ** ('85) 9 Bom 100 (102, 103) (DB).

(3) It is competent to the District Magistrate to supervise the Courts subordinate to him and give general instructions as to procedure, punishments and other matters of direction. ('05) 2 Cri L Jour 43 (43) = 1905 Pun Re (Cr) No. 6 (DB).

(4) The District Magistrate should not issue orders which may have the effect of fettering or controlling the judicial discretion of subordinate Magistrates. ('98) 1898 All WN 154 (155) (DB).

(5) A First Class Magistrate is subordinate to the District Magistrate and not to the Additional District Magistrate. AIR 1953 Mad 956 (958) = 1953 Cri L Jour 1780.

(6) Where the Magistrate before whom an application was made for filing a complaint against the opposite party under Section 188, I. P. C., refuses to file such a complaint, it is only the District Magistrate to whom the Magistrate is subordinate who is competent to file the complaint under that section. AIR 1959 Cal 450 (451) = 1959 Cri L Jour 833.

(7) A Sub-divisional Magistrate is subordinate to the District Magistrate. AIR 1941 Oudh 388 (391) = 42 Cri L Jour 478 ** AIR 1927 Pat 111 (112) = 28 Cri L Jour 353 (DB) ** ('42) 7 Mad HCR (App) 5 (5).

(8) A Special Magistrate appointed under Section 14 is subordinate to the District Magistrate who can give direction about the distribution of work among him and other Magistrates and is also subordinate to the Sub-divisional Magistrate within whose sub division he exercises jurisdiction. If the local area

be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

(3) **Subordination of Assistant Sessions Judges to Sessions Judge.**—All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

(4) The Sessions Judge may also, when he himself is unavoidably absent or incapable of acting, make provision for the disposal of any urgent application by an Additional or Assistant Sessions Judge or, if there be no Additional or Assistant Judge, by the District Magistrate, and such Judge or Magistrate shall have jurisdiction to deal with any such application.

(5) Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under Sections 12, 13, 14 and 15 shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

[1882 — S. 17; 1872 — S. 37, Para. 2 and S. 41; 1861 — Nil.]

OBJECTS AND REASONS

Sub-section (4).—"We have recast sub-section (4) so as to provide for urgent applications being disposed of by the District Magistrate in the frequent case where there is no Additional or Assistant Judge, for the division in question."—S. C. R., 1898.

STATE AMENDMENTS

Gujarat

In its application to the State of Gujarat the amendments made in S. 17 are the same as those made in Maharashtra—see Cent. Act XI of 1960, S. 87.

Section 17 — Note 1 (contd.)

over which a Special Magistrate exercises jurisdiction extends over several districts he will be subordinate to the District Magistrate of the various districts with respect to the case arising in their respective districts and also subordinate to the various Sub-divisional Magistrates with respect to cases arising within their respective sub-divisions and pending before him. This subordination is not dependent on his place of sitting whether that be a fixed place or not. AIR 1952 All 70 (Pr. 7) = 1952 Cri L Jour 199.

[But see AIR 1952 Raj 96 (Pr. 4) = ILR (1952) 2 Raj 41 = 1952 Cri L Jour 1048.]

(9) Bench of Magistrates are under the Code of Criminal Procedure, subordinate to the District Magistrate. AIR 1961 Ker 194 (196) = 1962 (2) Cri LJ 89 = 1961 Ker LT 130.

(10) A Special Magistrate will be subordinate to a particular Sessions Judge with respect to cases arising from that sessions division and not with respect to cases of another sessions division if he, as a Special Magistrate, has jurisdiction over several sessions divisions. AIR 1952 All 70 (Pr. 7) = 1952 Cri L Jour 199.

(11) **Appointment of a Special Judicial Magistrate for Bombay and Nagpur Districts — There is no anomaly in such an appointment** — The appointee would be subordinate to the Nagpur Sessions Judge if he were exercising jurisdiction in respect of cases arising in the Nagpur Sessions Division and when acting in respect of cases arising in Bombay Sessions Division he would be subordinate to the Bombay Sessions Judge. (1964) 66 Bom LR 17 (DB).

(12) A Magistrate attached to a subdivision is subordinate to the Sub-divisional Magistrate of that sub-division. AIR 1918 Pat 172 (173) = 19 Cri L Jour 126.

(13) A Magistrate subordinate to a Sub-divisional Magistrate is also subordinate to the District Magistrate whose jurisdiction is not ousted or excluded by that of the former. ('91) 14 Mad 399 (400) (DB) ** ('82) 4 All 366 (370, 371) (DB).

(14) Additional District Magistrate appointed under Section 10 (2) and invested with powers of District Magistrate — Can exercise power under Sec. 435. (1963) 1 Cri LJ 112 (114) (Assam) (DB).

(15) Additional sub-divisional Magistrate is subordinate to sub-divisional Magistrate. 1965 All WR (HC) 833 = 1965 All LJ 1126.

(16) The words "other than a Sub-divisional Magistrate" in sub-section (2) of Section 17 cannot be read as implying that there can be more than one Sub-divisional Magistrate in a sub-division. AIR 1958 Madh Pra 184 (187) = 1958 Cri L Jour 897.

(17) Sub-section (5) provides that neither the District Magistrate nor the other Magistrates shall be subordinate to the Sessions Judge except so far as is expressly provided for in the Code. AIR 1941 Rang 324 (326) = 43 Cri L

Maharashtra

(1) In its application to the State of Maharashtra, in S. 17—

(i) In sub-section (1)-

(a) for the words "All Magistrates" substitute the words "All Judicial Magistrates";

(b) delete the figures "13";

(c) for the words "District Magistrates" substitute the words "Sessions Judge";

(d) delete the word "and" at the end.

(ii) Delete sub-section (2) and sub-section (5).

(iii) In the first marginal note to the section for the word "Magistrates" the words "Judicial Magistrates" and for the words "District Magistrate" the words "Sessions Judge" be substituted.

(iv) In sub-section (4), for the words "by the District Magistrate and such Judge or Magistrate" subtitute the words and brackets "by a Civil Judge (Senior Division) or if there be no Civil Judge (Senior Division), by the Sessions Judge or Additional or Assistant Sessions Judge of an adjoining Sessions Division, and such Judge" — Bombay Acts XXIII of 1951, S. 2 and Sch., (1-7-1953) and LXXI of 1954, S. 2 (29-11-1954).

(2) After the reorganization of the State of Bombay in 1956 the amendments made in S. 17 by the above-mentioned Bom. Acts are extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Mysore

In Section 17 of the principal Act,—

(i) in sub-section (1),—

(a) for the words "All Magistrates" the words "All Judicial Magistrates" shall be substituted;

(b) the figures "13" shall be omitted;

Section 17 — Note 1 (contd.)

Jour 373 (DB) ** AIR 1932 All 124 (124) = 33 Cri L Jour 474 (DB).

(18) There is no provision in the Code as to the subordination of the Additional Sessions Judge. AIR 1931 All 435 (436, 437) = 33 Cri L Jour 158.

(19) An Assistant Sessions Judge who exercises jurisdiction in the Court of Session has no separate or independent entity in the sense that the Court over which he presides while exercising such jurisdiction does not constitute an independent Court of Session. AIR 1957 Pat 375 (377) = 36 Pat 995 = 1957 Cri L Jour 879 (FB).

(20) Appellate order passed by Assistant Sessions Judge — Assistant Sessions Judge is inferior to Court of Session. AIR 1962 All 450 (455) = 1962 (2) Cri LJ 449 = 1962 All LJ 215.

(21) It is only the jurisdiction of the Sessions Judge to receive and admit appeal and, if admitted by him, it is within his discretion to transfer it to the Assistant Sessions Judge or Additional Sessions Judge for hearing. AIR 1957 Pat 375 (378) = 36 Pat 995 = 1957 Cri L Jour 879 (FB).

(22) The section does not empower the District Magistrate to stay proceedings pending before subordinate Magistrates. AIR 1931 Pat 411 (414) = 33 Cri L Jour 147 ** AIR 1923 Mad 688 (688) = 25 Cri L Jour 277.

[But see AIR 1923 Mad 595 (595) = 25 Cri L Jour 280.]

(23) Where a Magistrate is transferred from a district, the Magistrate of that district has no longer any authority to make any arrangement in regard to the work of the Magistrate so transferred. ('96) 19 All 114 (119) = 1896 All WN 195 (DB).

(24) The District Magistrate cannot delegate his powers of distributing business; the power is confined to him. AIR 1914 All 202 (202) = 15 Cri L Jour 584.

(25) An Additional Sessions Judge cannot grant or cancel bail unless power to do so is conferred on him under sub-section (4). AIR 1954 Raj 22 (23) = 1954 Cri L Jour 119 ** AIR 1930 Rang 335 (336) = 32 Cri L Jour 148.

(26) Sessions Judge assigning pending bail application for disposal to the Additional Sessions Judge — Order is not

(c) for the words "District Magistrate", the words "Sessions Judge" shall be substituted;

(d) word "and" at the end shall be omitted;

(ii) sub-section (2) and sub-section (5) shall be omitted;

(iii) in the marginal note to the said section, for the word "Magistrates", the words "Judicial Magistrates" and for the words "District Magistrate", the words "Sessions Judge" shall be substituted;

(iv) in sub-section (4) for the words "by the District Magistrate, and such Judge or Magistrate" the words "by the Sessions Judge or Additional or Assistant Sessions Judge of an adjoining sessions Division, and such Judge" shall be substituted.—Mys. Act XIII of 1965, S. 10 (1-10-1965).

Orissa

In its application to the State of Orissa in sub-section (4) of Section 17, after the words "by the District Magistrate" insert the words "or in his absence at headquarters by the Additional District Magistrate or if there be more than one such Additional District Magistrate by any one of them."—Orissa Act XXI of 1959, S. 2 (11-11-1959).

Punjab: Haryana: Chandigarh

In its application to the States of Punjab, Haryana and Union Territory of Chandigarh, for Section 17 the following sections shall be substituted, namely :—

"17. **Subordination of Assistant Sessions Judges, Judicial Magistrates and Benches to Sessions Judge and Chief Judicial Magistrate.**—(1) All Judicial Magistrates appointed under sub-sections (2) and (3) of Section 12 and S. 14 and all Benches constituted under S. 15, shall, subject to the control of the Sessions Judge be subordinate to the Chief Judicial Magistrate, and he may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business among such Magistrates and Benches.

(2) All Chief Judicial Magistrates shall be subordinate to the Sessions Judge.

(3) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessoins Judges.

(4) The Sessions Judge may also, when he himself is unavoidably absent or incapable of acting, make provision for the disposal of any urgent application by an Additional or Assistant Sessions Judge or if there be no Additional or Assistant Sessions Judge, by the Chief Judicial Magistrate, and such Judge or Magistrate shall have jurisdiction to deal with any such application.

17-A. **Subordination of Executive Magistrates.**—(1) All Executive Magistrates appointed under sub-section (1) Section 12 and Section 13 shall be subordinate to the

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Section 17 — Note 1 (contd.)

incompetent. AIR 1964 Punj 543 (543, 544) = 1964 (2) Cri LJ 728 = ILR (1963) 2 Punj 713.

(27) A general order by the Sessions Judge passed under sub-section (4) with a view to proper and efficient disposal of criminal cases cannot be said to be an order passed under this section. AIR 1954 Raj 22 (23) = 1954 Cri L Jour 119.

(28) Conferment of power is limited for disposal of urgent application made to Court — Hearing of criminal appeal pending on file of Sessions Judge is not matter coming under category of urgent applications. 1968 Cri LJ 419 (420) = (1967) 1 Mys LJ 238.

(29) The words "inferior Criminal Court" in Section 435 (1), Cr. P. C. (as amended by Bombay Act 23 of 1951) refer only to judicial magistrates and not to executive magistrates like District Magistrate or Sub-Divisional Magistrate. AIR 1967 Guj 225 (227, 228) = 1967 Cri LJ 1325 = (1966) 7 Guj LR 1085.

(30) A Sessions Judge has no power to dispose of criminal cases pending on file of the adjoining Sessions Division. 1968 Cri LJ 419 (421) = (1967) 1 Mys LJ 238.

(31) Retirement of Sessions Judge cannot amount to unavoidable absence — Retiring Sessions Judge cannot confer power under Section 17 (4). 1968 Cri LJ 419 (421) = (1967) 1 Mys LJ 238.

(32) Magistrate's order under Sec. 133 read with Section 140 — Revision — Enquiry under Sections 133 to 140 is judicial even though it is before executive Magistrate and is subject to revisional powers of High Court. 70 Bom LR 588 = 1968 Mah LJ 909 (DB).

District Magistrate and every Executive Magistrate (other than a Sub-divisional Magistrate) exercising powers in a sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

(2) The District Magistrate may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business among the Executive Magistrates subordinate to him and as to the allocation of business to an Additional District Magistrate.

17-B. Courts inferior to the High Court and Court of Session.—Courts of Session and Courts of Judicial and Executive Magistrates shall be Criminal Courts inferior to the High Court and Courts of Judicial and Executive Magistrates shall be Criminal Courts inferior to the Court of Session."—Punj. Act XXV of 1964, S. 2 and Sch., Pt. I, item (ii) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Rajasthan

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendments made in Sec. 17 are the same as those made in (1) of Maharashtra.—Cent. Act XXXVII of 1956, S. 119 (1-11-1956).

Union Territories (except Chandigarh)

In its application to the Union territories, for S. 17, substitute the following sections :—

"**17. Subordination of Judicial Magistrates and Benches to Chief Judicial Magistrates and of Chief Judicial Magistrates and Assistant Sessions Judges to Sessions Judge.**—(1) All Judicial Magistrates appointed under sub-sections (2) and (3) of Section 12 and all Benches constituted under Section 15, shall, subject to the control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate, and the Chief Judicial Magistrate may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business among such Magistrates and Benches.

(2) All Chief Judicial Magistrates shall be subordinate to the Sessions Judge.

(3) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and the Sessions Judge may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

(4) The Sessions Judge may also, when he himself is unavoidably absent or incapable of acting, make provision for the disposal of any urgent application by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge by the Chief Judicial Magistrate, and such Judge or Magistrate shall have urisdiction to deal with any such application.

17-A. Subordination of Executive Magistrates.—(1) All Executive Magistrates appointed under sub-section (1) of Section 12, Section 13 and Section 14 shall be subordinate to the District Magistrate and every Executive Magistrate (other than a Subdivisional Magistrate) exercising powers in a sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

(2) The District Magistrate may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business among Executive Magistrates subordinate to him and as to allocation of business to an Additional District Magistrate.

17-B. Courts inferior to High Court and Court of Session.—Courts of Session and Courts of Judicial and Executive Magistrates shall be Criminal Courts inferior to the High Court and Courts of Judicial and Executive Magistrates shall be Criminal Courts inferior to the Court of Session."—Act 19 of 1969, S. 3 and Sch., item 10 (in Delhi on 2-10-1969)

West Bengal

In its application to the State of West Bengal, for S. 17, substitute the following sections, namely :—

"17. **Subordination of Executive Magistrates.**—(1) All Executive Magistrates appointed under Sections 12, 13 and 14 shall be subordinate to the District Magistrate, and he may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business amongst such Magistrates.

(2) Every Executive Magistrate in a sub-division shall be subordinate to the Sub-Divisional Executive Magistrate, subject, however, to the general control of the District Magistrate.

17-A. **Subordination of Judicial Magistrates and Benches.**—(1) All Judicial Magistrates appointed under Sections 12, 13A and 14 and all Benches constituted under Section 15 shall, subject to the control of the Sessions Judge, be subordinate to the Sub-divisional Judicial Magistrate and the Sub-divisional Judicial Magistrate may from time to time distribute the business amongst such Judicial Magistrates and Benches consistent with this Code and the rules framed by the High Court.

(2) The Sub-divisional Judicial Magistrate shall be subordinate to the Sessions Judge.

(3) Notwithstanding anything contained in sub-section (1), the Sessions Judge may, if for any reason he thinks fit so to do, distribute the business referred to in that sub-section amongst the Judicial Magistrates and Benches within the Sessions division consistently with this Code and the rule framed by the High Court.

17-B. **Subordination of Assistant Sessions Judge to Sessions Judge.**—(1) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction and the Sessions Judge may from time to time distribute the business amongst such Assistant Sessions Judges consistent with this Code and the rules framed by the High Court.

(2) The Sessions Judge may also, when he himself is unavoidably absent or incapable of acting, make provisions for the disposal of any urgent application by the Additional or Assistant Sessions Judge, or if there be no Additional or Assistant Sessions Judge, by the Sub-divisional Judicial Magistrate, and any such Judge or Magistrate shall have jurisdiction to deal with any such application.

17-C. **Delegation of powers by the High Court.**—The High Court, and subject to its control the Sessions Judge, may authorise an Additional Sessions Judge to perform within its jurisdiction all or any of the powers of supervision and control over the Judicial Magistrates.

17-D. **Inferior criminal Courts**—Courts of Sessions and Courts of Magistrates shall be criminal Courts inferior to the High Court and Courts of Magistrates (excluding Courts of Presidency Magistrates) shall be criminal Courts inferior to the Court of Session."—W. B. Act 8 of 1970, S. 3 and Sch., item 13.

STATE AMENDMENTS

Sections 17A and 17B

Gujarat

In their application to the State of Gujarat, Sections 17A and 17B are the same as those inserted in Maharashtra subject however to the adaptation that in its application to the City of Ahmedabad for the words "Greater Bombay" in S. 17B the words "City of Ahmedabad" are to be substituted.—See Cent. Act XI of 1960, S. 87 and Guj. Act XIX of 1961, S. 15 (4-11-1961).

NOTE.—(1) For appointment of an Executive Magistrate in the City of Ahmedabad, see Guj. Act XIX of 1961, S. 14 (3A) (inserted by Guj. Act LI of 1963).

(2) Magistrates in the City of Ahmedabad have the powers and exercise the jurisdiction of a Presidency Magistrate—see Guj. Act XIX of 1961, S. 14 (3).

Maharashtra

(1) In its application to the pre-reorganization State of Bombay, after S. 17 insert the following sections, namely :—

"**17A. Subordination of Executive Magistrates.**—(1) All Executive Magistrates appointed under Section 13 or 14 shall be subordinate to the District Magistrate and every Taluka Magistrate shall also be subordinate to the Sub-Divisional Magistrate, subject, however, to the general control of the District Magistrate.

(2) The District Magistrate may from time to time make rules or give special orders consistent with this Code as to the distribution of business among the Magistrates subordinate to him; and as to allocation of business to an Additional District Magistrate—Bom. Act VIII of 1954, S. 2 and Sch. (10-2-1954).

17B. Inferior Criminal Courts.— Courts of Sessions and Courts of Magistrates (including Courts of Presidency Magistrates) shall be Criminal Courts inferior to the High Court and Courts of Magistrates outside Greater Bombay, shall be Criminal Courts inferior to the Court of Session."— Bom. Act XXIII of 1951, S. 2 and Sch. (1-7-1953).

(2) After the reorganization of the State of Bombay in 1956, Sections 17A and 17B inserted by the above-mentioned Bombay Acts are extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Mysore

In its application to the State of Mysore, after S. 17 insert the following sections, namely :—

"**17A. Subordination of Executive Magistrates.**—(1) All Executive Magistrates appointed under Section 13 or Section 14 shall be subordinate to the District Magistrate; and every Taluka Magistrate shall also be subordinate to the Sub-Divisional Magistrate, subject, however, to the general control of the District Magistrate.

(2) The District Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Magistrates subordinate to him and as to allocation of business to an Additional District Magistrate.

17B. Inferior Criminal Courts.—Courts of Sessions and Courts of Magistrates shall be criminal courts inferior to the High Court and Courts of Magistrates shall be criminal Courts inferior to the Court of Session."—Mys. Act XIII of 1965, S. 11 (1-10-1965).

Section 17-A (as inserted by Bombay Act) — Note 1

(1) Subordination of Executive Magistrates — Orders passed by Sub-Divisional Magistrate under Section 435 (1), Cr. P. C. — High Court has no power of revision. AIR 1967 Guj 225 (227, 228) = 1967 Cri LJ 1325 = (1966) 7 Guj LR 1085.

(2) Enquiry under Sections 133 to 140 is judicial even though it is before Executive Magistrate and is subject to revisional powers of High Court. (1968) 70 Bom LR 588 = 1968 Mah LJ 909 (DB).

Section 17-B — Note 1

(1) Courts inferior to High Courts — Order of Sub-Divisional Magistrate in proceedings under Section 133, Cr. P. C. — Revision does not lie to the High Court. AIR 1967 Guj 225 (227, 228) = 1967 Cri LJ 1325 = (1966) 7 Guj LR 1085.

(2) A Court of session, in view of Section 17-B is a Criminal Court inferior to High Court. A Court of Special Judge, by the introduction of the deeming provision, is treated as a Court of session. It is therefore evident that a Court of a Special Judge is a Criminal Court inferior to the High Court. 10 Guj LR 537 = 1969 Cri LJ 557.

(3) Sub-Divisional Magistrate acting under Section 145 is not inferior criminal Court as contemplated by Sec. 435 (1) — 'Courts of Magistrate' in Sec. 17-B refers only to Judicial Magistrates. AIR 1967 Bom 41 (42, 43) = 1967 Cri LJ 163 = 68 Bom LR 233.

(4) Enquiry under Sections 133 to 140, Cr. P. C. is judicial even though it is before Executive Magistrate and is subject to revisional powers of High Court. (1968) 70 Bom LR 588 = 1968 Mah LJ 909 (DB).

(5) Order by Executive Magistrate under Section 145, Cr. P. C. is open to consideration in revision by Sessions Judge and he can make reference to High Court. AIR 1967 Punj 482 (486) = 1967 Cri LJ 1690 = 66 Cur LJ 886.

(6) District Magistrate is one of Executive Magistrates and is subordinate to Court of Session within Section 476-B. 1970 Cri LJ 399 (402, 403) (Bom).

D.—Courts of Presidency Magistrates

18. Appointment of Presidency Magistrates.—(1) The *[State Government] shall, from time to time, appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the presidency-towns,† and shall appoint one of such persons to be Chief Presidency Magistrate for each such town.

(2) The powers of a Presidency Magistrate under this Code shall be exercised by the Chief Presidency Magistrate, or by a salaried Presidency Magistrate, or by any other Presidency Magistrate empowered by the *[State Government] to sit singly, or by any Bench of Presidency Magistrates.

‡[(3) A Presidency Magistrate may be appointed under this section for such term as the *[State Government] may, by general or special order, direct.

(4) The *[State Government] may appoint any person to be an Additional Chief Presidency Magistrate, and such Additional Chief Presidency Magistrate shall have all or any of the powers of a Chief Presidency Magistrate under this Code or under any other law for the time being in force, as the *[State Government] may direct.]

[1882 — S. 18, Para. 1.]

[*] Substituted for 'Provincial Government' by A. L. O., 1950.

[†] For definition of Presidency-town, see General Clauses Act (X of 1897), S. 3 (44).

[‡] Sub-sections (3) and (4) were added by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

STATE AMENDMENTS

Gujarat

City of Ahmedabad.—With effect from the 4th November, 1961, the City of Ahmedabad is, by virtue of Section 13 of the Ahmedabad City Courts Act, 1961 (Guj. XIX of 1961), to be a sessions division and is to be deemed to be a district within the meaning of Section 7 of the Criminal Procedure Code and the Criminal Procedure Code is to have effect accordingly.

Maharashtra

In its application to the State of Maharashtra after sub-section (4) of S. 18, the following sub-section shall be added, namely :—

> "(5) The power of appointment of the Chief Presidency Magistrate and the Additional Chief Presidency Magistrate shall be exercised in consultation with the High Court and the power of appointment of other Presidency Magistrates shall on the issue of public notification under Article 237 of the Constitution, be exercised subject to the terms of the said notification."—Bom. Acts XXIII of 1951, S. 2 and Schedule (1-7-1953) and XCVII of 1958, S. 2 (1-9-1959).

Section 18 — Note 1

(1) Though the Commissioner of Police, Madras and his deputies have the powers of Presidency Magistrates by virtue of their office, they are not Courts of Presidency Magistrates under the Code. AIR 1953 Mad 953 (954) = 1953 Cri L Jour 1737.

[See however AIR 1932 Mad 428 (428) = 33 Cri L Jour 539. (Case prior to amendment of Section 7 by Madras Act (31 of 1942.)]

(2) The powers of a Presidency Magistrate under the Code are conferred by sub-section (2) on any Bench of Presidency Magistrates. Such a Bench can, therefore, take action under Section 106 of the Code. ('05) 2 Cri L Jour 770 (773) (DB) (Bom).

(3) Where by notification under Section 21, sub-section (2), the State Government has declared all Presidency Magistrates to be subordinate to the Chief Presidency Magistrate, it has been held that by virtue of this sub-section (Section 18, sub-section (4)) the Presidency Magistrates are subordinate to the Additional Chief Presidency Magistrate also. AIR 1934 Cal 405 (406) = 35 Cri L Jour 729 (DB).

(4) A Presidency Magistrate has no jurisdiction to try a case of disobedience of his own order. ('08) 7 Cri L Jour 103 (104) (DB) (Cal).

West Bengal:

For Section 18, substitute the following, namely:—

"18. Appointment of Presidency Magistrate.—(1) Subject to the provisions of sub-sections (4) and (5), the State Government in consultation with the High Court,—

(a) shall from time to time, appoint a sufficient number of persons (hereinafter called 'the Presidency Magistrates) to be Magistrates for the presidency-town of Calcutta and shall appoint one of such persons to be the Chief Presidency Magistrate for such town;

(b) may also appoint one of such Presidency Magistrates to be an Additional Chief Presidency Magistrate and such Additional Chief Presidency Magistrate shall have all or any of the powers of the Chief Presidency Magistrate under this Code or under any other law for the time being in force, as the State Government, in consultation with the High Court, may direct.

(2) The powers of a Presidency Magistrate under this Code shall be exercised by the Chief Presidency Magistrate or by any Presidency Magistrate or by any Bench of Presidency Magistrates.

(3) A Presidency Magistrate may be appointed under this section for such term as the State Government in consultation with the High Court, may, by general or special order, direct.

(4) The Chief Presidency Magistrate and the Additional Chief Presidency Magistrate shall be appointed from among the members of the West Bengal Higher Judicial Service.

(5) The other Presidency Magistrates shall be appointed from among the members of the West Bengal Civil Service (Judicial):

Provided that as many Presidency Magistrates, as may be considered necessary, may also be appointed from among the members of the West Bengal Civil Service (Executive) or West Bengal Junior Civil Service for such period not exceeding five years from the commencement of the West Bengal Separation of Judicial and Executive Functions Act, 1970, in the presidency-town of Calcutta, as the State Government, in consultation with the High Court, may think fit.

(6) Appointment and control of Presidency Magistrates under sub-section (5) shall, on the issue of a notification published under Article 237 of the Constitution of India, be in accordance with the terms of the said notification."—West Bengal Act 8 of 1970, Section 3 and Schedule, item 14.

STATE AMENDMENT

Section 18-A

West Bengal:

After Section 18, insert the following section, namely:—

"**18-A. Special Presidency Magistrates.**—The State Government may also appoint, for such term as it may, by special or general order, direct, any person as a Presidency Magistrate for the performance of all or any of the functions of a Presidency Magistrate excepting those relating to inquiry into, or cognizance, investigation or trial of, any offence. Such Presidency Magistrates shall be called Special Presidency Magistrate" — West Bengal Act 8 of 1970, Section 3 and Schedule, item 15

19. Benches.—Any two or more of such persons may (subject to the rules made by the Chief Presidency Magistrate[*] under the power hereinafter conferred) sit together as a Bench.

[1882 — S. 18, Para. 2; 1872 — Nil; 1861 — Nil.]

[*] Chief Magistrate in the City of Ahmedabad has the powers and exercises the jurisdiction of a Chief Presidency Magistrate.—Guj. Act XIX of 1961, S. 14 (3) (4-11-1961).

20. Local limits of jurisdiction.—Every Presidency Magistrate shall exercise jurisdiction in all places within the presidency-town* for which he is appointed, and within the limits of the part of such town and of any navigable river or channel leading thereto, as such limits are defined under the law for the time being in force for the regulation of ports and port-dues.

[1882 — S. 20; 1872 — Nil; 1861 — Nil.]

[*] For definition of Presidency-town, see General Clauses Act (X of 1897), S. 3 (44).

STATE AMENDMENT

Gujarat

City of Ahmedabad.—In its application to the City of Ahmedabad, for the words "presidency-town", substitute the words "City of Ahmedabad."—Guj. Act XIX of 1961, S. 15 (4-11-1961).

NOTE.—Magistrates in the City of Ahmedabad have the powers and exercise the jurisdiction of a Presidency Magistrate.—Guj. Act XIX of 1961, S. 14 (3) (4-11-1961).

21. Chief Presidency Magistrate.—(1) Every Chief Presidency Magistrate shall exercise within the local limits of his jurisdiction all the powers conferred on him by this Code or which by any law or rule in force immediately before this Code comes into force are required to be exercised by any Senior or Chief Presidency Magistrate, and may, from time to time, with the previous sanction of the †[State Government], make rules consistent with this Code to regulate—

(a) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town;

(b) the times and places at which Benches of Magistrates shall sit;

(c) the constitution of such Benches;

Section 20 — Note 1

(1) The local limits of the jurisdiction of a Presidency Magistrate extend under this section to all places — (1) within the presidency-town, and (2) within the limits of the port of such town and of any navigable river or channel leading thereto, though such place is outside the presidency-town proper. AIR 1926 Bom 564 (564) = 27 Cri L Jour 1213 (DB) ** AIR 1919 Cal 1 (2) = 20 Cri L Jour 782 (DB).

(2) The Presidency Magistrate of Bombay has jurisdiction over the port of Bombay up to high water mark. ('84) Rat 193 (194) (DB).

(3) Hoogly is a navigable river which leads to the port of Calcutta, which is the port of the town of Calcutta. Therefore, the Presidency Magistrate, Calcutta has jurisdiction to commit a case to Sessions where an offence triable by a Court of Session has been committed on the river Hoogly outside the limits of the Calcutta town. ILR (1953) 2 Cal 150 (151).

(4) A City Magistrate can exercise jurisdiction in a case within the city — Allotment of areas in the city to different City Magistrates is merely for sake of administrative convenience — This does not bar making or having an inquiry or investigation made by a Police Officer under Section 202 of the Code. AIR 1969 Guj 14 (16) = 1969 Cri LJ 63 = 9 Guj LR 925.

SECTION 21 — SYNOPSIS

1. Conduct and distribution of business — Rules relating to.

2. Mode of settling differences of opinion — Rules relating to.

3. Subordination of Presidency Magistrates.

1. Conduct and distribution of business — Rules relating to.— (1) Where a rule was framed under this section directing that only such cases arising under certain specified enactments be made over to the Bench of Honorary Magistrates for disposal and the Bench convicted an accused and took action under S. 106, it was held that the order under S. 106 was not void. ('05) 2 Cri L Jour 770 (774) = 7 Bom LR 833 (DB).

(2) Under Bombay Rule 3, Chief Presidency Magistrate has power to order any class of cases to be brought to his own Court in the event of pressure of work in other Courts. AIR 1926 Bom 564 (564) = 27 Cri L Jour 1213 (DB).

(3) Bombay Rule 9 refers only to division of work and does not justify a Presidency Magistrate in ordering a return of a complaint on the ground that the case may be more conveniently tried by the Chief Presidency Magistrate. ('98) 1898 Rat 968 (969) (DB).

(4) Cases like criminal trespass ought not to be transferred to Honorary Presidency Magistrate for trial as they cannot be expected to clearly understand the distinction between civil and criminal trespass. AIR 1966 Mad 441 (442) = 1966 Cri LJ 1453 = (1966) 1 Mad LJ 535.

(d) the mode of settling differences of opinion which may arise between Magistrates in session; and

(e) any other matter which could be dealt with by a District Magistrate under his general powers of control over the Magistrates subordinate to him.

(2) The †[State Government] may, for the purposes of this Code, declare what Presidency Magistrates ‡[including Additional Chief Presidency Magistrates] are subordinate to the Chief Presidency Magistrate, and may define the extent of their subordination.

[1882 — S. 21; 1872 — Nil; 1861 — Nil.]

[*] In the City of Ahmedabad, the Chief Magistrate appointed under Guj. Act XIX of 1961, S. 14 (1), exercises, within his jurisdiction, all the powers of a Chief Presidency Magistrate—See Guj. Act XIX of 1961, S. 14 (3) (4-11-1961).

[†] Substituted for 'Provincial Government' by A. L. O., 1950.

[‡] Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 4.

OBJECTS AND REASONS

Sub-section (2).—"The Government of Madras recommended that all Presidency Magistrates should be subordinate to the Chief Presidency Magistrate in the like manner as in a district, Magistrates are subordinate to the District Magistrate. This appears to be sound in principle, and the clause as it stands enables the Chief Presidency Magistrates, with the sanction of local Government, to make rules on this footing. We are informed, that in Calcutta the Presidency Magistrates are not considered as subordinate to the Chief Presidency Magistrate. If this be so, we have no doubt that the local Government in sanctioning rules under this clause will pay such regard as it thinks right to any existing practice.—S. C. R., 1898.

STATE AMENDMENT

West Bengal

In its application to the State of West Bengal, in S. 21 :—

(i) in sub-section (1), for the words "with the previous sanction of the State Government, make", substitute the words "make, with the previous approval of the High Court";

Section 21 (contd.)

2. Mode of settling differences of opinion — Rules relating to.— (1) It was held by the High Court of Calcutta that a rule, made under this section directing that in a Bench composed of two members the opinion of the Chairman shall prevail, is not ultra vires. A similar rule framed under Section 16 also is not ultra vires. ('06) 3 Cri L Jour 409 (415, 417) (FB) (Cal). (('04) 1 Cri L Jour 842 (Cal) must be held to have been impliedly overruled.)

(2) Where a rule by the Chief Presidency Magistrate of Bombay provided that every member of a Bench shall have a voice in the determination of a case and that when a Bench is equally divided in opinion the Chairman shall have a casting vote, it was held that the judgment of the dissenting Magistrate, if any, should form part of the record. AIR 1927 Bom 630 (631, 632) = 28 Cri L Jour 1025 (DB).

3. Subordination of Presidency Magistrates.— (1) The Governments of Bombay and Calcutta have declared that all Presidency Magistrates, whether sitting singly **or as** members of a Bench, are subordinate to the Chief Presidency Magistrate in the same manner and to the same extent as ordinary Magistrates are subordinate to the District Magistrate under Section 17. ('99) 1 Bom LR 347 (348) (DB) ** AIR 1924 Cal 911 (912) = 26 Cri L Jour 101 (DB).

(2) The Chief Presidency Magistrate has power under Section 528 to withdraw any case from the file of a Presidency Magistrate either to his own file, or to transfer it for enquiry to any other Presidency Magistrate. AIR 1924 Cal 911 (912) = 26 Cri L Jour 101 (DB) ** ('99) 1 Bom LR 347 (348) (DB).

(3) The Government of Madras have directed that the subordination of a Presidency Magistrate shall be limited to the purposes of Section 124, sub-section (1), Section 144, sub-section (4), Section 192 and Section 528 of the Code. ('11) 12 Cri L Jour 451 (452) = 35 Mad 739 (DB).

(4) All stipendiary as well as non-stipendiary Magistrates in Calcutta are subordinate to the Chief Presidency Magistrate in Calcutta. AIR 1934 Cal 405 (406) = 61 Cal 467 = 35 Cri L Jour 729 (DB).

(ii) in clause (e), for the words "could be dealt with by a District Magistrate", substitute the words "requires to be dealt with by him"; and

(iii) in sub-section (2), after the word "declare", insert the words "in consultation with the High Court."—W. B. Act VIII of 1970, Section 3 and Sch., Item 16.

E. — Justices of the Peace.

°[22. **Justices of the Peace for the mufassal.**—Every °[State Government], so far as regards the territories subject to its administration †[* * *], may, by notification in the Official Gazette, appoint such ‡[persons resident within §[India] and not being the subjects of any foreign State] as it thinks fit, to be Justices of the Peace within and for the local area mentioned in such notification.]

[1882 — S. 22.]

[°] This section was substituted by the Devolution Act, 1920 (XXXVIII of 1920), S. 2 and Sch. I.

[†] The words and brackets "(other than the presidency-towns)" were repealed by the Criminal Law Amendment Act, 1923 (XII of 1923), S. 3.

[‡] Substituted for the words "European British subjects," ibid.

[§] Substituted for "the States" by the Code of Criminal Procedure (Amendment) Act, 1951 (I of 1951), S. 2 (1-4-1951).

STATE AMENDMENT

Assam

Same as in West Bengal noted below, except for cl. (a) of Explanation which is as follows:—

"(a) in a Municipality, a ward as notified under the Assam Municipal Act, 1956, and" — Assam Act XX of 1966, S. 3.

STATE AMENDMENTS

Sections 22A, 22B.

Assam

Same as in West Bengal with the following noted differences :—

(i) For the word 'volunteer' wherever occurring, read "Home-Guard";

(ii) For clause (b) of sub-section (3) and Explanation thereto, read the following, namely :—

"(b) when made upon a Home-Guard, to have been made by a competent authority calling upon the Home-Guard for duty under sub-section (1) of Sec. 7 of the Assam Home-Guards Act, 1947.

Explanation.—In this section the expression "Home-Guard" will have the same meaning as in the Assam Home-Guards Act, 1947, and

(iii) in sub-section (2) of Section 22B, omit the words 'a Presidency Magistrate or'. —Assam Act XX of 1966, S. 4.

Section 22 — Note 1

(1) There is no provision in the Code showing what the special duties of a Justice of the Peace are as distinguished from those of a Magistrate in the ordinary sense. Their powers are prescribed by various special and local enactments and also by the terms of their appointments. The power of a Justice of the Peace in India had never been placed on a clear footing. ('70) 7 Bom HCR (Cr) 6 (22, 23).

(2) Under the Foreign Jurisdiction and Extradition Act, 21 of 1879, the Governor-General in Council could appoint Justices of the Peace for territories outside British India, such Justices to have all the powers conferred by the Code of Criminal Procedure on Magistrates of the first class who are Justices of the Peace and who are European British subjects. ('11) 12 Cri L Jour 535 (545) (DB) (Mad) ** ('89) 12 Mad 39 (41, 42) (DB) ** ('03) 26 Mad 607 (613, 614) (SB).

Sections 22, 22A and 22B.

West Bengal

(1) In its application to the State of West Bengal including the areas of Cooch-Behar and Chandernagore, for Section 22 of the Code, substitute the following:

"22. **Appointment of Justices of the Peace.**—The State Government may, by notification in the Official Gazette, appoint for such period as may be specified in the notification, and subject to such rules as may be made by the State Government, any person who is a citizen of India and as to whose integrity and suitability it is satisfied, to be a Justice of the Peace for a local area to be mentioned in the notification, and more than one Justice of the Peace may be appointed for the same local area.

Explanation.—In this section and in Ss. 22A and 22B 'local area' means—

(a) in Calcutta, as defined in the Calcutta Municipal Act, 1951 (W. B. Act XXXIII of 1951) a ward specified in Sch. V to that Act, and

(b) elsewhere, the area included in a police station.

"22A. **Powers of Justices of the Peace.**—(1) A Justice of the Peace for any local area, shall, for the purpose of making arrest, have within such area all the powers of a police officer referred to in Section 54 and of an officer in charge of a police station referred to in Section 55.

(2) A Justice of the Peace making an arrest in exercise of any powers under sub-section (1) shall forthwith take or cause to be taken the person arrested before the officer in charge of the nearest police station and furnish such officer with a report as to the circumstances of the arrest. Such Officer shall thereupon rearrest the person.

(3) (i) A Justice of the Peace for any local area shall have power within such area, to call upon any member of the police force on duty or any volunteer to aid him—

(a) in taking or preventing the escape of any person who has participated in the commission of any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having so participated,

(b) in the prevention of crime in general and, in particular, in the prevention of a breach of the peace or a disturbance of the public tranquillity.

(ii) Where a member of the police force on duty or any volunteer has been called upon to render aid under clause (i), such call shall be deemed—

(a) when made upon a member of the police force, to have been made by a competent authority,

(b) when made upon a volunteer to have been made by a Unit Commandant (duly authorised in this behalf by the State Government) calling upon the volunteer for duty under sub-section (a1) of S. 10 of the West Bengal National Volunteer Force Act, 1949 (W. B. Act I of 1949).

Explanation.—In this section the expressions, 'volunteer' and 'Unit Commandant' have the same meaning as in the West Bengal National Volunteer Force Act, 1949.

(4) A Justice of the Peace for any local area may, in accordance with such rules as may be made by the State Government:—

(a) issue a certificate as to the identity of any person residing within such area, or

(b) verify any document brought before him by any such person, or

(c) attest any such document required by or under any law for the time being in force to be attested by a Magistrate, and until the contrary is proved, any certificate so issued shall be presumed to be correct and any document so verified shall be deemed to be duly verified and any document so attested shall be deemed to have been as fully attested as if he had been a Magistrate.

22B. Duties of Justices of the Peace.—(1) Subject to such rules as may be made by the State Government, every Justice of the Peace for any local area shall—

(a) on receipt of information of the occurrence of any incident involving a breach of the peace, or of the commission of any offence within such local area, forthwith make inquiries into the matter and report in writing the result of his inquiries to the [nearest Magistrate having jurisdiction] and to the Officer in charge of the nearest police station;

(b) if the offence referred to in clause (a) is a cognizable offence, also prevent the removal of anything from or the interference in any way with, the place of occurrence of the offence,

(c) when so requested in writing by a police officer making an investigation under Chapter 14 in respect of any offence committed within such local area,—

(i) render all assistance to the police officer in making such an investigation,

(ii) record any statement made under expectation of death by a person in respect of whom a crime is believed to have been committed.

(2) The provisions of sub-section (2) of Section 164 relating to the manner of recording statements shall, as far as may be, apply to the recording of a statement under sub-clause (ii) of clause (c) of sub-sec. (1) as if the statement were recorded by a Presidency Magistrate or a Magistrate of the first class."—W. B. Act XXX of 1955, S. 3 (11-10-1955) and W. B. Act 8 of 1970, S. 3 and Sch., item 17.

(2) **Transferred Territories.**—Sections 22, 22A and 22B as substituted by the abovementioned W. B. Act are extended as from 1-7-1959 by W. B. Act XIX of 1958 to the territories transferred to the State of West Bengal under S. 3 of the Central Act XL of 1956.

23. Justices of the Peace for the presidency-towns.—[Repealed by Sec. 4 of the Criminal Law Amendment Act, 1923 (XII of 1923), S. 4.]

NOTE.—The repealed section ran as follows:

"23. The Local Government, so far as regards the towns of Calcutta, Madras and Bombay, may, by notification in the Official Gazette, appoint to be Justices of the Peace within the limits of the towns mentioned in such notification any persons resident within British India and not being the subjects of any foreign State whom the Local Government thinks fit."

24. Present Justices of the Peace.—[Repealed by Section 4 of the Criminal Law Amendment Act, 1923 (XII of 1923), S. 4.]

NOTE.—The repealed section ran as follows:—

"24. (1) Every person now acting as a Justice of the Peace within and for any part of British India other than the said towns, under any commission issued by a High Court, shall be deemed to have been appointed under Section 22 by the Governor-General in Council to act as a Justice of the Peace for the whole of British India other than the said towns.

(2) Every person now acting as a Justice of the Peace within the limits of any of the said towns under any such commission shall be deemed to have been appointed under Section 23 by the Local Government."

25. Ex-officio Justices of the Peace.—In virtue of their respective offices, *[* * *] †[the Judges of the High Courts] are Justices of the Peace within and for ‡[the whole of India §[* * *]], Sessions Judges and District Magistrates

Section 25 — Note 1

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(1) This section declares as to who are Justices of the Peace in virtue of their office. The Courts are bound to take judicial notice that certain persons are Justices of the Peace. ('71) 15 Suth WR (Cr) 71n (75n) (SB).

are Justices of the Peace within and for the whole of the territories administered by the *†[State Government] under which they are serving, and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

[1882 — S. 25; 1872 — Nil; 1861 — Nil.]

[*] The words "the Governor-General, Governors, Lieutenant-Governors and Chief Commissioner, the ordinary members of the Council of the Governor-General and' were repealed by A. O., 1937.

[†] Substituted by the Lower Burma Courts Act, 1900 (VI of 1900) for "the Judges of the High Court and the Recorder of Rangoon."

[‡] Substituted by A. L. O., 1950 for 'all the Provinces of India.'

[§] The words and letter 'except Part B States' were omitted by S. 5 of the Code of Criminal Procedure (Amendment) Act (I of 1951) (1-4-1951).

[*†] Substituted for 'Provincial Government' by A. L. O., 1950.

STATE AMENDMENTS

Assam

In its application to the State of Assam, Sec. 25 of the Code is repealed.—Assam Act XX of 1966, S. 5. Section 6 of Assam Act 20 of 1966 authorises State Government to invest J. P.s with powers of third class Magistrate to try prescribed offences.

Gujarat

City of Ahmedabad.—Magistrates in the City of Ahmedabad have the powers and exercise the jurisdiction of a Presidency Magistrate.—See Guj. Act XIX of 1961, Section 14 (3).

West Bengal

In its application to the State of West Bengal including the areas of Cooch-Bihar and Chandernagore and the transferred territories, S. 25 of the Code is repealed.—W. B. Acts XXX of 1955, S. 4 (11-10-1955) and XIX of 1958 (1-7-1959).

F. — Suspension and Removal

26. Suspension and removal of Judges and Magistrates.—[Repealed by the Government of India (Adaptation of Indian Laws) Order, 1937.]

NOTE.—The Repealed section ran as follows :—

> "26. All Judges of Criminal Courts other than the High Courts established by Royal Charter, and all Magistrates, may be suspended or removed from office by the Local Government:
>
> Provided that such Judges and Magistrates as now are liable to be suspended or removed from office by the Governor-General in Council only shall not be suspended or removed from office by any other authority."

27. Suspension and removal of Justices of the Peace.—[Repealed by the Government of India (Adaptation of Indian Laws) Order, 1937.]

NOTE.—The repealed section was as follows :—

> "27. The Local Government may suspend or remove from office any Justice of the Peace appointed by it."

CHAPTER III

POWERS OF COURTS

A.—Description of offences cognizable by each Court.

28. Offences under Penal Code.—Subject to the other provisions of this Code any offence under the Indian Penal Code may be tried—

(a) by the High Court, or

(b) by the Court of Session, or

SECTION 28 — SYNOPSIS

1. Scope.

2. Subject to other provisions of the Code.

3. Clause (c) — "Any other Court."

1. Scope.— (1) The jurisdiction of every criminal Court to try a particular offence is derived from statute, either

(c) by any other Court by which such offence is shown in the eighth column of the second schedule to be triable.

Illustration

A is committed to the Sessions Court on a charge of culpable homicide. He may be convicted of voluntarily causing hurt, an offence triable by a Magistrate.

[1882 — S. 28; 1872 — S. 7; 1861 — S. 22, Para. 1.]

[Cf. Pakistan Criminal P. C., Ss. 28, 29, 31: Criminal P. C. of Northern Nigeria, 1960, Ss. 12, 13 14.]

Section 28 — Note 1 (contd.)
from the statute which creates the Court or from the statute which defines the offence. AIR 1945 Pat 98 (102, 103) = 46 Cri L Jour 399 (FB).

(2) The High Court and the Court of Session have concurrent jurisdiction with the subordinate Courts over offences triable by the latter. AIR 1942 Mad 440 (441) = 43 Cri L Jour 715 ** ('82) 1882 Pun Re No. 22, p. 28 (29) (DB).

(3) A Court of Session has, on a legal order of commitment, jurisdiction even in matters of offences not ordinarily triable by it; but the committing Magistrate must give adequate reasons for committing a person for an offence which is not exclusively triable by the Court of session. AIR 1949 All 1 (Pr. 52) = 50 Cri L Jour 59 = ILR (1949) All 279 (FB). (AIR 1946 All 365 (DB); AIR 1945 All 340 = Cri App No. 378 of 1946, D/- 7-10-1946; 3 Cri L Jour 94 (All) and AIR 1924 All 185, **Overruled.**)

(4) A Magistrate who is not mentioned in the eighth column of the second schedule as being empowered to try a particular offence, has no jurisdiction to try it. AIR 1955 Pat 118 (120) = 33 Pat 1018 = 1955 Cri L Jour 501 (DB) ** AIR 1925 Mad 367 (367) = 25 Cri L Jour 1193.

[See however ('72) 18 Suth WR (Cr) 8 (9) (DB).]

(5) Neither the consent of the parties thereto nor even an order of the District Magistrate authorizing the Magistrate to try the case will confer any jurisdiction on such Magistrate to do so. AIR 1932 Oudh 251 (251) = 33 Cri L Jour 511 ** ('26) AIR 1926 Cal 590 (592) = 27 Cri L Jour 545 (DB). (Administrative inconvenience cannot give jurisdiction.)

(6) There is no provision in the Code which bars the trial of a case by a superior Magistrate notwithstanding that it is competent for a Magistrate of the lowest grade to entertain the case. AIR 1956 Andhra 100 (101) = 1956 Cri L Jour 575.

(7) The fact that the offence which a Magistrate is not empowered to try includes a minor offence which he is authorised to try, cannot give him jurisdiction to try the accused for the former offence. ('10) 11 Cri L Jour 639 (640) = 1910 Pun Re (Cr.) No. 31.

(8) Magistrate cannot clutch at jurisdiction by intentionally ignoring facts of aggravation which make the offence cognizable only by a higher tribunal. AIR 1944 Mad 166 (168) = 45 Cri L Jour 508 ** AIR 1935 Sind 221 (221) = 37 Cri L Jour 80 (DB) ** ('11) 12 Cri L Jour 20 (20) (DB) (Mad) ** ('89) 13 Bom 502 (505) (DB).

[See ('89) 12 Mad 54 (56) (DB). (Accused tearing up pronote for value of Rs. 20 — Offence is under Section 477 and not Section 426 and is triable by Court of session.)]

(9) The Magistrate cannot, for instance, split up a graver offence into a number of smaller offences and thus give himself jurisdiction. (1900) 5 Cal WN 372 (373).

(10) The jurisdiction of a Magistrate to try the accused for an offence triable by him is not ousted merely by the fact that the accused is liable to be charged for an offence not triable by him. ('33) 1933 Mad WN 550 (551) ** AIR 1922 Mad 223 (224) = 23 Cri L Jour 232 (DB) ** AIR 1927 Mad 307 (308) = 28 Cri L Jour 164.

[But see (1866) 6 Suth WR (Cr) 49 (49) (DB).]

(11) It will be improper on the part of the Magistrate intentionally to ignore circumstances which show that an offence beyond his jurisdiction was in fact committed as well as an offence within his jurisdiction. If a Second Class Magistrate should ignore the violence used in committing theft and, instead of sending the accused before a First Class Magistrate to be tried for robbery, tries the case for theft, the action would be improper but his proceedings cannot be void for want of jurisdiction. AIR 1925 Rang 45 (47) = 26 Cri L Jour 1108.

(12) The proper course for a Court which finds that a case in which it is not empowered to pass the legal sentence has been inadvertently transferred to it, is not to proceed with the case but to return it to the transferring authority for necessary orders. AIR

Section 28 — Note 1 (contd.)
1944 Pat 92 (96) = 45 Cri L Jour 409 (DB).

(13) Before the Code was amended a case under Section 326, I. P. Code could either be sent to a First Class Magistrate if it was not a serious case, or to a S. 30 Magistrate if it was more serious but the appropriate sentence would not exceed seven years, and to a sessions Court if a sentence of more than seven years appeared to be called for and the only effect of the amendment is that the degree of seriousness of cases under Section 326 are reduced from three to two and a minor case under Section 326, I. P. Code can still be tried by a First Class Magistrate, but if it is more serious it has now to be sent to the Sessions Court to be tried either by a Sessions Judge or by an Assistant Sessions Judge and nothing in the amendment can detract in any way from the force of the words of Section 28 and the appropriate entry in the 8th column in the second schedule. AIR 1958 Punj 214 (Pr. 6) = 1958 Cri L Jour 800. (Cr. Revn. No. 226 of 1957, dated 11th October, 1957 (Punj), **Dissent. from.)**

(14) The jurisdiction of a Court to hear a case depends on the allegation with which its help is sought. The statement of a complainant in a criminal case and the statement of the plaintiff in a civil case have to be accepted for the purpose of jurisdiction. AIR 1925 All 290 (291) = 26 Cri L Jour 586 ** AIR 1966 Orissa 95 (96) = 1966 Cri LJ 566 = 32 Cut LT 310.

[But see AIR 1956 Vindh Pra 19 (Pr. 10) = 1956 Cri L Jour 1023. (The forum for the trial of a case is not determined by the allegations made in the complaint. Jurisdiction is a mixed question of law and fact. It is to be determined by facts which are ultimately found to be true. AIR 1925 All 290, **Diss. from.)]**

(15) When there are two or more offences disclosed at the initial stage resulting out of the same transaction, some within and others outside the jurisdiction of a bench of the Gram Cutcherry under the Bihar Panchayat Raj Act, 1947, the case relating to all such offences has to be tried by the Court which has jurisdiction to try the most serious one amongst them, and not by the bench of the Gram Cutcherry having jurisdiction over only one or more of them. 1960 BLJR 412 (414).

(16) A statement by an accused person that the offence committed by him is a more serious one, not triable by the Magistrate, does not deprive the Magistrate of jurisdiction, unless the prosecution accept the truth of that statement or the Magistrate is of the opinion that it is true. AIR 1938 Mad 784 (785) = 39 Cri L Jour 659.

(17) Where the facts disclose an offence which the Magistrate has jurisdiction to try, the mere fact that the same facts disclose a more serious offence beyond the Magistrate's competence to try will not render his proceedings void if the Magistrate tried the offender for the offence which he was competent to try. AIR 1956 Vindh Pra 19 (Pr. 4) = 1956 Cri L Jour 1023 ** 1964 BLJR 230 (232).

(18) As to appointment of Special Judges to try offences punishable under Sections 161, 165 or 165-A of the Penal Code and the procedure to be adopted in the trial of these offences, see Sections 6 to 9 of the Criminal Law Amendment Act, 1952 (46 of 1952) and the following case. AIR 1953 Mad 451 (Prs. 8 to 11) = 1953 Cri L Jour 882.

(19) In jurisdiction of the Court for trial depends upon the date of taking cognizance and not on the date of the occurrence. 1967 BLJR 35 (37).

(20) Court under Cr. P. C. is prohibited from taking cognizance of offences triable by a bench of Gram Cutcherry unless there is order to the contrary by concerned Magistrate. 1965 BLJR 661 (664) (DB).

(21) Juvenile offender charged with any offence under Penal Code or under any other law is exclusively triable by Juvenile Court under Mysore Children Act (1964) — Section 28 or 29 of Criminal P. C. has no application. AIR 1966 Mys 271 (274) = 1966 Cri LJ 1168 = (1966) 1 Mys LJ 249 (DB).

(22) No Magistrate other than a Second Class Magistrate has power to take cognizance of any of the offences under Section 119 of Kerala Panchayat Act upon information received or knowledge on suspicion under Sec. 190, Cr. P. C. AIR 1969 Ker 111 (119) = 1969 Cri LJ 486 = 1969 Ker LJ 351 (DB).

2. Subject to other provisions of the Code.— (1) Under Section 207 the Magistrate should not try but should commit the case to the Court of Session or the High Court where he is of opinion that it ought to be tried by such Court. Similarly Section 254 provides that the Magistrate shall try an accused person only for an offence which, in his opinion, can be adequately punished by him. ('92) 16 Bom 580 (585) (DB).

(2) This section is subject to Sec. 30, though the latter section specifically mentions only Section 29 and not this section. AIR 1936 Rang 230 (231) = 37 Cri L Jour 773 (DB) ** AIR 1938 Nag 56 (57) = 39 Cri L Jour 660 ** AIR 1926 Nag 374 (375) = 27 Cri L Jour 728.

29. Offences under other laws.—(1) Subject to the *[other provisions of this Code], any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

(2) When no Court is so mentioned, it may be tried by the High Court or †[subject as aforesaid] by any Court constituted under this Code by which such offence is shown in the eighth column of the second schedule to be triable.

[1882 — S. 29; 1872 — S. 8; 1861 — S. 21.] [Cf. Cri. P. C. (Pak.) Sections 28, 29, 31: Cri. P. C. of Northern Nigeria, 1960, Ss. 12, 13, 14.]

[*] Substituted for the words "provisions of S. 447", by the Criminal Law Amendment Act, 1923 (XII of 1923), S. 5.

[†] Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 5.

Section 28 — Note 2 (contd.)

(3) Section 30 as amended by Act 1 of 1951 specifically mentions Section 28 and therefore the provisions of Section 28 and the second schedule must give way to the provisions of Sec. 30. The effect of the State Government investing the District Magistrate or any Magistrate of the first class with power under Section 30 is to bring into being an additional Court in which all offences not punishable with death become triable. **AIR 1955 SC 191 (194) = (1955) 1 SCR 1045 = 1955 Cri L Jour 374** ** AIR 1956 Hyd 39 (40) = ILR (1956) Hyd 234 = 1956 Cri L Jour 402 (DB). (Investment of powers under Section 30 on a Magistrate does not oust the jurisdiction of Court of Session nor the powers of such Magistrate and those of the Sessions Judge mutually exclusive.) ** AIR 1967 Mad 409 (410) = 1967 Cr LJ 1530 = (1967) 1 Mad LJ 286. (The Sub-Magistrate is competent to try the offence under Secs. 363 and 366, I. P. C.)

[See AIR 1969 Mad 94 (96). (Complaint not of Trade Mark but only of infringement of property mark under Sections 482 and 486, I. P. C. — Sub-Magistrate held could try that offence.)]

[See also ILR (1954) Hyd 971 (973, 974). (Since Sections 28 and 29 are subject to Section 30 a Magistrate cannot commit a case falling under Section 304, I. P. C., to the Sessions Judge when a District Magistrate has been empowered under Section 30 to try that offence.)]

(4) The powers conferred under Sections 28 and 29, Cr. P. Code, are no doubt, subject to the other provisions of the code including Section 30. But having regard to the tenor, purport and language of Section 30, it cannot be inferred that powers conferred under Section 28 have been curtailed thereby. 1957 Andhra WR 247 (247).

(5) This section embodies a general provision in regard to powers of Court while Section 30 contains a special provision in regard to powers of Section 30 Magistrates. These two sections are not repugnant to each other. They deal with separate matters and can stand together. The amendment of Section 30 by Act 26 of 1955 does not in any way take away the powers which vest in a Magistrate of the First Class under Section 28 to deal with cases under Sections 326 and 409, Penal Code. AIR 1959 Punj 98 (Prs. 8, 9) = 1959 Cri L Jour 361 (DB).

3. Clause (c) — "Any other Court."—(1) "Any other Court" stated in Sec. 28 (c) means a Court referred to in Sec. 6 of the Code. It means a magisterial Court constituted under the Code and not a Special Court constituted under the M. B. Public Security Act, 1953 AIR 1957 Madh B 134 (Pr. 2) = 1957 Cri L Jour 452.

Section 29 — Note 1

(1) In the case of offences under laws other than the Penal Code, if a Court is specified in the particular enactment by which the offence is created, as having jurisdiction to try the offence, it is only such Court that can try the offence. AIR 1952 All 873 (Pr. 3) = 1952 Cri L Jour 1556 ** AIR 1952 Cal 588 (Pr. 52) = 1952 Cri L Jour 1308 (SB) ** AIR 1923 Cal 339 (341) (DB) ** AIR 1969 Ker 111 (115) = 1969 Cri LJ 486 = 1969 Ker LT 351 (DB).

[See however AIR 1953 Madh B 89 (Pr. 4) = 1953 Cri L Jour 629.]

(2) Juvenile offender charged with any offence under Penal Code or under any other law is exclusively triable by Juvenile Court under Mysore Children Act (1964). AIR 1966 Mys 271 (274) = 1966 Cri LJ 1168 = (1966) 1 Mys LJ 249 (DB).

(3) Special Court will always oust jurisdiction of ordinary Court unless the competent authority has kept the jurisdiction of ordinary Court intact. AIR 1967 Madh Pra 94 (95) = 1967 Cri LJ 381 = 1966 MPLJ 1132.

(4) If no Court is specified in the enactment creating the offence, it can be tried by the High Court or by any Court specified in this behalf in the second schedule to the Code. AIR 1950 Pat 550 (Pr. 5) = 29 Pat 935 (DB) ** AIR 1949 Nag 137 (Prs. 10, 18) = ILR (1949) Nag 18 (FB). (AIR 1937 Nag 135,

STATE AMENDMENTS

Andhra Pradesh

Added Territories.—In its application to the territories added to the State of Andhra Pradesh under Section 3 of the Central Act LVI of 1959, the amendments made in S. 29 by Madras Act XXXIV of 1955 shall stand repealed —Andh. Pra. A. L. O., 1961 (w. r. e. f. 1-4-1960).

Tamil Nadu

In its application to the State of Tamil Nadu, in Section 29—

(i) to sub-section (1), add the following proviso:—

"Provided that where the Court so mentioned is the High Court, it shall observe in the trial of such offence the same procedure which a Court of Session would observe if it were trying that case."

(ii) in sub-section (2), omit the words "by the High Court or".—T. N. Act XXXIV 1955, S. 5 (1-1-1956): T. N., A. L. O., 1969

Union Territories (except Chandigarh)

For sub-section (1) substitute the following, namely :—

"(1) Subject to the other provisions of this Code, any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court:

Section 29 — Note 1 (contd.)

Overruled.) ** 1957 Cri L Jour 671 (671) (Cal). (Offence under West Bengal Bargadars Act, 2 of 1950).

[See AIR 1957 Madh B 134 (Pr. 2) = 1957 Cri L Jour 452. ('Any Court" in Section 29 (2) refers to Court constituted under the Code.)]

[See also AIR 1949 Bom 71 (73) = ILR (1948) Bom 631 = 50 Cri L Jour 147 (DB).]

(5) The Hindu Marriage Act not having mentioned any particular Court for trial of the offences, the Court which can try this offence is the Court indicated in the Cr. P. C. AIR 1960 Ker 234 (234) = 1960 Cri LJ 908 = 1960 Ker LT 428.

(6) If the offender is to be charged under Section 71 of Air Force Act, he has to be tried by a Court martial but if not, the offence can be tried by competent Magistrate. AIR 1964 All 371 (372) = 1964 All WR (HC) 526 = 1964 (2) Cri LJ 184.

(7) Once a particular Court is mentioned in the special law that Court alone shall be competent to try offences under that law but subject to the other provisions of the Code of Criminal Procedure. AIR 1962 All 405 (406, 407) = 1962 (2) Cri LJ 305 = 1962 All LJ 687.

(7-A) Offence under Section 7 (3) of the Essential Commodities Act is triable by a Court specified in the Rajasthan Government notification dated 18-11-1964 in view of Section 12-A of the Act read with Section 29, Cr. P. C. and not by any other Court. 1968 Raj LW 597 (599).

(8) The specification of the Court in the special law need not be express. AIR 1951 Bom 145 (Pr. 4) = ILR (1952) Bom 73 = 52 Cri L Jour 1224 (DB).

(9) A third class Magistrate cannot try any offence under the Railways Act, though such offence may be within his jurisdiction if the matter were governed solely by this section and the second schedule. ('79-01) 1 Upp Bur Rul 374 ** ('79) Weir 3rd Edn 584 (585).

(10) As the Magistrate first class has no jurisdiction to try an offence, under Section 15 (1) of the U. P. Private Forests Act 1968, which is triable by Magistrate, Second or Third Class, the trial of the offence by magistrate first Class is void under Section 530 (p), Cr. P. C. **AIR 1964 SC 1673 (1676) = 1964 (2) Cri LJ 606 = (1964) 7 SCR 435.**

(11) This section is subject to the provisions of Section 30 and in view of Sec. 30 and the Notification Jud/AD/131/51 dated 20-4-1951 issued there under the Magistrate cannot commit a case falling under Section 304, I. P. C. to the Sessions when a District Magistrate has been empowered under Section 30 to try that offence. ILR (1954) Hyd 971 (973, 974) (DB).

(12) The sub-section (2), must be read with Section 5 and the High Court cannot take cognizance of a case unless it is committed to it for trial under S. 194. AIR 1936 All 830 (831) = 38 Cri L Jour 111 (FB).

Provided that if the Court so mentioned is a Court specified in column (1) of the Table below, such offence shall be tried by the Court of the Judicial Magistrate specified against it in column (2) thereof;

TABLE

Name of Court specified in the law 1	Court by which triable 2
1. District Magistrate.	Chief Judicial Magistrate.
2. Magistrate of the first class.	Judicial Magistrate of the first class.
3. Sub-divisional Magistrate.	Judicial Magistrate of the first class.
4. Magistrate of the second class. 5. Magistrate of the third class.	Judicial Magistrate of the second class.
6. Magistrate (except where it occurs in any expression mentioned above).	Judicial Magistrate.".

—Act 19 of 1969, S. 3 and Sch., ite 11 (in Delhi on 2-10-1969).

NOTE.—The Act has not been enforced in other territories so far. So in Goa territory the G. D. and D. (Separation of the Judicial and Executive Functions) Order, 1963, published in Goa Gaz., 28-11-1963, Sr. I, p. 411, continues to be inforce. (11) In Chandigarh, the Punjab Act 25 of 1964, prevails.

West Bengal

To sub-section (1), the following proviso shall be added:—

(1) Same as that of the Union territories, but for the Table which is as follows :—

TABLE

Name of the Court specified in the law. 1	Court by which triable 2
1. District Magistrate.	1. Sub-divisional Judicial Magistrate.
2. Magistrate of the first class.	2. Judicial Magistrate of the first class.
3. Sub-divisional Magistrate.	3. Sub-divisional Judicial Magistrate.
4. Magistrate of the second class.	4. Judicial Magistrate of the second class.
5. Magistrate of the third class.	5. Judicial Magistrate of the third class.
6. Magistrate.	6. Judicial Magistrate.
7. Presidency Magistrate.	7. Presidency Magistrate appointed in consultation with the High Court.

—W. B. Act VIII of 1970, Sec. 3 and Sch., Item 18.

29-A. Trial of European British subjects by second and third class Magistrates.—[Repealed by the Criminal Law (Removal of Racial Discriminations) Act, 1949 (XVII of 1949), S. 3.]

NOTE.—The repealed section ran as follows:—

"29A. No Magistrate of the second or third class shall enquire into or try any offence which is punishable otherwise than fine not exceeding fifty rupees where the accused is an European British subject and who claims to be tried as such."

*[**29B. Jurisdiction in the case of juveniles.**—Any offence, other than one punishable with death or †[imprisonment] for life, committed, by any person

SECTION 29-B — SYNOPSIS

1. Scope.

2. "Other than one punishable with death or imprisonment for life."

3. "May be tried."

4. "Or in any area in which the said Act has been . . . . . repealed."

who at the date when he appears or is brought before the Court is under the age of fifteen years, may be tried by a District Magistrate or a Chief Presidency Magistrate, or by any Magistrate specially empowered by the ‡[State Government] to exercise the powers conferred by Section 8, sub-section (1), of the Reformatory Schools Act, 1897, or in any area in which the said Act has been wholly or in part repealed by any other law providing for the custody, trial or punishment of youthful offenders, by any Magistrate empowered by or under such law to exercise all or any of the powers conferred thereby.]

[*] This section was newly added by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 6.

[†] Substituted for "transportation" by the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), S. 5 (1-1-1956).

[‡] Substituted for 'Provincial Government' by A. L. O., 1950.

STATE AMENDMENTS

Andhra Pradesh

Telangana Area.—In its application to the Telangana area of the State of Andhra Pradesh, Section 29B of the Code of Criminal Procedure, 1898, shall cease to apply to any area of Telangana in which the provisions of the Hyderabad Children Act, 1951, have been brought into force.—Hyd. Act XXXII of 1951, S. 66 and Andh. Pra. A. L. O., 1957, Pt. II.

Assam

Assam Children Bill, 1970, has been introduced in the Legislature of the State: Cl. 58 (1) of the said Bill proposes repeal of S. 29B.

Bihar

Section shall cease to apply in an area where the Bihar Children Act, 1970 (Pres. Act 10 of 1970) has been enforced.—Presi. Act 10 of 1970, Section 58 (1).

Gujarat

1. **Bombay Area.**—In its application to the Bombay area of the State of Gujarat, the provisions of Section 29B of the Code of Criminal Procedure, 1898, shall cease to apply to the Bombay area in which Parts II to XI of the Bombay Children Act, 1948, have been brought into operation. — Bom. Act LXXI of 1948, S. 6 and Guj. A. L. O., 1961.

2. **Saurashtra Area.**—In its application to the Saurashtra area of the State of Gujarat, the provisions of Section 29B of the Code of Criminal Procedure, 1898, shall

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Section 29-B (contd.)

1. Scope.— (1) The section is not intended to take away the jurisdiction already conferred on Magistrates under Section 28 and column 8 of the second schedule of the Code. It extends to certain Magistrates the power to try juvenile offenders for certain offences which would otherwise have been triable exclusively by the Court of Session. AIR 1936 All 675 (676) = 37 Cri L Jour 1073 ** AIR 1960 Mad 308 (310) = 1960 Cri LJ 927 = (1961) 2 Mad LJ 457.

(2) Exemption to a minor under Sections 82 and 83 of the Penal Code is not applicable in offence under Section 130 of Railways Act, though it is under Sections 126 to 129 of the Act. AIR 1919 Bom 173 (174) = 43 Bom 888 = 20 Cri L Jour 699 (DB).

(3) Order of the Magistrate committing the juvenile offender to the Court of Session for trial of offences triable by Sessions Court is correct. AIR 1960 Mys 71 (72) = 1960 Cri LJ 493 = 37 Mys LJ 706.

2. "Other than one punishable with death or imprisonment for life."— (1) This section empowers the Magistrates referred to therein to try any offence (other than one punishable with death or imprisonment for life) although such offence, apart from this section, would be beyond their competence to try. AIR 1934 Bom 211 (212) = 35 Cri L Jour 1033 (DB).

(2) An offence under Section 304 of the Penal Code is one punishable with imprisonment for life and cannot, therefore, be tried by the Magistrate in charge of the Central Children Court who is specially empowered under Section 8 of the Reformatory Schools Act, 1897. AIR 1932 Cal 487 (487, 488) = 33 Cri L Jour 645 (DB).

3. "May be tried."— (1) The words "may be tried" are permissive and a Magistrate other than one of those specified in the section before whom a juvenile offender is brought, has a discretion to direct that the accused be cease to apply to any area of Saurashtra in which Parts II to XI of the Saurashtra Children Act, 1956, have been brought into operation.—Sau. Act XXIX of 1956, S. 6 and Guj. A. L. O., 1961.

3. In its application to the State of Gujarat, the amendments made in Section 29B are the same as those made in the State of Maharashtra.

4. Chief Magistrate in the City of Ahmedabad has the powers and exercises the jurisdiction of a Chief Presidency Magistrate.—See Guj. Act XIX of 1961, S. 14 (3) (4-11-1961).

Madhya Pradesh

In its application to the State of M. P., S. 29B shall cease to apply to the area in which the M. P. Bal Adhyadesh is brought into force.—See M. P. Act 15 of 1970, S. 67.

Maharashtra

(1) In its application to the State of Maharashtra, the provisions of Section 29B of the Code of Criminal Procedure, 1898, shall cease to apply to any area in which Parts II to XI of the Bombay Children Act, 1948, have been brought into operation.

All the provisions of the said Bombay Act have now been enforced with effect from 26-10-1964 in those areas of the State wherein the Hyderabad Children Act, 1932 and the C. P. and Berar Children Act, 1928 were in force immediately before the Bombay Act was extended to the whole of Maharashtra.—Bom. Act LXXI of 1948 as amended and extended by Maha. Act XXXVIII of 1963, Ss. 3 and 5 and Maha. A.L.O., 1961.

(2) In its application to the pre-reorganisation State of Bombay, in S. 29B,—

(a) delete the words "a District Magistrate or";

(b) for the words "by any Magistrate specially empowered by the State Government", substitute the words "by any Judicial Magistrate specially empowered by the State Government in consultation with the High Court."—Bom. Act XXIII of 1951, S. 2 and Sch. (1-7-1953).

(3) After the reorganisation of the State of Bombay in 1956, the amendments made in Section 29B by Bombay Act XXIII of 1951 are extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959, by Bom. Act XCVII of 1958.

Mysore

(i) In its application to the State of Mysore S. 29B ceases to apply.—Mys. Act XIX of 1964, Ss. 6 (1) (9-4-1964).

Section 29-B — Note 3 (contd.)

dealt with under this section by one of the Magistrates specified therein or to deal with the case himself. AIR 1931 Bom 198 (199) = 32 Cri L Jour 722 (DB) ** AIR 1934 Bom 211 (212) = 35 Cri L Jour 1033 (DB).

[See also ('32) 1932 Mad WN 1076 (1076). (Case under Children Act (Madras Act 4 of 1920.)]

(2) The Magistrate other than one specified in the section should have jurisdiction under Section 28 or Sec. 29, to try such case. Thus, an offence under Section 130 of the Railways Act (9 of 1890) which is punishable under that section only with whipping and which is not specified to be triable by any Magistrate, in the second schedule of the Code, can be tried under the provisions of Section 29, sub-section (2) only by the High Court, or, under this section by the Magistrate, therein specified. AIR 1936 Sind 185 (185, 186) = 38 Cri L Jour 83 (DB) ** AIR 1928 Lah 909 (909) = 29 Cri L Jour 733.

4. "Or in any area in which the said Act has been . . . . repealed."— (1) See the Bombay Children Act, 1948 (71 of 1948), the Madras Children Act, 1920 (4 of 1920), the Hyderabad Children Act (32 of 1951) and the U. P. Children Act, 1951 (1 of 1952) and the following cases. AIR 1932 Mad 213 (214) = 33 Cri L Jour 192 (DB) ** 1932 Mad WN 1076 (1076).

(2) As to how youthful offenders are to be dealt with under other Acts, see the following cases. AIR 1915 Mad 841 (841) = 16 Cri L Jour 32 ** AIR 1932 Bom 489 (490) = 33 Cri L Jour 395 (DB).

(3) In the case of a trial in which a child is being tried together with an adult for an offence under Section 302, Penal Code, an order committing the child accused along with the adult to the Court of Session for trial, is illegal so far as the child accused is concerned. He can only be tried by the juvenile Court. AIR 1957 Bom 13 (Pr. 2) = 1957 Cri L Jour 50 (DB).

(ii) After the above Mysore Act Mys. Code of Criminal Pro. (Separation of the Judicial and Executive Functions Act, 1965 (Mys. Act XIII of 1965) has made the following amendments in S. 29B, namely :—

(a) Omit the words "a District Magistrate or"; and

(b) for the words "by any District Magistrate specially empowered by the State Government", substitute the words "by any Judicial Magistrate specially empowered by the State Government." — Mys. Act XIV of 1965, S. 12 (1-10-1965).

Punjab: Haryana: Chandigarh

In its application to the States of Punjab and Haryana and the Union Territory of Chandigarh, in Section 29B, for the words "a District Magistrate, or a Chief Presidency Magistrate, or by any Magistrate specially empowered by the State Government", substitute the words "a Chief Judicial Magistrate or any other Judicial Magistrate specially empowered by the High Court."—Punj. Act XXV of 1964, Sec. 2 and Sch., Pt. I, item (12) (2-10-1964) and Act 31 of 1966, Ss. 29, 88 (1-11-1966).

Rajasthan

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendments made in Section 29B are the same as those made in (1) and (2) of Maharashtra.—Cent. Act XXXVII of 1956, S. 119 (1-11-1956).

Union Territories (except Chandigarh)

(1) In its application to the Union territories, Section 29B of the Code of Criminal Procedure, 1898, shall cease to apply to any area in the Union territories in which the Children Act, 1960, has been brought into force—The Children Act, 1960 (LX of 1960), S. 58 (1).

NOTE.—The Act has so far been enforced in Himachal Pradesh, w. e. f. 2-10-1962—see H. P. Gaz., D/- 29-9-1962, Pt. I, p. 565; in Pondicherry w. e. f. 1-10-1963—see Reg. 7 of 1963, S. 3; and in Goa, Daman and Diu from 1-1-1964—see Goa Gaz., D/- 18-12-1963, p. 430.

(2) In Section 29B, for the words "a District Magistrate....empowered by the State Government", substitute the words "a Chief Judicial Magistrate or any other Judicial Magistrate specially empowered by the State Government in consultation with the High Court."—Act 19 of 1969, S. 3 and Sch., item 12.

Uttar Pradesh

In its application to the State of Uttar Pradesh, Section 29B of the Code of Criminal Procedure, 1898, ceases to apply to any area in which Chapters I and III to VIII of the Uttar Pradesh Children Act, 1951, have been brought into force.—U. P. Act I of 1952, S. 76 (1).

West Bengal

In its application to the State of West Bengal, in Section 29B—

(i) for the words 'a District Magistrate....State Government", substitute the words 'a Sub-divisional Judicial Magistrate or a Chief Presidency Magistrate, or any other Judicial Magistrate specially empowered by the State Government in consultation with the High Court"; and

(ii) for the words "exercise all or any other powers conferred thereby", substitute the words "try such persons".—W. B. Act VIII of 1970, Sec. 3 and Sch., item 19.

*[30. **Offences punishable with imprisonment not exceeding seven years.**—Notwithstanding anything contained in Section 28 or Section 29 the State

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SECTION 30 — SYNOPSIS

1. **Scope and object.**
2. **"As a Magistrate."**
3. **Procedure.**
4. **"All offences not punishable with death or . . . . . exceeding seven years."**
5. **Revision.**
6. **Sentence by Sec. 30 Magistrate.** See Section 34.
7. **Appeal — See Sections 34 and 408.**

1. Scope and object.— (1) This section is essentially a section conferring

Government may, in consultation with the High Court, invest any District Magistrate, Presidency Magistrate or Magistrate of the first class with power to try as a Magistrate all offences not punishable with death or with imprisonment for life or with imprisonment for a term exceeding seven years:

Provided that no District Magistrate, Presidency Magistrate or Magistrate of the first class shall be invested with such powers unless he has for not less than ten years, exercised as a Magistrate powers not inferior to those of a Magistrate of the first class.]

[1882, Section 30; 1872, Section 36; 1861 — Nil.]

[*] Substituted for old Section 30 by the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), Section 6 [1-1-1956.] This amendment is not retrospective.— Ibid, Section 116 (a).

STATE AMENDMENTS

Gujarat

(1) In its application to the State of Gujarat, the amendment made in Section 30 is the same as that made in Maharashtra.— See Cent. Act 11 of 1960, S. 87.

(2) Magistrates in the City of Ahmedabad have the powers and exercise the jurisdiction of a Presidency Magistrate. — See Guj. Act XIX of 1961, Section 14 (3) [4-11-1961.]

Section 30 — Note 1 (contd.)
jurisdiction. It gives Magistrates power to try offences which otherwise they cannot try. It deals only with the trial of offences and confers no power to pass a sentence. AIR 1943 Sind 87 (89) = 44 Cri L Jour 461.

(2) The scope of Section 30 is to enable a particular Magistrate to try a particular class of cases and has nothing to do with the competency of the Magistrate to try a particular class of cases. AIR 1960 Madh Pra 20 (22) = 1960 Cri LJ 82 = 1960 MPLJ 372.

(3) The object of conferring special powers on District Magistrates is to accelerate proceedings at the trial by avoiding the delay consequent on commitment to the Sessions Court. It is also intended to afford relief to those who have to attend as witnesses in the Court. AIR 1938 Nag 56 (58) = 39 Cri L Jour 660 ** ('03) 7 Cal WN 457 (460) (DB).

(4) The effect of the State Government investing the District Magistrate or any Magistrate of the first class with power under this section is to bring into being an additional Court in which all offences not punishable with death become triable. **AIR 1955 SC 191 (194) = (1955) 1 SCR 1045 = 1955 Cri L Jour 374.**

(5) First Class Magistrate exercising enhanced powers under this section in District K transferred to District G — Fresh Notification under Section 12 by State Government appointing him First Class Magistrate in District G — No Notification investing him with Sec. 30 powers — He cannot exercise enhanced powers under Section 30 in District G. AIR 1956 Punj 252 (Pr. 4) = ILR (1956) Punj 1119 = 1956 Cri L Jour 1429.

(6) Though before the amendment by the Code of Criminal Procedure (Amendment) Act (1 of 1951) the section specifically referred only to Sec. 29, it was held that Section 28 also must be read subject to this section. AIR 1938 Nag 56 (58) = 39 Cri L Jour 660 ** AIR 1954 Him Pra 79 (79) = 1954 Cri L Jour 1494.

(7) The section as amended by the Code of Criminal Procedure (Amendment) Act (1 of 1951) now refers both to Sections 28 and 29, so that Secs. 28 and 29 are subject to the provisions of this section. ILR (1954) Hyd 971 (973) (DB) ** **AIR 1955 SC 191 (194) = (1955) 1 SCR 1045 = 1955 Cri L Jour 374.**

(8) The section does not offend against Article 14 of the Constitution. AIR 1954 Pat 218 (220) = 1954 Cri L Jour 565 = 32 Pat 728 (DB) ** **AIR 1955 SC 191 (196) = (1955) 1 SCR 1045 = 1955 Cri L Jour 374.**

(9) The section as amended by Act 26 of 1955 does not in any way take away the powers which vest in a Magistrate of the first class under Section 28 to deal with cases under Sections 326 and 409 and other sections of the Penal Code. The only change that has been brought about by the amendment is that if the Magistrate considers that a severer punishment than two years is to be awarded in any of these cases, he should commit the case to the Court of Session and should not deal with it himself. AIR 1959 Punj 98 (Prs. 8, 9) = 1959 Cri L Jour 361 (DB).

2. "As a Magistrate."— (1) The section makes it clear that the cases tried by the specially empowered Magistrate shall be tried by him as a Magistrate. Hence, if he tenders pardon under Section 337 he is precluded from trying

Maharashtra

(1) In its application to the State of Maharashtra in Section 30 delete the words "District Magistrate" at both the places where they occur.

— Bom. Act XXXIX of 1955, Section 3. [2-1-1956.]

(2) After the reorganization of the State of Bombay in 1956, the amendment made in Section 30 by the abovementioned Bombay Act was extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bombay Act XCVII of 1958.

Mysore

In its application to the State of Mysore, omit the words "District Magistrate" at both places where they occur. — Mys. Act XIII of 1965, S. 13 (1-10-1965).

Punjab: Haryana: Chandigarh

In its application to the States of Punjab and Haryana and Union Territory of Chandigarh, for Section 30 substitute the following namely :—

"**30. Offences punishable with imprisonment not exceeding seven years.**—Notwithstanding anything contained in Section 28 or Section 29, the High Court may invest any Chief Judicial Magistrate or any other Judicial Magistrate of the first class with power to try as a Judicial Magistrate all offences not punishable with death or with imprisonment for life or with imprisonment for a term exceeding seven years :

Provided that no Chief Judicial Magistrate or Judicial Magistrate of the first class shall be invested with such powers unless he has, for not less than ten years, exercised as a Magistrate powers not inferior to those of a Magistrate of the first class."—Punj. Act XXV of 1964, Section 2 and Schedule, Pt. I, Item (13) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 [1-11-1966].

Rajasthan

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendment made in Section 30 is the same as that made in (1) of Maharashtra.—Cent. Act XXXVII of 1956, Section 119. [1-11-1956.]

Section 30 — Note 2 (contd.)

the case himself. ('06) 4 Cri L Jour 44 (46) (DB) (Cal) ** AIR 1925 Nag 119 (119) = 25 Cri L Jour 1341.

(2) No committal can be made to him. ('73) 1873 Pun Re No. 17, Cr. p. 19 (20) (DB).

(3) Where a case was committed under the Code of 1861 to a full-power Magistrate as a sessions case, but at the time of the receipt of the case by Magistrate the new Code of 1872 came into force and deprived the Magistrate of the power to try cases as a Court of Session, it was held that the Magistrate had no power to ignore the order of committal and deal with the case under Section 36. ('73) 5 NWPHCR 219 (219, 220).

(4) Where the proceedings of the trial of offence under Section 304, I. P. C., punishable with imprisonment for life or imprisonment for 10 years, were pending before the Section 30 Magistrate, on the date of the commencement of the Amendment Act 26 of 1955, which restricted the powers of the Section 30 Magistrates, the proceedings are to be continued as if Section 30 has not been amended. Disposal of such cases after the amendment came into force is not without jurisdiction. 1957 Raj LW 492 (493).

(5) A Magistrate of the first class who is holding a preliminary enquiry into a case triable by a Court of Session has jurisdiction either to commit it to a Court of Session or to discharge the accused. He cannot make over the case to a District Magistrate specially empowered under Section 30. Where, however, no prejudice had been caused to the accused by reason of his having been convicted by a District Magistrate instead of by the Sessions Court, the conviction was maintained. ('03) 7 Cal WN 457 (460) (DB).

(6) The fact that a case described in the eighth column of Schedule II as one triable by a Court of Session is tried by a Magistrate specially empowered, does not however alter its nature or make it a case "triable by a Magistrate" within the meaning of Section 250. Hence, a Magistrate trying such a case cannot award compensation. AIR 1954 Pat 145 (146, 147) = 32 Pat 424 = 1954 Cri L Jour 221 (DB) ** ('10) 11 Cri L Jour 396 (396) (Lah).

[But see AIR 1936 Rang 230 (231) = 37 Cri L Jour 773 (DB).]

3. Procedure.— (1) The procedure of the Magistrate exercising powers under Section 30 is not similar to the procedure of Sessions Court. AIR 1947 Pat

Union territories (except Chandigarh)

In its application to the Union territories, for Section 30, substitute the following, namely :—

"30. **Offences punishable with imprisonment not exceeding seven years.**— Notwithstanding anything contained in Section 28 or Section 29, the State Government, in consultation with the High Court, may invest any Chief Judicial Magistrate or any other Judicial Magistrate of the first class with power to try as a Judicial Magistrate all offences not punishable with death or with imprisonment for life or with imprisonment for a term exceeding seven years :

Provided that no Chief Judicial Magistrate or Judicial Magistrate of the first class shall be invested with such powers unless he has, for not less than ten years, exercised as a Magistrate powers not inferior to those of a Magistrate of the first class :

Provided further that if any Judicial Magistrate of the first class has, prior to his appointment as such Magistrate, exercised the powers of an Assistant Sessions Judge, he may be invested with the powers under this section notwithstanding the fact that he has not exercised the powers of Magistrate of the first class for not less than ten years."—Act 19 of 1969, Section 3 and Schedule, Item 14 (in Delhi on 2-10-1969).

Section 30 — Note 3 (contd.)

416 (Pr. 4) = 25 Pat 733. (As far as possible the Magistrate should adhere to the procedure indicated in Sec. 256.)

(2) The Court of the District Magistrate exercising enhanced powers is nevertheless not constituted a Court of Session thereby, but remains that of a Magistrate and the procedure for the trial is regulated by Chapter 21 and not by Chapter 23. ('04) 1 Cri L Jour 1063 (1065) (DB) (Lah) ** AIR 1916 Nag 97 (98) = 17 Cri L Jour 245.

(3) A Magistrate acting under this section has no power to try an accused person summarily. Colm. Dig Cr 42 of 1876 ** ('79) 1879 Pun Re. Cr. No. 25, p. 75 (75) (DB).

(4) The difference between the procedure of the trial of a case by a Sec. 30 Magistrate and the procedure in a case triable by a Sessions Court is not merely procedural but is one of substance. A notification conferring powers under this section on a Magistrate cannot have retrospective operations in the absence of some express provision in it to that effect : and the Magistrate invested with such powers cannot himself try a case, committal proceedings in which are pending before him at the time, but must continue the committal proceedings and either discharge the accused or commit him to the Court of Session. AIR 1953 Madh B 56 (Pr. 3) = ILR (1952) Madh B 571 = 1953 Cri L Jour 557 (DB).

(5) Where an Additional District Magistrate actually invested with powers, under Sec 30 acts under those powers, the fact that throughout the record of the case he described himself as Additional District Magistrate and signed the judgment in the same way cannot affect his exercise of powers under Section 30. AIR 1941 Lah 324 (326).

(6) A practice that when a case has not reached the stage of evidence, the City Magistrate acts as a substitute for the Section 30 Magistrate who is trying the case, if the latter is on tour, is illegal. 1936 AMLJ 85 (90).

4. "All offences not punishable with death or . . . . . .exceeding seven years"— (1) The section must be read as qualifying Sections 28 and 29 of the Code. All offences not punishable with death (or with imprisonment for life or with imprisonment for a term exceeding seven years) may be tried by Magistrate empowered under this section notwithstanding that under Sections 28 and 29 they are triable by the Courts specified in the eighth column of the second schedule of the Code. AIR 1926 Nag 374 (375) = 27 Cri L Jour 728 ** 1912 Pun LR No. 223, p. 709 (710) (DB).

(2) Before the Code was amended by Act 26 of 1955, a case under Section 326, Penal Code, could either be sent to a First Class Magistrate if it was not a serious one, or to a Section 30 Magistrate, if it was more serious, but the appropriate sentence could not exceed seven years, and to a Sessions Court if a sentence of more than seven years appeared to be called for and the only effect of the amendment is that the degrees of seriousness of cases under Section 326, Penal Code are reduced from three to two and a minor case under Section 326, Penal Code can still be tried by a First Class Magistrate, but if it is more serious it has now to be sent to the Sessions Court to be tried either by Sessions Judge or by an Assistant Sessions Judge and nothing in the Amendment can detract in any way from the force of the words of Sec. 28 and the appropriate entry in the 8th column in the Second Schedule. AIR 1958 Punj 214 (Pr. 6) = 1958 Cri L Jour 800.

(3) A person accused under Sec 120-B of the Penal Code of being a party to a

West Bengal

In its application to the State of West Bengal, for Section 30, substitute the following, namely:—

"**30. Offences punishable with imprisonment not exceeding seven years.**— Notwithstanding anything contained in Section 28 or Section 29, the State Government may, in consultation with the High Court, invest any Judicial Magistrate of the first class with power to try as a Magistrate all offences not punishable with death or with imprisonment for life or with imprisonment for a term exceeding seven years:

Provided that no such Judicial Magistrate shall be invested with such powers unless he has, for not less than ten years, exercised powers not inferior to those of a Judicial Magistrate of the first class:

Provided further that if any Judicial Magistrate of the first class has, prior to his appointment as such Magistrate, exercised the powers of an Assistant Sessions Judge, he may be invested with the powers under this section notwithstanding that he had not exercised the powers of a Judicial Magistrate of the first class for the ten years." —W. B. Act VIII of 1970, Section 3 and Schedule, Item 20.

Section 30 — Note 4 (contd.)

criminal conspiracy to commit an offence punishable with death (or imprisonment for life) can according to the second schedule, be tried only by a Court of Session. This section will enable a Magistrate empowered under it to try the case, provided no murder has taken place in pursuance of the conspiracy. AIR 1925 Lah 157 (158) = 25 Cri L Jour 1241.

(4) Where a case is prima facie one of murder, a Magistrate specially empowered under this section has no power to try it. AIR 1944 Pat 92 (96) = 45 Cri L Jour 409 (DB) ** AIR 1928 Lah 868 (869) (DB).

(5) Where there is evidence which, if believed, would sustain a charge of murder, it is undesirable that the Magistrate should, under this section, try the case for a minor offence. ('84) 10 Cal 85 (86) (DB).

(6) Cases on the borderline of jurisdiction and cases of great difficulty ought to be committed rather than be tried by the Magistrate under this section. 1 Bur LR 158.

(7) As a general rule, the cases which a Magistrate empowered under Sec. 30 should refrain from trying are, firstly, those in which a sentence more severe than he could inflict under Section 34 appears to be called for and, secondly, those cases in which the issues are so complex, or the difficulty of ascertaining the true facts or of correctly applying the law to them so considerable as to make a trial before a Sessions Judge with the aid of assessors more appropriate than a trial before a Magistrate under this section. 1893-1900 Low Bur Rul 219 (219).

(8) Where a Sessions Judge is of opinion that a Magistrate empowered under Section 30 has tried a case which he was not competent to try he should send the case to the High Court for an order that the accused be committed for trial to the Court of Session. AIR 1926 Lah 575 (575) = 27 Cri L Jour 846 ** AIR 1936 Pesh 139 (139) = 37 Cri L Jour 852.

(9) Though a case may be triable by a specially empowered Magistrate he is not precluded from committing it to a Court of Session if there are good reasons for his doing so. AIR 1952 Ajmer 49 (Pr. 10) = 1952 Cri L Jour 1563.

(10) A provision requiring a Magistrate to send a case to the Court of Session when it appears, that the offence is one triable exclusively by a Court of Session or that it ought to be tried by such Court cannot be taken to mean that a case that can be tried by a Magistrate invested with powers under this section must necessarily be sent for disposal to the Court of Session. AIR 1950 Ajmer 37 (Pr. 1) = 51 Cri L Jour 1240.

(11) The investment of powers under this section by the State Government does not oust the jurisdiction of the Court of Session, nor the powers of such a Magistrate especially empowered and those of the Sessions Judge become mutually exclusive. The investment of powers under this section does in no way affect the powers of the Court of Session conferred under Section 28 (2) to try all offences, of course, only on commitment. AIR 1956 Hyd 39 (40) = ILR (1956) Hyd 234 = 1956 Cri L Jour 402 (DB) ** AIR 1956 Hyd 28 (28) = ILR (1955) Hyd 839 = 1956 Cri L Jour 216 (DB).

(12) The powers conferred under the repealed Section 30 remain unaffected by the commencement of Act 26 of 1955, and can be exercised in proceedings instituted after such commencement. AIR 1960 Madh Pra 180 (181) = 1960 Cri LJ 914 = 1960 MPLJ 147.

(13) The Hyderabad High Court has held that when there are good grounds for commitment, the Magistrate is bound to commit the case to the Court of Session. Such a Magistrate has no power

B. — Sentences which may be passed by Courts of various classes.

31. Sentences which High Courts and Sessions Judges may pass.—(1) A High Court may pass any sentence authorised by law.

(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorised by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

(3) An Assistant Sessions Judge may pass any sentence authorised by law, except a sentence of death or *[of imprisonment for life or of imprisonment for a term exceeding ten years.]

[1882 — Section 31; 1872 — Sections 15, 17, 18; 1861 — Section 22, Paras. 1, 2, 3.]

[Cf: Criminal Procedure Code Law 1960, (North Nigeria), Section 114.]

[*] Substituted for the words "of transportation for a term exceeding seven years, or of imprisonment for a term exceeding seven years" by the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), Section 7 [1-1-1956.]

Section 30 — Note 4 (contd.)

to send the case to any Magistrate with special powers under this section although such especially empowered Magistrate may have jurisdiction to try the offence. AIR 1956 Hyd 39 (40) = ILR (1956) Hyd 234 = 1956 Cri L Jour 402 (DB).

[See also AIR 1956 Hyd 28 (28) = ILR (1955) Hyd 339 = 1956 Cri L Jour 216 (DB).]

(14) It was held by the Hyderabad High Court that in view of the provisions of this section and the Notification Jud/AD/131/51 dated 20-4-1951 issued thereunder, cases coming under Section 304, Penal Code cannot be said to be exclusively triable by the Court of Session and consequently the Magistrate cannot commit a case falling under Section 304, Penal Code to the Sessions when a District Magistrate has been empowered under this section to try that offence. ILR (1954) Hyd 971 (975) (DB).

(15) Cases of rape and unnatural vice should, as far as possible, be tried by a Magistrate with Section 30 powers, so that if circumstances call for a heavy sentence, the same may be given up to the outside limit of seven years. AIR 1936 Lah 256 (256) = 37 Cri L Jour 474.

(16) It has been held that a case under the Prevention of Corruption Act in which the maximum sentence is seven years should be tried by a Sessions Judge and not by a Section 30 Magistrate. AIR 1952 Punj 53 (Pr. 9).

(17) It was held in the following case that reading this section with Section 8 of the Penalties (Enhancement) Ordinance, 1942 (3 of 1942) a Magistrate acting under this section had his jurisdiction enlarged so as to include the power to try offences punishable with death under the said Ordinance. AIR 1943 Sind 87 (89) = 44 Cri L Jour 461.

5. Revision.— (1) Court of a Magistrate exercising enhanced powers and trying cases triable by a Court of Session is nevertheless not a Court of coordinate jurisdiction with, but is inferior to, a Sessions Court and subject to its revisional powers. ('04) 1 Cri L Jour 1063 (1065) = 1904 Pun Re Cr No. 15 (DB).

(2) A Magistrate who is not a District Magistrate, but is invested with enhanced powers, is nevertheless subordinate to the District Magistrate in the same way and to the same extent as any other Magistrate of the first class in the same district, and his orders are open to revision by the District Magistrate under Sections 436 and 437. AIR 1916 Nag 97 (98) = 17 Cri L Jour 245.

(3) It was only at the stage of awarding punishment that the question of competency of Magistrate to inflict higher punishment could arise. 1969 Cri LJ 538 (539) = (1968) 1 Andh LT 267 (DB).

6. Sentence by Section 30 Magistrate.— See S. 34.

7. Appeal.— See Sections 34 and 408.

SECTION 31 — SYNOPSIS

1. **Solitary confinement.**
2. **Imprisonment.**
3. **General principles as to punishments.**— See also Notes under Section 32.

1. Solitary confinement.— (1) Solitary confinement cannot be awarded for an offence not punishable under the Penal Code but punishable only under a local Act. AIR 1924 Lah 667 (667) = 25 Cri L Jour 120.

(2) Where the substantive punishment awarded does not include imprisonment but only fine solitary confinement cannot be awarded. ('82) 1882 Pun Re (Cr) No. 9, p. 13 (13) (DB).

(3) Cumulative sentences of solitary confinement are contrary to the intention of Section 73, Penal Code. AIR 1923 Rang 197 (198) = 25 Cri L Jour 85.

2. Imprisonment.— (1) An order directing that any period undergone as an under-trial prisoner should be con-

32. Sentences which Magistrates may pass.—(1) The Courts of Magistrates may pass the following sentences,*‡ namely :

(a) Courts of Presidency Magistrates*† and of Magistrates of first class*†	Imprisonment for a term not exceeding two years, including such solitary confinement as is authorised by law; Fine not exceeding *[two thousand] rupees; †[* *]
(b) Courts of Magistrates of the second class :	Imprisonment for a term not exceeding six months, including such solitary confinement as is authorised by law; Fine not exceeding *[five hundred rupees]; ‡[* * *]
(c) Courts of Magistrates of the third class :	Imprisonment for a term not exceeding one month; Fine not exceeding *[one hundred] rupees.

(2) The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

§[* * * * *]

[1882.— Section 32; 1872 — Section 20; 1861 — Section 22, paras 4 to 8].

[Cf. Criminal Procedure Code Law, 1960 (North Nigeria) Sections 16, 17, 18].

[*] Substituted for the words "one thousand," "twohundred" and "fifty" respectively by the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), Section 8 [1-1-1956.]

[†] The word "whipping" is omitted by the Abolition of Whipping Act, 1955 XLIV of 1955), Section 3 (a) [19-12-1955].

[‡] The words "whipping (if specially empowered)" were repealed by the Whipping Act, 1909 (IV of 1909), Section 8 and Sch.

[§] Sub-section (3) is omitted, ibid.

[*†] In the City of Ahmedabad Magistrates appointed under Guj. Act XIX of 1961, Section 14 (1), have the powers and exercise the jurisdiction of a Presidency Magistrate. — See Guj. Act XIX of 1961, Section 14 (3). [4-11-1961].

[*‡] For exceptions to this see Reg. VII of 1964, Section 32 (3); A. P. Act V of 1956; Section 11 (3); W. B. Act, XIV of 1965, Section 14.

Section 31 — Note 2 (contd.)

sidered as part of the sentence is illegal. AIR 1923 Lah 104 (105).

(2) Under Section 75 of the Penal Code, on a second conviction a sentence of imprisonment for more than double the prescribed term is illegal. ('82) 1882 Pun Re (Cr) No. 38, p. 63 (64) (DB).

(3) It is not strictly illegal to order that a term of imprisonment subsequently ordered should run concurrently with a term of imprisonment being undergone at the time in default of payment of a fine. But such an order is opposed to the spirit of Section 64, Penal Code and should not be passed. AIR 1931 Rang 51 (51) = 32 Cri L Jour 637.

3. General principles as to punishments.— (1) The expression "Pass any sentence authorised by law" — Means only sentence which is within competence of trying Court. **AIR 1966 SC 945 (947) = 1966 Cri LJ 709 = (1966) 2 SCR 822.** (See also Notes under Section 32.)

SECTION 32 — SYNOPSIS

1. Scope.

2. General principles as to punishment.

3. Imprisonment.

4. Solitary confinement.

5. Fine.

6. Whipping.

7. "May pass any lawful sentence".

8. Appeal against sentence.

9. Power to impose sentence higher than under Section 32.

10. Powers of High Court in revision.

1. Scope. — (1) A Magistrate cannot exceed the limit prescribed by the section and pass a sentence which he is not authorised to pass. AIR 1929 Rang 279 (279) = 31 Cri L Jour 175.

(2) Even a request on the part of the accused will not enable a Magistrate to inflict any sentence exceeding his limit. ('02) 2 Weir 449 (449) (DB).

[See also AIR 1956 Bom 671 (672) = 1956 Cri L Jour 1195 (DB). (Request to enhance substantive sentence but to reduce that awarded in default of payment of fine with a view to obtain certain remissions under jail rules cannot be accepted.)]

(3) There should be no soft peddling with question of sentence — A Judge should not close his eyes to deliberate disregard or defiance of law — Punishment is for prevention of crime, for preventing the offender from repeating the crime and others from committing it — Deterrent sentence must be imposed where necessary. AIR 1970 Goa 56 (59).

STATE AMENDMENT

Union Territories (except Chandigarh)

In its application to union territories, in Section 32, (i) Substitute 'Judicial Magistrates' for the word 'Magistrates' in the marginal heading. (ii) in sub-section (1), in the opening sentence, before the word 'Magistrates,' insert the word 'Judicial'; (iii) in cls. (a) and (b), for the words "Courts of Presidency Magistrates and of Magistrates of the first class" and "Courts of Magistrates" substitute the words "Courts of Judicial Magistrates of the first class" and "Courts of Judicial Magistrates" respectively; (iv) omit clause (c); and in sub-s. (2), for the words, "any Magistrates" substitute the words "any Judicial Magistrates."

—Act 19 of 1969, Section 3 and Sch., Item 14. [In Delhi, on 2-10-1969].

Section 32 — Note 1 (contd.)

(4) A Magistrate even though specially empowered under Section 30 cannot, when exercising his ordinary powers, pass a sentence greater than that allowed by this section. AIR 1933 Bom 58 (59) = 34 Cri L Jour 162 (SB).

(5) Conviction under Sections 7 and 16 of Prevention of Food Adulteration Act, unless there are any special and adequate reasons which must be mentioned in the judgment, the minimum sentence must be imposed. AIR 1969 Bom 360 (360) = 1969 Cri LJ 1350 = 70 Bom LR 693.

(6) Section does not affect the powers of a Magistrate under Section 106 to bind over a person to keep the peace for a period exceeding that for which he can pass a sentence of imprisonment under Section 32. AIR 1915 All 15 (16) = 16 Cri L Jour 350.

(7) Act falling under two definitions of offences but essentially only one offence. Maximum sentence which Magistrate can pass under this section awarded for each such offence, would be illegal. AIR 1948 Cal 6 (7) = 48 Cri L Jour 389.

2. General principles as to punishments. — (1) Every conviction of an offence must be followed by the prescribed punishment. AIR 1951 Orissa 284 (Pr 28) = ILR (1950) Cut 75 = 52 Cri L Jour 837 (DB). (AIR 1928 Nag 188, **Dissent from.** But where no minimum is prescribed, sentence may be nominal.)

(2) In fixing the punishment for any particular offence, Court should take into consideration nature of offence, circumstances in which it was committed, degree of deliberation shown by offender, provocation he has received, if the crime is one of violence, the antecedents of the accused up to the time of sentence, his age and character. And all these matters must be established by evidence and not by impressions created on the spur of the moment. AIR 1947 Bom 409 (411) = 48 Cri L Jour 721 (DB) ** AIR 1956 Madh B 269 (271) = 1956 Cri L Jour 1408 (DB) ** AIR 1967 Goa 95 (96) = 1967 Cri LJ 1005 ** AIR 1967 Raj 159 (175) = 1967 Cri LJ 922 = 1967 Raj LW 326 ** (1966) 32 Cut LT 208 (209) = ILR (1966) Cut 219 ** ILR (1964) Cut 623 (639) (DB).

[See also AIR 1957 Mad 722 (724) = 1957 Cri L Jour 1284 (2).]

(3) Proper sentence should be passed after taking into consideration all circumstances of case regardless of the consideration whether it should be appealable one. AIR 1939 Rang 69 (70) = 40 Cri L Jour 248 ** 1961 Ker LJ 122 = 1961 Ker LT 328.

(4) Every Court must award the sentence suited to the offence and the offender, and not make the sentence smaller because of any doubt regarding the commission of the offence itself. AIR 1953 Mad 877 (877) = 1953 Cri L Jour 1646.

(5) Maximum punishment should be awarded only in extreme cases. AIR 1929 All 919 (924) = 31 Cri L Jour 88 (DB) ** AIR 1958 All 198 (204) = 1958 Cri L Jour 316.

[See also ('10) 11 Cri L Jour 421 (422) = 1910 Pun Re (Cr) No. 16. (Technical offence under Section 19, Arms Act — Nominal sentence is sufficient to meet ends of justice.)]

(6) The Magistrate should exercise a judicial discretion in each case and pass an adequate sentence after taking into consideration all the pertinent circumstances of the case, such as youth, age, sex, illness, motive, drunkenness, insanity or ignorance of law of the accused. AIR 1958 All 198 (204) = 1958 Cri L Jour 316 ** AIR 1947 Mad 264 (Pr 8) = 48 Cri L Jour 89 = ILR (1947) Mad 433 (DB) ** 1970 Cri LJ 431 (433) (Mad). (Sentence of accused reduced because (1) he was first offender; (2) he was likely to be weeded out of co-operative institution, wherein he was the President, the position which was used by him for committing offences and (3) was pretty old man of 62 or 63 years.)

[See also AIR 1958 All 746 (757) = 1958 Cri L Jour 1266.]

(7) Court has discretion to award lesser penalty in case of murder. But confession of unchastity obtained from wife by coercion and threat cannot be accepted as a grave and sudden provocation for inflicting severe injuries on wife and killing the alleged paramour — Lesser penalty not justified. AIR 1965 Mad 48 (49) = 1965 (1) Cri LJ 184 = (1965) 2 Mad LJ 28 (DB).

Section 32 — Note 2 (contd.)

(8) The following are illustrative examples of mitigating circumstances to be considered in awarding punishment. AIR 1933 All 438 (440) = 34 Cri L Jour 641. (First offence.) ** AIR 1947 Pat 152 (Pr 25) = 48 Cri L Jour 497 = 25 Pat 205 (DB). (Sudden provocation.) ** AIR 1927 All 105 (106) = 27 Cri L Jour 1392 (DB). (Do.) ** AIR 1932 Lah 344 (345) = 33 Cri L Jour 587 (DB). (Exceeding right of self-defence.) ** AIR 1916 Low Bur 63 (64) = 17 Cri L Jour 335 ** AIR 1928 All 321 (326) = 30 Cri L Jour 766 (DB). (Apology in case of defamation.) ** AIR 1927 Lah 91 (91) = 28 Cri L Jour 52. (Sexual offence — Woman consenting party.) ** 1970 Cri LJ 549 (552) (Manipur) ** AIR 1968 All 170 (183, 184) = 1968 Cri LJ 584 ** AIR 1967 Pat 253 (254) = 1967 Cr LJ 1040. (Crops removed while civil suit for dispute over the land was pending.) ** AIR 1962 Cal 428 (433) = 1962 (2) Cr LJ 179 (DB). (Accused being of advanced age having his wife and children living.)

[See also AIR 1936 Nag 200 (203) = ILR (1936) Nag 78 = 37 Cri L Jour 1047 (DB). (Woman murdering child for sake of ornaments — Death sentence is proper — Age, sex of accused or that she has recently delivered in jail is no extenuating circumstance.)]

(9) Inordinate delay in trial, due to murderer absconding for a number of years is not valid ground for imposing lesser sentence under Section 302. when the murder is brutal. AIR 1962 Cal 428 (439) = 1962 (2) Cri LJ 179 (DB).

(10) The theory of deterrent punishment should not be loosely put into practice except where there is a danger of a wide breach of the peace or security. AIR 1922 Pat 267 (268, 269) = 22 Cri L Jour 679 ** AIR 1936 Rang 70 (71) = 37 Cri L Jour 416. (Offences of dacoity and robbery common in particular place — Deterrent sentence advisable.) ** AIR 1967 Goa 21 (31) = 1967 Cri LJ 357 (FB).

(11) Where a gang of desperate men or an unlawful assembly threatens to defy the law, the heaviest possible sentence should be passed. ('11) 12 Cri L Jour 260 (265) (DB) (Lah) ** AIR 1937 Sind 239 (240) = 30 Sind LR 354 = 38 Cri L Jour 953 (DB). (Band of Baloochis committing deliberate, audacious and premeditated murder to execute their own sentence of death — Proper sentence is death and not transportation for life.) ** AIR 1929 Pat 502 (503) = 30 Cri L Jour 1100.

(12) The following crimes should be punished with a deterrent sentence:

(a) Arson. AIR 1924 All 781 (782) = 25 Cri L Jour 1190 (DB).

(b) Crimes relating to coins. AIR 1927 Lah 220 (221) = 28 Cri L Jour 305.

(c) Burglary. AIR 1932 Lah 258 (258) = 33 Cri L Jour 500 (DB).

(d) Crimes of violence on women. AIR 1929 Lah 584 (585) = 30 Cri L Jour 699.

(e) Illegal traffic in drugs or liquor. AIR 1950 Ajmer 17 (Pr 3) = 51 Cri L Jour 920 ** AIR 1927 Oudh 132 (134) = 28 Cri L Jour 321.

(f) Sodomy. AIR 1933 Sind 87 (88) = 34 Cri L Jour 618 (DB).

(g) Theft in a railway train. ('12) 13 Cri L Jour 531 (531) (DB) (Bom).

(h) Cheating by a Railway official. AIR 1950 All 639 (Pr 39).

(i) A brutal attack by several persons in a fit of superstition relating to suspected sorcery resulting in the death of the person attacked. **AIR 1955 SC 583 (584) = 1955 Cri L Jour 1297.**

(j) Possessing and using a forged permit knowing it to be forged. **AIR 1965 SC 1921 (1925) = 1965 (2) Cri LJ 822 = (1965) 2 SCJ 474.**

(k) Under Section 16 (1) (a) (ii) of the Prevention of Food Adulteration Act (1954), accused must be sentenced to both imprisonment and fine for a second offence. 1959 All LJ 751 (752) = 1959 All WR (HC) 622.

(l) Accident cases where criminal negligence or rashness on the part of public vehicle drivers or others is proved. AIR 1968 Goa 77 (78) = 1968 Cr LJ 933.

(m) Offence with communal complex. AIR 1964 Madh Pra 182 (194) = 1964 (2) Cri LJ 185 = 1963 Jab LJ 932 (DB). (The sentences imposed were, however, found to be staggering and were suitably reduced.)

(13) An accused person is not entitled to get off with a small sentence merely because he is a person of high position or because he belongs to a particular caste or community. AIR 1953 Mys 75 (Pr 19) = ILR (1953) Mys 79 = 1953 Cri L Jour 1064 (DB) ** AIR 1932 Lah 500 (501) = 33 Cri L Jour 497 (DB).

(14) The fact that the accused is a legal practitioner is not a mitigating circumstance which could matter for the sentence that should be meted out for such offence. AIR 1962 Andh Pra 394 (397) = 1962 (2) Cri LJ 463 = (1962) 1 Andh LT 274.

(15) Inadmissible evidence or any extraneous circumstances such as the reputation of the accused should not influence the Magistrate in awarding the sentence. AIR 1926 Cal 1163 (1165) = 27 Cri L Jour 1329 (DB).

(16) Awarding small or lenient sentences on the ground of doubt regarding the commission of the offence is highly objectionable. AIR 1953 Mad 877 (877) = 1953 Cri L Jour 1646.

Section 32 — Note 2 (contd.)

(17) Imprisonment, for offences outside the Penal Code, should be awarded only as a last resort in cases of contumacy. AIR 1931 Mad 777 (778) = 32 Cri L Jour 1279 ** ('13) 14 Cri L Jour 293 (295) = 9 Nag LR 68.

(18) A Magistrate who pronounces a sentence must define precisely the nature of the sentence intended as well as the period of detention. ('01) 24 Mad 13 (15. 16) (DB) ** ('93) 15 All 208 (209, 210) (DB).

(19) Where the Court awards the maximum punishment it should give the reason therefor. AIR 1926 Lah 239 (240) = 27 Cri L Jour 186.

(20) Murder — Question of sentence has to be determined not with reference to the volume or character of evidence adduced by prosecution but with reference to extenuating circumstances mitigating enormity of crime. **AIR 1957 SC 614 (619, 620) = 1957 SCR 981 = 1957 Cri L Jour 1000.**

(21) Deliberate, cruel and cold-blooded murder by several accused — Court should not hesitate to impose extreme penalty on all unless circumstances exist which attract the principle of discrimination. AIR 1957 Bom 226 (231, 232) = 1957 Cri L Jour 1107.

(22) If murder is a deliberate one and there is no extenuating circumstance, sentence of death must be passed. AIR 1967 Goa 21 (31) = 1967 Cri LJ 357 (FB) ** AIR 1965 Mad 48 (49) = 1965 (1) Cri LJ 184 = (1965) 2 Mad LJ 28 (DB).

(23) An act which has only recently been made an offence or which is not unlawful in other parts of the country or State or which is not essentially criminal in character, deserves leniency, except in the case of persistent offenders. AIR 1958 All 198 (204) = ILR (1957) 2 All 147 = 1958 Cri L Jour 316.

(24) Short sentences ought to be deprecated especially when there is a previous conviction. AIR 1936 Nag 245 (246) = ILR (1937) Nag 181 = 38 Cri L Jour 423.

(25) A short stay in jail sometimes proves more harmful to the accused. The stigma of a convict without the healthy effect of disciplined influence is likely to result in more harm . than good, but the Court cannot abstain from punishing people for grave offences. AIR 1960 Punj 482 (483, 484) = 1960 Cri LJ 1234 = 62 Pun LR 156.

(26) Offence under Drugs Act must be viewed with great concern — Adulteration of drug not too deleterious — Sentence of maximum fine would meet ends of justice. AIR 1959 Cal 427 (430) = 1959 Cri L Jour 829.

(27) What will serve the ends of justice is a deterrent sentence unless, having regard to the nature of the offence and the circumstances in which it is committed, a reformative punishment is called for. AIR 1967 Goa 95 (96) = 1967 Cri LJ 1005 ** AIR 1960 Punj 482 (483, 484) = 1960 Cri LJ 1234 = 62 Pun LR 156.

(28) For punishment under U. P. Prevention of Cow Slaughter Act the Court has to consider many aspects. AIR 1962 All 141 (148) = 1962 (1) Cri LJ 237 = 1961 All LJ 499 (DB).

3. Imprisonment. — (1) Where the nature of the imprisonment is not specified when the sentence is passed it must be taken to be simple. ('07) 11 Cal WN 740 (741) (DB). (A case under the insolvency law.)

(2) Person tried under two sections of Penal Code — Failure to specify separate sentences — Sentence passed to be treated as concurrent sentence under both sections. AIR 1950 Lah 97 (Pr 5) = 51 Cri L Jour 717.

(3) A Magistrate has no jurisdiction in awarding a sentence to direct that any portion of the period during which the accused had been detained in custody as an under-trial prisoner should be computed as part of the sentence. AIR 1923 Lah 104 (105).

(4) In estimating what should be the proper sentence, the Court can take into consideration the period of detention as under-trial prisoner. ('10) 11 Cri L Jour 9 (10) (DB) (Cal).

(5) A sentence of imprisonment until the rising of the Court is good and fulfils the requirements of the law. AIR 1945 Mad 313 (313) = ILR (1945) Mad 529 = 47 Cri L Jour 50 (DB). (AIR 1929 Mad 226 = 30 Cri L Jour 247 and AIR 1942 Mad 723 = 44 Cri L Jour 139, **Overruled.**)

(6) Imprisonment for one day and detention till rising of Court are not different kinds of sentences and therefore. if an accused is sentenced to rigorous imprisonment for one day the accused cannot be detained in jail on a warrant issued for such a period as the day on which the sentence is passed counts as one day. AIR 1949 Cal 104 (Pr 2) = 50 Cri L Jour 135 (DB).

(7) Imprisonment in default of payment of fine should be long enough to induce the accused to pay the fine rather than suffer the imprisonment. AIR 1950 Kutch 73 (Pr 3).

(8) It is deducible from the provisions of Sections 32 and 33 that where a Magistrate has power to pass a sentence of imprisonment as well as of fine the limit placed on the term of the substantive imprisonment does not affect his power of passing sentence of imprisonment in default of payment of fine. AIR 1940 Rang 171 (172) = 1940 Rang LR 223 = 41 Cri L Jour 768.

(9) Sentence of imprisonment not imposed due to lapse of one year from date of offence and because the accused pleaded guilty. AIR 1967 Mys 51 (53) = 1967 Cri LJ 557 = (1966) 1 Mys LJ 108.

Section 32 (contd.)

4. Solitary confinement. — (1) No solitary confinement can be ordered in cases of convictions under —

(a) the Arms Act. ('66) 1866 Pun Re No. 120 Cr. p. 120 (120) (DB).
(b) the Excise Act. ('89) 1889 Pun Re Cr. No. 17 p. 65 (66).
(c) the Criminal Tribes Act. AIR 1924 All 319 (320) = 25 Cri L Jour 654.
(d) the Post Office Act. ('79) 1879 Pun Re No. 24 Cr. p. 73 (74) (DB).
(e) the Opium Act. ('01) 14 CPLR 39 (40).

(2) Solitary confinement can be awarded only as part of a substantive sentence of imprisonment and not when such imprisonment is awarded in default of payment of fine, or in default of furnishing security. ('87) 1887 Pun Re No. 53, Cr. p. 142 (143) (DB).

(3) Solitary confinement may be ordered even in cases where the trial is a summary one. AIR 1927 All 472 (473) = 28 Cri L Jour 534 ** ('99) 1899 Pun Re No. 14 (Cr) p. 38 (39) (DB).

(4) As to extent and the mode of inflicting a sentence of solitary confinement, see Sections 73 and 74 of the Penal Code.

5. Fine. — (1) The power to punish with fine for separate offences is, however, not affected by this section even though the aggregate fine imposed in respect thereof exceeds the maximum limit. ('93) 20 Cal 676 (681, 682) (DB).

(2) An order for payment of a daily fine, in anticipation of offences not yet committed, is illegal. AIR 1935 Pat 208 (210) = 36 Cri L Jour 1048 (DB) ** AIR 1932 All 109 (110) = 33 Cri L Jour 473 (DB) ** AIR 1926 Bom 526 (526) = 27 Cri L Jour 1328 (DB) ** AIR 1932 Nag 116 (117) = 33 Cri L Jour 859.

(3) In fixing the amount of fine within the limits prescribed under this section, the Court should have regard to the nature of the offence and the means of the accused to pay the fine imposed. AIR 1953 Hyd 155 (Pr 2) = ILR (1952) Hyd 526 = 1953 Cri L Jour 827 ** AIR 1950 Kutch 73 (Pr 3) ** AIR 1929 All 919 (924) = 31 Cri L Jour 88 (DB) ** AIR 1925 Bom 526 (526) = 26 Cri L Jour 1536 (DB) ** AIR 1931 Cal 633 (634) = 33 Cri L Jour 28 ** AIR 1928 Pat 59 (60) = 28 Cri L Jour 865 (DB).

(4) In cases of offences of an aggravated nature a sentence of imprisonment is more suitable than one of fine. AIR 1924 Lah 81 (82) = 24 Cri L Jour 278 ** AIR 1930 All 279 (279) = 31 Cri L Jour 631 (DB).

[See also AIR 1954 Pepsu 84 (85) = ILR (1953) Patiala 267 = 1954 Cri L Jour 745. (A sentence of Rs. 100 fine in the case of illicit possession of a .303 rifle is greatly incommensurate with the gravity of the offence.)]

(5) Imposition of fines should be avoided where a death sentence or any substantial term of imprisonment is given. ('13) 14 Cri L Jour 522 (523) = 1913 Pun Re (Cr) No. 18 (DB). (Death sentence.) ** AIR 1931 Cal 710 (711) = 33 Cri L Jour 31 (DB). (Substantial term of imprisonment.) ** AIR 1957 All 764 (765) = 1957 Cri L Jour 1205. (Imprisonment for life — Sentence of fine in addition held not justified.) ** AIR 1956 Bom 711 (714) = 1956 Cri L Jour 1306 (DB) ** AIR 1953 Assam 201 (202) = ILR (1952) 4 Assam 436 = 1953 Cri L Jour 1568 (DB). (Long terms of imprisonment.) ** AIR 1960 All 223 (227) = 1960 Cri LJ 437 = 1960 All LJ 136 (DB).

(6) It is only in very exceptional cases that it is suitable to inflict a fine as well as substantive term of imprisonment. AIR 1957 All 764 (765) = 1957 Cri L Jour 1205 ** AIR 1931 Cal 710 (711) = 33 Cri L Jour 31 (DB).

(7) Accused committing act under bona fide mistake — Disobedience of notice served under Section 313 (1) (a), Madras District Municipalities Act — Sentence of fine only will meet the ends of justice. AIR 1957 Mad 771 (773) = ILR (1958) Mad 82 = 1957 Cri L Jour 1421.

(8) Moving of wheat without permit held technical offence — Sentence of one year's R. I. , and fine of Rs. 1.000 held excessive — Sentence of fine held alone would meet ends of justice. 1962 Raj LW 608 = ILR (1962) 12 Raj 579 (583) (DB). (AIR 1958 Cal 612, Disting.)

(9) Accused bribing police for taking action against a resident of the locality — Circumstance of case indicating that accused might have been used by others for the purpose — No offence committed by accused previously — **Held,** sentence of fine would meet ends of justice — Fine of Rs. 500 in default to six months rigorous imprisonment imposed. 1966 All Cr R 189 (193).

(10) In passing orders of sentence for breach of the condition laid down by the Factories Act, Criminal Courts must bear in mind the beneficent purposes which the provisions of the Act are intended to serve. AIR 1962 Guj 234 (235) = 1962 (2) Cr LJ 71 = (1962) 3 Guj LR 136.

(11) Sentence of fine imposed on the accused on his plea of guilty to charge under Section 304-A, I. P. C. AIR 1960 Mys 177 (177) = 1960 Cri LJ 965 = ILR (1959) Mys 477 ** AIR 1960 Madh Pra 105 (105) = 1960 Cr LJ 482 = 1959 MPLJ 856.

(12) Breach of provisions of M. P. Foodgrains Dealers Licensing Order (1958) — Conduct of accused held not bona fide — Fine to be imposed must be heavy to serve as deterrent. AIR 1965 Madh Pra 27 (31) = 1965 (1) Cri LJ 43 = 1965 Jab LJ 38 (DB).

Section 32 — Note 5 (contd.)

(13) Sentence in default of payment of fine is a penalty and not substantive sentence as contemplated by Section 79 (f) of Bihar Panchayat Raj Act. 1963 BLJR 963 (965).

(14) Imprisonment and fine both obligatory for offence in question — Fine imposed must be adequate and not merely a token fine. AIR 1965 Madh Pra 225 (228) = 1965 (2) Cri LJ 507 = 1966 Jab LJ 10 (DB).

6. Whipping. — (1) The Whipping Act (4 of 1909) has now been repealed by the Abolition of Whipping Act (44 of 1955) with the result that the punishment of whipping has now been abolished.

7. "May pass any lawful sentence." — (1) The following are not lawful sentences for any Magistrate to pass:

(a) A sentence of fine only under Section 193 (false evidence), or Section 390 (robbery) or Section 420 (cheating), or Section 325 (grievous hurt), or Section 456 (lurking house trespass) of the Penal Code. ('66) 1866 Pun Re (Cr) No. 30 p. 29 (29). (Section 193, I. P. C.) ** AIR 1922 All 245 (246) = 23 Cri L Jour 274 (DB). (Section 390, I. P. C.) ** AIR 1929 All 260 (260) = 30 Cri L Jour 340. (Section 420, I. P. C.) ** AIR 1914 Mad 280 (280) = 15 Cri L Jour 192. (Section 325, I. P. C.) ** AIR 1927 Nag 49 (50) = 27 Cri L Jour 1229. (Do.) ** AIR 1933 Pat 179 (179) = 34 Cri L Jour 407 (DB). (Do.) ** ('66) 1866 Pun Re No. 80 Cr. p. 85 (85). (Section 456, I. P. C.)

(b) A sentence of imprisonment for an offence under Section 302, Penal Code. ('11) 12 Cri L Jour 145 (146) (DB) (Mad).

(c) Order of confiscation for an offence under Section 188, Penal Code. ('72) 1872 Pun Re No. 13, Cr. p. 18 (19) (DB).

(d) Imprisonment in default of fine for a period exceeding one-fourth of the maximum period for which the imprisonment can be awarded for the offence. ('71) 16 Suth WR Cr 42 (42) (DB).

(e) Doctor sentenced under Ss. 376, 417 Penal Code — Court directing that the doctor should be debarred from practising for three years. AIR 1969 All 489 (503) = 1969 Cri LJ 1203 (DB).

(2) Where there is one offence punishable under two different provisions of law one punishment only can be lawfully imposed. AIR 1930 Lah 266 (268) = 31 Cri L Jour 290 (DB).

(3) Sentence of one year in ordinary class — Magistrate should not use such useless and meaningless words in judgment. 1959 All WR (HC) 622 = 1959 All LJ 751.

8. Appeal against sentence. — (1) Unless discretion is improperly exercised Supreme Court would not interfere with the sentence imposed. **AIR 1960 SC 724 (738) = 1960 Cr LJ 1148** ** 1961 Ker LT 328 = 1961 Ker LJ 122 ** 1961 Ker LT 769 (772).

(2) Prevention of Food Adulteration Act (1954), Section 21 — Magistrate competent to award full sentence. **AIR 1960 SC 905 (906) = 1960 Cr LJ 1378 = (1960) 3 SCR 427.** (AIR 1959 All 778, Reversed.)

(3) Where the trial Court has exercised its discretion properly in awarding the sentence, appellate Court will not interfere. AIR 1967 Goa 21 (31, 32) = 1967 Cri LJ 357 (FB).

(4) Appellate Court, in varying a sentence, is bound by the limitations imposed by this section on the trial Court. AIR 1924 All 130 (130) = 25 Cri L Jour 312 (DB) ** AIR 1959 Andh Pra 530 (533) = 1959 Cri L Jour 1141. (Same rule applies to High Court while reversing acquittal into conviction.)

(5) Powers of enhancing sentence should be exercised by High Court very rarely. 1961 Ker LT 769 (772).

(6) Enhancement of the sentence where it is below the minimum is a duty of the High Court. AIR 1968 Ker 330 (336) = 1968 Cr LJ 1554 = 1968 Ker LT 909 (DB).

(7) Though High Court has jurisdiction to enhance the sentence, such jurisdiction should be exercised in proper cases. (1966) 32 Cut LT 208 (209) = ILR (1966) Cut 219.

(8) Shopkeeper's first offence under Act — Shopkeeper acquitted by Magistrate but convicted in appeal by High Court — More than 3½ years elapsing after occurrence — Fine sufficient to meet ends of justice. 1969 Cri LJ 704 (706) (Pat).

9. Power to impose sentence higher than under Section 32. — (1) Section 21 of the Prevention of Food Adulteration Act (1954), authorises a Magistrate of the first class to award a sentence beyond the limits prescribed for him under Section 32. **AIR 1960 SC 905 (906) = 1960 Cri LJ 1378 = (1960) 3 SCR 427.**

10. Powers of High Court in revision. — (1) High Court sitting in revision and exercising its jurisdiction under Section 439 read with Section 439 (3) has no power to enhance the sentence to an amount higher than the maximum fine fixed by the law in the case of a Presidency Magistrate, passed by him for offences under Section 167 (81) of Sea Customs Act (1878) and Section 5 of Imports and Exports (Control) Act (1947). AIR 1965 Bom 6 (8) = 1965 (1) Cri LJ 15 = 66 Bom LR 281.

33. Power of Magistrates to sentence to imprisonment in default of fine.—(1) The Court of any Magistrate may award such terms of imprisonment in default of payment of fine as is authorised by law in case of such default:

Proviso as to certain cases.

Provided that—

(a) the term is not in excess of the Magistrate's powers under this Code;

(b) in any case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence, the period of imprisonment awarded in default of payment of the fine shall not exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

SECTION 33 — SYNOPSIS

1. **Scope.**
2. **"Court of any Magistrate'**
3. **Fine.**
4. **Imprisonment.**
5. **"Authorized by law".**
6. **Refund of fine.**
7. **Proviso (a): In excess of powers.**
8. **Proviso (b): Limits to imprisonment in default where substantive sentence is ordered.**
9. **Sub-section (2).**

1. Scope. — (1) Imprisonment in default of payment of fine is a punishment not imposed on account of the offence committed but on account of the failure of the accused to pay the fine which the Court has ordered him to pay. It is, in short, punishment for contempt of Court and the accused continues to be liable to pay fine for six years (see Section 70 of the Penal Code) notwithstanding the imprisonment. AIR 1953 Trav-Co 233 (Pr 3) = ILR (1952) Trav-Co 1006 = 1953 Cri LJ 1265.

(2) Section 33 only relates to cases in which imprisonment in default is authorised by law. ('94) 21 Cal 979 (985) (DB).

[See also (1955) 1955-1 All ER 413. R. v. Carver. (Case under Criminal Justice Act (1948) (British.)) ** ('95) 18 Mad 490 (491, 492) (DB).]

(3) Sections 63 to 70 of the Penal Code authorise the award of imprisonment in default of payment of fine in cases of offences punishable under the Penal Code. Under Section 25 of the General Clauses Act, 1897 (10 of 1897) the sections have been made applicable to all fines imposed under any Act, Regulation, rule or bye-law unless such Act, etc., contains any express provision to the contrary. The mere existence of a special procedure in an Act for the recovery of fines will not negative the power to award imprisonment unless the applicability of Sections 63 to 70 of the Penal Code is expressly excluded in the said Act. ('02) 1 Low Bur Rul 150 (151) ** ('70) 7 Bom HCR (Cr) 76 (77) (DB). (Indian Income-tax Act.) ** ('75) Rat 91 (92) (DB) ** ('96) 23 Cal 421 (423) (DB). (Village Chowkidari Act, 6 of 1870, Bengal.) ** AIR 1932 Cal 63 (63) = 33 Cri LJ 303 ** AIR 1926 Sind 144 (144) = 27 Cri LJ 90 (DB) ** ('95) 18 Mad 490 (492) (DB).

[See also ('70) 5 Mad HCR (App) 23 (24).]

[But see ('72-92) 1872-92 Low Bur Rul 473 (473). (Case before the General Clauses Act of 1897.)]

(4) Section 33 does not make it imperative on a Court to award imprisonment in default of payment of fine. ('78) 1878 Pun Re (Cr) No. 30, p. 73 (73) (DB).

(5) Imprisonment in default of fine, should as a rule be awarded in cases where the Court is competent to award it, as otherwise the only procedure left open for the recovery of the fine would be that laid down in Sections 386 and 387, Criminal Procedure Code. ('92-96) 1 Upp Bur Rul 18 (18).

(6) Where a person who was sentenced to imprisonment and fine was released after he had served the full term of the imprisonment on his giving security for paying the fine by instalments, it was held that an order recommitting him to prison for default in paying the fine, passed after the period of six years within which the fine is leviable under S. 70 of the Penal Code, was illegal. AIR 1936 Lah 348 (349) = 37 Cri LJ 503.

(7) A sentence of joint fine on two accused persons with terms of imprisonment in default cannot be supported because it is impossible to say whether either of the convicted persons is liable to suffer the entire term of imprisonment and in what proportion to the default. AIR 1938 Pat 271 (271, 272) = 39 Cri LJ 531.

2. "Court of any Magistrate." — (1) The word "Magistrate" in the section is not qualified, as it is in Section 35 (2) (b), by the addition of the words "other than a Magistrate acting under S. 34": hence the section applies also to Magistrates specially empowered under S. 34. ('93-1900) 1893-1900 Low Bur Rul 281 (281).

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under Section 32.

[1882 — S. 33; 1872 — S. 20, Expln. and S. 309; 1861 — S. 45.]

STATE AMENDMENTS

Union Territories (except Chandigarh)

In its application to the Union territories, in Section 33,—

(i) in sub-section (1), in the marginal heading, for the word 'Magistrates', substitute the words 'Judicial Magistrates';

(ii) in the opening paragraph, for the words 'any Magistrate', substitute the words 'any Judicial Magistrate';

(iii) in the proviso, in clause (b), for the words 'by a Magistrate', substitute the words "by a Judicial Magistrate."—**Act 19 of 1969, S. 3 and Sch., item 15** (in Delhi on 2-10-1969).

The Act has not been brought into force so far and hence in the Union territory of Goa, Goa, Daman and Diu (Separation of the Judicial and Executive Functions) Order, 1963, published in Goa Gaz., 28-12-1963, Sr. I, p. 411, shall still be in force.

In the Union Territory of Chandigarh, created by Act 31 of 1966, Punjab Act XXV of 1964, on the subject, is in force in virtue of S. 89 of Act 31 of 1966.

Section 33 (contd.)

3. Fine. — (1) The excess charge or fare referred to in Section 113 of the Railways Act (9 of 1890), cannot be said to be a fine, though recoverable as such. Hence, imprisonment cannot be awarded in default of payment of such charge or fare. ('94) 18 Bom 440 (441) (DB) ** ('97) 20 All 95 (95) ** ('97) 20 Mad 385 (386) (DB).

(2) Where an Act provides for the award of compensation (e. g., Cattle-trespass Act) the mere fact that compensation may be levied as a fine does not authorise the Court to order imprisonment in default of payment thereof. The ordinary mode of levying fines is prescribed in Section 386 of the Code. ('90) 1 Weir 712 (712) ** ('96) 19 Mad 238 (239) (DB) ** ('94) 22 Cal 139 (143) (DB) ** (1900) 27 Cal 992 (992) (DB) ** AIR 1930 Nag 149 (149) = 31 Cri LJ 278.

(3) Section 386 does not apply to compensation ordered under Section 250 of the Code. ('94) 21 Cal 979 (985) (DB).

(4) Section 386 itself now prescribes for the passing of an order of imprisonment simultaneously with the order for compensation. Court-fees ordered to be paid under Section 31 (now repealed — see Sections 546-A and 547, Criminal P. C.) of the Court-fees Act though recoverable as fines were not fines within the meaning of this section. ('94) 1 Weir 724 (724).

(5) There is no distinction between the word "penalty" in the Bombay District Municipalities Act (6 of 1873) (since repealed — see now Bombay Act 3 of 1901) and the word "fine" in the Penal Code. So imprisonment may be awarded in default of payment of the penalty. ('93) 18 Bom 400 (401) (DB).

(6) Section 75 of the Penal Code contains no power to fine for an offence punishable under Chapter XII or XVII when such offence is committed after a previous conviction of an offence punishable under one of those chapters. Consequently in such a case a sentence of fine and imprisonment in default is illegal. (1900-02) 1 Low Bur Rul 57 (2) (58).

4. Imprisonment. — (1) Only imprisonment can be awarded in default of payment of fine. Transportation cannot be awarded nor whipping. ('82) 5 Mad 28 (29) = 1 Weir 30 (DB) ** ('80) 1880 Pun Re (Cr), No. 17 p. 29 (30) (DB) ** ('66) 1866 Pun Re (Cr) No. 5 p. 6 (6). (Whipping cannot be awarded.)

(2) A Court cannot order that a juvenile offender be sent to the Reformatory School in default of payment of fine as under Section 8 of the Reformatory Schools Act, 1897 (8 of 1897), a youth cannot be sent to a Reformatory School unless a substantive sentence of imprisonment or transportation has been passed on him. ('11) 12 Cri LJ 244 (244) = 4 Bur LT 69.

(3) Where the kind of imprisonment which the offender may be sentenced to for the offence as a substantive punishment is simple, the imprisonment that may be awarded in default of payment of fine can only be simple and not rigorous. ('66) 5 Suth WR (Cr) 76 (76) (DB) ** ('67) 7 Suth WR (Cr) 31 (31) (DB). [See ('68) 5 Bom HCR (Cr) 43 (43) (DB).]

(4) When the offence was punishable with fine only, the description of imprisonment in default of payment of

Section 33 — Note 4 (contd.)

such fine should be simple. ('72-92) 1872-1892 Low Bur Rul 279 (280) ** **AIR 1957 SC 645 (Pr 6) = 1957 SCR 1032 = 36 Pat 942 = 1957 Cri LJ 1023.** (Section 65 of the Bihar Waqfs Act 1947 (8 of 1948) not providing for any imprisonment in default of payment of fine — Sentence of 15 days' simple imprisonment in default of payment of Rs. 100 fine is valid under Section 33 read with Sections 40 and 67 of Penal Code.) ** ('82) 1 Weir 239 (239) (DB).

(5) When an offence is punishable with imprisonment of either description the imprisonment in default of payment of fine may be of either description. ('72-92) 1872-1892 Low Bur Rul 434 (435).

(6) When rigorous imprisonment may be awarded in default of payment of fine (viz., according to Section 66, Penal Code), the Court cannot order that a portion of the term of imprisonment be spent in solitary confinement under Section 73 of the Penal Code. ('73) 1873 Pun Re (Cr) No. 26 p. 34 (35) (SB) ** ('69) 1869 Pun Re (Cr) No. 20 p. 37 (38).

(7) Where an accused is sentenced to pay fine and in default of payment a simple imprisonment, the proper procedure is to ask him to execute a bond and take his signature thereto, unless he was appealing or filing revision. This would mean that he would have to pay fine only. In the case of fine, time also should be given for the payment thereof. AIR 1958 Mad 458 (Pr 2) = 1958 Cri LJ 1195.

5. "Authorized by law." — (1) It is not only necessary that the imprisonment awarded should not be in excess of the Magistrate's powers but it should also be in conformity with the provisions of the Penal Code. AIR 1943 Sind 124 (126) = 44 Cri LJ 637 (DB) ** AIR 1941 Pat 48 (48) = 41 Cri LJ 957.

(2) If the offence is punishable with fine only, Section 67, Penal Code, should be referred to for determining the limit to the imprisonment that may be awarded in default of payment of the fine. ('68) 10 Suth WR (Cr) 30 (30) (DB).

(3) If the offence is punishable with imprisonment and fine, or, imprisonment or fine, Section 65 and not Section 67, Penal Code determines the term of imprisonment awardable. ('01) 1 Low Bur Rul 150 (152) ** ('99) 22 Mad 238 (239, 240) (DB).

(4) Under Section 65, Penal Code, the **term of imprisonment that may be awarded in default of payment of fine may not exceed one-fourth the term of imprisonment which is the maximum fixed for the offence.** AIR 1943 Sind 124 (126) = 44 Cri LJ 637 (DB) ** AIR 1941 Pat 48 (48) = 41 Cri LJ 957 ** ('87) 10 Mad 166n (168n) (FB). **(Overruling 1 Mad 277 (FB)** ** ('87) 10 Mad 165 (167) (FB) ** ('77) 1 All 461 (462, 463) (FB) ** (1900) 2 Bom LR 1081 (1081) (DB).

(5) Imprisonment under this section should not only be such as is authorised by law but should be passed with due regard to the requirements of the case. It should, however, bear a reasonable proportion to the amount of the fine. ('72-92) 1872-92 Low Bur Rul 353 (353).

[See however 1 Bur LR 483 (484). (What imprisonment should be in each case must depend on circumstances which have nothing to do with amount of fine.)]

(6) Imprisonment in default of payment of fine should be long enough to induce the accused to pay the fine rather than suffer the imprisonment. AIR 1950 Kutch 73 (Pr 3).

(7) Sentence to pay fine and in lieu of it, to serve simple imprisonment — Not proper — He should follow procedure laid down in Section 265 (2) for recovery of fine. AIR 1966 Raj 238 (240, 241) = 1966 Cri LJ 1329 = 1964 Raj LW 408.

6. Refund of fine. — (1) A Court has no power to order the refund of fine realised. So when an accused paid a sum towards the fine inflicted, but that fact not having been communicated by the Magistrate to the jailor the prisoner suffered the whole term of imprisonment ordered in default of payment, it was held that the Magistrate had no power to order a refund but that any application for that relief should be made to the Government. ('67-68) 4 Bom HCR (Cr) 37 (38) (DB).

7. Proviso (a) : In excess of powers.— (1) Although Section 65 of the Penal Code authorises the awarding of imprisonment in default of payment of fine to the extent of one-fourth of the maximum term prescribed for the offence, the Magistrate, under this section, will not be competent to award even this term if it is in excess of his ordinary powers. ('77) 1 All 461 (465) (FB).

(2) In cases of imprisonment awarded as a process for enforcement of payment of fine the rule of Section 262 of this Code limiting the period of imprisonment in summary trials does not apply, as that section only refers to substantive sentences of imprisonment. AIR 1943 Sind 124 (125) = 44 Cri LJ 637 (DB) ** AIR 1940 Rang 171 (172) = 41 Cri LJ 768 ** ('83) 6 All 61 (61).

8. Proviso (b) : Limits to imprisonment in default where substantive sentence is ordered. — (1) Where the offence is punishable with imprisonment and fine and the Magistrate sentences the offender to both punishments and orders further that he is to undergo a term of imprisonment in default of payment of the fine, there is in addition to the restriction found in Section 65 of the Penal Code to the term awardable, this further restriction imposed on a Magistrate by this section, namely, that the imprisonment in default cannot exceed one-fourth

34. Higher powers of certain District Magistrates.—The Court of a Magistrate, specially empowered under Section 30, may pass any sentence authorised by law, except a sentence of death or of [*][imprisonment for life] or imprisonment for a term exceeding seven years.

[1882 — S. 34; 1872 — S. 36; 1861 — Nil.]

[*] Substituted for the words "transportation for a term exceeding seven years" by the Code of Criminal Procedure (Amendment) Act 1955 (XXVI of 1955), S. 9 (1-1-1956).

STATE AMENDMENTS

Punjab: Haryana: Chandigarh

In its application to the States of Punjab and Haryana and Union Territory of Chandigarh, in the marginal heading of S. 34, for the word "District", substitute the word "Judicial". — Punj. Act XXV of 1954, S. 2 and Sch., Pt. I, item (14) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Section 33 — Note 8 (contd.)
of the period which the Magistrate is competent to inflict as a substantive sentence. ('01) 1 Low Bur Rul 150 (152) ** 1955 BLJR 416 (420) (DB). (Sentence by Gram Cutchery under the Bihar Panchayat Raj Act.)

(2) A Magistrate who is not empowered to pass a sentence of more than six months' imprisonment cannot award a term of more than one and a half month's imprisonment in default of payment of fine. ('79) 1879 Pun Re (Cr) No. 24, p. 74 (74) (DB) ** AIR 1921 Lah 236 (1) (236) = 22 Cri LJ 145. (Offence under Sec. 225-B, Penal Code.) ** ('66) 6 Suth WR (Cr) 51 (51) (DB).

(3) A Magistrate with special powers is now enabled to sentence a person under this section for a period of one year and nine months, in default of payment of fine without the sanction of the Sessions Judge. 1885 Pun Re (Cr) No. 35, p. 78 (79) (DB) ** 1893-1900 Low Bur Rul 281 (281).

9. Sub-section (2). — (1) The sentence of imprisonment which a Magistrate may award in default of payment of fine may be in addition to the maximum substantive sentence of imprisonment awardable by him under Section 32. ('68) 9 Suth WR (Cr) 41 (47) (FB).

(2) Sentence in default of fine imposed is penalty and not substantive sentence. 1963 BLJR 963 (965).

SECTION 34 — SYNOPSIS

1. Validity of Section 34.
2. "Except a sentence . . . "
3. Appeal.

1. Validity of Section 34. — (1) Section 34 does not offend against Art. 14 of the Constitution. AIR 1954 Pat 218 (Pr 19) = 32 Pat 728 = 1954 Cri LJ 565 (DB).

2. "Except a sentence . . . . ." — (1) A sentence of seven years' imprisonment is the maximum sentence which a Magistrate empowered under Section 30 is authorized to pass. AIR 1930 Sind 211 (214) = 31 Cri LJ 1046 (DB) ** AIR 1958 Punj 214 (Pr 6) = 1958 Cri LJ 800. (Effect of amendment of S. 30 by Act 26 of 1955 indicated.)

[See ('12) 1912 Pun LR No. 223, p. 709 (710) (DB).]

(2) Section 75 of the Penal Code does not override the provisions of this section and enable a Magistrate acting hereunder to sentence a person to a longer term than seven years. ('72) 1872 Pun Re (Cr) No. 31, p. 41 (41) (DB).

(3) Under Section 30 a Magistrate may pass a sentence of whipping in addition to the maximum sentence of seven years' imprisonment for the same offence by virtue of the provisions of Section 32, sub-section (2), if the offence is punishable with whipping in addition to any other punishment. AIR 1937 Rang 183 (184) = 38 Cri LJ 670 (DB).

(4) Sentences passed by the High Court under its powers of enhancement should not ordinarily exceed one of seven years' rigorous imprisonment which a Magistrate acting under Section 34 is empowered to pass. If the Court considers that seven years will not meet the ends of justice, the usual course will be to set aside the trial and order the case to be committed to Sessions. AIR 1923 Lah 600 (600) = 24 Cri LJ 932 (DB) ** AIR 1925 Lah 318 (318) = 26 Cri LJ 757 (DB).

(5) If a case is referred under Section 349 to a Magistrate specially empowered, the latter cannot exercise his powers under Section 34. ('07) 6 Cri LJ 289 (290) = 4 Low Bur Rul 53.

(6) The specially empowered Magistrate to whom the case is referred under Section 349 can order a re-trial before himself and in that re-trial he can exercise powers under Section 34 if he finds the accused guilty. ('81) 1881 Pun Re (Cr) No. 10, p. 10 (11) (DB).

(7) A Magistrate empowered under Section 30 must purport to act under that section in order to be able to pass sentence under Section 34. AIR 1933 Bom 58 (59) = 34 Cri LJ 162 (SB) ** AIR 1934 Lah 361 (361) = 35 Cri LJ 1288.

[But see AIR 1941 Lah 324 (326) = 42 Cri LJ 890 ** AIR 1935 Pesh 108 (109) = 36 Cri LJ 1143 (DB).]

3. Appeal.— (1) If a Section 30 Magistrate acting under Section 34 passes sentences of imprisonment exceeding four

Union Territories (except Chandigarh)

In its application to the Union territories, in Section 34, in marginal heading amendment is the same as that of Punjab — Act 19 of 1969. S. 3 and Sch., item 16 (in Delhi on 2-10-69).

NOTE.—This Act has not been enforced in other territories so far and hence previous provisions or orders prevailing in any territory would continue to be in force thereat.

West Bengal

In its application to the State of West Bengal, in Section 34—

(i) in the marginal heading, for the words 'District Magistrates', substitute the words "Judicial Magistrates".

(ii) for the words 'Court of a Magistrate', substitute the words 'Court of a Judicial Magistrate"—W. B. Act 8 of 1970, S. 3 and Schedule, item 23.

34A. Sentences which Courts and Magistrates may pass upon European British subjects.—[Repealed by S. 3 of the Criminal Law (Removal of Racial Discriminations) Act, 1949 (XVII of 1949), S. 3.]

NOTE.—The repealed section ran as follows:—

"34A. Notwithstanding anything contained in Sections 31, 32 and 34—

(a) no Court of Session shall pass on any European British subject any sentence other than a sentence of death, penal servitude, or imprisonment with or without fine, or of fine, and

(b) no District Magistrate or other Magistrate of the first class shall pass on any European British subject any sentence other than imprisonment, which may extend to two years, or fine which may extend to one thousand rupees, or both."

35. Sentence in cases of conviction of several offences at *one trial.*—*(1)* *[When a person is convicted at one trial of two or more offences, the Court

Section 34 — Note 3 (contd.)

years, appeals of all or any of the accused convicted at such trial shall lie to the High Court. See S. 408.

(2) In the case of a joint trial for offences under Section 19, Arms Act and Section 29, Frontier Crimes Regulation (3 of 1901) separate sentences passed to run consecutively are proper and the whole order is appealable. AIR 1933 Pesh 90 (93, 94) (DB).

(3) If a Magistrate acting under Section 349 exercises powers under Section 34 (which Section 349 debars him from doing) the sentence is ultra vires and even if it exceeds four years, an appeal therefrom will lie only to Sessions Court and not to High Court. ('07) 6 Cri LJ 289 (290) = 4 Low Bur Rul 53.

(4) Interference in appeal — Ordinarily Supreme Court will not interfere in appeal with the sentence imposed. **AIR 1964 SC 986 (992) = 1964 (2) Cri LJ 57 = (1964) 5 SCR 916.**

SECTION 35 — SYNOPSIS

1. Scope.
2. "One trial."
3. Convictions for two or more offences.
4. "This section and Section 71, Penal Code."
5. "May sentence."
6. Separate and aggregate sentences.
7. Consecutive sentences.
8. Concurrent sentences.
9. Imprisonment or transportation — Concurrent sentences of.
10. Imprisonment in default of payment of fine, if can be made concurrent.
11. No imprisonment for a period longer than 14 years — Proviso (a).
12. Aggregate of sentences, when treated as a single sentence.

1. Scope. — (1) The object and effect of this section is to regulate and in some cases, to increase, subject to the provisions of Section 71 of the Penal Code, the period of the punishment that the Courts are competent to inflict. AIR 1934 Rang 338 (339) = 36 Cri LJ 460 (DB).

(2) The normal rule is that the sentences should be consecutive and they may be made to run concurrently only if there is some reason. AIR 1951 All 637 (Pr 11) = 52 Cri LJ 912 (2).

(3) A sentence of imprisonment must be made to operate from the date of conviction and not from a date prior to that on which the sentence is passed. ILR (1954)4 Raj 438 (440) ** 1970 Cr LJ 96 (97) (Goa). (Sentence takes effect immediately on conviction.)

(4) Offence falling under Defence of India Rules as also under Customs Act —Conviction should be under D. I. Rules which is special provision. AIR 1969 Andh Pra 278 (280, 281) = 1969 Cri LJ 1022.

may, subject to the provisions of Section 71 of the Indian Penal Code,] sentence him, for such offences, to the several punishments, prescribed therefor which such Court is competent to inflict; such punishments, when consisting of imprisonment †[* *] to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Maximum term of punishment.

Provided as follows:

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

(b) if the case is tried by a Magistrate (other than a Magistrate acting under Section 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

Section 34 — Note 1 (contd.)

(5) In fixing the punishment for any particular crime the Court will have to take into consideration the nature of the offence, the circumstances in which it was committed, the degree of deliberation shown by the offender, the provocation which he has received if the crime was one of violence, the antecedents of the prisoner up to the time of sentence, his age and character. 1962 (2) Cri LJ 147 (155) (Manipur).

2. "One trial." — (1) The rules as to the assessment of punishment must be sought for in Section 71 of the Penal Code and this section. ('86) 10 Bom 493 (496) (DB) ** ('88) 12 Mad 36 (38) (DB).

(2) Where a person accused of several offences is separately tried and convicted for each of such offences, this section has no application and the aggregate punishment which can be awarded is not limited to twice the amount which can be awarded by the Magistrate. ('80) 3 All 305 (311, 312, 315) (FB).

3. Convictions for two or more offences. — (1) This section applies only when an accused person has been convicted at one trial of two or more offences. AIR 1916 Mad 829 (829) = 16 Cri LJ 611.

[See also ('03) 5 Bom LR 26 (27) (DB).]

(2) Where a convicted person is liable to be punished under the provisions of Section 75, I. P. C. a separate sentence cannot legally be passed against him on account of the previous conviction recorded against him as S. 75 only imposes a liability to enhanced punishment. AIR 1916 Mad 829 (829) = 16 Cri LJ 611 ** ('69) 5 Mad HCR (App) 3 (3) ** ('88) 1888 Rat 417 (418) (DB) ** (1865) 1 Weir 36 (36).

4. "This section and Section 71, Penal Code." — (1) A commits criminal trespass on certain property with intent to commit theft, and also commits theft. The former is an offence under Section 457 of the Penal Code and the latter under Section 380 thereof. The offences in such a case are not 'separable' offences but 'distinct' offences and separate sentences can be passed in respect of them. AIR 1945 Mad 330 (330) = ILR (1945) Mad 896 = 47 Cri LJ 157. (AIR 1926 Pat 367 = 27 Cri LJ 976, **Dissented.**) ** AIR 1942 Oudh 214 (215) = 43 Cri LJ 252 ** AIR 1939 Sind 76 (77) = 40 Cri LJ 466 ** AIR 1939 Pat 349 (350) = 40 Cri LJ 751 (DB).

[But see AIR 1925 Cal 1015 (1016) = 26 Cri LJ 1253 (DB) ** AIR 1930 Pat 385 (386) = 31 Cri LJ 492 (DB) ** AIR 1926 Pat 367 (368) = 27 Cri LJ 976 (DB) ** AIR 1926 Lah 212 (212) = 27 Cri LJ 338.]

(2) A, B, C, D and E are members of an unlawful assembly, and A, in prosecution of the common object of the assembly, commits hurt. A would be guilty of rioting and of causing hurt. The hurt may have been caused in the course of rioting after the offence of rioting is complete, by the use of other forces. The hurt is not part of rioting within the meaning of Section 71 and separate sentences can be passed. AIR 1953 All 510 (Pr 11) = 1953 Cri LJ 1222 ** AIR 1940 Oudh 419 (420) = 41 Cri LJ 775 (DB) ** AIR 1940 Nag 120 (123) = 41 Cri LJ 360 ** ('85) 7 All 757 (758) (FB) ** ('85) 7 All 414 (421, 423) (FB).

(a) According to following cases the hurt is part of the rioting within the meaning of Section 71 and separate sentences cannot be passed for the two offences. AIR 1940 Pesh 10 (11) = 41 Cri LJ 543 = AIR 1928 Pat 326 (333) = 29 Cri LJ 325 (DB). (Offences under Sections 354 and 342 I. P. C. forming part of same transaction — Separate sentences not justified.) ** ('91) ILR 19 Cal 105 (109) (DB) ** ('99) 3 Cal WN 174 (175) ** AIR

(3) For the purpose of appeal, ‡[the aggregate of consecutive] sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

§[* * * * * *]

[1882 — S. 35; 1872 — S. 314; 1861 — S. 46.]

[*] Substituted for "when a person is convicted at one trial of two or more distinct offences, the Court may", by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 7.

[†] The words "or transportation" were omitted by the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), S. 10 (1-1-1956).

[‡] Substituted for "aggregate" by Act XVIII of 1923, S. 7.

[§] The Explanation and Illustration to S. 35 were repealed, ibid.

OBJECTS AND REASONS

"On the recommendation of the High Court, North-Western Provinces, we have empowered Courts in India, as in England, to pass concurrent, as well as consecutive, sentences of transportation and imprisonment. The effect of this change will probably be to mitigate sentences and at the same time also to discourage frivolous appeals...." —S. C. R., 1898.

STATE AMENDMENT

West Bengal:

In its application to the State of West Bengal, in clause (b) of proviso to sub-section (2) of Section 35, for the words "a Magistrate", occurring at two places, substitute the words "a Judicial Magistrate".—W. B. Act 8 of 1970, S. 3 and Sch., Item 24.

Section 35 — Note 4 (contd.)

1927 Lah 786 (788) = 28 Cri LJ 838 ** AIR 1926 Lah 581 (581) = 27 Cri LJ 834 ** AIR 1922 Lah 405 (405) = 24 Cri LJ 629 ** ('01) 1901 Pun Re (Cri) No. 4, p. 9 (10) (FB).

(b) The following cases hold that the hurt is part of the rioting and even in such a case A may be punished separately for the two offences. AIR 1933 Mad 333 (339) = 34 Cri LJ 273 (DB). (AIR 1927 Mad 970 (970) = 28 Cri LJ 1004, **Dissented from.**) ** AIR 1928 Mad 18 (18) = 28 Cri LJ 982 ** AIR 1940 Nag 120 (123) = 41 Cri LJ 360.

(c) The following case has held that in such a case the accused can be separately convicted and sentenced under Sections 147 and 323 I. P. C, but total punishment cannot exceed the maximum for the graver of the two offences. AIR 1953 All 510 (Pr 10) = 1953 Cri LJ 1222.

(3) B, C. D and E are guilty of the offence of rioting and by virtue of their being members of an unlawful assembly and for that reason only of the offence of hurt under Section 149 read with Section 323 of the Penal Code, separate sentences for each of the offences cannot be passed. ('89) 16 Cal 442 (446) (FB) ** AIR 1931 Cal 450 (451) = 32 Cri LJ 890 (DB). (The amendment of this section in 1923 does not alter the law as laid down in 16 Cal 442 (FB) ** AIR 1955 Bhopal 9 (Prs 19, 20, 22) = 1955 Cri LJ 1033.

[But see AIR 1943 Sind 212 (218) = 45 Cri LJ 130 ** AIR 1926 Nag 459 (461) = 27 Cri LJ 830 ** AIR 1926 All 225 (226) = 27 Cri LJ 287 ** ('93) 17 Bom 260 (270) (FB).]

(4) Section 149 of the Penal Code creates a specific offence. AIR 1925 PC 1 (7) = 26 Cri LJ 431.

(5) Unlawful assembly — Hurt caused in pursuance of common object but who caused it not known — Case falls under Para. 2 of Section 71, Penal Code— Accused can be convicted and sentenced separately under Section 147 and Section 323/149, Penal Code provided aggregate sentence does not exceed the limit prescribed for one of them. AIR 1952 All 92 (Prs 10, 11).

(6) Convictions under Sections 323 and 452, I. P. C. — Separate sentences are legal. AIR 1938 Rang 114 (115) = 39 Cri LJ 497.

(7) Conviction under Sections 379 and 429, I. P. C. — Separate sentences are legal. AIR 1936 Bom 172 (173) = 37 Cri LJ 553 (DB).

(8) Convictions for theft and mischief — Imposition of separate sentences is legal. AIR 1938 Rang 138 (139) = 39 Cri LJ 607.

(9) An accused convicted under Section 325 cannot be convicted and sentenced separately under Section 323 in respect of the same person. AIR 1940 Oudh 419 (420) = 41 Cri LJ 775 (DB).

(10) The offences under Sections 225 and 353 are separate offences and therefore the provisions of Section 71 cannot apply to them. AIR 1940 Pesh 10 (11) = 41 Cri LJ 543.

Section 35 — Note 4 (contd.)

(11) Offences under Sections 65 (b), 65 (f) and 66 (b), Bombay Prohibition Act (25 of 1949) — Although separate sentences can be passed subject to aggregate imposed by Section 71, I. P. C., ordinarily one sentence alone should be passed for offence under Section 65 (b). AIR 1951 Bom 244 (Pr 15) = ILR (1950) Bom 795 (DB).

(12) Convictions under Sections 143, 447, 379 and 427, Penal Code — Separate sentences are legal. ('50) 54 Cal WN (2 DR) 311 (312).

(13) Case under Bombay Prohibition Act, 1949— Accused drunk and incapable of taking care of himself and also behaving in disorderly manner under influence of drink — It would be proper to impose only one sentence. AIR 1956 Bom 279 (Pr 4) = 1956 Cri LJ 584 (DB).

(14) Act punishable under Section 121, Motor Vehicles Act — As a result of the Act, accused convicted under S. 304-A. I. P. C. for rash and negligent act — He cannot be punished again under Section 121, Motor Vehicles Act. AIR 1955 Mad 548 (Pr 3) = 1955 Cri LJ 1267.

(15) Offence defined by Sections 279, 280, 336, 337 and 338, Penal Code, can be viewed as minor offences included within Section 304-A. Accused once convicted under Section 304-A cannot be convicted under Section 279 for minor offence. AIR 1965 All 196 (201) = 1965 (1) Cri LJ 524 = 1964 All WR (HC) 134.

(16) There is no legal bar to a person being convicted both of murder and of the offence under Section 201 and the proper course for the trial Court in a case where the evidence warrants it will be to enter a conviction for both the offences but not to award any sentence for the accessory offence. AIR 1953 Trav-Co 402 (Pr 28) = ILR (1953) Trav-Co 514 = 1953 Cri LJ 1613 (DB).

(17) Offences under S. 429 I. P. C. and Section 116, Motor Vehicles Act — Each offence is separate and distinct — Separate sentence for each not invalid. AIR 1957 Andh Pra 100 (103) = 1957 Cri LJ 627.

(18) Where the sentence imposed under Sections 9 (a) and 9 (b) of the Opium Act is 3 months imprisonment on each count to run consecutively i. e., in all six months, it does not contravene Section 71 I. P. C. and is not illegal. **AIR 1958 SC 935 (937) = 1958 Cri LJ 1432.**

(19) Separate acts — Simultaneous conviction under Section 395 and Section 412 not illegal. ('56) 1956 Andh LT 915 (916, 917).

(20) Accused convicted and sentenced under Section 9, Prize Competitions Act — Separate sentence under Section 11, which is a lesser offence, not necessary. AIR 1964 All 572 (572) = 1964 (2) Cri LJ 632 = 1964 All LJ 581.

(21) Accused convicted and sentenced under Section 394 should not have a further conviction and sentence under Section 324, where assault was made during commission of robbery. 1968 All WR (HC) 889 (890) = 1968 All LJ 1037.

(22) Separate sentences for offence under Section 167 (81), Sea Customs Act and one under Section 120-B, Penal Code are not illegal. **AIR 1970 SC 45 (58).**

5. "May sentence." — (1) The word 'may' in the section must be interpreted as 'shall'. AIR 1933 Sind 9 (10, 11, 12) = 34 Cri LJ 143 (DB).

(2) Where, an accused is convicted at one trial of two or more offences the Court must, in cases in which the provisions of Section 71 of the Indian Penal Code do not come into play, pass separate sentences for the several offences. AIR 1953 All 510 (Pr 7) = 1953 Cri LJ 1222 ** ('51) 1951 Ker LT 261 (265) (DB) ** ('49) 1 Madh B LR 443 (444) ** AIR 1934 Rang 338 (339, 341) = 36 Cri LJ 460 (DB) ** AIR 1969 Orissa 146 (147) = 1969 Cri LJ 925 ** (1958) 24 Cut LT 494 (495).

[But see AIR 1953 Tripura 8 (Pr 6) = 1953 Cri LJ 1536. (Section 35 is permissive and not obligatory.) ** ('72-92) 1872-1892 Low Bur Rul 271 (271) ** ('72-92) 1872-1892 Low Bur Rul 526 (527) ** ('75) 12 Bom HCR 147 (148) (DB).]

(3) Conjoint sentence for several offences is illegal. 1968 All WR (HC) 78 (81) = 1968 All Cri R 45.

(4) The Court has no discretion whatever to pass only one sentence for one offence and decline to pass sentences, for the other offences of which it may find the accused guilty. AIR 1950 All 610 (Pr 1) ** AIR 1934 Rang 338 (341) = 36 Cri LJ 460 (DB).

(5) Where the accused are found guilty under Sections 249, 313 and 338 of the Madras District Municipalities Act, 1884, the Magistrate should impose a fine on the accused under Section 313 (1). An omission to do so is an illegality. ('55) 1955-1 Mad LJ 188 (189).

(6) Passing of a cumulative sentence, instead of separate sentences, upon an accused person convicted at one trial of two or more offences, is not the order, but is an exception only under certain circumstances enumerated under Section 71, I. P. C. AIR 1969 Orissa 146 (147) = 1969 Cri LJ 925.

6. Separate and aggregate sentences. — (1) In cases coming under this section, a Court has no power to pass an aggregate sentence instead of separate sentences on each head of charge. ('86) 1886 Pun Re (Cr.) No. 14 p. 23 (24) (DB).

[See also AIR 1924 Mad 584 (585) = 25 Cri LJ 396 (DB).]

[But see AIR 1950 All 610 (610). (Court may be obliged to pass one sent-

Section 35 — Note 6 (contd.)

ence but that sentence must cover both the offences of which the accused has been convicted.)]

(2) The object of the section in imposing separate sentences is to enable the appellate or revisional Court to determine the amount of punishment to be remitted in case one or other of the charges breaks down in appeal or revision. AIR 1934 Rang 338 (339) = 36 Cri LJ 460 (DB) ** ('86) 1886 Pun Re (Cr) No. 14, p. 23 (24) (DB).

[See also AIR 1958 All 575 (578) = 1958 Cri LJ 984 (DB).]

(3) Passing of consolidated sentence instead of separate sentences is only a curable error or defect. AIR 1953 All 245 (Pr 28) = 1953 Cri LJ 612 (DB) ** AIR 1950 Lah 97 (Pr 5) = 51 Cri LJ 717 ** ('66) 2 Bom HCR 391 (392) (DB).

(4) A composite sentence of imprisonment passed in respect of two or more offences means that Court awarded identically same sentence of imprisonment for each offence and an order that the sentences to run concurrently. AIR 1953 All 245 (Pr 28) = 1953 Cri LJ 612 (DB) ** AIR 1950 Lah 97 (Pr 5) = 51 Cri LJ 717 ** AIR 1924 All 492 (492) = 20 Cri LJ 992. (Sentence of 18 months' imprisonment under Sections 326 and 148, I. P. C. — Means concurrent sentence of 18 months and not 9 months, sentence for each offence.)

(5) Accused was tried and convicted under Sections 421 and 469 of the Travancore Penal Code but the Court passed a sentence of two years' rigorous imprisonment only under Section 469. In appeal and revision High Court reduced the sentence to one year and directed that for each of the offences under Sections 421 and 469, accused should be sentenced to one year's rigorous imprisonment respectively and that the sentence should run concurrently. ('51) 1951 Ker LT 261 (265, 266) (DB).

(6) A composite sentence of fine should be treated as made up of separate sentences of fine, equal in amount for each of the offences provided that such amount is within the maximum allowed under that offence. AIR 1953 All 245 (Pr 28) = 1953 Cri LJ 612 (DB).

(7) Where in a joint trial of several accused for several offences the Magistrate convicted all accused without specifying the sections of Penal Code under which they were convicted and passed a combined sentence in respect of each of them, it was held that judgment was vitiated. AIR 1948 All 136 (136) = 49 Cri LJ 103.

7. Consecutive sentences. — (1) Where a Magistrate convicts the accused under two sections of Penal Code and passes two separate sentences of imprisonment, but does not specify that they are to run concurrently, it must be held that they run consecutively. AIR 1953 All 510 (Pr 3) = 1953 Cri LJ 1222 ** AIR 1939 Pat 349 (349) = 40 Cri LJ 751 (DB) ** AIR 1965 Him Pra 21 (22) = 1965 (1) Cri LJ 443.

(2) Criminal breach of trust by accused — Accused convicted in 6 cases — Consecutive sentences totalling to 11 years and fine totalling to Rs. 10,500 held excessive. (1963) 5 OJD 294 (296).

(3) Failure to indicate order of sentences under Section 35 could not justify order of remand by appellate Court because even as appellate Court it was open to it to give direction as to order in which sentences were to run, if it was at all necessary. AIR 1968 Pat 287 (288) = 1968 Cri LJ 1108.

(4) In passing sentences, their order should be carefully set out without ambiguity to avoid complications in enforcing the sentence and dealing with the matter in appeal. AIR 1969 Orissa 146 (147) = 1969 Cri LJ 925.

(5) Sentence of certain months' R. I. ordered to run consecutively with sentence of specific months of R. I. under other provision— It is wholly immaterial which sentence should run first. AIR 1968 Pat 287 (288) = 1968 Cri LJ 1108.

8. Concurrent sentences. — (1) A Magistrate convicted an accused of offences under Sections 148 and 326, Penal Code, and sentenced him to 18 months imprisonment "under Sections 326 and 148, Penal Code." It was held that the order must be interpreted as meaning that the Magistrate passed concurrent sentences under each section and not separate sentences of nine months on each charge. AIR 1924 All 492 (492) = 25 Cri LJ 992.

(2) As to the power of Court to pass concurrent sentences even in cases where an accused has been convicted in two or more separate trials, see S. 397.

(3) The section confers a discretion on the Court to order sentences to run concurrently if there is some reason. But the Court must exercise its discretion judicially. AIR 1951 All 637 (Pr 11) = 52 Cri LJ 912 (2).

(4) It is not illegal to order simple imprisonment and rigorous imprisonment to run concurrently. ('37) 1937 Mad WN 1334 (1335).

(5) Accused sentenced to death for murder and to 10 years' and 9 months' rigorous imprisonment respectively for other offences — Death sentence commuted to life imprisonment — Principles in Sections 35 and 397 apply — Sentences should run concurrently. AIR 1963 Raj 202 (203) (DB) = 1963 (2) Cri LJ 396 = 1963 Raj LW 252 (DB).

(6) Power of Court to direct concurrent running of punishments is confined to cases where the punishment consists of imprisonment. AIR 1967 Pat 286 (287) = 1967 Cri LJ 1180 = 1966 BLJR 420.

C. — Ordinary and Additional Powers.

36. Ordinary powers of Magistrates.—All District Magistrates, Sub-Divisional Magistrates, and Magistrates of the first, second and third classes, have

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Section 35 (contd.)

9. Imprisonment or transportation — Concurrent sentences of. — (1) The section applies also to cases where one of the sentences inflicted is imprisonment and the other is transportation. AIR 1917 Cal 377 (378) = 17 Cri LJ 238 (238) (DB).

(2) A term of imprisonment can legally be made to run concurrently with a term of transportation. AIR 1914 Lah 75 (76) = 15 Cri LJ 68 (DB) ** AIR 1917 Cal 377 (378) = 17 Cri LJ 238 (238) (DB).

10. Imprisonment in default of payment of fine, if can be made concurrent. — (1) As this section refers only to substantive sentences of imprisonment, it is illegal to pass concurrent sentences of imprisonment in default of payment of fines imposed upon convictions for two or more offences at one trial or at separate trials. AIR 1950 All 625 (Pr 5) ** ('48) 1948 Bur LR 362 (363, 364) ** AIR 1944 Mad 448 (448) = 45 Cri LJ 770 ** AIR 1937 Mad 406 (407) = 38 Cri LJ 796 ** AIR 1926 Bom 62 (62) = 27 Cri LJ 111 (DB). (Concurrent sentences of fine are illegal.) ** AIR 1929 Sind 179 (179) = 30 Cri LJ 907 (DB) ** AIR 1940 Lah 388 (389) = 42 Cri LJ 33 (DB).

[See also AIR 1942 Sind 80 (81) = 43 Cri LJ 779 (DB). (Section 35, Cr. P. Code, does not expressly refer to substantive sentence of imprisonment but it must be read with Section 64, Penal Code.)]

(2) A sentence of imprisonment in default of payment of fine cannot be directed to run concurrently with a substantive sentence of imprisonment passed for a different offence either at the same trial or at different trials. AIR 1953 Trav-Co 233 (Pr 4) = ILR (1952) Trav-Co 1006 = 1953 Cri LJ 1265 (DB). (Such concurrent sentence contravenes S. 64, Penal Code.) ** 1948 Bur LR 362 (363, 364) ** AIR 1944 Mad 448 (448) = 45 Cri LJ 770 ** (1968) 1 Mys LJ 210 (211, 212) ** AIR 1967 Pat 286 (287) = 1967 Cri LJ 1180 = 1966 BLJR 420 (DB) ** (1969) 35 Cut LT 1292 (1297).

(3) Sentences of imprisonment in default of payment of fine — Bar under Section 64, I. P. Code is attracted. AIR 1967 Pat 286 (286) = 1967 Cri LJ 1180 = 1966 BLJR 420 (DB).

(4) Conviction under Sections 447 and 325 read with Section 34 Penal Code — Sentence on each count to undergo R. I. and fine — Direction that sentences should run concurrently — Held, that there could be no question of a concurrent sentence of fine at all and hence there could be only one sentence of fine and the sentence of imprisonment on each count would run concurrently. AIR 1967 Assam 111 (112) = 1967 Cri LJ 1597.

(5) The conversion of a concurrent sentence of fine to a consecutive sentence of fine was in the nature of an enhancement irrespective of the amount of fine involved. The Sessions Judge had no jurisdiction to do that. AIR 1967 Assam 111 (112) = 1967 Cri LJ 1597.

11. No imprisonment for a period longer than 14 years — Proviso (a). — (1) An aggregate sentence of 20 years passed in respect of three convictions at one trial is contrary to this proviso. ('01) 11 Cri LJ 679 (680) (DB) (Lah).

[See also ('70) 1870 Pun Re (Cr.) No. 33 p. 52 (53) (SB).]

(2) Where the sentences are ordered to run concurrently and the period of such concurrent sentences does not exceed 14 years, the proviso is not infringed. AIR 1937 Rang 391 (392) = 39 Cri LJ 28.

(3) Where accused is tried and convicted separately in two or more cases, the aggregate of the several sentences may be accumulated beyond the period of fourteen years. ('67) 7 Suth WR (Cr) 1 (2) (DB).

(4) Where an accused is convicted at one trial of two or more offences and sentences of transportation are passed upon him under Section 59, Penal Code, in lieu of the terms of imprisonment awarded, the aggregate of the sentences of transportation is also subject to the maximum limit of fourteen years. ('94) 7 CPLR (Cr) 29 (30).

12. Aggregate of sentences when treated as a single sentence.— (1) The aggregate of such sentences can be deemed to be a single sentence only for the purposes of appeal. ('87) 1887 Pun Re (Cr) No. 45 p. 110 (113) (DB) ** AIR 1954 Cal 301 (Pr 5) = 1954 Cri LJ 797 (DB).

(2) Two or more consecutive sentences of imprisonment, each less than seven years, cannot be added up and treated as a single sentence for the purpose of commuting them into transportation under Section 59 of the Penal Code. (1865) 3 Suth WR (Cr) 44 (44) (DB) ** ('66) 5 Suth WR (Cr) 44 (44) (DB).

(3) The aggregate of consecutive sentences refers only to sentences of imprisonment and not to sentences of fine. AIR 1926 Bom 416 (416) = 27 Cri LJ 926 (DB).

SECTION 36 — SYNOPSIS

1. **Ordinary powers of Magistrates.**
2. **Power of Government.**

1. Ordinary powers of Magistrates. — (1) Section 28, read with column 8 of Sch. II of the Code, defines the powers vested in each class of Magistrates to try the powers hereinafter respectively conferred upon them and specified in the third Schedule. Such powers are called their "ordinary powers."

[1882 — S. 36; 1872 — Ss. 21, 22, 24, 26, 28, 30; 1861 — Nil.]

STATE AMENDMENTS

Gujarat

In its application to the State of Gujarat, the amendment made in Sec. 36 is the same as that made in Maharashtra.—See Cent. Act XI of 1960, S. 87.

Maharashtra

(1) In its application to the State of Maharashtra in S. 36 for the words "District Magistrates, Sub-Divisional Magistrates and Magistrates of the first, second and third classes" substitute the words "Judicial and Executive Magistrates other than Special Judicial and Executive Magistrates."—Bom. Act XXIII of 1951, S. 2 and Schedule (1-7-1953): Maha. A. L. O., 1960.

(2) After the reorganization of the State of Bombay in 1956 the amendment made in Section 36 by the above-mentioned Bombay Act is extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Section 36 — Note 1 (contd.)

particular offences. This section read with Sch. III defines certain incidental powers vested in the Magistrates of each class, which they are required to exercise either in the course of trial before them or otherwise. These powers are referred to as the ordinary powers of a Magistrate as opposed to additional powers, which may be conferred on him under Section 37. AIR 1951 Madh B 67 (Pr 5) = 52 Cri LJ 214 ** AIR 1928 Sind 1 (4) = 28 Cri LJ 913 (FB) ** AIR 1969 Ker 111 (116) = 1969 Cri LJ 486 = 1969 Ker LT 351 (DB).

(2) The power to issue a search warrant under Section 96 is one of the ordinary powers of any Magistrate. ('12) 13 Cri LJ 693 (700) (PC).

(3) The power to hear an appeal against an order passed under Section 514 of the Code is one of the ordinary powers of a District Magistrate. AIR 1951 Madh B 67 (Pr 5) = 52 Cri LJ 214.

(4) When a person is appointed as a Magistrate under Sections 10, 12 or 13 he has powers conferred on him as specified in this section. AIR 1963 Tripura 31 (34) = (1963) (2) Cri LJ 322.

(5) Magistrates have various powers under the Code namely to try and to commit cases and power to take cognizance of offences. AIR 1969 Ker 111 (116) = 1969 Cri LJ 486 = 1969 Ker LT 351 (DB).

(6) The mere fact that the State Government has apppointed a first class Magistrate to be an Additional District Magistrate having all the powers of a District Magistrate, cannot abrogate the powers which the Code itself vests in a District Magistrate. AIR 1951 Madh B 67 (Pr 8) = 52 Cri LJ 214.

(7) Where a system of separation of judicial and executive functions obtains and there are Munsif Magistrates who can try cases, it is not proper for the other Magistrates to exercise judicial functions except when the Munsif Magistrates have no power to act. AIR 1951 Vind Pra 49 (Pr 8) = 1952 Cri LJ 13.

(8) Power to take cognizance of an offence under Section 190 is an ordinary power of a Sub-Divisional or Divisional Magistrate. AIR 1969 Ker 111 (116) = 1969 Cri LJ 486 = 1969 Ker LT 351 (DB).

(9) The power to entertain complaints is not one of the ordinary powers of a first, second or third class Magistrate, but must be conferred as an additional power under Section 37. ('11) 12 Cri LJ 535 (535) = 34 Mad 343 (DB).

(10) Schedule III is, however, not exhaustive of the powers conferred on Magistrates under the Code. A first class Magistrate, therefore, can exercise the powers under Section 106 and demand security for keeping the peace notwithstanding the fact that they are not specified in Schedule III. ('32) 1932 Mad WN 151 (152).

(11) A power to act under a particular section referred to in Schedule III can only mean a power to act subject to the conditions of that section. Thus, a power to act under Section 107 is conferred by Sechdule III on a first class Magistrate, but a District Magistrate cannot detain the accused under sub-section (4) of Section 107 unless the accused has been sent up before him under sub-section 3. ('08) 7 Cri LJ 360 (360) = 31 Mad 315 (FB).

(12) Any notification conferring on Justices of the Peace, the powers of a first class Magistrate, confers only the ordinary powers under this section and not any of the powers conferrable on them under Section 37, or any other general powers of the Magistrate under the Code. ('11) 12 Cri LJ 535 (535) = 34 Mad 343 (DB) ** ('11) 12 Cri LJ 42 (42) = 34 Mad 346 (SB) ** AIR 1917

Mysore

In its application to the State of Mysore the amendment made in Section 36 is the same as that of Maharashtra with addition of the word 'special' before 'Executive Magistrates' occurring for the second time.— Mys. Act XIII of 1965, S. 14 (1-10-1965).

Punjab: Haryana: Chandigarh

In its application to the States of Punjab and Haryana and the Union Territory of Chandigarh, in Section 36 after the words "District Magistrate", insert the words "Chief Judicial Magistrates"; and for the words "Magistrates of the first, second and third classes" substitute the words "Judicial and Executive Magistrates other than Special Judicial Magistrates."—Punj. Act XXV of 1964, S. 2 and Sch., Pt. I, item (15) (2-10-1964) and 31 of 1966, Ss. 29 and 88 (1-11-1966).

Rajasthan

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendment made in S. 36 is the same as that made in (1) of Maharashtra.—Cent. Act XXXVII of 1956, S. 119 (1-11-1956).

Union Territories (except Chandigarh)

In its application to the Union territories, in S. 36, after the words 'District Magistrates' insert the words "Chief Judicial Magistrates" and for the words "Magistrates of the first, second or third classes," substitute the words "Judicial and Executive Magistrates of the first and second classes."—Act 19 of 1969, S. 3 and Sch., item 17 (in Delhi on 2-10-1969).

West Bengal

In its application to the State of West Bengal, for Section 36 substitute the following, namely :—

> Ordinary powers of Magistrates—Judicial and Executive—
>
> 36. All District Magistrates, Sub-divisional Executive Magistrates and Executive Magistrates of the first, second and third class and all Sub-Divisional Judicial Magistrates and Judicial Magistrates of the first, second and third class have powers hereinafter respectively conferred upon them and specified in the

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Section 36 — Note 1 (contd.)
Mad 139 (140) = 17 Cri LJ 293 (293) (DB).

(13) Power under Section 109 to require security for good behaviour is 'ordinary power' conferred on a First Class Magistrate by Section 36. 1962 (2) Cri LJ 711 (712) (Mys).

(14) Order calling for records not indicating the section under which it is passed — Non-compliance by an inferior Court on that ground is illegal. AIR 1967 Pat 76 (79) = 1967 Cri LJ 242 = 1965 BLJR 765.

2. Powers of the Government. — (1-2) The power to appoint a Civil Judge as an Additional Sessions Judge is to be found not in Sections 36 to 39 but in Section 9 which empowers the State Government to appoint additional or Assistant Sessions Judges. **AIR 1967 SC 1599 (1604) = 1967 Cri LJ 1569 = (1967) 3 SCR 186.**

(3) Extent of power of District Magistrate — Power to call for records of an inferior Court in a judicial proceeding not taken away by the Government of Bihar Instructions contained in Appointment Department letter No. II—H. 301/50-A — 11860 dated 20th December, 1950. AIR 1967 Pat 76 (79) = 1967 Cri LJ 242 = 1965 BLJR 765.

(4) Any notification of the State Government which purports to take away or restrict the ordinary powers of a District Magistrate under this section would be ultra vires and illegal in the absence of any specific provision to that effect in the Code itself or in any other enactment. AIR 1951 Madh B 67 (Pr 10) = 52 Cri LJ 214.

(5) Appointment of Commandant 6th Battalian Assam Rifles as first class Magistrate is legal but restrictions on his powers are illegal. AIR 1963 Tripura 31 (34, 35) = (1963) 2 Cri LJ 322.

(6) The powers given to a Magistrate by the Code itself under this section cannot be taken away by the use of Sectinon 41. AIR 1951 Madh B 67 (Pr 5) = 52 Cri LJ 214 ** 1962 (2) Cri LJ 711 (712) (Mys).

(7) There is no provision in the Code with regard to the conferment of powers under Section 36 on any Magistrate by the Government. The powers under Section 36 of a Sub-divisional Magistrate are conferred by the Code itself. They are not conferrable on any Magistrate by any order of the Government. AIR 1958 Madh Pra 184 (Pr 4) = 1958 Cri LJ 897 (DB).

Third Schedule. Such powers are called their "ordinary powers".—W. B. Act VIII of 1970, S. 3 and Sch., item 25.

37. Additional powers conferrable on Magistrates.—In addition to his ordinary powers, any Sub-divisional Magistrate or any Magistrate of the first, second or third class may be invested by the [State Government] or the District Magistrate, as the case may be, with any powers specified in the fourth Schedule as powers with which he may be invested by the State Government or the District Magistrate.

[1882 — S. 37; 1872 — Ss. 23, 25, 27, 29; 1861 — Nil.]

STATE AMENDMENTS

Gujarat

In its application to the State of Gujarat, the substituted S. 37 is the same as that substituted in Maharashtra.—See Central Act XI of 1960, S. 87.

Maharashtra

(1) In its application to the State of Maharashtra for Section 37, the following shall be substituted, namely :—

"37. (1) In addition to his ordinary powers,—

(a) the State Government may invest any Magistrate with any of the powers as specified in the fourth Schedule, and

(b) a Sessions Judge may invest any Judicial Magistrate within his local jurisdiction with the powers specified in sub-part (B) of Part I of the fourth Schedule.

Section 37 — Note 1

(1) Section 36 deals with conferment of ordinary powers on Magistrates. ('11) 12 Cri LJ 535 (535) = 34 Mad 343 (DB).

(2) This section deals with the conferment or additional powers on Magistrates. AIR 1928 Sind 1 (4) = 28 Cri LJ 913 (FB).

(3) Under this section the State Government has power to invest a Sub-divisional Magistrate with all or any of the additional powers specified in the Fourth Schedule. But before these powers can be conferred on any Sub-divisional Magistrate, he must become a Sub-divisional Magistrate under Section 13 (1) by being placed in charge of a sub-division of a district. AIR 1958 Madh Pra 184 (Pr 4) = 1958 Cri LJ 897 (DB).

(4) This section authorises the State Government or the District Magistrate, to invest any Sub-Divisional Magistrate or any Magistrate of the 1st, 2nd or 3rd class with what are called additional powers, **AIR 1967 SC 1599 (1604) = 1967 Cri LJ 1569 = (1967) 3 SCR 186.**

(5) So far as second class Magistrates are concerned, the power to record statement and confessions during a Police investigation is an additional power with which he may be invested under this section. AIR 1953 Trav-Co 402 (Pr 25) = ILR (1953) Trav-Co 514 = 1953 Cri LJ 1612.

(6) A District Magistrate cannot authorise a second class Magistrate to commit a case for trial under Section 206. AIR 1926 Pat 400 (400) = 27 Cri LJ 704 (DB).

(7) Once such powers are conferred on any Magistrate, they remain personal to him and independent of the local area where he may be exercising them until withdrawn by the authority conferring the powers. AIR 1931 Bom 517 (519, 520) = 33 Cri LJ 68 (DB) ** 1960 Jab LJ 255 (255) = 1960 MPLJ 408.

(8) Where a judicial officer is invested under Section 14 (1) with powers of a Magistrate, first class, for a period of six months and is also invested by the State Government under this section with the powers to try summarily certain offences mentioned in Section 260 he cannot, after the expiry of that period, exercise the Magisterial power or powers to try summarily those offences without any further orders. AIR 1951 All 488 (Pr 4).

(9) Power given to State Government under Section 10 (2) is in no way controlled by Section 37. ILR (1959) 9 Raj 594 (595) (DB).

(10) A person appointed as a Civil Judge and an Additional Sessions Judge exercises both the powers of a Civil Judge and those of an Additional Session Judge. **AIR 1967 SC 1599 (1604, 1605) = 1967 Cri LJ 1569 = (1967) 3 SCR 186.**

(11) From a combination of powers of a Civil Judge and an Additional Session Judge in one and same person, it does not follow that he is not an Additional Sessions Judge or that he is a Civil

(2) (i) The powers under clause (a) of sub-section (1) shall be exercised by the State Government in the case of Judicial Magistrates in consultation with the High Court.

(ii) The power under clause (b) of sub-section (1) shall be exercised by the Sessions Judge with the approval of the High Court.

(3) The State Government may authorize a District Magistrate to invest any Magistrate subordinate to him with any of the powers specified in Part II of the Fourth Schedule."—Bom. Act XXXIV of 1953, S. 4.

(2) After the reorganization of the State of Bombay in 1956, S. 37 as substituted by the above-mentioned Bombay Act is extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Mysore

In its application to the State of Mysore, substitute the following, namely,—

"37. **Additional powers conferrable on Magistrates.**—(1) In addition to his ordinary powers, the State Government may invest any Magistrate with any of the powers specified in the Fourth Schedule.

(2) The State Government may authorise a District Magistrate to invest any Magistrate subordinate to him with any of the powers specified in Part II of the Fourth Schedule."—Mys. Act XIII of 1965, S. 15 (1-10-1965).

Punjab: Haryana: Chandigarh

In its application to the States of Punjab and Haryana and the Union Territory of Chandigarh, for S. 37 the following shall be substituted, namely :—

"37. **Additional powers conferrable on Magistrates.**—In addition to his ordinary powers,—

(i) the High Court may invest any Judicial Magistrate with any of the powers as specified in Part I of the Fourth Schedule;

(ii) a Chief Judicial Magistrate may invest any other Judicial Magistrate within his local jurisdiction with the powers specified in Part I of the Fourth Schedule;

(iii) the State Government may invest any Executive Magistrate with any of the powers as specified in Part II of the Fourth Schedule; and

(iv) a District Magistrate may invest any Executive Magistrate within his local jurisdiction with the powers specified in Part II of the Fourth Schedule."—Punj. Act XXV of 1964, S. 2 and Sch., Pt .I, item (16) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Rajasthan

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendment made in Section 37 is the same as that made in (1) of Maharashtra.—See Cent. Act XXXVII of 1956, S. 119 (1-11-1956).

Section 37 — Note 1 (contd.)

Judge and therefore not a District Judge. **AIR 1967 SC 1599 (1605) = 1967 Cri LJ 1569 = (1967) 3 SCR 186.**

(12) Power to take cognizance of an offence under Section 190 is not one of the ordinary powers of a Magistrate of the First, Second or Third Class. It is an additional power for such a Magistrate. AIR 1969 Ker 111 (116) = 1961 Cri LJ 486 = 1969 Ker LT 351 (DB).

(13) The additional powers dealt with in Section 37 are enumerated in fourth Schedule. AIR 1969 Ker 111 (116) = 1969 Cri LJ 486 = 1969 Ker LT 351 (DB).

(14) Taluka Magistrate not invested with powers under Section 164 — Any statement recorded by him would be inadmissible. AIR 1969 Bom 189 (193) = 1969 Cri LJ 706 = 71 Bom LR 105 (DB).

(15) Conferment of power under Section 39 not limited to additional powers under Section 37 and applies to appointment under Section 12 (1). AIR 1963 Tripura 31 = 1963 (2) Cri LJ 322.

Union Territories (except Chandigarh)

In its application to the Union territories, for Ss. 37 and 38, substitute the following, namely,—

"**37. Additional powers conferrable on Magistrates.**—In addition to the ordinary powers,—

(i) the State Government, in consultation with the High Court, may invest any Judicial Magistrate with any of the powers specified in Part I-A of Schedule IV;

(ii) a Chief Judicial Magistrate may invest any Judicial Magistrate within his local jurisdiction with the powers specified in Part IB of Schedule IV;

(iii) the State Government may invest any Executive Magistrate with any of the powers specified in Part IIA of Schedule IV; and

(iv) a District Magistrate may invest any Executive Magistrate within his local jurisdiction with the powers specified in Part IIB of Schedule IV.

38. Exercise of powers under Section 37 by Chief Judicial Magistrate or District Magistrate to be subject to control of High Court or State Government.—The power conferred on the Chief Judicial Magistrate under clause (ii) of Section 37 shall be exercised subject to the control of the High Court and the power conferred on the District Magistrate under clause (iv) of that section shall be exercised subject to the control of the State Government.

38A. Powers on Judicial Magistrates to be conferred in consultation with High Court.—Whenever, under any provisions of this Code or of any other law for the time being in force relating to any of the matters specified in Lists II and III of the Seventh Schedule to the Constitution, any judicial powers are to be conferred on a Sessions Judge, or an Additional or Assistant Sessions Judge or a Chief Judicial Magistrate or any other Judicial Magistrate or any such Magistrate is to be specially empowered to exercise such powers the orders conferring such powers or empowering the exercise of such powers shall be made by the State Government in consultation with the High Court notwithstanding that such provision may not expressly so provide.

Explanation.—For the purposes of this section, the question whether any powers are judicial shall be decided by the State Government in consultation with the High Court and such decision shall be final." — Act 19 of 1969, S. 3 and Sch., item 18 (in Delhi on 2-10-1969).

West Bengal

In its application to the State of West Bengal, for S. 37, substitute the following :—

"**37. Additional powers conferrable on Judicial and Executive Magistrates.**—In addition to his ordinary powers—

(i) any Judicial Magistrate may be invested by the State Government in consultation with the High Court with any of the powers specified in Part I-A of the Fourth Schedule as powers with which he may be invested by the State Government in consultation with the High Court;

(ii) any Judicial Magistrate may be invested by the Sessions Judge to whom he is subordinate with any of the powers specified in Part I-B of the Fourth Schedule as powers with which he may be invested by the Sessions Judge;

(iii) any Executive Magistrate may be invested by the State Government with any of the powers specified in Part II-A of the Fourth Schedule as powers with which he may be invested by the State Government;

(iv) any executive Magistrate may be invested by the District Magistrate to whom he is subordinate with any of the powers specified in Part II-B of the Fourth Schedule as powers with which he may be invested by the District Magistrate."—W. B. Act VIII of 1970, S. 3 and Sch., item 26.

38. Control of District Magistrate's investing power.—The power conferred on the District Magistrate by Section 37 shall be exercised subject to the control of the *[State Government].

[1882 — S. 38; 1872 — Nil; 1861 — Nil.]

[*] Substituted for "Provincial Government" by A. L. O., 1950.

STATE AMENDMENTS

Gujarat

In its application the State of Gujarat the amendment made in S. 38 is the same as that made in Maharashtra.—See Cent. Act XI of 1960, S. 87.

Maharashtra

(1) In its application to the State of Maharashtra in S. 38, for the words "conferred on" substitute the words "delegated to."—Bom. Act XXIII of 1951, S. 2 and Sch. (1-7-1953).

(2) After the reorganization of the State of Bombay in 1956, the amendment made in S. 38 by the above-mentioned Bombay Act is extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Mysore

In its application to the State of Mysore, in S. 38, for the words 'conferred on the District Magistrate by' substitute the words 'delegated to the District Magistrate under'—Mys. Act XIII of 1965, S. 16 (1-10-1965).

Punjab: Haryana: Chandigarh:

In its application to the States of Punjab and Haryana and the Union Territory of Chandigarh, for S. 38 the following shall be substituted, namely :—

> "38. **Exercise of powers under Section 37 by Chief Judicial Magistrate or District Magistrate to be subject to control of High Court or State Government.**—The power conferred by clause (ii) of Section 37 shall be exercised subject to the control of the High Court and the power under clause (iv) shall be exercised subject to the control of the State Government."—Punj. Act XXV of 1964, S. 2 and Sch., Pt. I item (16) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Rajasthan:

Abu Area:—In its application to the Abu Area of the State of Rajasthan, the amendment made in Section 38 is the same as that made in (1) of Maharashtra—See Central Act XXXVII of 1956, S. 119 (1-11-1956).

Union Territories (except Chandigarh):

See under Section 37.

West Bengal

For Section 38 substitute the following :—

> "38. **Control of the investing powers of the Sessions Judge and the District Magistrate.**—The power conferred on the Sessions Judge by clause (b) of Section 37 shall be exercised subject to the control of the High Court and the power conferred on the District Magistrate by clause (d) of that section shall be exercised subject to the control of State Government."—W. B. Act 8 of 1970, S. 3 and Sch., item 27.

STATE AMENDMENTS

Section 38A

Gujarat

In its application to the State of Gujarat S. 38A is the same as the one inserted in Maharashtra.—see Cent. Act XI of 1960, S. 87.

Maharashtra

(1) In its application to the State of Maharashtra, after Section 38, insert the following section, namely :—

> "38A. **Powers on Judicial Magistrates to be conferred in consultation with the High Court.**—Whenever under any provisions of this Code or of any law for the time being in force relating to any of the matters specified in Lists II and III of the Seventh Schedule to the Constitution any judicial powers are to be conferred on a Sessions Judge, an Additional or Assistant Sessions Judge or a Judicial Magistrate or any such Magistrate is to be specially empowered to exercise such powers, the orders conferring such powers or empowering the exercise of such powers shall be made by the State Government in consultation with the High Court notwithstanding that such provision may not expressly provide for such consultation.
>
> **Explanation.**—For the purposes of this section, the question whether any powers are judicial shall be decided by the State Government in consultation with the High Court and such decision shall be final."—Bom. Act XXIII of 1951, S. 2 and Schedule (1-7-1953).

(2) After the reorganization of the State of Bombay in 1956, Section 38A as inserted by the above-mentioned Bom. Act is extended o the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Punjab: Haryana: Chandigarh

In its application to the States of Punjab and Haryana and the Union Territory of Chandigarh, after S. 38 insert the following section, namely :—

> "38A. **Powers on Judicial Magistrate to be conferred in consultation with the High Court.**—Whenever under any provisions of this Code or of any law for the time being in force relating to any of the matters specified in Lists II and III of the Seventh Schedule to the Constitution, any judicial powers are to be conferred on any Sessions Judge, or an Additional or, Assistant Sessions Judge or a Chief Judicial Magistrate or any other Judicial Magistrate or any such Magistrate is to be specially empowered to exercise such powers, the orders conferring such powers or empowering the exercise of such powers shall be made by the High Court notwithstanding that such provision may not expressly so provide.
>
> **Explanation.**—For the purposes of this section, the question whether any powers are judicial shall be decided by the High Court and such decision shall be final."—Punj. Act XXV of 1964, S. 2 and Sch., Pt. I, Item (17) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Rajasthan

Abu Area.—In its application to the Abu area of the State of Rajasthan, S. 38A is the same as in Maharashtra.—See Cent. Act XXXVII of 1956, S. 119.

West Bengal

In its application to the State of West Bengal, after S. 38, insert the following, namely :—

> "38A. **Control of the investing powers of the Sessions Judge and the District Magistrate.**—Whenever under any provision of this Code, or any other law for the time being in force, any judicial power is to be conferred by the State Government on a Sessions Judge or an Additional or Assistant Sessions Judge or a Sub-Divisional Judicial Magistrate or any other Judicial Magistrate, or any such Judicial Magistrate is to be specially empowered to exercise such powers, the order conferring such powers or empowering the exercise of such powers shall be made by the State Government in consultation with the High Court notwithstanding that such provision may not expressly so provide.

Explanation.—For the purpose of this section, the question whether any powers are judicial shall be decided by the State Government in consultation with the High Court and such decision shall be final."—W. B. Act VIII of 1970, Sec. 3 and Sch., item 28.

D. — Conferment, Continuance and Cancellation of Powers.

39. Mode of conferring powers.—(1) In conferring powers under this Code the *[State Government] may, by order, empower persons specially by name or in virtue of their office or classes of officials generally by their official titles.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered.

[1882—S. 39; 1872—S. 43; 1861—Nil.]

[*] Substituted for "Provincial Government" by A. L. O., 1950.

STATE AMENDMENTS

Punjab, Haryana and Chandigarh:

In its application to the States of Punjab and Haryana and the Union Territory of Chandigarh, in sub-section (1) of Section 39, for the words "the State Government", substitute the words "the State Government or the High Court, as the case may be,".

—Punj. Act XXV of 1964, S. 2 and Schedule Pt. I, item (18) (2-10-1964) and Act 31 of 1966, Ss. 29 and 89 (1-11-1960).

SECTION 39

1. Conferment of powers, "generally" or "specially." — (1) Where, by notification of the Government, a class of officials is invested with powers to try certain offences, such officials are generally empowered. AIR 1953 Assam 35 (Pr 17) = 1953 Cri LJ 395 (FB) ** AIR 1956 Sau 73 (Prs 2, 6) = 1956 Cri LJ 1231 (DB) ** AIR 1915 Mad 1159 (1160) = 16 Cri LJ 268 (269) (DB) ** 1964 BLJR 242 (245) ** (1963) (2) Cr LJ 226 (228) = (1962) 40 Mys LJ 930 (DB) (Mys) ** AIR 1960 Andh Pra 282 (285) = 1960 Cri LJ 569 = (1960) Andh LJ 55.

(2) Where a notification empowers the Magistrates mentioned in the list attached to the notification to try certain cases, such Magistrates are specially empowered. AIR 1924 Mad 256 (256) = 24 Cri LJ 846 (DB) ** 1964 BLJR 242 (245).

(3) A Magistrate is an "office" and not an "official" and so the empowerment of "the Magistrates of the first class" is in virtue of their office and "special". AIR 1953 Assam 35 (Pr 17) = 1953 Cri LJ 395 (FB). (AIR 1915 Mad 1159 = 16 Cri LJ 268, **Dissented from.**) ** AIR 1953 Trav-Co 402 (407) = ILR (1953) Trav-Co 514 = 1953 Cri LJ 1613 (DB) ** (1963) 2 Cr LJ 226 (228) = (1962) 40 Mys LJ 930 (DB) (Mys) ** AIR 1960 Andh Pra 282 (285) = 1960 Cri LJ 569 = (1960) Andh LT 55.

[But see AIR 1956 Sau 73 (Prs 2, 6) = 1956 Cri LJ 1231 (DB). (AIR 1915 Mad 1159, Rel. on; AIR 1953 Assam 35 (FB) and AIR 1953 Trav-Co 402, **Dissented from.**) ** AIR 1915 Mad 1159 (1160) = 16 Cri LJ 268 (DB).]

(4) Addition of words "class of officers generally by their official title" in Section 39 (1) include all classes of Magistrates which would not have been otherwise possible if it had not used the words, 'by virtue of their office'. AIR 1960 Andh Pra 282 (285) = 1960 Cri LJ 569 = (1960) Andh LT 55.

(5) Judge empowered by Government to try cases under Section 396, Penal Code under a special procedure — Offence under Section 395 without murder cannot be tried by such Judge by special procedure. AIR 1933 Rang 116 (117) = 34 Cri LJ 929 (DB).

(6) The fact that a Subordinate Judge duly invested with powers of a Magistrate of First Class was later on invested with higher powers of the Additional Judge of the Court of Session does not divest him of the powers conferred on him as a Magistrate of the First Class unless his powers as a Magistrate are withdrawn under Section 41. AIR 1956 Nag 67 (Pr 13) = ILR (1954) Nag 962 = 1956 Cri LJ 256 (DB).

(7) Appointment of District Magistrates as Assistant Sessions Judges, not by names but by designation is permissible in view of this section and Section 15 of the General Clauses Act. Such a notification does not violate Article 233 of the Constitution. AIR 1967 Mad 351 (Pa 4) = ILR (1957) Mad 597 = 1957 Cri LJ 642 (DB).

(8) Presiding Officer of Industrial Tribunal appointed First Class Magistrate for trying offences under labour enactments in entire State by Notification under Section 14, Criminal P. C. — Conferment of powers is legal. AIR 1964 Andh Pra 471 (474, 475) = 1964 (2) Cri LJ 378 = (1963) 2 Andh WR 410.

(9) The State Government can confer additional powers mentioned in Section 37 on persons by name or by virtue of their office or on classes of officials

Union Territories (except Chandigarh):

In its application to the Union Territories, in Sec. 39, add the following proviso, namely:—

> "Provided that in the case of Judicial Magistrates, the State Government shall confer such powers in consultation with the High Court."—Act 19 of 1969, S. 3 and Schedule, Item 19 (in Delhi on 2-10-1969).

Section 39 — Note 1 (contd.)

generally by their official titles. **AIR 1967 SC 1599 (1604) = 1967 Cri LJ 1569 = (1967) 3 SCR 186** ** (1963) (2) Cr LJ 226 (228) = (1962) 40 Mys LJ 930 (DB) (Mys).

(9-a) State Government can specially empower not only particular individual Additinoal District Magistrate, but also entire class of such Magistrates, under the section. AIR 1970 Ker 50 (52).

(10) Rule under Section 18 of the Bihar and Orissa General Clauses Act 1917, being same as under Section 39 (1) appointment of different officers to discharge their functions as Election Officers could also be made by reference to their offices. 1964 BLJR 242 (245).

(11) Section 39 (1) can only apply to criminal cases. 1964 BLJR 242 (245).

(12) Conferment of power under Section 39 is not limited to conferring additional powers under Section 37. AIR 1936 Tripura 31 (34) = (1963) 2 Cri LJ 322.

(13) A person holding another official post can be conferred the power of a Magistrate in virtue of his office with the result that the successor in the said office also becomes invested with the said power. AIR 1963 Tripura 31 (33) = (1963) 2 Cri LJ 322.

(14-15) The word "specially" does not convey the idea of picking and choosing of the Magistrates and whether additional powers should be conferred on some or all depend on the exigencies of the situation and not on any other test, as Section 39 speaks of conferring powers on Magistrates by virtue of their office and of conferring powers on a class or classes of Magistrates. 1963 (2) Cri LJ 226 (227, 228) = (1962) 40 Mys LJ 930.

(16) Sanitary Inspectors would be deemed to be class of officers generally by their "official title" in the sense in which it was used in Section 39. AIR 1970 Tripura 1 (9).

2. Order conferring powers, when takes effect — Sub-section (2). — (1) The expression "communicate" in S. 39 (2) is not synonymous with the expression "publish" which means "to make public." It means "to bestow, convey, make known, recount, to impart as to communicate information to any one." So where a Magistrate passes an order under Section 488, Criminal P. C., after the notification investing him with powers of a First Class Magistrate, but before the order investing him with powers of the First Class Magistrate is communicated to him, the order under Section 488 is void. AIR 1956 Punj 254 (255) = 1956 Cri LJ 1430 (1).

(2) Where before the sentence is passed in a case, the Magistrate trying the case is invested with higher powers, he can pass sentence in the exercise of such higher powers. ('85) 7 All 414 (418, 419, 422) (FB) ** AIR 1928 Mad 55 (55) = 29 Cri LJ 71 (DB).

[See AIR 1925 Pat 472 (472) = 26 Cri LJ 914 (DB).]

(3) The maxim omnis ratihabitio retrotrahitur et mandato priori acquiparatur — a subsequent ratification or confirmation has a retrospective effect and is equivalent to a prior command does not apply to criminal cases. (1864) 1 Bom HCR 107 (111) (SB) ** AIR 1957 Him-Pra 52 (Pr 14) = 1957 Cri LJ 1254.

(4) A power conferred under this section has no retrospective effect. ('78) 3 Cal LR 281 (282) (DB) ** AIR 1933 Pesh 97 (97) = 35 Cri LJ 462.

(5) Where a third class Magistrate passes a sentence which only a second class Magistrate can pass a subsequent notification investing him with second class powers from a date antecedent to that of the sentence will not validate the sentence passed. ('78) 3 Cal LR 281 (282) (DB).

(6) When an officer having powers of a First Class Magistrate who is working as a Revenue Assistant is posted elsewhere as a Tehsildar, it amounts to a reversion and it cannot be said that he continued to have these powers. After his reversion he has no authority to record a confession. The position will not be remedied by subsequent issue of notification under Section 39 vesting the officer with powers with retrospective effect. AIR 1957 Him Pra 52 (Pr 16) = 1957 Cri LJ 1254.

(7) Where an order is found to have been communicated on a particular day, but the hour of communication thereof is not clear, the rule that official acts must be presumed to have been done at the earliest part of the day will be applied. ('06) 10 Cal WN ccxliii (ccxliv).

(8) There is no statutory provision fixing the date when the withdrawal of powers conferred takes effect unless the officer knows that his powers have been withdrawn, he cannot cease to exercise them. AIR 1957 All 267 (Prs 2, 4) = 1957 Cri LJ 492 (DB).

40. Powers of officers appointed.—Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is *[appointed] to an equal or higher office of the same nature, within a like local area under the same †[State Government], he shall, unless the †[State Government] otherwise directs, or has otherwise directed ‡[* * *], exercise the same powers in the local area §[in which] he is so *[appointed].

[1862—S. 40; 1872—S. 56; 1861—Nil.]

[*] Substituted for "transferred" by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 8.

[†] Substituted for 'Provincial Government' by A.L.O., 1950.

[‡] The words "continue to" were repealed, ibid.

[§] Substituted for 'to which", ibid.

SECTION 40 — SYNOPSIS

1. **Scope.**
2. **"Unless the State Government otherwise directs."**
3. **"Is appointed to an equal or higher office of the same nature."**
4. **Absence on leave, effect of.**
5. **Absence on foreign service, effect of.**

1. Scope.— (1) This section contemplates that a person invested with any powers under the Code may have two sets of powers. AIR 1956 Nag 67 (69) = ILR (1954) Nag 962 = 1956 Cri L Jour 256 (DB).

(2) This section provides that whenever any person invested with any powers under the Code in any local area is appointed to an equal or higher office of the same nature in a like local area under the same State Government, the powers so invested continue in him. ('99) 22 Mad 47 (48) (DB) ** ('92) 15 Mad 132 (133) = 2 Weir 36 (DB).

(3) The person can continue to exercise the powers only in the local area in which he is so appointed. The reason is that under Section 12, Magistrates can exercise jurisdiction only within the local areas defined for them or where there is no such definition, throughout the district. ('84) 1884 Pun Re (Cr) No. 15, p. 20 (22, 23) (DB).

2. "Unless the State Government otherwise directs."— (1) Where A who was invested with powers by the State Government to exercise summary jurisdiction in District X under Section 222 of the Code of 1872 (now Section 260), proceeded to England on furlough and on his return was posted to District Y and was invested by a fresh notification with the powers of a Magistrate of the first class, it was held that the fresh investment of powers was a "direction otherwise" within the meaning of this section and that A could not exercise summary powers in District Y. ('76) 2 Cal 117 (120, 121, 122) (DB).

(2) Where a First Class Magistrate with Section 30 powers in District K was transferred to District G and the Government issued a fresh notification under Section 12 appointing him a First Class Magistrate in District G, he cannot exercise enhanced powers under Section 30 in District G. Express mention of one thing implies exclusion of another. AIR 1956 Punj 252 (Pr. 4) = ILR (1956) Punj 1119 = 1956 Cri L Jour 1429.

(3) Under Section 40 a Magistrate continues to exercise the same powers in successive local areas to which he may be transferred. 1960 Jab LJ 255 (255) = 1960 MPLJ 408.

3. "Is appointed to an equal or higher office of the same nature."— (1) This section applies only when a person invested with any powers under the Code is appointed to an equal or higher office of the same nature within a like local area under the same State Government. AIR 1933 Sind 398 (400) = 35 Cri L Jour 187 (DB).

[See ('06) 4 Cri L Jour 140 (142) (All).]

(2) The section does not mean that a person invested with powers does not retain his powers if he is appointed to a lesser office in the same local area. ('87) Rat 322 (322) (DB).

[See AIR 1951 All 488 (Pr. 4).]

[But see AIR 1957 Him Pra 52 (Pr. 14) = 1957 Cri L Jour 1254.]

(3) Person appointed as temporary A. S. D. O. and invested with Magisterial powers by separate notification — Person confirmed as Deputy Collector — Fresh notification under Section 12 or Section 39 held not necessary. 1963 (2) Cri LJ 721 (723) (Tripura).

4. Absence on leave, effect of.— (1) Where a first class Magistrate invested with appellate powers was transferred from Shikarpur to Sholapur and next as District Magistrate of Ahmedabad, and during the course of this service there were various intervals of leave. It was held that he continued to exercise the powers conferred on him. (1900) 2 Bom LR 536 (538, 539) (DB). (But absence without leave involves loss of appointment and loss of powers.) ** AIR 1930 Lah 833 (834) = 31 Cri L Jour 1051.

(2) Where there is an implied withdrawal of powers as where an officer

STATE AMENDMENTS

Punjab: Haryana: Chandigarh:

In its application to the States of Punjab and Haryana and Union Territory of Chandigarh, in S. 40, for the words "the State Government" occurring for the second time, substitute the words "the State Government or the High Court, as the case may be".—Punj. Act XXV of 1964, S. 2 and Schedule. Pt. I, Item (19) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Union Territories (except Chandigarh):

In its application to the Union territories to S. 40, the following proviso shall be added:—

> "Provided that in the case of Judicial Magistrates no such direction shall be issued except in consultation with the High Court."—Act 19 of 1969, S. 3 and Schedule, Item 20 (in Delhi on 2-10-1969).

West Bengal

In its application to the State of West Bengal, in S. 40, for the words "State Government otherwise direct", substitute the words "State Government, in consultation with the High Court, where necessary, otherwise directs."—W. B. Act VIII of 1970, S. 3 and Sch., item 29.

41. Powers may be cancelled.—(1) The *[State Government] may withdraw all or any of the powers conferred under this Code on any person by it or by any officer subordinate to it.

(2) Any powers conferred by the District Magistrate may be withdrawn by the District Magistrate.

[1882—S. 41; 1872—S. 54; 1861—Nil.]

[*] Substituted for 'Provincial Government' by A.L.O., 1950.

STATE AMENDMENTS

Gujarat:

In its application to the State of Gujarat, the amendments made in S. 41 are the same as those made in Maharashtra.—See Central Act XI of 1960, S. 87.

Section 40 — Note 4 (contd.)

invested with powers under the Code is appointed permanently to other duties or elsewhere dissociated from magisterial work, or when he resigns the office a subsequent appointment to the same or higher office requires a fresh investment of powers and Section 40 will not apply. AIR 1923 Mad 598 (599, 600) = 24 Cri L Jour 381 (DB) ** ('67) 1867 Pun Re (Cr) No. 22, p. 41 (41) (DB).

5. Absence on foreign service, effect of.— (1) A Deputy Tahsildar of Vedaraniyam invested with the power of recording confessions was subsequently for certain period, in "foreign service". He was subsequently recalled and posted as Tahsildar of Shiyali. It was held that he was "a person holding an office in the service of Government" within the meaning of this section on the date of his appointment as a Tahsildar of Shiyali. AIR 1944 Mad 302 (304) = 46 Cri L Jour 667 (DB).

Section 41 — Note 1

(1) A Government order wrongly interpreting a previous investiture order will not operate as a withdrawal. ('82) Weir 3rd Ed. 715 (717) (DB).

(2) A withdrawal may also be implied from the fact that the Magistrate upon whom powers are conferred, is permanently allotted to another duty not entailing magisterial powers or from the fact that he resigns, or retires from his appointment. AIR 1923 Mad 598 (599) = 24 Cri L Jour 381 (DB).

(3) This section does not require actual exercise of magisterial powers but only capacity to exercise them. 1963 (2) Cri LJ 721 (723) (Tripura).

(4) An order withdrawing powers under this section operates only from the date of its communication to the Magistrate concerned. ('92) 15 Mad 132 (133) (DB) ** AIR 1957 All 267 (268) = 1957 Cri L Jour 492.

(5) The powers given to a Magistrate by the Code itself under Section 36 cannot be taken away by the use of this section which deals only with the powers invested under Section 37. AIR 1951 Madh B 67 (Pr. 5) = 52 Cri L Jour 214 **AIR 1957 Andh Pra 247 (248) = 1957 Cri L Jour 819 ** 1962 (2) Cri LJ 711 (712) = 39 Mys LJ 580.

(6) The fact that a Subordinate Judge duly invested with powers of a Magistrate of the First Class was later on invested with higher powers of the Additional Judge of the Court of Session does not divest him of the powers conferred on him as a Magistrate. AIR 1956 Nag 67 (69) = 1956 Cri L Jour 256 (DB).

Maharashtra:

(1) In its application to the State of Maharashtra, in Section 41—

(i) to sub-section (1), add the following proviso:

"Provided that in the case of Judicial Magistrates the withdrawal of such powers shall be made in consultation with the High Court."—Bom. Act XXIII of 1951, S. 2 and Schedule (1-7-1953).

(ii) after sub-section (2), insert the following sub-section:—

"(3) Any powers conferred by the Sessions Judge may be withdrawn by the Sessions Judge with the approval of the High Court."—Bom. Act LXXI of 1954, Section 3, (29-11-1954).

(2) After the reorganization of the State of Bombay in 1956, the amendments made in Section 41 by the above-mentioned Bombay Acts are extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Punjab: Haryana: Chandigarh:

In its application to the States of Punjab and Haryana and the Union territory of Chandigarh, in Section 41,—

(i) in sub-section (1), after the words "State Government", insert the words "or the High Court, as the case may be"; and

(ii) for sub-section (2), the following shall be substituted, namely:—

"(2) Any powers conferred by the Chief Judicial Magistrate or the District Magistrate may be withdrawn by him."—Punj. Act XXV of 1964, S. 2 and Schedule, Pt. I, item 20 (2-10-1964) and Act 31 of 1966, Ss. 29 and 88, (1-11-1966).

Rajasthan:

Abu Area—In its application to the Abu Area of the State of Rajasthan, the amendments made in Section 41 are the same as those made in (1) of Maharashtra.—Central Act XXXVII of 1956, S. 119 (1-11-1956).

Union Territories (except Chandigarh):

In its application to the Union territories, in Section 41,—

(i) to sub-section (1), the following proviso shall be added, namely:—

"Provided that the State Government shall not withdraw any power conferred on the Judicial Magistrate except in consultation with the High Court.";

(ii) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) Any powers conferred by the Chief Judicial Magistrate or the District Magistrate may be withdrawn by him.".—Act 19 of 1969, S. 3 and Schedule, item 21 (in Delhi on 2-10-1969).

West Bengal:

In its application to the State of West Bengal, in Section 41,—

(i) after the words "State Government", insert the words "or, where the conferment of power was in consultation with the High Court, the State Government, in consultation with the High Court"; and

(ii) for sub-section (2), substitute the following, namely:—

"(2) Any power conferred by the Sessions Judge or the District Magistrate may be withdrawn by the Sessions Judge or the District Magistrate, as the case may be." W. B. Act VIII of 1970, S. 3 and Schedule, item 30.

PART III

GENERAL PROVISIONS

CHAPTER IV

OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE AND PERSONS MAKING ARRESTS

42. Public when to assist Magistrate and Police.—Every person is bound to assist a Magistrate or police officer reasonably demanding his aid, whether within or without the presidency-towns,*—

(a) in the taking or preventing the escape of any other person whom such Magistrate or police officer is authorised to arrest;

(b) in the prevention or suppression of a breach of peace, or in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property.

[1882—S. 42; 1872—S. 91; 1861—S. 82.]

[*] For definition of "presidency-town", see General Clauses Act, 1897 (X of 1897), Section 3 (44).

43. Aid to person, other than police officer, executing warrant.—When a warrant is directed to a person other than a police officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

[1882—S. 43; 1872—S. 163; 1861—S. 78.]

44. Public to give information of certain offences.—(1) Every person, whether within or without the presidency-towns*, aware of the commission of,

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Section 42 — Note 1

(1) In the cases specified every person shall assist a Magistrate or a police-officer reasonably demanding his aid. ('81) 3 All 201 (202, 203).

(2) Aid cannot be demanded for such general purposes as tracing out the whereabouts of an absconding criminal or collecting evidence to warrant his conviction. AIR 1920 All 265 (266) = 21 Cri L Jour 801 (DB).

(3) In a case of theft ordering a person to find a clue is illegal. ('81) 3 All 201 (202).

(4) Demanding the accused to assist in finding and arresting unknown persons whose precise whereabouts were unknown is illegal. AIR 1920 All 265 (266) = 21 Cri L Jour 108 (DB).

(5) The assistance that can be demanded under the section is personal assistance of the individual of whom it is demanded. ('93) 2 Weir 37 (37).

(6) Personal assistance will include placing at the disposal of the police-officer, the use of a fire-arm or of a bicycle or other means of locomotion. AIR 1920 All 265 (266) = 21 Cri L Jour 801 (DB).

(7) Personal assistance will not include supply of a contingent of men to assist. ('93) 2 Weir 37 (37).

(8) A person assisting under this section is not a "public servant" within Section 21, I. P. C. AIR 1917 Upp Bur 8 (9) = 18 Cri L Jour 351.

(9) Person arrested lying on the ground and refusing to move — Police-officer can demand assistance to prevent his escape. AIR 1932 All 506 (507) = 33 Cri L Jour 736.

(10) The section does not authorise the wholesale delegation by the Police of their duties to a private individual authorising the latter to arrest an offender. AIR 1937 Sind 254 (255, 258) = 38 Cri L Jour 1101 (DB) ** AIR 1955 Pat 106 (107) (DB).

(11) The fact that assistant is taken under this section will not render the arrest or custody lawful if it is otherwise illegal. ('81) 1 Weir 341 (341) (DB).

(12) Disobedience of valid order under this section is punishable under Section 187, I. P. C. AIR 1932 All 506 (507) = 33 Cri L Jour 736 ** ('02) 6 Cal WN 337 (338) (DB).

(13) Disobedience of an order not authorised by the section is not an offence and is not punishable. ('81) 3 All 201 (202, 203) ** AIR 1920 All 265 (266) = 21 Cri L Jour 801 (DB).

SECTION 44 — SYNOPSIS

1. **Scope.**
2. **"Shall, in the absence of reasonable excuse, ... forthwith give information."**
3. **"Information," meaning of.**
4. **Failure to give information, effect of.**

1. Scope.— (1) This section imposes a duty on every person aware of the commission or of the intention of any other person to commit any of the off-

or of the intention of any other person to commit any offence punishable under any of the following sections of the Indian Penal Code (namely), 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 143, 144, 145, 147, 148, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459 and 460, shall, in the absence of reasonable excuse the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such commission or intention.

(2) For the purposes of this section the term "offence" includes any act committed at any place out of †[India] which would constitute an offence if committed in †[India.]

[1882—S. 44; 1872—S. 89; 1861—S. 138.]

[*] For definition of 'presidency-town', see General Clauses Act, 1897 (X of 1897), Section 3 (44).

[†] Substituted for the words "the States" by the Code of Criminal Procedure (Amendment) Act, 1951 (I of 1951), S. 2 (1-4-1951).

Section 44 — Note 1 (contd.)

ences specified in the section, to give forthwith information thereof to the nearest Magistrate or Police officer. ('41) AIR 1941 Rang 324 (331) = 43 Cri L Jour 373 (DB) ** 1968 Cri LJ 1362 (1372) = 1969 Mad LJ (Cri) 553 (Ker) (DB).

(2) There is no obligation under this section to give information of the offences not specified in the section. (1867) 3 Mad HCR (App) xxx (xxxi) ** (1867) 1867 Pun Re (Cr) No. 25, p. 45 (45) (DB).

(3) The section does not exclude the criminal himself from the obligation thereunder. AIR 1941 Rang 324 (331) = 43 Cri L Jour 373 (DB) ** AIR 1930 Mad 870 (871) = 32 Cri L Jour 263 (DB).

[But see AIR 1941 Pat 550 (558) = 42 Cri L Jour 603 (DB).]

2. "Shall, in the absence of reasonable excuse, ... forthwith give information."— (1) When once information of the fact of a crime has reached the police the object of this section gets fulfilled and it is not reasonable that every other person who may possibly be bound to give information should be prosecuted for not having done so. ('79) 4 Cal 623 (624) (DB) ** AIR 1926 Nag 217 (218) = 26 Cri LJ 1489 (1) ** ('93) Rat 674 (675) (DB) ** ('89) 1889 Pun Re (Cr) No. 5, p. 37 (38).

(2) Section 44 has been designedly made so that crimes are brought to book and not suppressed by persons knowing about them. AIR 1964 Pat 62 (65) = 1964 (1) Cri LJ 214 (DB).

3. "Information," meaning of.— (1) "Information" means something which the person bound to report, knows or has reason to believe to be true and not any hearsay or any vague surmises which the people around him might have put into his head. ('73) 19 Suth WR (Cr) 57 (65) (DB).

(2) Where a person who could speak of an offence only from hearsay, gave a report based on such hearsay, it was held that the report could not be used as evidence to corroborate his evidence. AIR 1925 Lah 418 (419) = 26 Cri L Jour 1489 (2) (DB).

(3) It is not necessary that the information should be signed by the informant. ('10) 11 Cri L Jour 3 (4) = 3 Sind LR 132 (DB).

4. Failure to give information, effect of.— (1) An intentional omission to give the information under this section is an offence punishable under Section 176 or under Section 202, I. P. C. AIR 1916 Mad 493 (493) = 16 Cri L Jour 219 (219) ** AIR 1920 Nag 170 (171) = 21 Cri L Jour 486.

(2) The giving of a false information of the commission of an offence is also punishable under S. 182, I. P. C. ('13) 14 Cri L Jour 491 (492) (DB) (Bom).

[See also AIR 1931 All 269 (270) = 33 Cri L Jour 256 (DB) ** ('09) 9 Cri L Jour 170 (171) = 32 Mad 258 (FB) ** AIR 1932 Mad 427 (427) = 33 Cri L Jour 452.]

(3) The evidence of a person who is aware of the intention of certain persons to commit an offence or who is aware of the commission of the offence and does not disclose it to anybody cannot be relied upon without independent corroboration in material particulars. AIR 1937 Oudh 259 (261) = 38 Cri L Jour 286 (DB) ** AIR 1956 Hyd 99 (105) = ILR (1956) Hyd 205 = 1956 Cri L Jour 887 (DB) ** AIR 1923 Lah 391 (392) = 25 Cri L Jour 264 (DB).

(4) The mere omission to give information of an offence does not amount to "intentionally aiding" the offender in his offence within the meaning of Section 107, I. P. C. ('13) 14 Cr L Jour 610 (615) (DB) (Low Bur).

45. Village headmen, accountants, landholders and others bound to report certain matters.—(1) Every village headman,°° village accountant, village watchman, village police officer,°° owner or occupier of land, and the agent of any such owner or occupier °[in charge of the management of that land] †[and every member of a village panchayat, other than a judicial panchayat (where such panchayat, by whatever name called, is constituted under any law for the time being in force)], and every officer employed in the collection of revenue or rent of land on the part of ††[the Government] or the Court of Wards, shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police station, whichever is nearer, any information which he may ‡[possess] respecting,—

(a) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, accountant, watchman or police officer, or in which he owns or occupies land, or is agent, or collects revenue or rent;

(b) the resort to any place within, or the passage through, such village of any person whom he knows, or reasonably suspects to be a thug, robber, escaped convict or proclaimed offender;

SECTION 45 — SYNOPSIS

1. **Object.**
2. **"Every village-headman," etc.**
3. **"Owner or occupier of land."**
4. **Agent.**
5. **"Every officer employed in the collection of revenue."**
6. **"Shall forthwith communicate."**
7. **"Any information which he may possess."**
8. **"Information," meaning of.**
9. **Passage of thug, etc., through village — Clause (b).**
10. **Commission of non-bailable offence — Clause (c).**
11. **Sudden or unnatural death — Clause (d).**
12. **Order under sub-section (3), if revisable by High Court.**
13. **Punishment for non-compliance with the section.**
14. **Effect of giving false information.**

1. Object.— (1) The object of the section is that the earliest information should be communicated by those who are in the best position to obtain the same, in order that an inquest may be held. ('85) 11 Cal 619 (623, 624) (SB).

2. "Every village-headman," etc.— (1) A village Magistrate in Madras is a village-headman. ('09) 9 Cri L Jour 170 (172) = 32 Mad 258 (FB).

(2) A village chowkidar is a village-watchman under this section. AIR 1924 Pat 691 (693) = 25 Cri L Jour 972 ** AIR 1929 All 935 (935) = 31 Cri L Jour 12 ** ('81) 3 All 60 (61).

(3) Definite duties have been imposed on the village headman with regard to information given or complaint made to him. ('09) 9 Cri L Jour 170 (173) = 32 Mad 258 (FB).

(4) A Patel appointed under M. P. Land Revenue Code does not discharge any police functions. He only does what any private person is bound to do under Section 44, Cr. P. C. AIR 1964 Madh Pra 92 (96) = 1964 MPLJ 160 (DB).

3. "Owner or occupier of land."— (1) The owner of a house is not bound under the section to give the information. ('87) 1 Weir 101 (101, 102) (DB) ** ('75) 23 Suth WR (Cr) 60 (61) (DB) ** AIR 1929 Bom 12 (12) = 30 Cri L Jour 172 (DB) ** ('89) 12 Mad 92 (93) (DB).

4. Agent.— (1) The following persons are not agents within the meaning of the section :—

(a) A khazanchi of a zamindar of a village. ('79) 4 Cal 603 (604) (DB).

(b) A mukhtear. ('75) 23 Suth WR (Cr) 60 (61) (DB).

(c) A mere servant of the owner or occupier. ('11) 11 Ind Cas 609 (610) = 12 Cri L Jour 425 (DB) (Lah).

(2) A dewan if he is acting only under the orders of his resident master will not be liable under the Act. ('79) 4 Cal 603 (604) (DB).

5. "Every officer employed in the collection of revenue."— (1) A village-accountant is not a person engaged in the collection of revenue. ('76) 1 Mad 266 (267) (DB).

6. "Shall forthwith communicate."— (1) It is incumbent on the persons mentioned in the section to give the information specified. ('74) 22 Suth WR (Cr) 42 (43) (DB) ** AIR 1924 Pat 691 (693) = 25 Cri L Jour 972.

7. "Any information which he may possess."— (1) The informant is required to give such information as he may possess to his own knowledge and is fit to be communicated to the officer-in-charge of the police-station. AIR

(c) the commission of, or intention to commit, in or near such village any non-bailable offence or any offence punishable under Sections 143, 144, 145, 147, or 148 of the Indian Penal Code;

(d) the occurrence in or near such village of any sudden or unnatural death or of any death under suspicious circumstances *[or the discovery in or near such village of any corpse or part of a corpse, in circumstances which lead to a reasonable suspicion that such a death has occurred or the disappearance from such village of any person in circumstances which lead to a reasonable suspicion that a non-bailable offence has been committed in respect of such person];

(e) the commission of, or intention to commit, at any place out of §[India] near such village any act which, if committed in §[India], would be an offence punishable under any of the following sections of the Indian Penal Code, namely, *[231, 232, 233, 234, 235, 236, 237, 238,] 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, *†[460, 489A, 489B, 489C, and 489D];

(f) any matter likely to affect the maintenance of order or the prevention of crime or the safety of person or property respecting which the District Magistrate, by general or special order made with the previous sanction of the *†*†[State Government], has directed him to communicate information.

Section 45 — Note 7 (contd.)

1924 Pat 691 (693) = 25 Cri L Jour 972.

(2) Where a person gives information of a dacoity in the village to the village-headman, which is reduced to writing, it is enough if the latter merely communicates the information. He need not transmit the statement along with it. ('09) 9 Cri L Jour 170 (178, 179) = 32 Mad 258 (FB). (Per Sankaran Nair, J.)

8. "Information," meaning of.— (1) "Information" does not mean a person's belief or opinion. See ('82) 4 All 498 (499).

(2) A mere rumour of an occurrence in a village is not "information" within the meaning of this section. AIR 1924 Pat 691 (693) = 25 Cri L Jour 972.

(3) Where a zamindar and his agent were told by people in the village, whose names they did not remember, that a certain person had disappeared from the village and had been murdered, it was held that this was not "information" which either the zamindar or his agent was bound to communicate under this section. (1900) 1900 All WN 207 (208).

9. Passage of thug, etc., through village — Clause (b).— (1) This clause requires information to be given as to the visit to a village of persons suspected to be dacoits, robbers, etc. ('81) 1881 Rat 160 (161) (DB).

(2) The persons included in the expression "proclaimed offenders" are persons over and above those to whom the words, in their ordinary signification, apply, and who might, but for this explanation, escape out of the category of proclaimed offenders. AIR 1938 Oudh 80 (81) = 39 Cri L Jour 154 (DB) ** ('01) 1901 All WN 10 (10) (DB).

(3) Where a person is prosecuted for faillure to report the movements of a proclaimed offender, the burden is on the prosecution to prove that there was a due proclamation in accordance with the provisions of Section 87 of the Code. ('84) 7 Mad 436 (438).

[But see AIR 1938 All 220 (221) = 39 Cri L Jour 570.]

(4) Where a proclamation has been made in respect of an accused person under Section 87, it is sufficient to constitute him a "proclaimed offender" under this section although it is not made strictly in accordance with the terms of Section 87. AIR 1938 Oudh 80 (81) = 39 Cri L Jour 154 (DB).

(5) Where a person suspected of a robbery is arrested and brought to a village and then released there, it cannot be said that a suspected robber has "resorted to or passed through" the village. ('87) 1887 Pun Re No. 30 Cr 59 (60) (DB).

10. Commission of non-bailable offence — Clause (c).— (1) There is no duty upon the persons referred to in the section, to communicate information of bailable offences other than those specified in Clause (c). ('87) 1887 Pun Re (Cr) No. 30, p. 59 (60) (DB) ** ('09) 1 Ind Cas 245 (246) = 9 Cri L Jour 224 (DB) (Mad).

(2) The persons are not bound to communicate information under the section if the offence is not committed in or near their village. See ('86) 1886 All WN 65 (65).

(2) In this section—

(i) "village" includes village-lands; and

(ii) the expression "proclaimed offender" includes any person proclaimed as an offender by any Court or authority established or continued °‡[by the Central Government outside India], in respect of any act which, if committed in §[India], would be punishable under any of the following sections of the Indian Penal Code, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.

(3) **Appointment of village headmen by District Magistrate or Sub-Divisional Magistrate in certain cases for purposes of this section.**—Subject to rules in this behalf to be made by the °†°†[State Government], the District Magistrate *[or Sub-Divisional Magistrate] may from time to time appoint one or more persons *[with his or their consent] °§[to perform the duties of a village headman under this section whether a village headman has or has not been appointed for that village under any other law.]

[1882, S. 45; 1872, S. 90; 1861—Nil.]

[**] See, however, Section 1 (2) (b) and (c), supra.

[*] Inserted by the Code of Criminal Procedure (Amendment) Act,. 1923 (XVIII of 1923),. Section 9.

[†] Inserted by the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), S. 11 (1-1-1956).

[††] Substituted for "the Crown" by A.L.O., 1950.

[‡] Substituted for "obtain" by Act XVIII of 1923, S. 9.

[§] Substituted for "the States" by the Code of Criminal Procedure (Amendment) Act, 1951 (I of 1951), Section 2 (1-4-1951).

[°†] Substituted for "and 460" by Act XVIII of 1923, S. 9.

[*†°†] Substituted for 'Provincial Government' by A. L. O., 1950.

[°‡] Substituted for "by the Central Government or the Crown Representative in any part of India" by Act I of 1951, S. 7 (1-4-1951).

[°§] Substituted for "to be village headman for the purposes of this section in any village for which there is no such headman appointed under any other law," by Act XVIII of 1923

Section 45 (contd.)

11. Sudden or unnatural death — Clause (d).— (1) The obligation to report about any sudden, suspicious or unnatural death arises only when it takes place in or near the village and not in a remote part of the country. ('75) 23 Suth WR (Cr) 60 (61) (DB) ** AIR 1954 Him Pra 67 (68) = 1954 Cri L Jour 1465.

(2) The words "sudden or unnatural death" mean that there is a suspicion that the death has not occurred from natural causes. ('87) 1 Weir 101 (101) (DB).

(3) Death by suicide is an unnatural death. AIR 1929 Bom 12 (12) = 30 Cri L Jour 172 (DB).

(4) However unnatural, in the ordinary sense, the cause of a death might be, it would not come within the meaning of the word "unnatural" in this section unless the death occurred soon after the cause. AIR 1922 Nag 87 (88) = 23 Cri L Jour 345.

12. Order under sub-section (3), if revisable by High Court.— (1) An order passed by a District Magistrate dismissing a village headman from his office or appointing a village headman, by virtue of the rules framed by the State Government under sub-section (3), is not open to revision by the High Court. ('07) 29 All 563 (564, 565) = 5 Cri L Jour 476 ** AIR 1948 All 114 (115) = 49 Cri L Jour 31 (1) = ILR (1947) All 745.

(2) An order passed by a Sub-Divisional Magistrate under the sub-section and an order passed in appeal from the order of the Sub-Divisional Magistrate is not open to revision. AIR 1950 All 540 (Pr. 3) = 51 Cri L Jour 1489 ** AIR 1954 All 447 (448) = 1954 Cri L Jour 879 (DB).

13. Punishment for non-compliance with the section.— (1) A failure to furnish the information referred to in Clause (a) or Clause (b) or Clause(d) of the section will be punishable under

CHAPTER V

OF ARREST ESCAPE AND RETAKING

A.—Arrest[°] generally

46. Arrest how made.—(1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) **Resisting endeavour to arrest.**—If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with [†][imprisonment] for life.

[1882—S. 46; 1872—Ss. 177, 178; 1861—Ss. 91, 92.]

[°] For protection against arrest and detention, see Art. 22 of the Constitution of India.

[†] Substituted for "transportation" by the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), S. 12 (1-1-1956).

Section 45 — Note 13 (contd.)
Section 176 of the Penal Code. AIR 1938 Oudh 80 (81) = 39 Cri L Jour 154 (DB).

(2) A failure to furnish the information referred to in Clause (c) will be punishable under Section 202 or Sec. 176 of the Penal Code. See ('11) 11 Ind Cas 785 (786, 788) = 12 Cri L Jour 441 (Nag) ** ('95) 1895 Rat 783 (783) (DB).

(3) An owner or occupier of land can be prosecuted for an offence under Section 154 when he or his agent or manager fails to report of the occurrence of a riot or unlawful assembly on the land. ('01) 29 Cal 504 (515, 516) (DB) ** ('90) 12 All 550 (550, 551) (SB).

(4) The fact that the person bound to give the information under this section is himself the injured party will not exempt him from criminal liability if he fails to give the information. ('83) 1883 All W N 9 (9).

(5) The burden of proving that the accused holds a position which raises the obligation under this section is on the prosecution. ('78) 1 Mad 266 (266, 267) (DB).

(6) Where a person is prosecuted for failure to give information of an offence, the prosecution has also to prove that the specified offence was committed, that the accused had knowledge of it, and that he intentionally failed to give information. ('74) 22 Suth WR (Cr) 42 (42, 43) (DB).

(7) This section ought not to be used for purposes of vexation but in order to secure due information to Magistrates and the police of offences committed within their jurisdiction. AIR 1921 Oudh 227 (228) = 23 Cri L Jour 162 ** AIR 1929 Bom 12 (12) =30 Cri L Jour 172 (DB).

(8) If information is conveyed to the nearest Magistrate or the police-officer by one of the persons bound to give such information, it will not be reasonable that every other person who may possibly be bound to give the information be prosecuted for not having done so. ('84) 7 Mad 436 (438) ** ('93) 20 Cal 316 (318) (DB) ** AIR 1933 Lah 515 (516).

[See also ('88) 1 Weir 102 (104, 105).]

(9) Where the accused had no reason to suppose that information had been given to the authorities by anyone else, he cannot escape liability merely because another person who was also bound to give information under the section was present at the occurrence. AIR 1916 Mad 493 (493) = 16 Cri L Jour 219.

14. Effect of giving false information.—(1) Every information of an offence does not necessarily amount to a charge of an offence. ('09) 1 Ind Cas 187 (189, 190) = 9 Cri L Jour 170 (Mad) (FB).

(2) Merely giving false information to the police on a matter on which a person is not legally bound to give any information does not make him guilty of an offence under Section 177, I. P. C. AIR 1936 All 788 (799, 800) = 38 Cri L Jour 57 (DB).

SECTION 46 — SYNOPSIS

1. **Arrest how made.**
2. **Submission to custody.**
3. **Arrest on Sunday.**
4. **Arrest in Court premises.**
5. **All means necessary to effect the arrest.**
6. **Illegal arrest — Effect of.**
7. **Resistance to lawful arrest.**
8. **Evidence of arrest.**

1. Arrest how made.— (1) There must be touch, or confinement or else acquiescence. An arrest by mere oral declaration is not legal. ('29) 30 Cri L Jour 128

Section 46 — Note 1 (contd.)
(128) (Nag) ** AIR 1916 Sind 19 (20) = 17 Cri L Jour 87 (DB).

(2) Arrest is a mode of formally taking a person in police custody, but a person may be in a police custody in other ways e.g. survillance or restrictions on the movements of a person. AIR 1970 Bom 79 (82) (DB). (Statement by person under survillance — Not hit by S. 24, Evidence Act.)

(3) Arrest in the wake of warrant of arrest is deprivation of the personal liberty of the person arrested. AIR 1968 Cal 220 (228).

(4) A custody of a police-officer within the meaning of this section is "custody" within the meaning of Section 27 of the Evidence Act. AIR 1933 Pat 149 (151) = 34 Cr L Jour 349 (SB) ** AIR 1922 Cal 342 (344) = 22 Cri L Jour 562 (DB).

(5) Arrest is complete when there is submission to custody by word or action — Touching or confining of body of person arrested not necessary. 1969 Ker LR 826 = (1969) Ker LT 597 (600).

(6) Detention order is not a warrant of arrest — Provisions of Section 80, Cr. P. Code cannot be extended to detention order by virtue of Section 3-A of Preventive Detention Act. AIR 1961 All 542 (543, 544) = 1961 (2) Cri LJ 595 = 1961 All LJ 270 (DB) ** AIR 1963 J and K 23 (24) ** 1963 (1) Cri LJ 765.

(7) Keeping a watch over a person cannot by itself amount to taking the person into custody. 1968 Pat LJR 145 (147) (DB).

(8) Mere surrounding a person does not amount to his arrest. 1966 Cri LJ 331 (333) (Guj).

2. Submission to custody.— (1) Where a person states to a police-officer that he has done certain acts which amount to an offence, he submits to the custody of the officer within the meaning of this section. AIR 1941 Nag 86 (90) = 42 Cri L Jour 390 (DB) ** AIR 1933 Pat 149 (151) = 34 Cri L Jour 349 (SB). (AIR 1928 Pat 491 = 29 Cri L Jour 790 (DB), **Overruled.**)

(2) Custody does not mean physical custody by arrest. AIR 1967 Pat 63 (65) = 1967 Cri LJ 237 = 1966 BLJR 133 (137).

(3) Section does not contemplate any formality before a person can be said to be taken in custody, submission to the custody by word or action by a person is sufficient. AIR 1963 Andh Pra 87 (92) = 1963 (1) Cri LJ 142 = ILR (1966) 1 Andh Pra 128 (DB).

3. Arrest on Sunday.— (1) An arrest on a Sunday is not illegal. ('68) 10 Suth WR (Civ) 350 (351) (DB) ** ('73) 7 Mad HCR 285 (286, 287) (DB).

4. Arrest in Court premises.— (1) Persons going to and from the Court upon the business of the Court in connexion with litigation are not exempt from arrest under criminal process. An arrest made in a Court building, therefore, is not improper. AIR 1945 Cal 107 (110) = ILR (1944) 1 Cal 489 (SB).

5. All means necessary to effect the arrest.— (1) The provisions of sub-section (2) apply to the case of a person who is a fugitive and who wants to evade the arrest or wants to forcibly resist any endeavour to arrest him. ('55) 1955 BLJR 383 (384).

(2) In making an arrest no more force is to be used than is necessary. This is also provided by Section 50 which must be read with this section. ('94) 1894 Pun Re (Cr) No. 32. p. 106 (106, 108) (DB) ** AIR 1948 Sind 67 (73) = 49 Cri L Jour 178 (DB).

(3) It is by no means necessary that the arresting officer should in arresting the person, immediately proceed to put handcuffs on him with cord or chain; their use can only be justified on the ground that they are means necessary to effect the arrest. (1900-02) 1 Low Bur Rul 173 (174, 175).

(4) The person effecting the arrest is justified under sub-section (2) of the section in using so much violence as is necessary to effect his object, with this qualification, namely, that his right does not, except in the two cases mentioned in sub-section (3), extend to causing the death of the person sought to be arrested. AIR 1935 Pesh 83 (83, 84) = 36 Cri L Jour 1135 ** AIR 1955 All 379 (381) = 1955 Cri L Jour 905 (DB) ** 1967 Cur LJ 324 (327) (Punj).

(5) It is no part of the duty of a police-man to undertake a needless risk of being killed by a person whom he conceives it to be his duty to arrest. ('46) 1946 Rang LR 246 (257) (DB).

(6) Right of using violence against a person to be arrested should not be exceeded. ('02) 1902 Pun Re (Cr) No. 29. p. 78 (79) (DB).

(7) The words "all means" include the taking of assistance from others in effecting the arrest. AIR 1951 All 3 (Pr. 15) = ILR (1952) 1 All 445 (FB) ** AIR 1948 All 103 (105) = ILR (1948) All 3 = 49 Cri L Jour 62 (DB).

6. Illegal arrest, effect of.— (1) The fact that the officer who effected the arrest went beyond his powers in making the arrest does not affect the jurisdiction of the Court to try the accused for the offence with which he is charged. **AIR 1944 PC 73 (74, 75) = 46 Cri L Jour 119 ** AIR 1957 SC 857 (866) = 1958 SCR 328 = 1957 Cri L Jour 1346 **** ('11) 12 Cri L Jour 505 (508) = 39 Cal 164 (SB).

47. Search of place entered by person sought to be arrested.—If any person acting under a warrant of arrest, or any police officer[*] having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, [†][any person residing] in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

[1882—S. 47; 1872—Ss. 99, 179; 1861—Ss. 93, 106.]

[*] By notifications issued under Section 1 (2) of this Code, the State Government of West Bengal has extended Section 47 of the Code to the Commissioner of Police and the police in the town of Calcutta—See Notifications No. 1048J, dated 15-3-1943 read with Nos. 1002J, dated 25-3-1946 and 3019J, dated 25-9-1946.

[†] Substituted for "the person residing" by the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), S. 13 (1-1-1956).

48. Procedure where ingress not obtainable.—If ingress to such place cannot be obtained under Section 47, it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer[*] to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance:

Breaking open zanana.—Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall before entering such apartment, give notice to such woman that she is at liberty

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Section 46 — Note 6 (contd.)

[See however AIR 1925 Bom 131 (133, 134) = 26 Cri L Jour 441 (DB).]

(2) The person wrongfully making the arrest would be guilty of the offence of wrongful confinement. AIR 1924 Bom 333 (333) = 25 Cri L Jour 797 (DB).

(3) Detention of accused by villagers on suspicion — Subsequent arrest by constable — Command certificate not produced in trial — Custody held not lawful. AIR 1960 Orissa 23 (25) = 1960 Cri LJ 267 = 25 Cut LT 244.

(4) Police-officers maliciously confining certain persons knowing that in doing so they are acting contrary to law are guilty under Section 220 of the Penal Code. AIR 1948 Sind 67 (72) = 49 Cri L Jour 178 (DB) ** (1967) All Cr 488 (507, 508) = 1967 All WR (HC) 776.

(5-6) Resistance to an illegal arrest is no offence. ('97) 24 Cal 320 (324) (DB) AIR 1930 Lah 348 (349, 350) = 31 Cri L Jour 294 (DB).

(7) A rescue from custody under an illegal arrest is not an offence. ('12) 13 Cri L Jour 590 (591) (DB) (Cal) ** ('98) 1898 Pun Re No. 12, Cr, p. 29 (29).

(8) A rescue from arrest, where the warrant is not illegal but merely defective, will be an offence. AIR 1918 Lah 332 (333) = 19 Cri L Jour 390.

7. Resistance to lawful arrest.— (1) Resistance or illegal obstruction to a lawful arrest may amount to an offence under Section 224 of the Penal Code. AIR 1932 Lah 615 (616) = 34 Cri L Jour 25.

(2) Mere act of running away before arrest or the evasion of arrest does not constitute the offence of resistance or illegal obstruction to lawful apprehension. ('91) 1891 All WN 64 (64) ** ('88) 1 Weir 205 (206). (Evading arrest.)

(3) There is no legal right of private defence against an arrest carried out in the manner provided by this section. AIR 1951 All 3 (Prs. 22, 25) = ILR (1952) 1 All 445 (FB).

8. Evidence of arrest.— (1) A Police-officer must always be in a position to provide the Court with the date and the place of the arrest and any special circumstance attending it. AIR 1944 Mad 483 (484) = 46 Cri L Jour 337 (DB).

Section 47 — Note 1

(1) This section does not restrict the powers of the police to enter the place to be searched without any demand. AIR 1914 Cal 456 (470) = 15 Cri L Jour 385 (DB).

Section 48 — Note 1

(1) If difficulties are placed in the way of a police-officer, he may use force to obtain ingress. AIR 1914 Cal 456 (470) = 15 Cri L Jour 385 (DB).

(2) A person causing hurt to a police-officer making search under this section is guilty of an offence under Section 332, I. P. C. AIR 1942 Pat 281 (282) = 43 Cri L Jour 279.

to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

[1882—S. 48; 1872—Ss. 100, 180, 181; 1861—Ss. 94, 95, 107.]

[*] By Notifications issued under Section 1 (2) of this Code, the State Government of West Bengal has extended Section 48 of the Code to the Commissioner of Police and the police in the town of Calcutta—See Notifications No. 1048J, dated 15-3-1943 read with Nos. 1002J, dated 25-3-1946 and 3019J, dated 25-9-1946.

49. Power to break open doors and windows for purposes of liberation.—Any police officer* or other person authorised to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

[1882—S. 49; 1872—Nil; 1861—Nil.]

[*] By Notifications issued under Section 1 (2) of this Code, the State Government of West Bengal has extended S. 49 of the Code to the Commissioner of Police and the police in the town of Calcutta—See Notifications No. 1048J, dated 15-3-1943 read with Nos. 1002J, dated 25-3-1946 and 3019J, dated 25-9-1946.

50.* No unnecessary restraint.—The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

[1882—S. 50; 1872—S. 182; 1861—S. 96.] [See Constitution of India, Articles 21, 22.]

[*] By notifications issued under Section 1 (2) of this Code, the State Government of West Bengal has extended Section 50 of the Code to the Commissioner of Police and the police in the town of Calcutta—See Notifications No. 1048J, dated 15-3-1943 read with Nos. 1002J, dated 25-3-1946 and 3019J, dated 25-9-1946.

51. Search of arrested persons.—Whenever a person is arrested by a police officer* under a warrant which does not provide for the taking of bail, or under a warrant which provides for taking of bail but the person arrested cannot furnish bail, and

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Section 48 — Note 1 (contd.)

(3) The first part of Section 48 does not require that where the door of the house is open the constable should wait and make a formal demand for admittance to the owner of the house. AIR 1956 Orissa 97 (99) = ILR (1956) Cut 50 = 1956 Cri L Jour 635.

(4) Where a police party, for the purposes of effecting arrest of some inmates of a Math and for searching and seizing arms, effected their entry into the Math by breaking open backdoors without permission of the head of the Math the entry of the police party was illegal. AIR 1957 Orissa 130 (145, 146) = 1957 Cri L Jour 769 (DB).

Section 49 — Note 1

(1) A Magistrate has no jurisdiction to authorise police to break open the door for the purpose of delivering properties alleged to have been wrongfully locked up by a person not having any title to it. AIR 1923 All 473 (473) = 25 Cri L Jour 218.

Section 50 — Note 1

(1) Complaint filed against Sub-Inspector — Before hearing the case, sub-Inspector arresting complainant and his witnesses under Section 151, Criminal P. C. — Complainant and witnesses unarmed and also not resisting or evading arrest yet all of them beaten up — Such arrest is fraudulent and dishonest. (1967) All Cr R 488 (507, 508) = 1967 All WR (HC) 776.

Section 51 — Note 1

(1) It is not permissible to forcibly take hold of a prisoner and examine his body medically without his consent for the purpose of qualifying some medical witnesses to give medical evidence in the case against the accused. AIR 1931 Cal 601 (602, 604) = 33 Cri L Jour 11 (DB) ** AIR 1932 Cal 723(725) = 34 Cri L Jour 177 (DB).

[See however ('10) 11 Cri L Jour 453 (464) (DB) (Cal).]

(2) Resistance to a search under this section may amount to an offence under Section 186 of the Penal Code. ('11) 12 Cri L Jour 457 (457) (DB) (Bom).

(3) There is no provision in the Code which requires a panch to be called in cases of searches of persons. ('11) 12 Cri L Jour 457 (457) (DB) (Bom) ** AIR 1954 All 106 (107) = 1954 Cri L Jour 188 ** AIR 1960 Pat 582 (587) = 1960 Cri LJ 1650 = 1960 BLJR 511.

(4) The procedure under Section 103 does not apply to a search of the person under this section. AIR 1942 Oudh 221 (224) = 43 Cri L Jour 416 ** 1963 (1) Cri LJ 342 (343) (All).

whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles other than necessary wearing apparel, found upon him.

[1882—S. 51; 1872—S. 387; 1861—Nil.]

[*] By Notifications issued under Section 1 (2) of this Code, the State Government of West Bengal has extended Section 53 of the Code to the Commissioner of Police and the police in the town of Calcutta—See Notifications No. 1048J, dated 15-3-1943 read with Nos. 1002J, dated 25-3-1946 and 3019J, dated 25-9-1946.

52. **Mode of searching women.**—Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency.

[1882—S. 52; 1872—S. 386; 1861—S. 126.]

53. **Power to seize offensive weapons.**—The officer* or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.†

[1882 — S. 53; 1872 — Nil; 1861 — Nil.]

[*] By Notifications issued under Section 1 (2) of this Code, the State Government of West Bengal has extended Section 53 of the Code to the Commissioner of Police and the police in the town of Calcutta—See Notifications No. 1048J, dated 15-3-1943 read with Nos. 1002J, dated 25-3-1946 and 3019J, dated 25-9-1946.

[†] For protection against arrest and detention, see Art. 22 of the Constitution of India.

B.—Arrest without warrant.

54. **When police may arrest without warrant.**—(1) Any police officer may, without an order from a Magistrate and without a warrant, arrest—

First, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible infor-

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Section 51 — Note 1 (contd.)

(5) Neither Section 51 nor Section 550 has application to a case where the person who was driving the truck at the time of the seizure, was not a person accused of the offence that was investigated by the police. 1966 All Cri R 91 = 1966 All WR (HC) 157.

(6) The police officer seizing property under Section 51, Cr. P. C. is not liable in a suit by the acquitted accused. 1963 (1) Cri LJ 117 (119) = 62 Cal WN 470 (DB).

(7) Before arrest of accused and seizure of articles therefrom their identity should be satisfactorily established. 1962 Ker LJ 840 = 1962 Ker LT 759 (760).

(8) Where a person is arrested under Section 54 (1) (iv), Criminal P. C. on suspicion that he was carrying stolen property and on a search of such person under Section 51 gold and silver are seized under Section 550, the seizure by any police officer of property taken under Section 51 shall be forthwith reported under Section 523 to a Magistrate, who shall make such order as he thinks fit respecting the disposal of such property. **AIR 1965 SC 1039 (1042, 1043) = 1965 (2) Cri LJ 144 = (1965) 1 SCR 375.**

Section 52 — Note 1

(1) Search of female accused by a female in the presence of witnesses and the Sub-Inspector cannot be said to be with strict regard to decency. ('58) 24 Cut LT 445 (447).

(2) Search of woman — Decency — It will not be an extraordinary circumstance that some men should have seen an article being taken out from the woman. **AIR 1962 SC 1189 (1190, 1191) = 1962 (2) Cri LJ 273 = 64 Bom LR 517 = 1962 Supp (2) SCR 632.**

Section 53 — Note 1

(1) Recovery of unlicensed revolver from accused — Failure to seal it on spot at time of recovery — No defect in investigation. 1963 (1) Cri LJ 342 (343) (All).

SECTION 54 — SYNOPSIS

1. **Scope.**
2. **"Any police-officer."**

mation has been received, or a reasonable suspicion exists of his having been so concerned;

Secondly, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking;

Thirdly, any person who has been proclaimed as an offender either under this Code or by order of the **[State Government];

Fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property *[and] who may reasonably be suspected of having committed an offence with reference to such thing;

Fifthly, any person who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody;

Sixthly, any person reasonably suspected of being a deserter from †[the Indian] ‡[Army, Navy or Air Force] §[* * *] *†[* * *] *‡[* * *];

Section 54 — Synopsis (contd.)

3. **"Concerned in any cognizable offence" — Clause (1).**
4. **"Reasonable complaint."**
5. **"Credible information."**
6. **"Reasonable suspicion exists of his having been so concerned."**
7. **Proclaimed offender.**
8. **Person in possession of implement of house-breaking — Clause (2).**
9. **Obstruction to police-officer — Clause (5).**
10. **Deserter from Army or Navy — Clause (6).**
11. **Arrest of fugitive criminals for offences committed outside India — Clause (7).**
12. **Arrest on requisition from another police-officer — Clause (9).**

1. Scope.— (1) An arrest purporting to be under the section would be illegal, unless the circumstances specified in any of the various clauses of the section exist. AIR 1926 Pat 560 (561) = 26 Cri L Jour 1608 ** AIR 1949 Oudh 74 (76) = 50 Cri L Jour 578 ** AIR 1932 Pat 171 (174) = 33 Cri L Jour 706 (DB).

(2) Where a person is arrested in pursuance of the order of a Magistrate, it is such order that must determine the legality or otherwise of the arrest. AIR 1935 Cal 122 (124) = 36 Cri L Jour 794 (DB).

(3) A police-officer's power to arrest under this section is discretionary. ('93-1900) 1893-1900 Low Bur Rul 390 (392).

(4) Power under the Preventive Detention Act is in addition to those contained in Criminal Procedure Code. AIR 1969 Tripura 44 = 1969 Cri LJ 1536.

(5) Provision for the arrest under Section 4 (c) of Armed Forces (Assam and Manipur) Special Powers Act is similar to that under Section 54 (1) First. AIR 1963 Manipur 12 (13) = 1963 (1) Cri LJ 451.

2. "Any police-officer."— (1) A private person cannot act under this section even though authorised by a police officer to do so. ('09) 10 Cri L Jour 118 (120) = 5 Low Bur Rul 21.

(2) A village chowkidar is not a police-officer. AIR 1944 All 117 (117) = 45 Cr L Jour 643 ** AIR 1940 Pat 696 (698) = 42 Cri L Jour 199 (DB).

(3) It has been held that a police-officer of Jammu and Kashmir State cannot be regarded as a police-officer for purpose of this section. AIR 1952 Trav-Co 201 (Pr. 1) = 1952 Cri L Jour 943 (DB).

3. "Concerned in any cognizable offence" — Clause (1).— (1) A police-officer can act under Clause (1) only when the offence for which a person is to be arrested is a cognizable offence. AIR 1942 All 424 (425) = ILR (1942) All 914 ** AIR 1942 Pat 281 (282) = 43 Cri L Jour 279.

(2) Arrest of a child under seven years of age, is illegal. AIR 1916 Mad 642 (642) = 16 Cri L Jour 602.

4. "Reasonable complaint."— (1) It is sufficient if there is a reasonable complaint made to any person entitled to entertain it. AIR 1937 Bom 56 (59) = 38 Cri L Jour 267 (DB).

(2) Where a Magistrate acts upon a complaint of a cognizable offence there is a "reasonable complaint" of the accused being concerned in a cognizable offence. AIR 1922 All 457 (458).

(3) Where a complaint is made to a police-officer of the commission of a cognizable offence, but there are circumstances in the case which lead him to suspect the information, he should leave the complainant to go to Magistrate and convince him that the information justifies the serious step of the issue of warrants of arrest. ('95) 1895 Rat 795 (797) (DB).

Seventhly, any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in any act committed at any place out of °§[India] which, if committed in °§[India], would have been punishable as an offence, and for which he is, under any law relating to extradition †‡[° ° °] or otherwise, liable to be apprehended or detained in custody in °§[India];

†§[° °]

Eighthly, any released convict committing a breach of any rule made under Section 565, sub-section (3);

‡§[Ninthly, any person for whose arrest a requisition has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.]

Section 54 (contd.)

5. **"Credible information."**— (1) "Credible information" need not be sworn information. ('82) 1882 Pun Re (Cr) No. 7, p. 6 (8) (FB) ** AIR 1929 Lah 720 (720) = 30 Cri L Jour 625.

(2) A bare assertion without anything more will not amount to "credible information. AIR 1925 Cal 278 (279) = 26 Cri L Jour 625 (DB).

(3) It is not enough for an arrest of a person under Section 54 that there was likelihood of a cognizable offence being committed in the future. 1962 (1) Cr LJ 673 (675) (Tripura).

(4) The "reasonable suspicion" and "credible information" must relate to definite averments which must be considered by the police-officer himself before he arrests a person under this section. AIR 1950 Madh B 83 (Pr. 5) (DB) ** AIR 1934 Sind 197 (199) = 36 Cri L Jour 332 (DB).

(5) A complaint of a cognizable offence recorded by a Magistrate and sent by him to the police for investigation and report is sufficient information. AIR 1923 Pat 547 (549) = 24 Cri L Jour 375 (DB).

(6) An information that a warrant of arrest has been issued against a person in respect of a cognizable offence, may justify action being taken under this section. AIR 1918 Mad 514 (514) = 18 Cri L Jour 709 (709) (DB) ** AIR 1914 All 205 (206) = 15 Cri L Jour 179.

(7) Vague information that some persons were about to rob a train — Police finding certain persons there, arresting them — **Held,** there was no legal justification for arrest. AIR 1926 Pat 560 (560, 561) = 26 Cri L Jour 1608.

(8) Arrest of a foreigner inside India under Sec. 4 of Passport Act is illegal. 1962 (1) Cri LJ 673 (675) (Tripura).

6. **'Reasonable suspicion exists of his having been so concerned."**— (1) Where a police-officer suspecting that certain pieces of cloth which a man was carrying early in the morning were stolen property, went to him and questioned him and having received unsatisfactory answers arrested him, it was held that he was entitled to do so. ('88) 12 Bom 377 (396, 397) (DB) ** **AIR 1965 SC 1039 (1043) = (1965) (2) Cri LJ 144 = (1965) 1 SCR 375.**

(2) Where a person was found armed, lurking at midnight in a village inhabited by persons well known to the police as professional dacoits, it was held that there was a reasonable suspicion against the person of his being concerned in a cognizable offence. ('69) 1869 Pun Re (Cr) No. 7, p. 9 (10).

(3) Reasonable complaint or suspicion should be at least founded on some definite fact tending to throw suspicion on the person arrested, and not on a mere vague surmise. AIR 1950 Madh B 83 (Pr. 5) (DB). (Under Section 54 (1) (vii).) ** AIR 1939 Pat 129 (133) = 40 Cri L Jour 500 (DB).

(4) "Reasonable suspicion" means a bona fide belief on the part of the police-officer that an offence has been committed or is about to be committed. AIR 1943 Mad 218 (219, 220).

[See however 1962 Ker LJ 840 (842) = 1962 Ker LT 759.]

(5) Where there is personal enmity between the police officer concerned and the person arrested, a very high standard of evidence would be required to prove that the police-officer acted in good faith. AIR 1949 Oudh 74 (76) = 50 Cri L Jour 578.

7. **Proclaimed offender.** — (1) In order to justify an arrest under the third clause, the proclamation must have been duly published. AIR 1936 Pat 249 (250) = 37 Cri L Jour 318.

8. **Person in possession of implement of house-breaking — Clause (2).**— (1) An arrest cannot be made when there is no definite information and it cannot be justified on the ground that on search, such an implement happened to be found in the possession of the person

(2) This section applies also to the police in the towns[‡‡] of Calcutta and Bombay.[‡‡]

[1882 — S. 54; 1872 — S. 92; 1861 — S. 100.]

[**] Substituted for "Provincial Government" by A.L.O., 1950.

[*] Substituted by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 10, for "or".

[†] Substituted for "Her Majesty's" by A.L.O., 1950.

[‡] Substituted for the words "Army or Navy" by the Repealing and Amending Act, 1927 (X of 1927), S. 2 and Sch. I.

[§] The words "or of belonging to Her Majesty's Indian Marine Service and being illegally absent from that service" were repealed by the Amending Act, 1934 (XXXV of 1934), S. 2 and Schedule.

[*†] The words "or from any unity of the armed forces maintained by Part B States" were omitted by 2 A.L.O., 1956.

[*‡] The words "declared under the Indian Extradition Act, 1903, to be a unit, desertion from which is an extradition offence" were omitted by the Code of Criminal Procedure (Amendment) Act, 1951 (I of 1951), S. 8 (1-4-1951).

[*§] Substituted for "the States" ibid, S. 2 (1-4-1951).

[†‡] The words "or under the Fugitive Offenders Act, 1881," were omitted, ibid, S. 8 (1-4-1951).

[†§] The word "and" was repealed by Act (X of 1927), S. 3 and Sch. II.

[‡§] Inserted by Act XVIII of 1923, S. 10.

[‡‡] The letter 's' and the words "and Bombay" were repealed by the City of Bombay Police Act, 1902 (Bom. Act IV of 1902), S. 2 (1) and Schedule A. This

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Section 54 — Note 8 (contd.)

arrested. AIR 1942 All. 74 (76) = 43 Cri L Jour 338 (DB).

9. Obstruction to police-officer — Clause (5).— (1) It is a right and duty of a police-officer to prevent a breach of the peace and he may arrest any one who obstructs and resists him in performing this duty. ('87) 1887 Rat 331 (332) (DB) ** ('88) 12 Bom 377 (394, 399) (DB).

10. Deserter from Army or Navy — Clause (6).— (1) A police-officer has power to arrest without warrant a deserter from Indian Army, Navy or Air Force and an obstruction thereto would be punishable under Section 225-B of Penal Code. AIR 1943 Mad 280 (281) = 44 Cri L Jour 465 ** ('12) 13 Cri L Jour 234 (234) = 1911 Pun Re (Cr) No. 20 (DB).

11. Arrest of fugitive criminals for offences committed outside India — Clause (7).— (1) There must be in existence as a fact, as opposed to any belief which may be entertained by any person, a warrant which has been issued under the Extradition Act. It is not necessary that it should be present or available to any particular officer. It must merely exist. AIR 1939 Pat 129 (133) = 40 Cri L Jour 500 (DB) ** AIR 1933 Lah 159 (160) = 34 Cri L Jour 679 (DB).

(2) The clause does not require that the person to be arrested should be liable to be arrested without a warrant if the offence had been committed in India. AIR 1947 Mad 358 (358) = ILR (1947) Mad 640 = 48 Cri L Jour 299 (DB).

12. Arrest on requisition from another police-officer — Clause (9).— (1) This clause does not seek to limit in any way the application of the other clauses and merely introduces another class of persons who can be arrested without a warrant. AIR 1943 Mad 207 (207) = 44 Cri L Jour 272.

(2) Where an officer-in-charge of a certain thana, who could personally have arrested the accused, gave a command certificate to the constables of his thana directing them to make the arrest it was held that under this clause the constables were justified in making the arrest. AIR 1946 Cal 314 (315) = 47 Cri L Jour 352 (DB).

[See also AIR 1955 All 438 (442) = 1955 Cri L Jour 1120 (DB). (Per Desai J.)]

(3) The word 'requisition' covers a message communicated by a police-officer by means of telephone or wireless. Such message, however, must disclose the identity of the person to be arrested and the offence or the reason for which the arrest is to be made, as required by this clause. AIR 1950 Madh B 83 (Prs. 4, 7) (DB) ** AIR 1942 Mad 539 (546) = 44 Cri L Jour 45 (DB) ** AIR 1960 Orissa 23 (25) = 1960 Cri LJ 267 = 25 Cut LT 244.

[See 1962 (2) Cri LJ 437 (438) (Ker).]

[See also AIR 1964 Ker 185 (189) = 1964 (2) Cri LJ 34 (DB) ** AIR 1960 Orissa 33 (36) = 1960 Cri LJ 381 = ILR (1959) Cut 645.]

Bombay Act IV of 1902 has been repealed by the Bombay Police Act, 1951 (XXII of 1951), S. 167 (1) and Schedule I (which Act applies to the whole State of Bombay from 1-8-1951). Section 167 (3) read with Sch. III of that Act has amended Section 1 (2) of the Code of Criminal Procedure, 1898, in its application to the State of Bombay, so as to make the whole Code applicable to the town of Bombay (now greater Bombay) as well.

OBJECTS AND REASONS

1923.—Sub-section (1), ninthly.—"We think that amendment of Section 54, as drafted, might lead to the interpretation that a requisition could only be issued in cases where arrest was lawful under the first clause of sub-clause (1). We do not think that this was the intention, and we would, therefore, add a separate clause for arrest on requisition. We agree with those critics who desire that some safeguard should be provided, and we have, therefore, proposed to lay down that the requisition shall reveal the offence or other cause for which the arrest is to be made, so that the arresting officer can satisfy himself that the arrest could lawfully have been made without warrant by the officer issuing requisition."—S.C.R. (XVIII of 1923).

55. Arrest of vagabonds, habitual robbers, etc.—(1) Any officer in charge of a police station may, in like manner, arrest or cause to be arrested—

(a) any person found taking precautions to conceal his presence within the limits of such station, under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence; or

(b) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself; or

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Section 54 — Note 12 (contd.)

[See however AIR 1968 All 132 = 1968 Cri LJ 435.]

(4) The power of directing the arrest under Section 54 (9) of some person at a place outside the local limits of the jurisdiction of a Court is wide and drastic and has to be exercised with caution and circumspection and on substantial reasons. AIR 1959 Madh Pra 147 (149).

Section 55 — Note 1

(1) The fact that a person is a habitual offender is by itself not an offence, but he may be arrested under this section and dealt with under the security sections. AIR 1918 Mad 514 (514) = 18 Cri L Jour 709 (709) (DB) ** AIR 1926 Sind 190 (191) = 27 Cri L Jour 628 (DB).

(2) This section is independent of Chapter VIII of the Code although proceeding under Chapter VIII may follow such arrest as a natural sequence. ('13) 14 Cri L Jour 618 (618) = 35 All 407 ** AIR 1930 Pat 103 (104) = 31 Cri L Jour 717.

(3) A person, who is suspected of earning his livelihood by unlawful gaming, cannot be arrested under this section. ('06) 3 Cri L Jour 20 (20) = 3 Low Bur Rul 94.

(4) This section is intended for suppression of habitual bad characters whom an officer in charge of a police-station suddenly finds within his circle, or about whom he has good cause to fear that they will commit serious harm before there is time to apply to the nearest Magistrate empowered to deal with the case under Section 112. ('91) 14 All 45 (46).

(5) The words "in like manner" refer to Section 54 under which a police-officer has power to arrest without an order from a Magistrate and without a warrant. ('13) 14 Cri L Jour 618 (618) = 35 All 407.

(6) An arrest on mere suspicion that a person is concerned in several offences is not justified. AIR 1924 Mad 555 (557) = 25 Cri L Jour 563.

(7) It is illegal for an officer in charge of a police-station to arrest a person under this section out of the limits of his station. ('83) 1883 All WN 223 (223).

(8) When the police act under this section they are bound to give the person arrested the option of bail, and that bail should be not excessive but in accordance with the position in life occupied by the person arrested. ('92) 14 All 45 (47).

[But see ('36) 37 Cri L Jour 1070 (1071) = 63 Cal 189 (DB).]

(9) An arrest by an Inspector of Police in Calcutta of a person who has no ostensible means of subsistence or is unable to give a satisfactory account of himself, is quite legal. ('04) 1 Cri L Jour 535 (537) = 31 Cal 557 (DB).

(10) It is only if arrest is made under Section 55 which is quite different from Sections 54 (1) and 151 that question of proceeding against arrested person under Section 109 would arise. AIR

(c) any person who is by repute an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury.

(2) This section applies also to the police in the towns of Calcutta and Bombay.*

[1882 — S. 55; 1872 — S. 94; 1861 — S. 101.]

[*] The letter "s" and the words "and Bombay" were repealed by the City of Bombay Police Act, 1902 (Bom. Act IV of 1902), S. 2 (1) and Sch. A. This Bombay Act, IV of 1902, has now been repealed by the Bombay Police Act, 1951 (XXII of 1951), S. 167 (1) and Sch. 1 (which applies to the whole State of Bombay from 1-8-1951). By S. 167 (3) and Sch. III it has amended S. 1 (2) of the Code of Criminal Procedure, 1898, so as to make the whole Code applicable to the town of Bombay.

56. Procedure when police officer deputes subordinate to arrest without warrant.—(1) When any officer in charge of a police station *[or any police officer making an investigation under Chapter XIV] requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made. *[The officer so required shall, before making the arrest, notify to the person to be arrested the substance of the order, and, if so required by such person, shall show him the order.]

(2) This section applies also to the police in the towns of Calcutta and Bombay.†

[1882 — S. 56; 1872 — S. 102 Para. 1; 1861 — S. 140.]

[*] Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 11.

[†] The letter "s" and the words "and Bombay" were repealed by the City of Bombay Police Act, 1902 (Bom. Act IV of 1902), S. 2 (1) and Sch. A. This Bombay

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Section 55 — Note 1 (contd.)

1963 Manipur 12 (14) = 1963 (1) Cri LJ 451.

(11) Writ in pending cases — Question of illegal arrest under Section 55 sub judice — Matter cannot be decided in proceedings for habeas corpus. AIR 1964 Tripura 57 (59) = 1964 (2) Cri LJ 588.

Section 56 — Note 1

(1) Where a police-officer empowered under Section 54 to arrest a person without a warrant is also ordered by a superior police officer to arrest the person, and he arrests such person without complying with the provisions of this section the non-compliance will not affect the validity of the arrest as Section 54 is independent of this section and is not in any way controlled by it. AIR 1937 Bom 56 (59) = 38 Cri L Jour 267 (DB) ** AIR 1943 Mad 207 (208) = 44 Cri L Jour 272 ** AIR 1938 Pat 229 (230) = 39 Cri L Jour 563 (DB) ** AIR 1964 Ker 185 (138) = 1964 (2) Cri LJ 34 (DB) ** AIR 1960 Ori 33 (35) = 1960 Cri LJ 381 = ILR (1959) Cut 645.

[But see AIR 1941 Rang 180 (180) = 42 Cri L Jour 629 ** AIR 1939 Nag 95 (97) = 40 Cri L Jour 905.]

(2) The fact that a Magistrate has issued a warrant for the arrest of a person under Section 114 is no bar to an order for his arrest under this section. ('96) 18 All 246 (248. 249) (DB).

(3) This section does not apply where the person arrested is a deserter from Army. AIR 1943 Mad 280 (281) = 44 Cri L Jour 465.

(4) When an investigation has been taken up by a Sub-Inspector, an arrest made by the Assistant Sub-Inspector accompanying him but not in his presence and without a written order from him is not lawful. AIR 1948 Cal 95 (96. 97) = 48 Cri L Jour 464 (DB).

(5) The power of arrest without warrant under Section 56, Cr. P. Code, has to be exercised where the obtaining of a warrant from a Magistrate would involve unnecessary delay which might defeat the arrest or which would cause unnecessary delay in effecting the arrest. AIR 1959 All 384 (386) = 1959 Cri L Jour 605.

(6) The expression "officer subordinate" is not limited to a police officer as in Section 54 and Sections 57 to 61 of the Code. An arrest by a chowkidar in

Act IV of 1902 has now been repealed by the Bombay Police Act, 1951 (XXII of 1951), S. 167 (1) and Sch. I (which applies to the whole State of Bombay from 1-8-1951). By S. 167 (3) and Sch. III, it has amended S. 1 (2) of the Code of Criminal Procedure, 1898, so as to make the whole Code applicable to the town of Bombay.

57. Refusal to give name and residence.—(1) When any person who in the presence of a police-officer has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required:

Provided that, if such person is not resident in *[India], the bond shall be secured by a surety or sureties resident in *[India].

(3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest† or should he fail to execute

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Section 56 — Note 1 (contd.)

pursuance of an order from an officer in charge of a police-station is therefore legal AIR 1937 Bom 56 (60) = 38 Cri L Jour 267 (DB) ** ('96) 18 All 246 (248, 249) (DB).

(7) The mere endorsement of a constable's name on a warrant of arrest issued by a Magistrate, and signed by the officer in charge of a police station is not "an order in writing". AIR 1934 All 879 (880) = 35 Cri L Jour 1452.

(8) The endorsement of the name of the constable actually going to make the arrest is not necessary for the validity of an order under this section. AIR 1940 Pat 361 (362) = 41 Cri L Jour 742.

(9) The order for arrest given to a subordinate officer should specify within which category as given in S. 55 the supposed offender falls. AIR 1926 Sind 190 (191) = 27 Cri L Jour 628 (DB).

[See however AIR 1934 All 879 (880) = 35 Cri L Jour 1452.]

(10) Non-compliance with provision makes the arrest illegal. AIR 1940 Cal 321 (321) = 41 Cri L Jour 744 (DB).

(11) Order directing arrest need be shown only if required by the person to be arrested. AIR 1925 Oudh 544 (544) = 26 Cri L Jour 795.

[See also AIR 1959 All 384 (386) = 1959 Cri L Jour 685.]

(12) The object of this section is to pin both the superior and the subordinate officer down to their respective responsibilities where the former does not choose to act for himself but through the latter. AIR 1955 All 438 (440) = 1955 Cri L Jour 1120 (DB).

(13) An arrest of an accused person under Section 56 is illegal if there was no order in writing. The arrest cannot be made legal by calling in aid of Section 54 (1). AIR 1955 All 438 (441, 443) = 1955 Cri L Jour 1120 (DB) ** AIR 1968 All 132 (135) = 1968 Cri LJ 435.

[But see AIR 1960 Orissa 33 (36) = 1960 Cri LJ 381 = ILR (1959) Cut 645.]

(14) The section presupposes a case of a person who is willing to submit himself for hearing the substance of the order or to seeing it. It does not relate to the case of a person who is a fugitive and who wants to evade the arrest or wants to forcibly resist any endeavour to arrest him. 1955 BLJR 383 (384).

(15) Detention of accused by villagers on suspicion — Subsequent arrest by constable — Escape — Trial for — Command certificate not produced — Arrest held, was neither under Section 54 nor under Section 56. AIR 1960 Orissa 23 (26) = 1960 Cri LJ 267 = 25 Cut LT 244.

Section 57 — Note 1

(1) In the case of non-cognizable offences the power of the police to arrest without warrant arises only under the conditions specified in this section. AIR 1938 Rang 161 (163) = 39 Cri L Jour 642 (DB) ** AIR 1923 Mad 523 (526) = 24 Cri L Jour 599 (FB).

(2) Where no non-cognizable offence is committed in the presence of a police-officer, no demand can be made for giving name and hence a person refusing to give his name cannot be arrested under this section. AIR 1941 Lah 422 (425) = 43 Cri L Jour 127.

(3) When true name and residence of person arrested is ascertained, he must be released on bail if he executes the necessary bond. AIR 1919 All 160 (161) = 20 Cri L Jour 381.

(4) Person causing disturbance on a public road and not giving his name and address to police constable — Constable using abusive language while arresting

the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

[1882 — S. 57; 1872 — S. 93; 1861 — S. 108.]

[*] Substituted for "the States", by the Code of Criminal Procedure (Amendment) Act (1 of 1951), S. 2 (1-4-1951).

[†] See Article 22 of the Constitution of India.

STATE AMENDMENTS

Gujarat

In its application to the State of Gujarat the amendment made in S. 57 is the same as that made in Maharashtra.—See Cent. Act XI of 1960, S. 87.

Maharashtra

(1) In its application to the State of Maharashtra, in sub-section (2) of S. 57 for the words "before a Magistrate if so required" substitute the words "before a Magistrate having jurisdiction if so required."—Bom. Act XXIII of 1951, S. 2 and Sch. (1-7-1953).

(2) After the reorganization of the State of Bombay in 1956, the amendment made in S. 57 by the above-mentioned Bombay Act is extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Mysore

In its application to the State of Mysore, amendment made in sub-section (2), is the same as that of Maharashtra.—Mys. Act XIII of 1965, S. 17 (1-10-1965).

Punjab: Haryana: Chandigarh (U. T.)

In its application to the States of Punjab and Haryana and the Union Territory of Chandigarh, in sub-section (2) of Section 57 for the words "a Magistrate", substitute the words "a Judicial Magistrate having jurisdiction."—Punj. Act XXV of 1964, S. 2 and Sch., Pt. I, Item (21) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Rajasthan

Abu Area—In its application to the Abu area of the State of Rajasthan, the amendment made in S. 57 is the same as that of Maharashtra.—Central Act XXXVII of 1956, S. 119 (1-11-1956).

Union Territories (except Chandigarh)

In its application to the Union territories, in sub-sections (2) and (3), for the words 'a Magistrate' and 'Magistrate', substitute the words respectively 'a Judicial Magistrate' and 'Judicial Magistrate'.—Act 19 of 1969, S. 3 and Sch., item 22 (in Delhi on 2-10-1969).

West Bengal:

For the word 'Magistrate' in sub-sections (2) and (3), substitute the words 'Judicial Magistrate'.—W. B. Act 8 of 1970, S. 3 and Schedule, Item 31.

58. **Pursuit of offenders into other jurisdictions.**—A police-officer* may, for the purpose of arresting without warrant any person whom he is authorised to arrest under this Chapter, pursue such person into any place in †[India].

[1882 — S. 58; 1872 — S. 103; 1861 — S. 141.]

[*] By notifications issued under S. 1 (2) of this Code, the State Government of West Bengal has extended Section 58 of the Code to the Commissioner of Police

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Section 57 — Note 1 (contd.)

him — Though arrest is justified use of abusive language amounted to offence under Section 504, I. P. C. ('03) 5 Bom LR 597 (598) (DB).

Section 58 — Note 1

(1) Section 58 authorises the pursuit of an offender into any place in India for purposes of arrest. AIR 1955 Nag 97 (98) (Pr. 6) = ILR (1955) Nag 23 = 1955 Cri L Jour 728 (DB).

(2) Officer in charge of a thana can go into the jurisdiction of the neighbouring thana to make an arrest for an offence committed within his thana. AIR 1946 Cal 314 (314) = 47 Cri L Jour 352 (DB).

(3) An arrest of a person in the State of Travancore-Cochin by a police-officer of the State of Jammu and Kashmir for an offence committed in that State is not warranted by law. AIR 1952 Trav-Co 201 (Pr. 1) = 1952 Cri L Jour 943 (DB).

(4) Section 58 does not authorize the pursuit into foreign territory for pur-

and the police in the town of Calcutta—See Notfns. No. 1048J dated 15-3-1943 read with Nos. 1002J dated 25-3-1946 and 3019J dated 25-9-1946.

[†] Substituted for "the States", by the Code of Criminal Procedure (Amendment) Act (I of 1951), S. 2 (1-4-1951).

59. Arrest by private persons and procedure on such arrest.—*[(1) Any private person may arrest any person who in his view commits a non-bailable and cognizable offence, or any proclaimed offender, and without unnecessary delay, shall make over any person so arrested to a police-officer, or, in the absence of a police-officer, take such person or cause him to be taken in custody to the nearest police-station.]

(2) If there is reason to believe that such person comes under the provisions of Section 54, a police-officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of Section 57. If there

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Section 58 — Note 1 (contd.)

poses of arrest. ('98) 25 Cal 20 (30, 31) = 24 Ind App 137 (PC). **(Reversing** 1896 Pun Re C. No. 1 (DB).) ** AIR 1920 Lah 235 (236) = 21 Cri LJ 303.

[See however AIR 1919 Lah 459 (464) = 20 Cri L Jour 65 (DB).]

SECTION 59 — SYNOPSIS

1. **Scope.**
2. **"In his view."**
3. **"Proclaimed offender."**
4. **Private person.**
5. **"May arrest."**
6. **Arrest how made.**
7. **"Take such person or cause him to be taken in custody."**
8. **"Police-officer."**
9. **Escape from custody.**

1. Scope.— (1) A private individual may arrest a person only when he is a proclaimed offender or he in his view commits a non-bailable and cognizable offence. AIR 1945 Lah 334 (335) = 47 Cri L Jour 1036 ** AIR 1934 Cal 610 (615) = 35 Cri LJ 1367 (DB) ** 1967 All LJ 519 = 1967 All WR (HC) 278 ** 1967 Cur LJ 324 (327) (Punj) ** (1965) 2 Mys LJ 263 (266) = (1965) 3 Law Rep 263.

[See also 1963 (1) Cri LJ 558 (558) (Tripura).]

(2) Whether an offence is non-cognizable or cognizable or bailable or non-bailable is a question of law. (1965) 2 Mys LJ 263 (268) = (1965) 3 Law Rep 263.

(3) Section 59 equally applies to an attempt to commit an offence where such attempt is itself an offence and is made in the view of the person arresting. AIR 1945 Lah 334 (335) = ILR (1945) Lah 403 = 47 Cri L Jour 1036.

(4) A private person in India cannot arrest a person who threatens to commit an offence, as can be done under the Common law of England. AIR 1923 Mad 523 (526) = 24 Cri L Jour 599 (FB).

(5) The section must be construed in a manner so as not to enlarge the power of private individuals to arrest a person. AIR 1955 Pat 106 (107) (DB).

(6) Accused robbing a boy at point of knief — Deceased accosting the accused, tried to apprehend him in discharge of his duty under Section 59 — Accused stabbing the deceased on vital spot — Defence of grave and sudden provocation, held not tenable in the circumstances. ILR (1956) Hyd 914 (920) (DB).

2. "In his view."— (1) A private person cannot arrest on mere suspicion or information. The offence must be committed in his view. ('07) 6 Cri LJ 10 (12) = 29 All 575 (DB) ** ILR (1965) 2 Ker 76 (79) = 1965 Ker LT 697 (DB).

(2) The words "in his view" mean "in presence of" or "within sight of" and not "in his opinion". AIR 1926 Pat 53 (53) = 26 Cri L Jour 1462 ** AIR 1957 Mad 514 (522) = 1957 Cri L Jour 962 ** AIR 1956 Punj 122 (124) = 1956 Cri L Jour 654 (DB) ** ILR (1965) 2 Ker 76 (79) (DB) = 1965 Ker LT 697 (DB) ** 1963 (1) Cri LJ 827 (830) = 1962 BLJR 438 (DB) (Pat).

(3) An arrest made by a private person where the offender has not committed any offence in his view is not a lawful arrest. (1900) 27 Cal 366 (367) (DB) ** ('01) 23 All 266 (267, 269) (DB) ** ('08) 7 Cri L Jour 188 (190) = 35 Cal 361 (DB) ** AIR 1922 Lah 73 (74) = 23 Cri L Jour 3 (DB) ** (1965) 2 Mys LJ 263 (266) = (1965) 3 Law Rep 263 ** AIR 1960 Orissa 23 (25) = 1960 Cri LJ 267 = 25 Cut LT 244.

(4) The words 'in his view" should not be given too strained a construction. AIR 1924 Mad 384 (385) = 25 Cri L Jour 792.

[See also AIR 1951 All 3 (Pr. 14) = ILR (1952) 1 All 445 (FB).]

(5) When anyone commits a non-bailable and cognizable offence and then

is no sufficient reason to believe that he has committed any offence, he shall be at once released.

[1882 — S. 59; 1872 — Ss. 105, 107; 1861 — Nil.]

[°] Substituted for the original sub-section by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 12.

Section 59 — Note 2 (contd.)

tries to escape it has been held that both the acts constitute one single transaction and any private person who either sees him committing the offence or finds him running away immediately after the commisson of the offence would be entitled to arrest him under this section. AIR 1948 All 103 (105) = ILR (1948) All 3 = 49 Cri L Jour 62 (DB) ** AIR 1956 Andhra 156 (156) = ILR (1955) Andhra 718 = 1956 Cri L Jour 970 ** AIR 1955 Pat 106 (107, 108) (DB).

(6) Where the arrested accused rescues himself or somebody rescues the accused from the custody of the private individual, the private individual again has the right to follow and re-arrest him because all this will be a part of the same transaction. AIR 1955 Pat 106 (107, 108) (DB).

(7) A police officer of Jammu and Kashmir cannot arrest a person in Travancore State, for an offence alleged to have been committed in Jammu and Kashmir. AIR 1952 Trav-Co 201 (Pr. 2) = 1952 Cri L Jour 943 (DB).

(8) Accused stealing paddy and running away — Act of stealing seen by A — B on hearing cry coming on scene and catching accused in act of running away — Arrest by B is not under S. 59. 1963 (1) Cr LJ 827 (830) (DB) - (Pat).

3. "Proclaimed offender."— (1) In order that a person may be a "proclaimed offender" it is not sufficient for a Sub-Inspector of Police to say or to write that he is a proclaimed offender. AIR 1937 Sind 254 (258) = 38 Cri L Jour 1101 (DB).

4. Private person.— (1) A chowkidar is not a police officer but is only a 'private person". AIR 1916 All 253 (254) = 17 Cri L Jour 529 (530).

(2) The private person making an arrest under this section and the person with whom the arrested person is sent in custody to the police-station are not "public servants" within Section 21 of the Penal Code. AIR 1917 Upp Bur 8 (9) = 18 Cri L Jour 351.

5. "May arrest."— (1) The words "may arrest" do not necessarily mean that the private person in whose presence a non-bailable and cognizable offence is committed should himself physically arrest the offender. He may cause such offender to be arrested by another person. AIR 1925 Cal 884 (885).

[But see AIR 1947 Sind 107 (109) = ILR (1946) Kar 443 = 48 Cri L Jour 823 (DB).]

(2) Power of arrest under sub-section (1) cannot be exercised long after the commission of the offence. AIR 1956 Andhra 156 (156) = ILR (1955) Andhra 718 = 1956 Cri L Jour 970 ** 1967 All LJ 519 = 1967 All WR (HC) 278.

(3) Attempt to commit burglary at the House of accused — Accused armed with lathi chasing burglar — Burglar armed with axe trying to assault accused — Latter giving blows with his lathi to burglar resulting in death — Accused held had the right to arrest the burglar. (1962) 28 Cut LT 515 (518) = ILR (1962) Cut 891.

(4) A private citizen has no right to arrest a drunken person, apart from the fact whether he is a Police Constable or a private citizen. (1965) 2 Mys LJ 263 (267) = (1965) 3 Law Rep 263.

6. Arrest how made.— (1) The arrest under this section must be carried out in the manner provided by Section 46. ('04) 1 Cri L Jour 285 (287) (Kathiawar).

(2) The person arresting can use all necessary means to effect the arrest, including the wounding of the person arrested. AIR 1935 Pesh 83 (83, 84) = 36 Cri L Jour 1135 ** 1967 Cur LJ 324 (327) (Punj).

(3) There is no right to cause the death of the person sought to be arrested unless he was committing an offence punishable with death or with transportation for life. ('02) 1902 Pun Re (Cr) No. 29, p. 78 (79) (DB).

7. "Take such person or cause him to be taken in custody."— (1) Where the private person keeps the arrested person unnecessarily in his own custody without making any effort to hand him over to the police, he will be guilty of an offence under Section 342 of the Penal Code. ('26) 27 Cri L Jour 1378 (1381) (Pat).

(2) As soon as a person is arrested he must be made over to the Police officer without unnecessary delay. (1965) 2 Mys LJ 263 (266) = (1965) 3 Law Rep 263.

8. "Police officer."— (1) A chowkidar is not a police-officer and is not entitled to receive a person arrested under this section. AIR 1914 Cal 272 (273) = 14 Cri L Jour 494 (495) (DB) ** (1900) 27 Cal 366 (367) (DB) ** AIR 1916 Cal 247 (247) = 17 Cri L Jour 164 (165) (DB).

[See however AIR 1932 Pat 214 (215) = 33 Cri L Jour 572.]

9. Escape from custody.— (1) Where the arrest is lawfully made under this section but the private person places the arrested person in the custody of a

60. Person arrested to be taken before Magistrate or officer in charge of police-station.—A police-officer making an arrest* without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police-station.

[1882 — S. 60; 1872 — S. 101; 1861 — S. 109.]

[*] For protection against arrest and detention, see Art. 22 of the Constitution of India.

61. Person arrested not to be detained more than twenty-four hours.—No police-officer shall detain* in custody a person arrested without warrant for a

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Section 59 — Note 9 (contd.)
chowkidar or a dafadar who negligently suffers the arrested person to escape from his custody, the chowkidar is not guilty of an offence under Section 223 of the Penal Code. ('42) 46 Cal WN 163 (167).

(2) Where the arrest under this section is not lawful, as where the offence is not committed in the presence of the arresting person an escape or rescue from the custody is no offence. ('82) 5 Mad 22 (23) (DB) ** 1959 Ker LJ 818 (819).

(3) Where the arrest is lawful, an escape will be punishable under Section 224 of the Penal Code. AIR 1945 Lah 334 (335) = ILR (1945) Lah 403 = 47 Cri L Jour 1036 ** ('94) 17 Mad 103 (104) (DB).

(4) A rescue from lawful custody would be punishable under Section 225 of the Penal Code. ('83) 1883 All WN 214 (214).

Section 60 — Note 1

(1) Sections 60 and 61 seem to be designed to secure that within not more than 24 hours some Magistrate shall have seisin of what is going on and some knowledge of the nature of the charges against the accused, however incomplete the information may be. AIR 1924 Cal 893 (895) = 25 Cri L Jour 1203 (DB).

(2) A police-officer cannot detain any person in custody without arresting him. Any such detention will amount to a wrongful confinement within Sec. 340 of the Penal Code. (1902) 4 Bom LR 79 (80) (DB) ** AIR 1964 Manipur 39 (44) = 1964 (2) Cri LJ 307.

(3) The practice of keeping to all intents and purposes, a person in custody but not producing him before a Magistrate under the colourable pretension that no actual arrest has been made, is a defiance of all provisions of law for the protection of liberty of the subject and should not be tolerated. (1885) 1885 All WN 59 (59) (FB) ** AIR 1924 Rang 173 (176) = 25 Cri LJ 381.

(4) Like Article 22 (2) of the Constitution, this section and Section 61 also may be regarded as not applicable to arrests under the Preventive Detention law. AIR 1950 Pat 332 (337) = 29 Pat 410 = 51 Cri L Jour 1251** **AIR 1969 SC 1014 (1018) = 1969 Cri LJ 1440 = (1969) 2 SCJ 306.**

(5) Arrest under Section 19, Opium Act — Section 20 of that Act attracts the provisions of Criminal P. C. AIR 1952 Him Pra 74 (Pr. 15).

(6) Where a police-officer negligently suffers a person in his custody to escape, he will be guilty of an offence under Section 223 of the Penal Code. ('83) 6 All 129 (133).

(7) The expression 'a Magistrate having jurisdiction in the case' clearly means the Magistrate having jurisdiction to try the case. The section only refers to the power of the Police to grant bail. AIR 1959 Madh Pra 147 (148) = 1959 Cri L Jour 600.

(8) Where the Head Constable, no doubt, produced the convict before the judicial Magistrate as required by law, but did not obey his orders in sending the prisoners to the judicial lock-up but kept him in his custody, the custody of the prisoner with the Head Constable was held to be illegal. AIR 1955 Pepsu 33 (36) = ILR (1954) Patiala 316 = 1955 Cri L Jour 537 (DB).

(9) If an accused person is not arrested by police and if he is already a convict in jail the section will have no application to the case. AIR 1956 Madh B 130 (131) = 1956 Cri L Jour 619.

(10) Accused detained by Customs authorities for interrogation and produced before the Magistrate within 24 hours of their arrest — Provisions of section are not violated — There is no unreasonable delay. AIR 1970 Bom 79 (82) (DB).

SECTION 61 — SYNOPSIS

1. **Scope.**
2. **"Detain in custody," meaning of.**
3. **Place of detention during the 24 hours.**
4. **Period of 24 hours, computation of.**
5. **"Exclusive of the time necessary for the journey."**

1. Scope.— (1) This section cannot come into operation until a police officer makes an arrest of the accused person without warrant. AIR 1956 Madh B 130 (131) = 1956 Cri L Jour 619.

(2) A police-officer is not justified in detaining a person for one single hour

longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under Section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

[1882 — S. 61; 1872 — S. 124; Para. 1; 1861 — S. 152.]

[°] See Article 22 of the Constitution of India.

Section 61 — Note 1 (contd.)
except upon some reasonable ground justified by the circumstances. ('66) 6 Suth WR (Cr) 88 (89) (DB) ** AIR 1955 All 138 (150) = ILR (1955) 2 All 97 = 1955 Cri L Jour 394 (DB) ** ('69) 1869 Rat 22 (22) (DB).

(3) Detention exceeding 24 hours without a special order of a Magistrate is absolutely unlawful. (1867) 7 Suth WR (Cr) 3 (6) (DB) ** AIR 1955 All 138 (150) = ILR (1955) 2 All 97 = 1955 Cri LJ 394 (DB) ** 1870 Pun Re No. 36, p. 56 (57) (SB).

[See also AIR 1955 Pepsu 33 (36) = ILR (1954) Patiala 316 = 1955 Cri L Jour 537.]

(4) Where a police officer is charged with having detained prisoners for more than 24 hours, it is not necessary for the prosecution to prove that he detained them with a guilty purpose. ('73) 19 Suth WR (Cr) 36 (36) (DB).

(5) The section has no application where there has not been a continuous detention for 24 hours. (1864) 1 Suth WR (Cr) 5 (5) (DB).

(6) The law views with disfavour detention of any person in the custody of the police. AIR 1931 Lah 476 (478) = 32 Cri L Jour 913 (DB) ** AIR 1931 Lah 480 (480) = 33 Cri L Jour 162 (DB).

(7) The provisions of this section and of Section 167 are designed to prevent discoveries by means of duress and terror of wrongful confinement. ('86) 1886 Rat 254 (272, 273) (DB).

(8) The provisions of this section and of S. 167 are designed to see that an accused person is brought before a Magistrate competent to try or commit with as little delay as possible. AIR 1924 Cal 476 (478) = 25 Cri L Jour 732 (DB) ** AIR 1956 Orissa 129 (132) = ILR (1956) Cut 267 = 1956 Cri L Jour 909 (DB) ** ('88) 11 Mad 98 (102) (DB) ** AIR 1964 Manipur 39 (44) = 1964 (2) Cri LJ 307 ** AIR 1963 Manipur 12 (14) = 1963 (1) Cri LJ 451.

(9) Although this section does not apply to the police of Calcutta, that does not mean that there is power in the Calcutta police to detain any person for an unlimited period, even if such police-officer is a Justice of the Peace. AIR 1926 Cal 1121 (1129, 1132) = 27 Cri L Jour 1201 (FB). **(Overruling** 27 Cri L Jour 1185 (Cal).)

(10) This section and Section 60 may be regarded as not applicable to persons arrested under the law relating to Preventive Detention. AIR 1950 Pat 332 (337) = 29 Pat 410 = 51 Cri L Jour 1251.

(11) Article 22 (2) of the Constitution in effect not only gives constitutional protection to the provision contained in Section 61, Cr. P. Code but further liberalizes it by making the provision applicable in those cases also where the arrest is made in pursuance of a warrant. AIR 1954 All 601 (604) = ILR (1955) 1 All 793 = 1954 Cri L Jour 1317 (DB).

[See also AIR 1959 All 384 (387) = 1959 Cri L Jour 685.]

(12) Section 61 is concerned solely with the question of the period of detention by the police of a person arrested without warrant. This section does not deal with the question of the grant of bail. AIR 1959 Madh Pra 147 (149) = 1959 Cri L Jour 600.

(13) 'Magistrate' and 'Court of a Magistrate' are interchangeable terms. 1960 All Cr R 143 = 1960 All LJ 227 (229) (DB).

2. "Detain in custody," meaning of.— (1) The detention of a person in a particular place or compelling him to go in a particular direction by force of an exterior will is an imprisonment. ('66) 2 Mad HCR 396 (398) (DB).

(2) As to the meaning of the word "custody" in Section 27, Evidence Act, see the following cases: AIR 1940 Lah 129 (146) = 41 Cri L Jour 591 (FB). ("Police custody" does not necessarily mean custody after formal arrest. It also includes "some form of police surveillance and restriction on the movements of the person concerned by the police.") ** AIR 1931 Lah 278 (279) = 32 Cri L Jour 650. (The word "custody" does not necessarily mean detention or confinement.) ** AIR 1934 Lah 150 (151) = 36 Cri L Jour 14 (DB).

(3) A detention through the exercise of moral force without the accompaniment of physical force or actual conflict, is sufficient to amount to confinement. ('81) 1 Weir 341 (341) (DB).

[See also ('85) 1885 All WN 59 (59) (FB).]

3. Place of detention during the 24 hours.— (1) Person arrested should, if possible, be immediately sent to the police-station and be placed in the custody of the officer in charge of the station. ('67) 7 Suth WR (Cr) 3 (6) (DB).

4. Period of 24 hours, computation of.— (1) The 24 hours of detention are to be counted up to the time when the accused person leaves the police station

62. Police to report apprehensions.—Officers in charge of police-stations shall report to the District Magistrate, or, if he so directs to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

[1882 — S. 62; 1872 — S. 132; Para. 1; 1861 — S. 160.]

STATE AMENDMENTS

Gujarat

City of Ahmedabad.—Sections 14 (3) and 15 of the Ahmedabad City Courts Act, 1961 (Guj. XIX of 1961), run as follows:

> "14 (3) The Chief Magistrate and any other Magistrate appointed under sub-section (1) shall have and exercise within the limits of the City of Ahmedabad all the powers and jurisdiction of the Chief Presidency Magistrate and a Presidency Magistrate respectively under the Criminal Procedure Code and all other laws for the time being in force and the provisions of that Code and such laws shall apply to such Chief Magistrate and Magistrate as they apply to Chief Presidency Magistrate and Presidency Magistrate and shall be construed accordingly."

> "15. In the Criminal Procedure Code for the words "Presidency-town" and the words "Greater Bombay" wherever they occur, the words "City of Ahmedabad" shall be substituted unless the context otherwise requires."

[Whether, in view of these provisions read together, the provisions of Section 96 (2) of the Bombay Police Act, 1951 (Bom. XXII of 1951) [extended to Gujarat by Guj. A. L. O., 1960] would apply to the City of Ahmedabad as well?]

Maharashtra

Greater Bombay, Nagpur and Poona.— Sub-section (2) of Section 96 of the Bombay Police Act, 1951 (Bom. XXII of 1951) as amended by Bom. Act LVI of 1959, S. 3 and Sch. runs as follows:

> "96 (2) Nothing contained in Section 62 of the Code of Criminal Procedure, 1898, shall operate to require any officer in charge of a Police Station in [any area under the charge of a Commissioner] to submit any report provided for by that section to any Magistrate."

West Bengal

In S. 62, for the words "to the District Magistrate....Sub-divisional Magistrate" substitute the words " the Sub-divisional Executive Magistrate and the Sub-divisional Judicial Magistrate."—W. B. Act 8 of 1970, S. 3 and Sch., item 32.

Section 61 — Note 4 (contd.)

on the way to the Magistrate. ('69) 1869 Rat 22 (22), Circular 1260, 1869.

5. **"Exclusive of the time necessary for the journey."**— (1) The time occupied in the journey to the Magistrate is not to be counted in the 24 hours, but the Magistrate should see that the time so occupied is reasonable. ('69) 1869 Rat 22 (22), Circular 1260, 1869.

(2) Accused while being kept in detention for his being taken over to District Magistrate because of Magistrate being on leave is in lawful custody. AIR 1954 Hyd 89 (90) = ILR (1954) Hyd 68 = 1954 Cri L Jour 651 (DB).

Section 62 — Note 1

(1) Where the police have power to make an arrest without a warrant, the police must report such arrest. ('02) 26 Bom 150 (158) (FB).

(2) The object of the section is to enable the District Magistrate to prevent illegalities in arrests by examining the reports of arrests made to him. ('86) 1886 Rat 254 (261) (DB).

(3) The term "police report" under Section 190 will include a report also under this section. ('10) 11 Cri L Jour 150 (151) = 1910 Pun Re (Cr) No. 3.

63. Discharge of person apprehended.—No person who has been arrested by a police-officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

[1882 — S. 63; 1872 — S. 132, Para. 2; 1861 — S. 160.]

STATE AMENDMENTS

Gujarat

In its application to the State of Gujarat, the amendment made in Section 63 is the same as that made in Maharashtra.—See Cent. Act XI of 1960, S. 87.

Maharashtra

(1) In its application to the pre-reorganization State of Bombay, in Section 63 for the words "special order of a Magistrate", substitute the words "special order of a Magistrate having jurisdiction."— Bom. Act XXIII of 1951, S. 2 and Sch. (1-7-1953).

(2) After the reorganization of the State of Bombay in 1956, the amendment made in Section 63 by the above-mentioned Bombay Act is extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVIII of 1958.

Mysore

In its application to the State of Mysore amendment made in S. 63 is the same as that of Maharashtra.—Mys. Act XIII of 1965, S. 18 (1-10-1965).

Punjab: Haryana: Chandigarh (Union Territories):

In its application to the States of Punjab and Haryana and the Union Territory of Chandigarh, in Section 63 for the word "Magistrate", substitute the words "Magistrate having jurisdiction."—Punj. Act XXV of 1964, S. 2 and Schedule, Pt. I, item (22) (2-10-1964) and Act 31 of 1966, Ss. 29 and 89 (1-11-1966).

Rajasthan

Abu Area.—In its application to the Abu Area of the State of Rajasthan, the amendment made in Section 63 is the same as that made in (1) of Maharashtra.—Cent. Act XXXVII of 1956, S. 119 (1-11-1956).

Union Territories (except Chandigarh)

In its application to the Union Territories, in S. 63, for the word 'Magistrate' substitute the words "Magistrate having jurisdiction."—Act 19 of 1969, S. 3 and Schedule, item 23 (in Delhi on 2-10-1969).

West Bengal

In S. 63, after the words "of a Magistrate", add the words 'having jurisdiction'.— W. B. Act 8 of 1970, S. 3 and Sch., item 33.

64. Offence committed in Magistrate's presence.—When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

Section 63 — Note 1

(1) Section 63 merely empowers a Magistrate in a special case to make an order discharging the accused at a time when 'investigation' is in progress. If the Magistrate has acted under Section 63 then he cannot claim to have acted under Section 553. AIR 1957 Cal 379 (381) = 1957 Cri L Jour 713.

(2) Section 63 does not itself confer any power on any Magistrate to release a person on bail. AIR 1959 Madh Pra 147 (149) = 1959 Cri L Jour 600.

Section 64 — Note 1

(1) A Magistrate can arrest a person under this section even in respect of an offence which cannot be taken cogniz-

[1882 — S. 64; 1872 — S. 108; 1861 — S. 110.]

65. **Arrest by or in presence of Magistrate.**—Any Magistrate may at any time arrest or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

[1882 — S. 65; 1872 —S. 166, Para. 2; 1861 — S. 8.]

66. **Power, on escape, to pursue and retake.**—If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in *[India].

[1882 — S. 66; 1872 — Nil; 1861 — S. 113.]

[*] Substituted for "the States", by the Code of Criminal Procedure (Amendment) Act (1 of 1951), S. 2 (1-4-1951).

67. **Provisions of Sections 47, 48 and 49 to apply to arrests under Section 66.**—The provisions of Sections 47, 48 and 49 shall apply to arrests under Section 66, although the person making any such arrest is not acting under a warrant and is not a police-officer having authority to arrest.

[1882 — S. 67; 1872 — Nil; 1861 — S. 112.]

CHAPTER VI

OF PROCESSES TO COMPEL APPEARANCE

A.—Summons.

68. **Form of summons.**—(1) Every summons issued by a Court under this Code shall be in writing in duplicate, signed and sealed by the presiding officer of such Court, or by such other officer as the High Court may, from time to time, by rule, direct.

Section 64 — Note 1 (contd.)

ance of without a complaint made under the authority of the Provincial Government. AIR 1939 All 682 (683) = 41 Cri L Jour 85.

(2) The powers of a Magistrate to arrest are prescribed by this section and Section 65 of the Code. AIR 1920 Pat 516 (517) = 21 Cri L Jour 795 ** ('04) 1 Cri L Jour 146 (151) (Kathiawar.)

(3) This section applies only when an offence is committed in the presence of the Magistrate. ('02) 2 Weir 241 (242).

Section 65 — Note 1

(1) A Magistrate taking cognizance of an offence under Section 190 can himself make the arrest under this section. AIR 1919 Mad 30 (31) (DB) ** ('07) 6 Cri L Jour 60 (64, 66) = 31 Bom 438 (DB).

(2) Where, a Magistrate could issue a warrant of arrest only if he took cognizance of the case under Section 190 and there is nothing to show that he took such cognizance, he is not competent to act under this section and make an arrest. ('02) 2 Weir 241 (242).

(3) Where a Magistrate purporting to take cognizance of an offence upon knowledge or suspicion that such offence has been committed, makes an arrest under this section, his action will be justified only if he acts bona fide, i.e., with due care and attention. ('04) 1 Cri L Jour 146 (151) (Kathiawar.)

(4) It is improper to arrest a witness for the defence for giving false evidence while the evidence for the defence is being taken. ('11) 12 Cri L Jour 465 (467) (Low Bur).

(5) Magistrate may issue a warrant even at the stage where Section 54, Cr. P. Code applies. Therefore as the Magistrate can issue the warrant, Section 65 clearly authorises him to arrest the person also. AIR 1958 All 758 (762) = 1958 Cri L Jour 1278. **(AIR 1951 SC 207, Rel. on.)**

SECTION 68 — SYNOPSIS

1. **Form and contents of summons.**
2. **Effect of not observing the formalities.**
3. **Summons to appear at a place outside India.**
4. **Service of summons.**
5. **Disobedience of summons.**
6. **When person summoned can depart.**
7. **Order to appear on adjourned date.**

1. Form and contents of summons.— (1) As a general principle an accused

(2) Summons by whom served.—Such summons shall be served by a police-officer, or subject to such rules as the °[State Government] may prescribe in this behalf, by an officer of the Court issuing it or other public servant.

(3) This section applies also to the police in the towns of Calcutta and Bombay.

[1882 — S. 68; 1872 — Ss. 152, 153; 1861 — Ss. 69, 70.]

[°] Substituted for 'Provincial Government' by A. L. O., 1950.

STATE AMENDMENT

Maharashtra

In its application to the State of Maharashtra, in sub-section (3) of Section 68, for the word "towns", substitute the word 'town' and delete the words "and Bombay".—Bom. Act XX of 1956, S. 3 (18-4-1956).

Section 68 — Note 1 (contd.)
person is entitled to have conveyed to him by the process, whether summons or warrant, information which should specify not only the technical designation of the offence but the acts for which the accused would have to answer. ('75) 24 Suth WR (Cr) 58 (59) (DB).

(2) A person cannot be served in a manner other than what is contemplated under Sections 68 to 71 of the Code viz., by registered post or so. (1968) 9 Guj LR 116 (118).

(3) The form of summons should contain particulars of the place where and the time when the offence was committed as also the nature of such offence. AIR 1928 All 261 (263) = 29 Cri L Jour 357 (DB).

[See however ('09) 9 Cri L Jour 108 (111) = 32 Mad 3 (DB).]

(4) Summons to a witness must contain the place at which, the day and the time of the day when, the attendance of the witness is required. ('83) 5 All 7 (8).

2. Effect of not observing the formalities.— (1) A person legally bound to attend the Court in obedience to a summons, but who intentionally disobeys the same is liable to be punished under Section 174 of the Penal Code. ('84) 1 Weir 84 (84) ** ('82) 1 Weir 85 (85) (DB).

(2) In the case of a summons to an accused person a summons which does not state the particulars of the place, the time, and the nature of the offence charged, is illegal. AIR 1928 All 261 (263) = 29 Cri L Jour 357 (DB) ** AIR 1934 Oudh 370 (371) = 35 Cri L Jour 1161.

[But see AIR 1940 Oudh 77 (79) = 41 Cri L Jour 92 (DB).]

(3) A summons not sealed is illegal and no sanction to prosecute can be granted against any person for disobeying such summons. AIR 1920 Mad 352 (352) = 21 Cri L Jour 800 (DB).

(4) A failure to attend in obedience to a summons is not an offence where it does not specify the place where or the time when the attendance is required. ('72) 1 Weir 81 (81) ** ('90) 1890 All WN 1 (1).

(5) A defect of any kind in the summons is only an "error, omission or irregularity" under Section 537 of the Code. ('07) 31 Bom 611 (625) = 6 Cri L Jour 240 (DB).

[But see AIR 1960 Mys 198 (199) = 1960 Cr LJ 1107 = 38 Mys LJ 125. (Notice served through process server of Civil Court — Irregularity held not curable under Section 537.)]

3. Summons to appear at a place outside India.— (1) A summons directing a person to appear at a place outside India is bad in law. ('93) 16 Mad 463 (463) (DB).

4. Service of summons.— (1) Summons is to be served on an accused in accordance with the provisions of Sections 68 to 71. 1964 All WR (HC) 502 (503).

(2) Sending the summonses by post instead of serving them as provided by this section is a serious irregularity. AIR 1950 East Punj 20 (Pr. 7) = 51 Cri L Jour 390 ** **AIR 1949 FC 6 (10) = 1948 FCR 86 = 50 Cri L Jour 294** ** ('97) 1 Cal WN cxvi (cxvi) ** (1962) 2 Ker LR 134 = 1962 Ker LT 526.

(3) Service of notice under Sec. 488, Cr. P. C. has to be effected as contemplated under Section 68 read with Sections 69 and 70 before making an ex parte order against the husband under Section 488. Mere publication of the notice in the Government Gazette cannot serve the purpose. AIR 1959 Pat 433 (434) = 1959 Cri L Jour 1105 ** 1962 Ker LT 526 (528) = (1962) 2 Ker LR 134 ** AIR 1960 Mys 198 (199) = 1960 Cri LJ 1107 = 38 Mys LJ 125.

5. Disobedience of summons.— (1) Where witnesses on being summoned do not turn up any one guilty of disobedience of the orders of the Court should be proceeded against according to law. AIR 1954 Pat 437 (438) = 1954 Cri L Jour 1437 (DB).

(2) Where, on the date specified in the summons, the public officer was himself absent, no offence under Section 174 of the Penal Code is committed if the person summoned to appear be-

69. Summons how served.—(1) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

(2) **Signature of receipt for summons.**—Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

(3) Service of a summons on an incorporated company or other body corporate may be effected by serving it on the secretary, local manager or other principal officer of the corporation or by registered post letter addressed to the chief officer of the corporation in *[India]. In such case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

[1882 — S. 69; 1872 — S. 154; 1861 — S. 71.]

[*] Substituted for "the States", by the Code of Criminal Procedure (Amendment) Act (I of 1951), S. 2 (1-4-1951).

Section 68 — Note 5 (contd.)

fore such public officer fails to attend the Court though intentionally. ('97) 20 Mad 31 (32) (DB).

(3) Where the case is not taken up at all on the date stated in the summons, failure to attend is not an offence. ('09) 10 Cri L Jour 576 (577) = 3 Sind LR 155 (DB).

(4) If the public officer has no authority to issue the summons, a disobedience of such a summons is no offence. ('04) 1 All L Jour 263 (265) = 1 Cri L Jour 497.

[See also AIR 1920 All 304 (305) = 22 Cri L Jour 79.]

(5) Illness incapacitating a person from attending to his ordinary avocations is sufficient excuse for not attending in obedience to a summons. AIR 1922 All 82 (82) = 23 Cri L Jour 208 (DB).

(6) Officers of the Government like other citizens of the land are expected to respect and obey summons issued from Courts. If official duties prevent them from appearing, they are expected at least to intimate that fact and explain their absence. 1959 Ker LT 496 (497) = 1959 Mad LJ (Cri) 633.

6. When person summoned can depart.— (1) Where the Summons contains no direction that the person summoned should not leave the Court without permission the summons does not oblige him to remain waiting in attendance in Court for more than a reasonable time. ('83) 5 All 7 (8) ** ('70) 14 Suth WR (Cr) 20 (21) (DB) ** ('86) 10 Bom 93 (95) (DB).

[See also AIR 1956 All 270 (271) = 1956 Cri L Jour 473 (DB).]

(2) It is inherently implied in a summons issued by a criminal Court that the person must not only appear in the Court on the date and at the time fixed in the summons but also not leave the Court without its permission unless the case is finished. A Court, therefore, acts strictly in accordance with these provisions in keeping such person in custody. AIR 1956 All 270 (271) = 1956 Cri L Jour 473 (DB).

7. Order to appear on adjourned date.— (1) Where on the day fixed for the appearance of the accused the case is not taken up and the Magistrate orally orders the accused to appear on another day, he is bound to appear on that day. ('70) 5 Mad HCR (App) xv, High Court Proceedings, 18th January 1870.

Section 69 — Note 1

(1) Where a summons is not served as prescribed by the Code, no conviction can be had against any person for disobedience of summons under Section 174 of the Penal Code. 1882 All WN 52 (52) ** 1968 Raj LW 494 (495).

(2) Substituted service should not be resorted to unless, in spite of reasonable diligence, personal service is not practicable. AIR 1923 Nag 55 (55) = 23 Cri L Jour 739 ** AIR 1963 Mys 239 (240) = (1963) 1 Mys LJ 148 = 1963 (2) Cri LJ 293.

(3) In case of personal service the tender must be a real tender of a document which is understood by the person to be served. AIR 1928 All 118 (119) = 29 Cri L Jour 263 ** (1868) 5 Bom HCR (Cr) 20 (21) (DB).

(4) Sub-section (3) provides for service of summons against an incorporated company. The summons in such a case may be served on the secretary, the president and the members of the managing committee. AIR 1944 Pat 210 (211) = 46 Cri L Jour 168 ** AIR 1929 Bom 433 (436) = 31 Cri L Jour 495 (DB).

(5) When summons is issued against a company some competent representative like the Secretary, Local Manager or other Principal Officer must be described both by name and by designation as representing the company and there must be some evidence of his representative character. AIR 1956 Cal 237 (238) = 1956 Cri L Jour 617.

(6) The mere refusal to receive the summons or to sign the receipt for a

70. Service when person summoned cannot be found.—Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family, or, in a presidency-town,° with his servant residing with him; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

[1882 — S. 70; 1872 — S. 154; 1861 — S. 71.]

[°] For definition of "Presidency-town", see the General Clauses Act, 1897, S. 3 (44).

STATE AMENDMENT

Gujarat

In its application to the State of Gujarat for the words "presidency-town", substitute the words "City of Ahmedabad."—Guj. Act XIX of 1961, S. 15 (w. e. f. 4-11-1961).

71. Procedure when service cannot be effected as before provided.—If service in the manner mentioned in Sections 69 and 70 cannot by the exercise of

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Section 69 — Note 1 (contd.)

summons is not an offence under Section 173, Penal Code. AIR 1918 All 409 (409) = 19 Cri L Jour 746 ** AIR 1925 All 322 (323) = 26 Cri L Jour 909 ** AIR 1923 Rang 146 (147) = 24 Cri L Jour 737.

(7) The question whether there has been a preventing of personal service is in each case, a question of fact. AIR 1928 All 118 (119) = 29 Cri L Jour 263.

(8) Service of notice under Sec. 488 has to be effected as contemplated under Section 68 read with Sections 69 and 70 before making an ex parte order against the husband. Mere publication of the notice in the Government Gazette cannot serve the purpose. AIR 1959 Pat 433 (434) = 1959 Cri L Jour 1105 ** 1968 All WR (HC) 76 (76).

[See also (1968) 9 Guj LR 116 (118).]

(9) Summons received by Head of office but not served personally on the Government servant before he left the station on account of new assignment — **Held** there had been no service in accordance with Section 69 — Mere knowledge that summons was received in office was not enough. AIR 1959 Mad 165 (166) = ILR (1959) Mad 349 = 1959 Cri L Jour 483.

(10) Magistrate asking the Manager and the Standing Counsel of a factory to inform the occupier of the factory the date of hearing would not amount to substituted service. 1964 All WR (HC) 502 (503).

(11) No valid service of summons — No proof that husband was wilfully avoiding service to attend Court — Limitation for setting aside ex parte order against husband — Time starts running from date of knowledge and not from date of order. (1968) 9 Guj LR 116 (119).

Section 70 — Note 1

(1) In the absence of proof that the person summoned cannot, after exercise of due diligence, be found, a service on an adult male member of the house or on his darwan is illegal. AIR 1932 Cal 62 (62) = 33 Cri L Jour 264.

(2) The Court should have an affidavit from the person who was entrusted with the service, that he has made his best endeavours to effect personal service and that he has been unable to do so either because the person summoned has evaded service, or he cannot be found. 1882 All WN 170 (170, 171) (DB)

(3) A summons for attendance outside the presidency-town, cannot properly be served by leaving it with the servant of the person summoned. It must be served by leaving the duplicate summons with the adult male member of his family. 1899 All WN 13 (14) ** (1905) 2 Cal L Jour 48n (48n) (DB).

(4) A service on female members of the family of the person to be summoned is not warranted by this section. AIR 1926 Lah 50 (50) = 26 Cri L Jour 393.

(5) Service of notice under Section 488 has to be effected as contemplated under Section 68 read with Sections 69 and 70 before making an ex parte order against the husband. Mere publication of the notice in the Government Gazette cannot serve the purpose. AIR 1959 Pat 433 (434) = 1959 Cri L Jour 1105.

(6) If methods for service of summons followed by the process server had not been complied with Sec. 70 before resorting to service by affixing a copy of summons to the house, the service under Section 71 would be bad in law AIR 1963 Mys 239 (240) = 1963 (2) Cri LJ 293 = (1963) 1 Mys LJ 148.

(7) Magistrate asking the Manager and the Standing Counsel of a factory to inform the occupier of the factory the date of hearing would not amount to substituted service. 1964 All WR (HC) 502 (502).

Section 71 — Note 1

(1) Unless the summons cannot after the exercise of due diligence be served

due diligence be effected, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

[1882 — S. 71; 1872 — S. 155; 1861 — S. 72.]

72. Service on servant of Government or of Railway Company.—(1) Where the person summoned is in the active service of the °[Government] or of a Railway Company, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by Sec. 69, and shall return it to the Court under his signature with the endorsement required by that section.

(2) Such signature shall be evidence of due service.

[1882 — S. 72; 1872 — S. 158; Proviso; 1861 — Nil.]

[°] Substituted for 'Crown' by A. L. O., 1950.

73. Service of summons outside local limits.—When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

[1882 — S. 73 — Same; 1872 and 1861 — Nil.]

74. Proof of service in such cases, and when serving officer not present.—(1) When a summons issued by a Court is served outside the local limits of its

Section 71 — Note 1 (contd.)

personally as provided by Section 69, or on an adult male member or servant as provided by Section 70, resort cannot be had to the provisions of this section. AIR 1926 Cal 1208 (1209) = 27 Cri L Jour 715 (DB) ** AIR 1923 Nag 55 (55) = 23 Cri L Jour 739 ** (1968) 9 Guj LR 116 (117, 118) ** 1968 Raj LW 494 (495).

(2) The interpretation of the words "ordinarily resides" in Section 20 of the Code of Civil Procedure, may usefully be considered in cases coming under this section also. AIR 1931 Pat 160 (160) = 32 Cri L Jour 740 ** AIR 1918 Nag 46 (46) = 20 Cri L Jour 816.

See also Notes under S. 20, Civil P. C.

(3) No valid service of summons — No proof that husband was wilfully avoiding service to attend Court — Limitation for setting aside ex parte order against husband — Time starts running from date of knowledge and not from date of order. (1968) 9 Guj LR 116 (119).

(4) Summons should be served in accordance with the procedure prescribed under Sections 68 to 71. 1964 All WR (HC) 502 (503).

Section 72 — Note 1

(1) Section 72 applies only to summons issued by a Court of justice and not to orders of police-officers investigating a crime under Chapter XIV of the Code. AIR 1918 Mad 815 (816) = 13 Cri L Jour 733 (734).

(2) A summons to a Sub-Inspector of Railway Police should be served through the Superintendent of Railway Police for the district. AIR 1925 Pat 553 (555) = 26 Cri L Jour 965.

(3) The principles laid down for service of summons in civil cases cannot be applied to service of summons in criminal cases in criminal Courts. AIR 1959 Mad 165 (166) = ILR (1959) Mad 349 = 1959 Cri L Jour 483.

(4) It is the duty of the superior officer who receives summons under Sec. 72 to serve it on the person summoned. Refusal to serve it on any ground other than that the subordinate officer was not available for service amounts to contempt of Court. AIR 1958 Raj 293 (294) = ILR (1958) 8 Raj 632 = 1958 Cri L Jour 1348.

(5) Petition under Section 488, Cr. P. C. — Non-applicant outside limits of jurisdiction — Only mode of service is personal service under Section 72 read with Section 69, Cr. P. C. — Publication in newspaper not prescribed by Cr. P. C. as mode of service. 1968 All WR (HC) 76 (77).

Section 73 — Note 1

(1) There is no procedure provided, in this Code, for service on a person in a place outside India, as for instance in England. AIR 1927 Rang 248 (248) = 28 Cri L Jour 861.

Section 74 — Note 1

(1) This is one of the only three sections, i.e., Sections 74, 526 and 539-A in the Code which allow proof by affidavit evidence. AIR 1952 J and K 28 (Pr. 4).

jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in manner provided by Section 69 or Section 70) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

(2) The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

[1882 — S. 74 — Same; 1872 and 1861 — Nil.]

B. — Warrant of Arrest.

75. Form* of warrant of arrest.—(1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer, or in the case of a Bench of Magistrates, by any member of such Bench; and shall bear the seal of the Court.

(2) **Continuance of warrant of arrest.**—Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

[1882 — S. 75; 1872 — S. 159; 1861 — S. 76.]

[*] See Form II of Schedule V.

STATE AMENDMENT

West Bengal

In its application to the State of West Bengal, in Section 75 (1), for the word 'Magistrates', substitute the words "Judicial Magistrates"—Presi. Act VIII of 1968, Section 3 and Schedule, item 25.

SECTION 75 — SYNOPSIS

1. **Difference between summons and warrant.**
2. **Requisites of a valid warrant of arrest.**
3. **Form of warrant.**
4. **General warrant.**
5. **Special warrant.**
6. **Conditional warrant.**
7. **Effect of illegal warrant.**
8. **"Until it is cancelled by the Court issuing it."**
9. **"Or until it is executed."**

1. Difference between summons and warrant.— (1) A warrant addressed to a police-officer to apprehend an offender and to bring him before a Magistrate is not "a summons, notice, or order" within the meaning of Section 172 of the Penal Code. AIR 1928 All 232 (233) = 30 Cri L Jour 203 ** (1906) 3 Cri L Jour 117 (118) (DB) (Cal).

2. Requisites of a valid warrant of arrest.— (1) An arrest in the wake of a warrant of arrest is deprivation of the personal liberty of the person arrested. It is, therefore, incumbent upon the Magistrate to issue a warrant strictly in accordance with law. AIR 1968 Cal 220 (228) = 1968 Cri LJ 604 = 71 Cal WN 508 (DB).

(2) A warrant which is not signed by the authority issuing it is invalid and any arrest made in execution of such warrant is illegal. AIR 1918 Pat 252 (253) = 19 Cri L Jour 1000 (DB).

(3) The official designation of the person signing and the place of signing should appear on the face of the warrant. (1872) 9 Bom HCR 154 (159, 160).

(4) A warrant signed by a Magistrate at a place outside the limits of his jurisdiction has been held to be illegal. (1910) 11 Cri L Jour 570 (571) = 1910 Pun Re Cr. No. 23 (DB).

(5) The signature contemplated is that of the officer who is actually presiding at the time of the issue of the warrant. AIR 1932 Pat 175 (176) = 34 Cri L Jour 297 ** AIR 1932 Pat 171 (175) = 33 Cri L Jour 706 (DB).

(6) The signature should be made with a pen and not a stamp so that its authenticity may admit of proof. But the affixing of a signature by a stamp is only an irregularity which does not vitiate the warrant. (1883) 6 Mad 396 (398) (DB).

(7) Warrant bearing initials instead of full signature of Magistrate — Irregularity is curable. AIR 1956 Orissa 97 (99) = ILR (1956) Cut 50 = 1956 Cri L Jour 635.

(8) An omission to affix the seal renders the warrant invalid. AIR 1915 Cal 737 (738) = 16 Cri L Jour 336 (336) (DB) ** AIR 1928 Lah 332 (333) = 29 Cri L Jour 265 ** (1894) 18 Bom 636 (668, 669) (DB) ** 1962 (1) Cr LJ 91 (93) (Raj) (DB).

Section 75 — Note 2 (contd.)

[But see (1910) 11 Cri L Jour 570 (571) = 1910 Pun Re Cr No. 23 (DB). (Search warrant issued under the Gambling Act, 3 of 1867 — Absence of seal is an irregularity curable under Sec. 537.)]

(8) A warrant which is duly sealed and which does not in terms specify the period during which it is to remain in force, is not rendered invalid merely because it is attached to a piece of paper on which unsealed endorsements are made by the Court. AIR 1952 Trav 459 (Pr. 11) = ILR (1952) Trav-Co 133 = 1952 Cri L Jour 1592 (DB).

(9) A blank warrant without specifying the addressee thereof is invalid. (1913) 14 Cri L Jour 142 (143) = 1913 Pun Re Cr No. 16 (DB) ** AIR 1924 All 128 (129) = 24 Cri L Jour **630.**

(10) A warrant addressed to "the bailiff of the Court" without naming of the bailiff is perfectly legal. AIR 1915 Mad 225 (225, 226) = 15 Cri L Jour 576. (Case of issue of a civil warrant.)

(11) An endorsement of a warrant under Section 79 should be made by name to the person to whom it is endorsed. (1900) 4 Cal WN 85 (86).

(12) A warrant should contain a distinct and unequivocal intimation to the person to be arrested that he is the individual meant to be apprehended. AIR 1940 Bom 397 (399) = 42 Cri L Jour 205 (DB) ** (1894) 18 Bom 636 (669) (DB) ** AIR 1965 Ker 72 (72) = 1965 (1) Cr LJ 296 = 1964 Ker LT 230.

[See however AIR 1943 Pat 366 (368) = 46 Cri L Jour 322 (DB).]

(13) Where a person is prosecuted for illegal disobedience to a warrant of arrest, the onus is on the prosecution to show that the accused was the person against whom the warrant had been issued. (1901) 28 Cal 399 (400, 401).

(14) A warrant which does not specify a punishable offence, and which has been issued upon a statement, not sufficient to make out any offence, is illegal. (1871) 6 Beng LR (App) 129 (130) (DB) ** (1875) 24 Suth WR (Cr) 58 (59) (DB).

(15) The person executing the warrant is bound to notify its substance to the person arrested. If not, the arrest is not legal. ('99) 26 Cal 748 (750) (DB) ** AIR 1924 Mad 555 (556) = 25 Cri L Jour 563.

(16) The Cr. P. Code nowhere empowered the Magistrate, under the colour of exercising powers under Section 75, to send the warrant to a place outside India through Government of India for the extradition of the petitioner a procedure which the Cr. P. Code never intended and unknown to it. AIR 1968 Cal 220 (228) = 1968 Cri LJ 604 = 71 Cal WN 508 (DB).

(17) Name and designation of person who was to execute warrant not mentioned in the warrant — Warrant is defective — Defect not curable under Section 537. 1965 All WR (HC) 143 = 1965 All Cri R 141.

3. Form of warrant.— (1) A strict adherence to the form prescribed in Schedule V, Form No. 2, tends to prevent the warrant being granted irregularly, and without enquiry as to whether the circumstances justify its issue. (1864) 1 Suth WR (Cr) (Cir) 7 (7).

(2) Where any special or local Act does not provide a form of the warrant of arrest, the form prescribed by the Code should be adopted. (1894) 18 Bom 636 (668) (DB).

4. General warrant.— (1) A general warrant, or a warrant to apprehend all persons committing a particular offence is illegal. (1872) 9 Bom HCR 154 (159, 160) ** 1895 Pun Re (Cr) No. 11, p. 38 (39).

(2) A warrant to search any house, which the police-officer to whom it is directed may think fit, is illegal. (1912) 13 Cr L Jour 832 (832) = 35 All 1 ** AIR 1924 Lah 247 (248) = 24 Cri L Jour 633.

5. Special warrant.— (1) A special warrant, can only be executed by the officer named therein. A warrant which can be endorsed over to another officer for execution is not a special warrant. AIR 1929 Bom 157 (160) = 30 Cri L Jour 595 (DB).

(2) Warrant under Section 5 of the Public Gambling Act is a special warrant — Operation of Section 75, Criminal P. C. is barred. AIR 1948 Lah 81 (83) = 49 Cri L Jour 150 (DB).

6. Conditional warrant.— (1) A warrant which provides that the person against whom it is issued should do a particular thing and that, if he does not do so, he should be arrested is invalid. (1894) 18 Bom 636 (659, 667) (DB).

7. Effect of illegal warrant.— (1) Proceedings in pursuance of an illegal warrant, or a warrant issued without jurisdiction, are void and resistance to the officer executing such a warrant is not punishable. (1907) 6 Cri L Jour 38 (39) (DB) (Cal) ** AIR 1933 All 759 (761, 762) = 34 Cri L Jour 1211 (DB) ** AIR 1928 Bom 184 (185, 186) = 29 Cri L Jour 317 (DB) ** 1962 (1) Cri LJ 91 (93) (Raj) (DB).

8. "Until it is cancelled by the Court issuing it."— (1) A warrant of arrest remains in force until it is cancelled by the Court issuing it. AIR 1952 Trav Co 459 (Pr. 11) = ILR (1952) Trav-Co 133 = 1952 Cri L Jour 1592 (DB).

(2) Court has a discretion, on sufficient cause being shown, to cancel the

76. Court may direct security to be taken.—(1) Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

(2) The endorsement shall state—

(a) the number of sureties;

(b) the amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound; and

(c) the time at which he is to attend before the Court.

(3) **Recognizance to be forwarded.**—Whenever security is taken under this section the officer to whom the warrant is directed shall forward the bond to the Court.

[1882 — S. 76; 1872 — S. 160; 1861 — S. 181.]

Section 75 — Note 8 (contd.)

warrant and issue a summons instead. (1908) 8 Cri L Jour 187 (187) = 1 Sind LR 69 (DB).

(3) A District Magistrate has no power to direct a Sub-Divisional Magistrate to re-issue a warrant cancelled by him. AIR 1917 Cal 185 (186) = 18 Cri L Jour 1001 (1001) (DB). (Following 1 Cal WN 650.)

(4) Cancellation of a warrant need not be by a formal order on the record. AIR 1940 All 178 (179) = 41 Cri L Jour 500.

9. "Or until it is executed."— (1) Expiry of returnable date in the warrant does not affect its executability. AIR 1928 Pat 466 (466) = 29 Cri L Jour 1007 (DB) ** AIR 1967 Pat 141 (142) = 1967 Cri LJ 574 = 1966 BLJR 353.

(2) A warrant retains its validity until it is executed. (1904) 1 Cri L Jour 227 (231, 239) = 28 Bom 129 (SB).

(3) A warrant, on which there is an endorsement for bail to be taken for the appearance of an accused on a certain date, does not lapse on the expiry of that date. It is only the direction to take bail that lapses, but the warrant continues in force. (1909) 10 Cri L Jour 479 (480) (DB) (Cal).

(4) Warrant not specifying a particular period during which it is to remain in force. Court issuing it giving adjournments to police officer concerned for arrest and production of accused on adjourned dates. Warrant remains in force till it is executed by the arrest of the accused. AIR 1952 Trav-Co 459 (Pr. 11) = ILR (1952) Trav-Co 133 = 1952 Cri L Jour 1592 (DB).

(5) A person should not be arrested after he had surrendered and been released on bail. AIR 1917 Pat 17 (18) = 18 Cri L Jour 526 (526) (DB).

Section 76 — Note 1

(1) A warrant of arrest issued against a recalcitrant witness may direct release on security. (1881) 2 Weir 39 (39) ** AIR 1948 All 72 (74) = 49 Cri L Jour 1 (DB).

(2) The section does not empower the Court to order the physical delivery of the arrested person to another. AIR 1948 All 72 (74) = 49 Cri L Jour 1 (DB).

(3) A warrant not complying with the requirements of sub-section (2) is not in proper form. (1870) 7 Bom HCR (Cr) 50 (55) (DB) ** AIR 1968 Cal 220 (225) = 1968 Cri LJ 604 = 71 Cal WN 503 (DB).

(4) Where the date on which the person to be arrested is to attend the Court, passes without the person being arrested, the person may be arrested even after that date. (1909) 10 Cri L Jour 479 (480) (DB) (Cal).

(5) Where an endorsement directs the release of the arrested person on his personal recognizance, the police-officer executing the warrant is not authorised to take security from any person. (1906) 6 Cri L Jour 275 (276) (Lah).

(6) Where an endorsement for taking a bond has been made on the warrant of arrest, the arresting officer has no power to enquire whether the person under arrest is good for the amount of the security or whether the sureties are persons who are able to keep control over the person arrested. AIR 1926 Cal 961 (962) = 28 Cri L Jour 10 (DB).

(7) A Magistrate is only competent to issue a warrant of arrest for production of a person before his own Court and not before a police-officer. (1897) 24 Cal 320 (323) (DB).

(8) It is not necessary that a warrant issued for the arrest of a person charged with a bailable offence must contain an endorsement under this section. AIR 1939 All 156 (156, 157) = 40 Cri L Jour 283 ** (1911) 12 Cri L Jour 430 (431) (Mad).

77. Warrants to whom directed.—(1) A warrant of arrest shall ordinarily be directed to one or more police officers, and when issued by a Presidency Magistrate,* shall always be so directed; but any other Court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person or persons; and such person or persons shall execute the same.

(2) **Warrants to several persons.**—When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them.

[1882: S. 77; 1872: Ss. 161, 164; 1861: Ss. 77, 79.]

[*] Magistrates in the City of Ahmedabad have, and exercise, within the limits of their jurisdictions, all the powers of a Presidency Magistrate under the Code of Criminal Procedure, 1898, and all other laws in force—See Guj. Act XIX of 1961, Section 14 (3) (4-11-1961).

78. Warrant may be directed to land-holders, etc.—(1) A District Magistrate or Sub-Divisional Magistrate may direct a warrant to any landholder, farmer or manager of land within his district or sub-division for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.

(2) Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, his land or farm, or the land under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under Section 76.

[1882: S. 78; 1872: S. 162; 1861: Nil.]

STATE AMENDMENTS

Gujarat:

In its application to the State of Gujarat the amendment made in S. 78 is the same as that of Maharashtra.—See Central Act XI of 1960, S. 87.

Maharashtra:

(1) In its application to the State of Maharashtra, in sub-section (1) of Section 78, after the words "or Sub-Divisional Magistrate", insert the words "or Magistrate of the first class".—Bom. Act XXIII of 1951, S. 2 and Schedule (1-7-1953).

(2) After the reorganization of the State of Bombay in 1956, the amendment made in Section 78 by the above-mentioned Bombay Act is extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Mysore:

In its application to the State of Mysore the amendment made in Section 78 is the same as that of Maharashtra—Mysore Act XIII of 1965, Section 18 (1-10-1965).

Punjab: Haryana: Chandigarh:

In its application to the States of Punjab and Haryana and the Union Territory of Chandigarh, for Section 78 (1), substitute the following, namely:—

"(1) A District Magistrate or a Chief Judicial Magistrate or a Sub-Divisional Magistrate or any other Judicial Magistrate of the first class may direct a warrant

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Section 77 — Note 1

(1) A warrant addressed, to "the Sub-Inspector of police of X" is perfectly legal. AIR 1918 Pat 613 (614) = 19 Cri L Jour 747 (DB) ** AIR 1924 Rang 383 (384) = 26 Cri L Jour 845.

[But see AIR 1922 Oudh 224 (225) = 24 Cri L Jour 14.]

(2) The section is directory and not mandatory. 1896 Pun Re (Cr) No. 1, p. 1 (7) (DB).

(3) The provisions of Section 83 override the express direction contained in this section when the Court issuing the warrant is that of the Presidency Magistrate. AIR 1940 Bom 397 (398) = 42 Cri L Jour 205 (DB).

to any landholder, farmer or manager of land within the area of his jurisdiction for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit."—Punj. Act XXV of 1964, Sec. 2 and Schedule, Pt. I, item 23 (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Rajasthan:

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendment made in Section 78 is the same as that made in Maharashtra.—See Central Act XXXVII of 1956, Section 119 (1-11-1956).

Union Territories (except Chandigarh):

In its application to the Union territories, for sub-section (1) of Section 78, substitute the following, namely:—

"(1) A District Magistrate or a Chief Judicial Magistrate or any other Judicial Magistrate of the first class or a Sub-Divisional Magistrate may direct a warrant to any land-holder, farmer or manager of land within the area of his jurisdiction for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence and who has eluded pursuit."—Act 19 of 1969, S. 3 and Schedule, item 24 (in Delhi on 2-10-1969).

West Bengal

In its application to the State of West Bengal, in Section 78 (1), for the words "or Sub-Divisional Magistrate", substitute the words "Sub-Divisional Executive Magistrate or Sub-Divisional Judicial Magistrate".—W. B. Act VIII of 1970, S. 3 and Sch., item 34.

79. **Warrant directed to police officer.**—A warrant directed to any police officer may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

[1882: S. 79; 1872: S. 165; 1861: S. 80.]

Section 79 — Note 1

(1) A special warrant can be executed only by the officer named in it and cannot be endorsed over to any other officer for execution. AIR 1929 Bom 157 (160) = 30 Cri L Jour 595 (DB).

(2) An endorsement under this section cannot be made to process servers. (1900) 27 Cal 457 (460) (DB).

[But see 1968 All WR (HC) 629 (630) = 1968 All Cri R 409.]

(3) An endorsement to the Sub-Inspector of a particular thana will not enable the head-constable who is temporarily in charge of the thana to execute the warrant. (1913) 14 Cri LJ 142 (143) = 1913 Pun Re (Cr) No. 16 (DB).

(4) It is immaterial, if the writing is on the warrant or on a separate piece of paper. It is further not necessary that the authorization should be addressed to the endorsee so long as the authorization is clear. AIR 1931 Sind 89 (92, 93, 94) = 32 Cri L Jour 916 (DB).

[But see 1968 All Cr R 409 = 1968 All WR (HC) 629 (630).]

(5) It is not necessary that the official designation of the endorsee should be given, even though Form No. 2 of Schedule V seems to suggest that both the name and the designation should be given. AIR 1932 Pat 171 (172, 173) = 33 Cri L Jour 706 (DB).

(6) An endorsement to "the officer in charge of a police-station" without the name of such officer being given is not sufficient. (1899) 4 Cal WN 85 (86) ** 1964 (1) Cri LJ 592 (594) = 1963 Ker LJ 76 (DB) ** 1962 (2) Cr LJ 437 (438) (Ker).

(7) An endorsement by merely subscribing initials is not invalid. (1901) 5 Cal WN 447 (448).

(8) An endorsement without signature does not amount to endorsement. 1968 All WR (HC) 629 (630) = 1968 All Cri R 409.

(9) A warrant directed to a Sub Inspector cannot be endorsed by the head-constable unless he was at that time actually filling the office of the Sub-Inspector. (1900) 27 Cal 457 (459) (DB).

(10) Warrant directed to police officer for execution outside jurisdiction — He cannot endorse it to any other police officer discharging duties outside jurisdiction of Court issuing warrant. AIR 1964 Raj 36 (38) = 1964 (1) Cr LJ 359 = 1963 Raj LW 642.

(11) Section 79 does not apply to a warrant issued under Section 5 of the Public Gambling Act. AIR 1956 All 449 (452) = 1956 Cri L Jour 952 (DB). (30 All 60, AIR 1920 All 150, Overruled and AIR 1945 Nag 216, Dissented from.) **

80. Notification of substance of warrant.—The police officer or other person executing a warrant of arrest[°] shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

[1882—S. 80; 1872—S. 176; 1861—S. 90.]

[°] See Articles 21 and 22 of the Constitution of India, for protection against arrest.

Section 79 — Note 1 (contd.)

AIR 1948 Lah 81 (83) = 49 Cri L Jour 150 (DB).

[But see AIR 1966 Mys 289 (292) = 1966 Cri LJ 1280 = (1966) 1 Mys LJ 110 ** AIR 1966 Mys 207 (209) (DB) ** 1966 Cri LJ 929 = (1965) 2 Mys LJ 584 (DB). (Want of endorsement as specified in Section 79 on order of detention under Defence of India Rules, does not render it invalid.) ** AIR 1955 All 231 (232) = 1954 Cri L Jour 492.]

(12) Though a Superintendent of Police is appointed as the Principal of a Training School he remains a police-officer and is competent to execute a warrant under Section 79. AIR 1959 J and K 56 (58) = 1959 Cri L Jour 709 (DB).

(13) Warrant sought to be executed by constable six days after the date fixed for return — Warrant not cancelled — Warrant continued to be valid — Officer in charge directed to execute, endorsing warrant for execution to constable — Endorsement not illegal. AIR 1967 Pat 141 (142).

SECTION 80 — SYNOPSIS

1. **Shall notify the substance.**
2. **Show him the warrant if so required.**
3. **Effect of non-compliance with the section.**

1. Shall notify the substance.— (1) The police-officer or other person executing a warrant of arrest is bound to notify the substance of the warrant to the person sought to be arrested. (1896) 23 Cal 896 (898) (DB) ** AIR 1918 Pat 613 (615) = 19 Cri L Jour 747 (DB).

(2) Order of detention under Rule 30 (4) of Preventive Detention Act must be executed in accordance with requirements of Section 80. (1966) 1 Mys LJ 85 (94) = (1966) 5 Law Rep 108.

[But see AIR 1966 Mys 207 (209) = 1966 Cri LJ 929 = (1965) 2 Mys LJ 584 (DB).]

(3) Provisions of Section 80 have no application to arrest made under Section 3-A of Preventive Detention Act. AIR 1961 All 542 (544) = 1961 (2) Cri LJ 595 = 1961 All LJ 270 (DB) ** AIR 1963 J and K 23 (24) = 1963 (1) Cri LJ 765.

(2) An arrest made without notifying the substance of the warrant as required by this section is illegal. (1912) 13 Cri L Jour 590 (590) (DB) (Cal).

(3) Where the person arrested has a reasonable opportunity of knowing on what charge he is being arrested, the requirements of the section are satisfied. AIR 1918 Pat 613 (615) = 19 Cri L Jour 747 (DB) ** AIR 1932 Pat 171 (173) = 33 Cri L Jour 706 (DB).

(4) It is not necessary that the officer or other person arresting another under a warrant, should in his report state the fact of his having notified the substance of the warrant as required by this section. AIR 1932 Pat 171 (173) = 33 Cri L Jour 706 (DB).

(5) It is not necessary for the prosecution to prove that the police-officer notified the substance of the warrant to the accused or showed him the warrant. AIR 1940 Pesh 10 (11) = 41 Cri L Jour 543.

(6) The section does not relate to the case of a person who is a fugitive and who wants to evade the arrest or wants to forcibly resist any endeavour to arrest him. 1955 BLJR 383 (384).

2. Show him the warrant if so required.— (1) The person sought to be arrested is entitled to see if the person arresting has authority to do so and to ask for inspection of the warrant. (1896) 18 All 246 (248) (DB) ** AIR 1924 Mad 555 (556) = 25 Cri L Jour 563 ** AIR 1916 All 53 (54) = 17 Cri L Jour 413 (414) ** AIR 1952 Sau 81 (Pr. 4) = 1952 Cri L Jour 1208 (DB).

(2) It is not necessary to show the warrant unless so required. AIR 1938 All 120 (121) = 39 Cri L Jour 360 ** AIR 1918 Oudh 162 (162) = 19 Cri L Jour 641.

(3) When so required, the warrant must be shown in such a manner as to give the person to be arrested an opportunity to read the same. (1899) 26 Cal 748 (750) (DB).

(4) For the arrest of a deserter from Army, the production of the written report of the commanding officer before the arrest is made is sufficient compliance with this section. AIR 1943 Mad 280 (281) = 44 Cri L Jour 465.

3. Effect of non-compliance with the section.— (1) An arrest under a warrant may be supported under Section 46 (2) even without a notification of the substance of the warrant under this section. AIR 1929 Cal 174 (175) = 30 Cri L Jour 703 (DB) ** (1896) 23 Cal 896 (898) (DB) ** (1899) 26 Cal 748 (749, 750) (DB) ** (1912) 13 Cri L Jour 590 (591) (DB) (Cal).

(2) The illegality of an arrest will not vitiate a conviction for any substantive

81. Person arrested to be brought before Court without delay.—The police officer or other person executing a warrant of arrest shall (subject to the provisions of Section 76 as to security) without unnecessary delay[*] bring the person arrested before the Court before which he is required by law to produce such person.

[1882: S. 81; 1872: S. 183; 1861: S. 97.]

[*] See Articles 21 and 22 of the Constitution of India.

82. Where warrant may be executed.—A warrant of arrest may be executed at any place in [*][India.]

[1882: S. 82; 1872: S. 167; 1861: S. 83.]

[*] Substituted for "the States" by the Code of Criminal Procedure (Amendment) Act (I of 1951), S. 2 (1-4-1951).

83. Warrant forwarded for execution outside jurisdiction.—(1) When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a police officer, forward the same by post or otherwise to any Magistrate or District Superintendent of Police or the Commissioner of Police in a presidency-town[*] within the local limits of whose jurisdiction it is to be executed.

(2) The Magistrate or District Superintendent or Commissioner to whom such warrant is so forwarded shall endorse his name thereon and, if practicable,

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Section 80 — Note 3 (contd.)

offence with which the person arrested is charged, unless there is a failure of justice within Section 537 of the Code. AIR 1917 All 85 (86) = 18 Cri L Jour 666 (667).

Section 81 — Note 1

(1) Like Article 22 (2) of the Constitution Section 81 will not apply to a person arrested under a law relating to preventive detention. AIR 1950 Pat 332 (Pr. 16) = 29 Pat 410 = 51 Cri L Jour 1251.

Section 82 — Note 1

(1) The provisions of this section apply to search warrants by virtue of Section 101 and therefore a search warrant can be executed at any place in India. AIR 1957 Madh Pra 7 (8) = 1957 Cri L Jour 455 (1).

(2) Presidency Magistrate issuing warrant and sending it to Secretary, Home Department for onward transmission to Government of India for taking further steps for securing presence of accused in India from Hong Kong to undergo trial — **Held,** issue of warrant and procedure followed in transmitting warrant were not illegal, not even irregular — Though provisions of Extradition Act (1962) could not be availed of, that did not bar the requisition made by External Affairs Ministry to authorities in Hong Kong — Fugitive Offenders Act is not rendered inapplicable because India is no more a British possession — **AIR 1969 SC 1171 (1183). (AIR 1968 Cal 220, Reversed.)**

Section 83 — Note 1

(1) The power under this section should be exercised with the utmost circumspection. AIR 1940 Bom 397 (398) = 42 Cri L Jour 205 (DB).

(2) Section 83 (1) is intended to provide a safeguard to a person who has to be arrested, so that he is not arrested without a proper authority having applied his mind to the question of the legality of the warrant and authorised arrest outside its jurisdiction. AIR 1956 Bom 591 (591) = 1956 Cri L Jour 989.

(3) Where a warrant is sent for execution to the Magistrate of a district where a different language is in ordinary use, the warrant should be accompanied by a translation, certified by the transmitting Magistrate to be correct, into such other language or into English. In such cases it would be proper that the warrant should always be accompanied by a letter in English requesting its execution. ('72) 18 Suth WR (Cr Cir Order) No. 3, p. 9.

(4) A non-bailable warrant issued by the Chief Presidency Magistrate of Calcutta was addressed to the "o/c concerned" and referred to the accused merely by their names without reference to address, description or occupation, and in the margin of the warrant a note was initialled by the said Magistrate, "Forwarded to the third Presidency Magistrate, Bombay, for favour of execution and return." It was held that the warrant must be dealt with strictly and that the warrant in question was invalid. AIR 1940 Bom 397 (399) = 42 Cri LJ 205 = ILR (1941) Bom 16 (DB).

(5) The City Magistrate of Srinagar in a case under Section 420, Penal Code, issued warrant for the arrest of P whose address was at 91, Theatre Road, Calcutta, and sent the same for execu-

cause it to be executed in manner hereinbefore provided within the local limits of his jurisdiction.

[1882: S. 83; 1872: S. 168, Paras 1, 2 and S. 170, Para 1; 1861: Ss. 86, 87.]

[°] For definition of "Presidency-town", see the General Clauses Act, 1897, S. 3 (44).

STATE AMENDMENTS

Gujarat:

In its application to the State of Gujarat, the amendment made in S. 83 is the same as that in (i) of Maharashtra.—See Central Act XI of 1960, S. 87 (1-5-1960).

Maharashtra:

(i) In its application to the State of Bombay, as formed by S. 8 of the States Reorganisation Act, 1956, in sub-section (1) of Section 83, delete the words "in a presidency-town".—Bom. Act LVI of 1959, S. 3 and Schedule (4-1-1960).

(ii) In its application to the State of Maharashtra, in sub-section (1) of Section 83, for the words "District Superintendent of Police", substitute the words "Superintendent of Police"; and in sub-section (2), for the words "District Superintendent", substitute the word "Superintendent".—Maha. Act XLVI of 1962, S. 3 and Schedule (1-7-1964).

(iii) Section 83 (2), so far as it applied to the police in the town of Bombay, was repealed by the City of Bombay Police Act, 1902 (Bom. Act IV of 1902), which Act has now been repealed and replaced by the Bombay Police Act, 1951 (Bom. Act XXII of 1951), S. 167 (1) and Schedule I. By Section 167 (3) read with Schedule III of the Bombay Police Act, 1951, S. 1 (2) of the Code of Criminal Procedure, 1898, is so amended as to make the Code applicable to the Town of Bombay. The Bombay Police Act, 1951, which applies to the whole State of Bombay, has come into force on 1-8-1951.

(iv) Cities of Bombay, Nagpur and Poona have Commissioners of Police.

Section 83 — Note 1 (contd.)

tion to the Chief Presidency Magistrate of Calcutta through the Government of West Bengal. As the place was outside the jurisdictional limits of the Chief Presidency Magistrate he forwarded the warrant for execution to the Commissioner of Police and ordered the accused to furnish bail for appearance before the Srinagar Magistrate. It was held that Section 83 which conferred jurisdiction on the issuing Court to forward the warrant for execution to the Commissioner of Police did not apply to the case and the Chief Presidency Magistrate as internal Court, on receipt of the warrant for execution issued by an external Court, had no such jurisdiction. AIR 1955 Cal 277 (278) = 1955 Cri L Jour 791 (DB).

(6) Mere affixing of initials instead of name of magistrate as required by Section 83 (2) amounts to an irregularity curable by Section 537, Criminal P. C. AIR 1956 Orissa 97 (99) = ILR (1956) Cut 50 = 1956 Cri L Jour 635.

(7) Warrant directed to Sub-Inspector of Police Station without mentioning particular Police Station — Warrant sent to Chief Presidency Magistrate Bombay through the complainant with forwarding letter for execution — **Held** that though the warrant was irregular it was not invalid inasmuch as the intention was that it should be executed under Section 83 (1). AIR 1956 Bom 591 (592) = 1956 Cri L Jour 989.

(8) Name of the authority for actual execution of the warrant should be left to the Court to which warrant is sent for execution. Issuing Court putting name of authority for actual execution, by mistake — Mere technical irregularity — Warrant is valid. AIR 1969 Cal 340 (341) = 1969 Cri LJ 879 = 73 Cal WN 97.

(9) Court receiving warrant for the purpose of execution is not required to enter into the question of legality of the warrant that is received. AIR 1969 Cal 340 (341) = 1969 Cri LJ 879 = 73 Cal WN 97.

(10) Section 83 (1) is only a provision enabling Magistrate who issues a warrant to be executed outside his jurisdiction to forward the same to the authorities within the local limits of whose jurisdiction it is to be executed, instead of directing the warrant to a police officer and it does not specify the route or channel warrant may take. Fact that warrant was forwarded to Secretary to Government who in turn forwarded the same to Sub-Magistrate will not in any way affect validity of the warrant or jurisdiction of the Magistrate to execute the warrant. 1962 (1) Cri LJ 645 (646, 647) = 1961 Ker LT 463.

84. Warrant directed to police officer for execution outside jurisdiction.—(1) When a warrant directed to a police officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a police officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

(2) Such Magistrate or police officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute the same within such limits, and the local police shall, if so required, assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police officer within the local limits of whose jurisdiction the warrant is to be executed, will prevent such execution, the police officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

(4) This section applies also to the police in the towns of Calcutta and Bombay.

[1882—S. 84; 1872—Ss. 168, 170; 1861—S. 84.]

STATE AMENDMENT

Maharashtra:

In its application to the City of Bombay, Section 84 was repealed by the City of Bombay Police Act, 1902 (Bom. Act IV of 1902), S. 2 (1) and Schedule A. The said Bombay Act, however, has now been repealed by the Bombay Police Act, 1951 (Bom. Act XXII of 1951), S. 167 (1) and Schedule I. By S. 167 (3) read with Schedule III, this Act of 1951 has so amended S. 1 (2) of the Code of Criminal Procedure, 1898, as to make the Code applicable to the City of Bombay. The Bombay Police Act, 1951, has been applied to the whole State from 1-8-1951.

85. Procedure on arrest of person against whom warrant issued.—When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles of the place of arrest or is nearer than the Magistrate or District Superintendent of Police or the Commissioner of Police in a presidency-town[*] within the local limits of whose jurisdiction the arrest was made, or unless security is taken under Section 76, be taken before such Magistrate or Commissioner or District Superintendent.

[1882—S. 85; 1872—S. 169; 1861—S. 85.]

[*] For the definition of "Presidency-town", see the General Clauses Act, 1897, Section 3 (44).

STATE AMENDMENTS

Gujarat:

In its application to the State of Gujarat, the amendment made in S. 85 is the same as that in (i) of Maharashtra.—See Central Act XI of 1960, S. 87 (1-5-1960).

Maharashtra:

(i) In its application to the State of Maharashtra, in Section 85 delete the words "in a presidency-town".—Bom. Act LVI of 1959, S. 3 and Schedule (4-1-1960).

(ii) In its application to the State of Maharashtra, in S. 85, for the words "District Superintendent of Police", substitute the words "Superintendent of Police" and for the words "District Superintendent" substitute the word "Superintendent".—Maha. Act XLVI of 1962, S. 3 and Schedule (1-7-1964).

Section 84 — Note 1

(1) **Warrant directed to police officer for execution outside jurisdiction** — He cannot endorse it to any other police officer discharging duties outside jurisdiction of Court issuing warrant. AIR 1964 Raj 36 (38) = 1964 (1) Cr LJ 359 = 1963 Raj LW 642.

(iii) Section 85, so far as it applied to the Town of Bombay, was repealed by the City of Bombay Police Act, 1902 (Bom. Act IV of 1902), which Act has been repealed by the Bombay Police Act, 1951 (Bom. Act XXII of 1951), S. 167 (1) and Schedule I. By Section 167 (3) read with Schedule III of the said Act, which applies to the whole State of Bombay from 1-8-1951, Section 1 (2) of the Code of Criminal Procedure, 1898, is so amended as to make the Code applicable to the Town of Bombay.

(iv) Commissioners of Police have been appointed for the Cities of Nagpur and Poona as well now.

86. Procedure by Magistrate before whom person arrested is brought.—(1) Such Magistrate or District Superintendent or Commissioner shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court:

Provided that, if the offence is bailable and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under Section 76 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent or Commissioner shall take such bail or security, as the case may be, and forward the bond to the Court which issued the warrant.

(2) Nothing in this section shall be deemed to prevent a police officer from taking security under Section 76.

[1882—S. 86; 1872—S. 170; 1861—S. 84.]

STATE AMENDMENT

Maharashtra:

(i) In its application to the State of Maharashtra, in sub-section (1) of Section 86, for the words "District Superintendent", wherever they occur, substitute the words "Superintendent".—Maha. Act XLVI of 1962, S. 3 and Schedule (1-7-1964).

(ii) Section 86, so far as it applied to the Town of Bombay, was repealed by the City of Bombay Police Act, 1902 (Bom. Act IV of 1902), which Act is subsequently repealed by the Bombay Police Act, 1951 (Bom. Act XXII of 1951), S. 167 (1) and Schedule I. By Section 167 (3) read with Schedule III of the Bombay Police Act, 1951 (which applies to the whole State of Bombay from 1-8-1951), Section 1 (2) of the Code of Criminal Procedure, 1898, is so amended as to make the Code applicable to the Town of Bombay.

Section 86 — Note 1

(1) The Magistrate or other officer after satisfying himself that the person arrested appears to be the person intended by the Court which issued the warrant, has to direct the removal of the arrested man in custody to the Court which issued the warrant. He is not entitled to institute an inquiry under Section 186. AIR 1940 Bom 397 (398) = 42 Cri L Jour 205 (DB). (Provisions of Section 186 do not override those in Sections 75 to 86.)

(2) An elaborate enquiry as to the identity of the person arrested is not contemplated by Section 86 (1). The Magistrate is to be satisfied prima facie that the person arrested is the person mentioned in the warrant. 1962 (1) Cr LJ 645 (646) = 1961 Ker LT 463 ** (1965) 69 Cal WN 113 (116) (DB) ** AIR 1965 Ker 72 (73, 74) = 1965 (1) Cri LJ 296 = 1964 Ker LT 230.

(3) Non-bailable warrant for arrest of accused issued by Judicial Magistrate in Punjab State — In pursuance of warrant Superintendent of Police arresting accused at Delhi and producing him before Additional District Magistrate, Delhi who enlarged accused on bail on personal bond with one surety — Accused directed to appear before Judicial Magistrate, Rupar on or before certain date and to produce certificate of his having done so by certain date before him upto which date bail was granted — Held that Additional District Magistrate had no jurisdiction to extend operation of bail bond and enquire from Superintendent of Police at Chandigarh whether there were other charges against accused. 1966 Cri LJ 863 (866) = (1966) 68 Pun LR (D) 46.

C.—Proclamation and Attachment.

87. Proclamation for person absconding.—(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:—

(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village; and

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with and that the proclamation was published on such day.

[1882—S. 87—Same; 1872—Ss. 171, 353, para. 1; 1861—Ss. 183, 189.]

SECTION 87 — SYNOPSIS

1. **Proclamation, when can be issued.**
2. **Proof of issue of warrant.**
3. **"Has absconded or is concealing himself."**
4. **"Not less than thirty days from the date of publishing."**
5. **Publication of the proclamation — Sub-section (2).**
6. **Statement in writing by Court — Sub-section (3).**
7. **Revision.**

1. Proclamation, when can be issued.— (1) The processes of proclamation and attachment are exceptional remedies and should not be issued as a matter of course whenever a warrant fails of its effect. (1965) 3 Suth WR (Cr) 63 (63) (DB).

(2) Where the warrant issued by a Magistrate is without jurisdiction or does not fulfil the requirements of law, the issue of a proclamation under the section would be illegal. (1912) 13 Cri L Jour 796 (797) (DB) (Bom) ** (1909) 10 Cri L Jour 306 (309) = 5 Nag LR 125.

(3) The simultaneous issue of a warrant and proclamation is not legal. AIR 1943 Pat 366 (369) = 46 Cri L Jour 322 (DB) ** (1960) 62 Punj LR 189 (190, 191) ** AIR 1960 Pat 160 (161) = 1960 Cri LJ 501.

(4) The Court issuing the proclamation must have reason to believe that the person against whom the warrant has been issued has absconded or is concealing himself for the purpose of avoiding the execution of the warrant. AIR 1942 Mad 289 (290) = 43 Cri L Jour 11; ** AIR 1922 Lah 475 (476, 477) = 23 Cri L Jour 454.

(5) The provisions of Sections 87, 88 would not be available for securing presence of persons alleged to have committed contempt. **AIR 1963 SC 692 (697) = 1963 (1) Cri LJ 633 = (1963) Supp 1 SCR 40.**

2. Proof of issue of warrant.— (1) A warrant of arrest can only be proved by the production of the original or by secondary evidence and not by merely proving a proclamation under this section. **AIR 1944 PC 54 (57) = 45 Cri L Jour 721.**

3. "Has absconded or is concealing himself."— (1) It matters not if a person departs from his place or remains in it, if he conceals himself. In either case he is said to "abscond". AIR 1943 Oudh 325 (328) = 44 Cri L Jour 804.

(2) From the mere fact that a person is absent it should not be readily assumed that he is an absconder without due enquiry and notice. (1886) 2 Weir 40 (40).

(3) A person cannot be said to be absconding or concealing himself where he files a petition against the order issuing the warrant and takes steps to procure an order of a superior Court that he should be allowed to remain on bail after such warrant has been issued. AIR 1922 Lah 475 (476, 477) = 23 Cri L Jour 454.

(4) The mere fact that an accused person absconded is not sufficient proof of his guilt. (1910) 11 Cri L Jour 557 (558) (Cal) ** AIR 1931 Lah 38 (41) = 32 Cri L Jour 522 (DB) ** AIR 1927 Pat 257 (260) = 28 Cri L Jour 497 (DB).

4. "Not less than thirty days from the date of publishing."— (1) The proclamation issued under this section should fix

Section 87 — Note 4 (contd.)

a date not less than thirty days from the date of publication for the appearance of the absconder. Otherwise the proclamation is illegal. AIR 1948 Lah 151 (152) = ILR (1947) Lah 615 = 48 Cri L Jour 624 ** AIR 1955 Punj 18 (20) = ILR (1955) Punj 602 = 1955 Cri L Jour 318 (DB) ** AIR 1954 Sau 145 (146) = 1954 Cri L Jour 1833 (DB) ** AIR 1919 Lah 57 (59) = 21 Cri L Jour 210 (DB) ** (1907) 6 Cri L Jour 332 (333) (Mad).

[But see AIR 1934 Lah 987 (988) = 36 Cri L Jour 457 (DB).]

(2) The section is imperative in this respect and a non-compliance therewith will render the proclamation and all further proceedings in pursuance thereof null and void. (1895) 5 Mad L Jour 215 (217, 218) (DB) ** AIR 1958 Raj 167 (168) = ILR (1958) 8 Raj 107 = 1958 Cri L Jour 965 ** AIR 1955 Punj 18 (20) = ILR (1955) Punj 602 = 1955 Cri L Jour 318 (DB). (Section 537 cannot be made applicable in such a case.) ** AIR 1948 Lah 151 (152) = ILR (1947) Lah 615 = 48 Cri L Jour 624 ** (1895) 19 Mad 3 (4, 5) (DB) ** 1969 Cri LJ 826 (826) (Mys) = (1968) 2 Mys LJ 630 ** 1967 Cr LJ 1120 (1121) = 68 Punj LR 865 ** 1970 Raj LW 70.

5. Publication of the proclamation — Sub-section (2).— (1) The requirement as to publication in accordance with Clauses (a), (b) and (c) of sub-section (2) is mandatory. AIR 1919 Lah 57 (59) = 21 Cri L Jour 210 (DB). (Requirements of Clauses (a) and (c) not complied with.) ** AIR 1954 Sau 145 (146) = 1954 Cri L Jour 1833 (DB) ** (1895) 19 Mad 3 (4, 5) (DB) ** 22 All 216 (218) ** 1960 All WR (Sup) 15 ** 62 Punj LR 189 (190, 191).

[See however AIR 1938 Oudh 80 (81) = 39 Cri L Jour 154 (DB).]

[But see AIR 1917 Lah 438 (439) = 18 Cri L Jour 979 (DB) ** AIR 1942 Lah 214 (215) = 43 Cri L Jour 791.]

(2) No presumption under Sec. 114, illustration (e) of the Evidence Act can be drawn that the requirements of the section have been duly observed and proclamation published as provided therein. (1884) 7 Mad 436 (438) ** (1886) 13 Cal 197 (199) (DB).

[But see AIR 1942 Lah 214 (214) = 43 Cri L Jour 791 ** AIR 1938 All 220 (221) = 39 Cri L Jour 570.]

6. Statement in writing by Court — Sub-section (3).— (1) Where no statement in writing is recorded under sub-section (3) and there is nothing to show that the provisions of sub-section (2) have been complied with, the proclamation cannot be considered to be in accordance with law. (1900) 22 All 216 (218).

[See also AIR 1954 Sau 145 (145) = 1954 Cri L Jour 1833 (DB).]

(2) Where neither the proclamation nor a copy of it is preserved and the record does not show that all the legal formalities have been complied with, an order of confiscation passed under Section 88 would be illegal. (1912) 13 Cri L Jour 293 (294) (DB) (Bom).

(3) The burden of proving that there was due proclamation under this section is upon the prosecution. (1884) 7 Mad 436 (438) ** AIR 1917 Mad 652 (652) = 17 Cri LJ 78 (DB).

(4) Where the validating order under this sub-section does not state that the proclamation has been duly published on a specified date, the Court is not precluded from questioning the legality of the proclamation. AIR 1936 Pat 249 (250) = 37 Cri L Jour 318 ** AIR 1948 Lah 151 (152) = ILR (1947) Lah 615 = 48 Cri L Jour 624.

(5) Where the proclamation issued fixes a date less than thirty days from the date of publication for the appearance of the absconder, a statement under this sub-section will not be conclusive evidence of the fulfilment of the requirements of this section. AIR 1948 Lah 151 (152) = ILR (1947) Lah 615 = 48 Cri L Jour 624.

(6) This section does not expressly or by implication make the proclamation equivalent to notice to the public of its contents or even to the inhabitants of the town or village where it is published. **AIR 1944 PC 54 (57) = 45 Cri L Jour 721.**

(7) No presumption under sub-sec. (3) of Section 87 arises where the requirements of this section have not been complied with or where the Court issuing the proclamation has failed to record any statement that the proclamation was duly published on the specified day. AIR 1958 Raj 167 (168) = ILR (1958) 8 Raj 107 = 1958 Cri L Jour 965.

7. Revision.— (1) When the proclamation does not comply with the requirement of the section, the proceedings can be set aside in revision. AIR 1948 Lah 151 (152) = ILR (1947) Lah 615 = 48 Cri L Jour 624 ** AIR 1958 Raj 167 (169) = ILR (1958) 8 Raj 107 = 1958 Cri L Jour 965 ** AIR 1954 Sau 145 (146) = 1954 Cri L Jour 1883 (DB) ** AIR 1919 Lah 57 (59) = 21 Cri L Jour 210 (DB).

(2) High Court will not entertain an application on behalf of an accused person against whom a proclamation has been issued until he has surrendered. Even after surrendering, the proper procedure for the accused is to apply to the Magistrate himself in the first instance and a revision will lie from the Magistrate's decision on such application. (1870) 2 NWPHCR 441 (443) (FB) ** 1968 Raj LW 187 (189). (An objection that

88. Attachment of property of person absconding.—(1) The Court issuing a proclamation under Section 87 may at any time order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person.

(2) Such order shall authorise the attachment of any property belonging to such person within the district in which it is made; and it shall authorise the attachment of any property belonging to such person without such district when endorsed by the District Magistrate or Chief Presidency Magistrate within whose district such property is situate.

(3) If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made—

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

(4) If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to §[the State Government], be made through the Collector of the district in which the land is situate, and in all other cases—

(e) by taking possession; or

(f) by the appointment of a receiver; or

(g) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

(h) by all or any two of such methods, as the Court thinks fit.

Section 87 — Note 7 (contd.)

the proclamation issued by Magistrate was not in accordance with Section 87, cannot be allowed to be raised for first time before High Court.) ** 1970 Raj LW 70.

SECTION 88 — SYNOPSIS

1. **Object.**
2. **Which Court can order attachment.**
3. **Stage at which attachment can be ordered.**
4. **Property which can be attached.**
5. **Mode of attachment.**
6. **Attachment by Civil Court.**
7. **Forfeiture of attached property.**
8. **Decision of claims and objections to attachment — Procedure.**
9. **Sale of attached property.**
10. **Setting aside sale.**
11. **Suit to recover property from Government or auction-purchaser, whether lies.**
12. **Order on claim, whether open to revision.**

1. Object.— (1) The object of the section is to compel an accused person to appear in obedience to a summons or warrant issued by Criminal Courts. AIR 1937 Pat 642 (642) ** **AIR 1963 SC 692 (697) = 1963 (1) Cri LJ 633 = (1963) Supp 1 SCR 40.**

2. Which Court can order attachment.— (1) It is only the Court issuing the proclamation that is empowered to order an attachment under this section. If the property to be attached is in a District outside that of the Magistrate issuing the order, the order must be endorsed by the District Magistrate or Chief Presidency Magistrate within whose jurisdiction the property sought to be attached is situate. AIR 1930 Pat 347 (347) = 31 Cri L Jour 494.

(2) Proceedings of attachment and sale under Section 88, can be taken only by the Court which has issued a valid proclamation within the provisions of Section 87. AIR 1955 Punj 18 (20) = ILR (1955) Punj 602 = 1955 Cri L Jour 318 (DB) ** 1967 Cr LJ 1120 (1121) = 68 Pun LR 865 ** AIR 1960 Pat 160 (161) = 1960 Cri LJ 501 ** 1970 Raj LW 70.

3. Stage at which attachment can be ordered.— (1) The Court is empowered to order the attachment at any time. The Court can thus issue a proclamation against an absconding offender under Section 87 and simultaneously order the attachment of his property under this section. AIR 1943 Pat 366 (369) = 46 Cri L Jour 322 (DB) ** (1902) 6 Cal WN 680 (681) = 29 Cal 417 (DB).

(2) Before an order for attachment can be passed under this section, it is necessary that a warrant for arrest must have been issued and it must be established that the accused has absconded or concealed himself for the purpose of evading arrest. AIR 1942 Mad 289 (289, 290) = 43 Cri L Jour 11 ** AIR

(5) If the property ordered to be attached consists of live-stock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Chapter XXXVI of the Code of Civil Procedure, 1882.*

†[(6A) If any claim is preferred to, or objection made to the attachment of, any property attached under this section within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under this section, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part:

Provided that any claim preferred or objection made within the period allowed by this sub-section may, in the event of the death of the claimant or objector, be continued by his legal representative.

(6B) Claims or objections under sub-section (6A) may be preferred or made in the Court by which the order of attachment is issued or, if the claim or objection is in respect of property attached under an order endorsed by a District Magistrate or Chief Presidency Magistrate in accordance with the provisions of sub-section (2), in the Court of such Magistrate.

Section 88 — Note 3 (contd.)
1943 Pat 366 (369) = 46 Cri L Jour 322 (DB).

(3) When a warrant of attachment is issued under this section a presumption that the proclamation under Section 87 has been issued arises under Evidence Act, Section 114, illustration (e). AIR 1938 All 220 (220) = 39 Cri LJ 570.

4. Property which can be attached.— (1) The Court can attach both moveable and immovable property at the same time. ('69) 4 Mad HCR (App) xlviii (xlviii).

(2) Where the property is subject to a mortgage at the time of the attachment, the attachment will operate only in respect of the equity of redemption. AIR 1937 Pat 642 (642).

(3) Word "property" includes the rights and interests of persons who, as members of an undivided family, are entitled to the property of the family. What has to be attached under the section in such a case is the share of the defaulting member. AIR 1917 Mad 366 (367) = 17 Cri LJ 296 (FB). **(Overruling** 2 Weir 43.)

(4) It has been held that where the property to be attached is only the interest of a member of a Hindu joint family the only procedure that can be adopted is to appoint a receiver for the collection and realization of the absconder's share in the income of the property attached. AIR 1951 Hyd 81 (Pr. 6) = ILR (1952) Hyd 184 = 52 Cri L Jour 707 (1) (DB).

(5) A son born to the absconder subsequent to the attachment of his share and before sale is entitled to have his share freed from the attachment. AIR 1917 Mad 366 (367, 368) = 17 Cri L Jour 296 (FB).

(6) Where a Hindu coparcener dies, his widow is entitled to maintenance out of the property in the hands of the surviving coparceners and such right can be enforced against the property even after its attachment under this section. AIR 1938 Bom 321 (324).

5. Mode of attachment.— (1) The action of a police-officer executing a warrant of attachment under this section in digging the walls or floor to remove the frames embedded therein amounts to an irregularity. Resistance to the officer under such circumstances does not amount to an offence under Section 332, Penal Code. AIR 1930 Pat 387 (387) = 31 Cri L Jour 937.

(2) Mere order of attachment made on order sheet is not sufficient to assume attachment of land. Taking of actual possession or at least making an explicit order prohibiting parties from going upon the land is necessary. 1962 BLJR 405 (410).

6. Attachment by Civil Court.— (1) Where the actual attachment by the Criminal Court was subsequent to an attachment made by the Civil Court, a sale held in pursuance of the former cannot affect the rights of the attaching decree-holder under the latter. AIR 1929 Bom 200 (200) ** (1912) 13 Cri L Jour 568 (569) = 6 Low Bur Rul 57.

7. Forfeiture of attached property.— (1) The words "at the disposal of the State Government" mean that the properties come under the absolute control of the State Government to dispose of

(6C) Every such claim or objection shall be inquired into by the Court in which it is preferred or made:

Provided that, if it is preferred or made in the Court of a District Magistrate or Chief Presidency Magistrate, such Magistrate may make it over for disposal to any Magistrate of the first or second class or to any Presidency Magistrate, as the case may be, subordinate to him.

(6D) Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (6A) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute; but subject to the result of such suit, if any, the order shall be conclusive.

(6E) If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment.]

(7) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of the §[State Government], but it shall not be sold until the expiration of six months from the date of the attachment ‡[and until any claim preferred or objection made under sub-section (6A) has been disposed of under that sub-section], unless it is subject to speedy and natural decay, or the Court considers that the sale

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Section 88 — Note 7 (contd.)
or deal with them. in whatever manner it may seem most appropriate and convenient. (1883) 9 Cal 861 (863) (DB) ** (1875) 23 Suth WR (Cr) 30 (31) (DB).

(2) The absconder cannot maintain a suit for possession of the confiscated property unless he has otherwise acquired a title to the property subsequent to the order of confiscation. AIR 1923 Bom 198 (198, 199) (DB).

(3) In a suit brought to enforce a mortgage over the property, if the Government is not impleaded as a party, the right of the Government as well as a purchaser from the Government to redeem the mortgage is not lost. Where the Government has sold the property to a third person before the suit on the mortgage, the purchaser is a necessary party to the suit but the Government is not a necessary party. AIR 1937 Pat 642 (642) ** AIR 1930 Mad 1017 (1020) (DB).

(4) If the proclaimed person appears or is arrested within the time specified in the proclamation, the attachment will cease. AIR 1934 Pat 181 (182) = 35 Cri L Jour 682 (SB).

8. Decision of claims and objections to attachment — Procedure.— (1) Sub-sections (6-A) to (6-E) prescribe a complete Code for the purpose of determination of the questions which properly fall to be considered in the context of an application making a claim or preferring an objection with regard to attachment under Section 88. AIR 1955 Cal 524 (525) = 1955 Cri L Jour 1343 (DB).

(2) Where a claim or an objection is preferred with respect to attached property the law enjoins the Magistrate to investigate it and come to a decision. AIR 1955 All 127 (127) = 1955 Cri L Jour 331.

(3) Where opportunity to make claim or prefer an objection could not be availed of for sufficient grounds the Magistrate has jurisdiction to enlarge the time by giving the party affected further opportunity to contest the proceedings provided of course the claim was initially made within the time limited by the law. AIR 1955 Cal 524 (525) = 1955 Cri L Jour 1343 (DB).

(4) The word 'interest' in sub-section (6-A) cannot be limited to mere claim of possession. AIR 1955 Cal 524 (526) = 1955 Cri L Jour 1343 (DB).

(5) In an inquiry under sub-sections (6-A) to (6-E) the Magistrate is not merely concerned with the question of possession only. AIR 1955 Cal 524 (525, 526) = 1955 Cri L Jour 1343 (DB).

(6) Where the Magistrate asks the objector to pick out things belonging to him from one of the boxes, but the objector protests against the procedure and refuses to take just small portion of the things belonging to him and leaves the Court-room, the withdrawal under the circumstances can never be interpreted as withdrawal of the objections. AIR 1955 All 127 (127) = 1955 Cri L Jour 331.

(7) It is only the final order made after an inquiry contemplated in sub-section (6-A) which is to be considered as conclusive. Where a claim petition was dismissed for default but was subsequently revived by an application it was held that the alleged conclusiveness of the order of dismissal could not possibly relate back to a point of time when the proceedings were said merely to lapse on account of non-prosecution. AIR 1955 Cal 524 (526) = 1955 Cri L Jour 1343 (DB).

would be for the benefit of the owner; in either of which cases the Court may cause it to be sold whenever it thinks fit.

[1882: S. 88; 1872: Ss. 172, 353, paras. 2, and 3; 1861: Ss. 184 and 189.]

[*] Now see Order 40 of the Code of Civil Procedure, 1908.

[†] Sub-sections (6A) to (6E) were inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 13.

[‡] Inserted, ibid.

[§] Substituted for 'Provincial Government' by A. L. O., 1950.

OBJECTS AND REASONS

1923—Sub-sections (6A) to (6E).—"The sub-sections which the Bill adds to Section 88 imply that the Court which issues an order of attachment or endorses the same under sub-section (2) is to investigate and determine a claim or objection. We think that a limited power to transfer claims and objections for disposal to subordinate Magistrates would be useful and we have, therefore, provided (see proviso to sub-section (6C)) that District Magistrates may transfer such cases to Magistrates not below the rank of Second Class Magistrates, and that Chief Presidency Magistrates may likewise transfer cases to Presidency Magistrates subordinate to them. The other amendments made in this clause are consequential upon this."—S.C.R. (XVIII of 1923).

Section 88 — Note 8 (contd.)

(8) Section provides a procedure for determining whether the attached property belongs to the proclaimed person or not. Therefore the State can always raise a question whether the property attached by the Court belonged, at the time of attachment to the proclaimed person. 1967 All WR (HC) 311 (313).

9. Sale of attached property.— (1) Where there is an outstanding valid lease in favour of a third person at the time of attachment under this section, and the lessee prefers a claim, the proper order to make is to sell the property subject to the right of the lessee to remain in possession until the expiry of the term of the lease. (1908) 8 Cri L Jour 260 (261) = 1908 Pun Re (Cr) No. 9 (DB).

10. Setting aside sale.— (1) Sales once held under the section cannot be set aside. (1900) 22 All 216 (219) ** (1911) 12 Cri L Jour 142 (143) = 1911 Pun Re (Cr) No. 8.

[But see 6 Suth WR (Cr) 79 (79) (DB).]

(2) It is open to the absconder to apply under the next following section for the recovery of the net sale proceeds, provided the requirements of that section are satisfied. AIR 1924 Lah 420 (421) = 24 Cri L Jour 573 ** (1883) 9 Cal 861 (863) (DB).

11. Suit to recover property from Government or auction purchaser, whether lies.— (1) Different views are held as to whether a suit lies at the instance of the proclaimed offender to recover the property sold under the section on the ground that the proclamation and sale are in contravention of the provisions of Sections 87 and 88:

(a) Suit lies. (1905) 27 All 572 (573, 574) = 2 Cri L Jour 247 (DB).

(b) Suit does not lie. AIR 1928 Lah 562 (564, 565, 566) (DB) ** (1867) 8 Suth WR (Civ) 207 (208) (DB).

[But see AIR 1955 Punj 18 (20) = ILR (1955) Punj 602 = 1955 Cri L Jour 318 (DB) ** AIR 1919 Lah 57 (59) = 21 Cri L Jour 210 (DB).]

(c) Suit lies if Court exercises powers in excess or in contravention of the powers conferred. (1908) 35 Cal 859 (864) (DB) ** (1890) 17 Cal 590 (604) = 17 Ind App 40 (PC).

(2) A third person is not bound to prefer a claim but he can straightway file a suit to set aside the sale proceedings. AIR 1945 Oudh 104 (104) = 20 Luck 254 (DB) ** AIR 1939 Cal 746 (747) = 41 Cri L Jour 134 ** AIR 1938 Bom 321 (323).

(3) A third person is entitled to maintain a suit against the Government and the latter is responsible for mesne profits for the period during which the property was at its disposal. (1901) 28 Cal 540 (544, 545) (DB).

(4) Any party claiming an interest in the property before sale can obtain a decree of a Civil Court declaring his right in the property, and decree would be binding against Government. AIR 1938 Bom 321 (323).

(5) Where the property attached is sold by the Magistrate and the sale proceeds are kept in the Court, and a claimant suing under sub-section (6-D) of this section frames his suit as one for recovery of money instead of one for declaration, the mere fact that the suit is so framed does not take it out of the category of suits within the purview of the sub-section. AIR 1942 Mad 93 (94) = 43 Cri L Jour 325 ** AIR 1957 Nag 71 (73) = ILR (1956) Nag 866 = 1957 Cri LJ 382 (DB).

(6) A claim for damages for illegal seizure of property is not connected with

STATE AMENDMENTS

Gujarat:

In its application to the State of Gujarat, the amendment made in S. 88 is the same as that made in Maharashtra.—See Central Act XI of 1960, S. 87.

NOTE.—Chief Magistrate and Magistrates in the City of Ahmedabad exercise the powers and have the jurisdiction of a Chief Presidency Magistrate and a Presidency Magistrate, respectively.—See Guj. Act XIX of 1961, S. 14 (3) (4-11-1961).

Maharashtra:

(1) In its application to the pre-reorganization State of Bombay in sub-section (6C) of S. 88, delete the words beginning with "of the first" and ending with "may be".—Bom. Act XXIII of 1951, S. 2 and Schedule (1-7-1953).

(2) After the reorganization of the State of Bombay in 1956, the amendment made in S. 88 (6C) by the above-mentioned Bombay Act is extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Mysore:

In its application to the State of Mysore, in S. 88 (6C), omit the words "of the first or second class".—Mys. Act 13 of 1965, S. 20-A (1-10-1951).

Punjab: Haryana: Chandigarh:

In its application to the States of Punjab and Haryana and the Union territory of Chandigarh, in S. 88,—

(i) in sub-sections (2) and (6B), after the words "District Magistrate", insert the words "or Chief Judicial Magistrate"; and

(ii) for the proviso to sub-section (6C), substitute the following proviso, namely:—

"Provided that, if it is preferred or made in a Court of a District Magistrate, or any other Executive Magistrate, such Magistrate shall refer it to the Chief Judicial Magistrate who shall make it over for disposal to any Judicial Magistrate of the first class subordinate to him, and such Judicial Magistrate shall have all the powers and jurisdiction in respect of such claim or objection as if the order of attachment had been issued by such Judicial Magistrate and the claim or objection had been originally preferred or made before him."—Punj. Act XXV of 1964, S. 2 and Schedule, Pt. I, item (24) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88, (1-11-1966).

Section 88 — Note 11 (contd.)
any right to the property and it cannot be said to have been raised or disallowed under Section 88 (6-A) so as to attract Section 88 (6-D). AIR 1957 Nag 71 (73) = ILR (1956) Nag 866 = 1957 Cri L Jour 382 (DB).

(7) Upon the objection of the plaintiff being allowed and some of the property being released, the State was liable to return the same, and if it failed to return the same, to pay the value of the property by way of damages. 1956 All L Jour 932 (933). (Section 88 (6-A), Cr. P. Code makes its obligatory by implication that the property which has been released should be delivered to the objector.)

12. Order on claim, whether open to revision.— (1) Any order passed by a Magistrate refusing to release the property from attachment on a claim preferred by a third person, is subject to revisional jurisdiction of the High Court. AIR 1924 Lah 617 (618) = 25 Cri L Jour 82 ** AIR 1957 All 121 (122) = ILR (1957) 1 All 506 = 1957 Cri L Jour 169 (DB) ** (1908) 8 Cri L Jour 260 (262) = 1908 Pun Re (Cr) No. 9 (DB).

(2) Where the Magistrate without deciding the objection orders the same to be simply filed a revision is certainly competent. AIR 1955 All 127 (127) = 1955 Cri L Jour 331.

(3) Where the Court accepts the claim of mortgagee for the mortgage amount but at the same time orders that the mortgagee shall retain the possession of the land as receiver of Court till the land is disposed of, the mortgagee cannot assail that order in revision after expiry of the period specified in Sec. 88 (6-D), particularly, when the land in question is auctioned and sale finalised in favour of third party. 1968 Raj LW 187 (189) = ILR (1967) 17 Raj 1029.

Rajasthan:

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendment made in S. 88 is the same as in (1) of Maharashtra.—See Central Act XXXVII of 1956, S. 119 (1-11-1956).

Union Territories (except Chandigarh):

In its application to the Union territories, in S. 88,—

(a) in sub-sections (2) and (6B), after the words "District Magistrate", insert the words "or Chief Judicial Magistrate"; and

(b) for the proviso to sub-section (6C), substitute the following, namely:—

"Provided that if it is preferred or made in the Court of a District Magistrate or Chief Judicial Magistrate, he may make it over for "disposal to any Magistrate subordinate to him, and such Magistrate shall have all the powers and jurisdiction in respect of such claim or objection as if the order of attachment had been issued by such Magistrate and the claim or objection had been originally preferred or made before him."—Act 19 of 1969, S. 3 and Schedule, item 25 (in Delhi, on 2-10-1969).

West Bengal

In its application to the State of West Bengal, in Section 88—

(a) in sub-sections (2) and (6B), after the words "District Magistrate", insert the words "Sub-Divisional Judicial Magistrate"; and

(b) For the words 'within whose district' in sub-section (2) substitute the words 'within whose jurisdiction'; and

(c) for the proviso to sub-section (6C), substitute the following, namely :—

"Provided that if it is preferred or made in the Court of a District Magistrate or a Sub-Divisional Judicial Magistrate or a Chief Presidency Magistrate, such District Magistrate, Sub-Divisional Judicial Magistrate or Chief Presidency Magistrate may make it over for disposal to any Magistrate subordinate to him, and such Magistrate shall have all the powers and jurisdiction in respect of such claim or objection as if the order of attachment had been issued by such Magistrate and the claim or objection had been originally preferred or made before him." — W. B. Act 8 of 1970, S. 3 and Sch., item 35.

89. **Restoration of attached property.**—If within two years from the date of the attachment, any person whose property is or has been at the disposal of the *[State Government], under sub-section (7) of Section 88, appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satis-

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SECTION 89 — SYNOPSIS

1. **Scope.**
2. **'Within two years from the date of the attachment."**
3. **Who can apply under the section.**

1. Scope.— (1) The burden of proof as to the requirements of the section lies on the absconder and not on the Government. AIR 1943 Oudh 325 (329) = 44 Cri L Jour 804 ** AIR 1948 Lah 151 (152) = ILR (1947) Lah 615 = 48 Cri L Jour 624.

(2) If the prescribed conditions are satisfied, the absconder is entitled to a restoration of the property attached, where it has not been sold, or to the net sale proceeds if the property has already been sold. AIR 1924 Lah 420 (421) = 24 Cri L Jour 573 ** (1911) 12 Cri L Jour 142 (143) = 1911 Pun Re (Cr.) No. 8.

(3) This section prescribes a remedy where there is a good and legal proclamation but affords no facility for contesting the legality of the proclamation. (1900) 22 All 216 (219) ** AIR 1942 Lah 214 = 43 Cri LJ 791 ** AIR 1919 Lah 57 (59) = 21 Cri L Jour 210 (DB) ** AIR 1934 Lah 987 (988) = 36 Cri L Jour 457 (DB). (No.)

[But see AIR 1917 Lah 438 (439) = 18 Cri L Jour 979 (DB).]

(4) Where it is established that the petitioner had absconded and had notice of the proclamation issued under Sec. 87 and his property was attached under Section 88 the petitioner cannot get the attached property restored under Section 89, Criminal P. C., on his being subsequently tried and acquitted. AIR 1955 Punj 18 (Pr. 3) = ILR (1955) Punj 602 = 1955 Cri L Jour 318 (DB).

(5) Independent of the section, the High Court can, in the exercise of its revisional jurisdiction, go into the question of the legality of the proclamation

faction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the nett proceeds of the sale, or, if part only thereof has been sold, the nett proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

[1882: S. 89; 1872: Ss. 173, 354; 1861: Ss. 185, 190.]

[*] Substituted for "Provincial Government" by A. L. O., 1950.

D.—Other Rules regarding Processes.

90. Issue of warrant in lieu of, or in addition to, summons.— A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person other than a juror *[* *], issue, after recording its reasons in writing, a warrant for his arrest—

(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

[1882—S. 90; 1872—S. 148, para. 2, Ss. 150, 156, 352, 355 and S. 494, para. 1; 1861—Ss. 73, 188, 191, 257, 260, 285.]

[*] The words "or assessor" were omitted by the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), S. 14 (1-1-1956).

Section 89 — Note 1 (contd.)
and order restoration of the property or the delivery of the net sale proceeds to the applicant. AIR 1948 Lah 151 (152) = ILR (1947) Lah 615 = 48 Cri L Jour 624 ** AIR 1942 Lah 214 (215) = 43 Cri L Jour 791 ** AIR 1919 Lah 57 (59) = 21 Cri L Jour 210 (DB) ** 1970 Raj LW 70.

(6) The High Court can also under its inherent powers order the attachment to be raised and the property restored in proper cases. AIR 1926 Lah 662 (663) = 27 Cri L Jour 1025.

(7) Where the attached property has been sold the applicant for restoration is only entitled to the sale proceeds. AIR 1924 Lah 420 (421) = 24 Cri L Jour 573.

2. "Within two years from the date of the attachment."— (1) It is not sufficient that the absconder should merely appear before the Court within the period of two years. He should also "prove" to the satisfaction of the Court within the said period that he did not abscond or conceal himself for the purpose of avoiding execution of warrant and that he had no notice of the proclamation. (1913) 14 Cri L Jour 237 (237) (DB) (Bom).

[See also AIR 1926 Lah 662 (663) = 27 Cri L Jour 1025.]

(2) The word "proves" in the section must be taken to include an offer to prove, that is, an application under the section. AIR 1924 Bom 485 (485) = 25 Cri L Jour 1293 (DB) ** AIR 1916 Lah 49 (52) = 17 Cri L Jour 414.

(3) Where no application is made under this section within two years from the date of the attachment, the proper remedy in such a case is to apply to the Government. AIR 1924 Bom 485 (485, 486) = 25. Cri L Jour 1293 (DB).

(4) Where property is forfeited to the Government, it can re-grant it to any one it thinks fit. AIR 1923 Bom 198 (199) (DB).

3. Who can apply under the section.— (1) The absconder should himself appear and prove that he did not abscond or conceal himself for the purpose of avoiding execution of a warrant or that he did not know of the proclamation, even if an application is made on his behalf under this section. (1913) 14 Cri L Jour 237 (237) (DB) (Bom) ** (1909) 10 Cri L Jour 260 (260) (DB) (Mysore).

SECTION 90 — SYNOPSIS

1. **Scope.**
2. **"May . . . . issue . . . . a warrant for his arrest."**
3. **"After recording its reasons in writing."**
4. **Form of warrant.**

1. Scope.— (1) Where an accused has been discharged under Section 253 of the Code by a subordinate Magistrate, the District Magistrate cannot issue a

91. Power to take bond for appearance.—When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court.

[1882—S. 91—Same; 1872 and 1861—Nil.]

Section 90 — Note 1 (contd.)

warrant for his arrest. ('93) 1893 Pun Re (Cr) No. 15, p. 67 (69) (DB).

(2) The Court cannot issue a warrant under this section for the arrest and appearance of a witness before a police-officer investigating a case. (1897) 24 Cal 320 (323) (DB).

(3) The Court cannot issue a warrant of arrest against a party who fails to appear in pursuance of an order passed under Section 145, sub-section (1) of the Code. 5 Cal WN 71 (72).

2. "May . . . . issue . . . . a warrant for his arrest."— (1) This section does not authorise a Court to issue warrants without discrimination. (1870) 13 Suth WR (Cr) 1 (5, 6) (DB).

(2) The section gives a discretion to the Court to issue a warrant of arrest Where the discretion is improperly exercised and none of the conditions contained in Clause (a) or Clause (b) is present, the issue of a warrant is illegal. ('09) 3 Ind Cas 575 (576) = 10 Cri L Jour 306 (Nag) ** (1870) 14 Suth WR (Cr) 20 (20) (DB).

[See also AIR 1957 Raj 382 (383) = 1957 Cri L Jour 1455 (1). (Discretion ought to be exercised judicially and not arbitrarily.)]

(3) The Court ought not in a case under Section 498 of the Penal Code straightway, without issuing a summons, issue a warrant of arrest to procure the appearance of the complainant's wife as a witness. (1907) 6 Cri L Jour 275 (275) (Lah).

(4) Where summons has been served and the summoned person does not appear, the Court must be satisfied that the summons has been duly served and in good time before issuing a warrant for his arrest. AIR 1941 Pat 206 (207) = 42 Cri L Jour 103.

(5) The report of a police-station writer is not admissible as evidence of due service under Clause (b). (1905-1906) 3 Low Bur Rul 116 (116).

(6) Where a person is absenting himself in response to a summons on the ground that he has sent a telegram intimating to the Court through his mukhtear that the High Court has stayed further proceedings in the matter, the Court will be justified in issuing a warrant for his arrest. (1912) 20 Ind Cas 142 (143) = 14 Cri L Jour 382 (DB) (Cal).

(7) A witness arrested under a warrant and brought before a Magistrate can be enlarged on bail. (1905) 2 Weir 39 (39).

(8) The Court has no power to order the physical delivery of the arrested person to another. AIR 1948 All 72 (74) = 49 Cri L Jour 1 (DB).

3. "After recording its reasons in writing."— (1) As to whether the provision in the section requiring the Court to record its reasons in writing before issuing a warrant of arrest is mandatory or is merely directory, and as to whether an omission to do so is an illegality the following views are held:

(a) The recording of reasons in writing is a necessary preliminary to the exercise of jurisdiction under the section and the failure to do so vitiates the warrant. AIR 1916 Mad 1063 (1064, 1065) = 17 Cri L Jour 132 ** AIR 1955 Punj 81 (Pr. 3) = 1955 Cri L Jour 698 ** AIR 1919 Lah 67 (68) = 19 Cri L Jour 443 ** Oudh SC 99 (113).

(b) An omission to record reasons in writing amounts only to a violation of a directory provision and is a mere irregularity. AIR 1920 All 245 (246) = 22 Cri L Jour 111 (DB) ** AIR 1924 Cal 1 (8, 9, 17) = 24 Cri L Jour 881 (FB).

4. Form of warrant.— (1) Warrant issued to a person charged with a bailable offence — Endorsement under Section 76, directing release of arrested person if security for his appearance is given is entirely in discretion of Court which issues warrant. AIR 1939 All 156 (156, 157) = 40 Cri L Jour 283.

Section 91 — Note 1

(1) A bond for appearance may be taken from an accused person charged with an offence or from a witness. AIR 1919 All 158 (158) = 20 Cri L Jour 384.

(2) A bond may be taken under this section even from a mukhtear for the appearance of a witness. 1901 All WN 35 (35, 36).

(3) There are other provisions in the Code enabling one Magistrate to take a bond from a person for appearance before another Court. (1900) 2 Bom LR 589 (591) (DB).

(4) The section does not empower the Magistrate to go to the houses of persons and compel them to execute bonds for appearance in Court. (1936) 37 Cri L Jour 837 (837) (Nag).

(5) In the case of a witness who is not in any way disinclined to appear when called for by the Magistrate, an ordinary recognizance is enough and he

92. Arrest on breach of bond for appearance.—When any person who is bound by any bond taken under this Code to appear before a Court does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

[1882—S. 92—Same; 1872: See S. 208, para 2; 1861—Nil.]

93. Provisions of this Chapter generally applicable to summonses and warrants of arrest.—The provisions contained in this Chapter relating to a summons and warrant, and their issue, service and execution, shall so far as may be, apply to every summons and every warrant of arrest issued under this Code.

[1882 — S. 93; 1872 — S. 158, Para. 1 and S. 185; 1861 — Ss. 75, 99.]

E.—Special Rules regarding Processes in certain cases.

93A. Special rules regarding processes in certain cases.—[Repealed by the Code of Criminal Procedure (Amendment) Act, 1958 (XXVI of 1958), S. 2 (3-9-1958).]*

[*] Now see Chapter VII-A and Section 105A.

NOTE.—The repealed Section 93A was as follows:—

"93A. Special rules regarding processes in certain cases—

(1) In this section, the expression "internal Court" means any Court in the territories to which this Code extends, and the expression "external Court" means

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Section 91 — Note 1 (contd.)

should not be called upon to furnish bail for his appearance. (1893) 21 Cal 642 (663, 664) (DB).

(6) A verbal order given to a witness by a Court to attend on a particular day is a valid order, the disobedience of which will be an offence punishable under Section 174 of the Penal Code. ('72) 1 Weir 88 (88).

(7) Under Section 114, Criminal P. C., a Magistrate has the power, as the Magistrate who had made an order under Section 112, to issue summons to require those persons to appear and, therefore, he is an officer who is empowered to issue a summons for the appearance of the persons proceeded against within the meaning of Section 91 and hence he is authorised to ask the persons proceeded against to furnish security also for appearance before him. AIR 1958 All 578 (583) = 1958 Cri L Jour 988.

(8) Section 91 in conferring power to demand security for appearance also granted by necessary implication the power to commit the person to custody where he has failed to give security for his attendance. AIR 1958 All 578 (584) = 1958 Cri L Jour 988.

(9) Surety bond for appearance executed at the instance of Police Officer — Forfeiture of it under Section 514 is not valid. 1964 All Cr R 567 ** ('64) 66 Punj LR 604.

Section 92 — Note 1

(1) It is the duty of the person for whose appearance a bond has been given, to appear at the time when he is bound to appear. AIR 1919 All 158 (158, 159) = 20 Cri L Jour 384.

(2) The section will not apply to a case where prior to the time fixed for the appearance, arrest by warrant is sought to be effected. AIR 1916 Mad 1063 (1064) = 17 Cri L Jour 132 (133).

(3) Where a witness who is bound over fails to appear in Court, it is for the Court and not for the party to take steps to compel his attendance. AIR 1938 Nag 103 (105) = 39 Cri L Jour 62.

(4) Where, it is alleged that the accused by his absence is hindering the case from being proceeded with, it is open to the trial Magistrate to apply the provisions of Section 92 of the Code. AIR 1955 Mys 96 (Pr. 3) = ILR (1955) Mys 145 = 1955 Cri L Jour 973.

(5) Where the Court which granted bail in bailable offence cancelled the bond, it is no abuse of process of Court to order re-arrest of offender. AIR 1967 All 394 (397) = 1967 Cri LJ 980 = ILR (1965) 2 All 740.

Section 93 — Note 1

(1) A Magistrate is competent, under this section read with Section 76, to admit to bail a recalcitrant witness arrested under Section 90. (1881) 2 Weir 39 (39).

(2) When a warrant is returned unexecuted due to obstruction to execution Court has jurisdiction to examine whether the obstruction caused is lawful or not. If it is lawful, Court will cancel the warrant. Otherwise it will send back the warrant for execution and take action in contempt against those responsible for preventing its execution. AIR 1960 Bom 502 (505) = 1960 Cri LJ 1553 = 62 Bom LR 383 (FB).

Section 93-A — Note 1

(1) A warrant for arrest received from a Court in Bhopal before its administration was assumed by the Central Gov-

any Court established or continued by the authority of the Central Government in exercise of its foreign jurisdiction or any Court in the State of Jammu and Kashmir or in the State of Manipur.

(2) Where an internal Court desires that a summons to or a warrant for the arrest of an accused person issued by it shall be executed at any place within the local limits of the jurisdiction of an external Court, it may send such summons or warrant, in duplicate, by post or otherwise, to the presiding officer of that Court to be served or executed; and where any such summons has been so served, the provisions of Section 74 shall apply in relation to such summons as if the presiding officer of the external Court to whom it is sent were a Magistrate in the territories to which this Code extends.

(3) Where an internal Court has received for service or execution a summons to or a warrant for the arrest of, an accused person issued by an external Court, it shall cause the same to be served or executed as if it were a summons or warrant received by it from another internal Court for service or execution within local limits of its jurisdiction; and where any such warrant of arrest has been so executed the person arrested shall, so far as possible, be dealt with in accordance with the procedure prescribed by Sections 85 and 86."

CHAPTER VII

OF PROCESS TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVABLE PROPERTY, AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED

A. — Summons to produce

94. **Summons to produce document or other thing.**—(1) Whenever any Court, or in any place beyond the limits of the towns of Calcutta and Bombay,

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Section 93-A — Note 1 (contd.)
ernment, was after the assumption, a warrant received from a Court continued under the authority of the Central Government and had to be executed under Section 93-C as if it were a warrant from a Court in the Indian Union. In such a case no question of extradition could arise. AIR 1952 All 365 (366) = ILR (1951) 1 All 736 = 1952 Cri LJ 690.

(2) Section 93-A is the only provision under which warrants received from external Courts can be executed. A warrant of arrest of a person forwarded to the Commissioner of Police, Madras, by the Inspector-General of Police, Jammu and Kashmir Government, cannot be executed by the Commissioner of Police, both for the reason that the Commissioner of Police is not a Court and that Section 93-A of the Code does not apply to him. AIR 1953 Mad 953 (Pr 8) = 1953 Cri LJ 1737.

(3) If a person is arrested in one State because he is wanted by another State for detention in that State such an arrest is illegal. If this is so in case of States inter se within the Union, a fortiori a person cannot be arrested in Madras for the purpose of detention in the State of Jammu and Kashmir. If the person is wanted for an offence, it must be clearly stated in the warrant, with necessary particulars and descriptions and Section 93-A must be strictly followed. AIR 1953 Mad 953 (Pr 9) = 1953 Cri LJ 1737.

(4) The City Magistrate of Srinagar in a case under Section 420, Penal Code, issued a warrant for the arrest of P whose address was at 91, Theatre Road, Calcutta, and sent the same for execution to the Chief Presidency Magistrate of Calcutta through the Government of West Bengal. As the place was outside the jurisdictional limits of the Chief Presidency Magistrate he forwarded the warrant for execution to the Commissioner of Police and ordered the accused to furnish bail for appearance before the Srinagar Magistrate : **Held** that the case was governed by Section 93-A and therefore the Chief Presidency Magistrate, not being the issuing Court, had no jurisdiction, as an external Court, to get it executed through the Commissioner of Police in a place outside his jurisdiction. The warrant was illegally executed and therefore the subsequent order of the Chief Presidency Magistrate directing the accused to furnish bail for appearance before the City Magistrate, Srinagar, was also bad. AIR 1955 Cal 277 (Pr. 4) = 1955 Cri LJ 791 (DB).

SECTION 94 — SYNOPSIS

1. **Custom cases.**
2. **"Court" meaning of.**
3. **"Document or thing."**

any officer in charge of a police-station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person* required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, Sections 123 and 124, or to apply to a letter, postcard, telegram or

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Section 94 — Synopsis (contd.)

4. **Effect of converting the thing, the subject-matter of an offence, into cash.**
5. **"Is necessary or desirable."**
6. **"Such Court."**
7. **"May issue summons."**
8. **To whom summons or order should be issued.**
9. **Where the document or thing is in the possession of an accused person.**
10. **Person having a lien on the thing ordered to be produced.**
11. **Summons or order to attend and produce.**
12. **Person summoned, if a witness.**
13. **Seizure of account books by the police.**
14. **Inspection of things or documents produced.**
15. **Documents produced, if can be compelled to be put in evidence.**
16. **Security for production.**
17. **Document protected under S. 126, Evidence Act.**
18. **Banker's books.**
19. **Effect of non-compliance with an order under the section.**
20. **This section and Article 20 (3) of the Constitution.**
21. **Revision.**

1. Custom cases.— (1) In a case for smuggling of goods instituted on complaint by Assistant Collector of Customs after obtaining sanction of Government documents referred to in Section 173 (4) Cr. P. C. cannot be made available to accused by resorting to Section 94. **AIR 1970 SC 962 (966).** (69 Bom LR 421, **Reversed.)**

(2) Customs officers making investigations before lodging complaint — Statement of witnesses recorded during investigation — Offer by Officers to make available to accused copies after tendering them in evidence — Accused cannot get copies by resort to Sec. 94. AIR 1966 Bom 253 (266) = 1966 Cri LJ 1395 = 67 Bom LR 748.

2. "Court" meaning of.— (1) Civil Court conducting an enquiry under Section 476 of the Code, does not cease to be a Civil Court and, therefore, cannot have recourse to this section in such proceedings. AIR 1942 Nag 73 (73).

3. "Document or thing".— (1) The words "document or thing" are general and cover every document or thing provided the production and inspection thereof are considered necessary or desirable or will serve the ends of justice in any investigation, inquiry, trial or other proceeding before a Court or police-officer. AIR 1914 Lah 587 (590) = 16 Cri LJ 225 ** (1892) 19 Cal 52 (64) (DB).

(2) The words "document or thing" will include not only documents or things which form the subject of the offence under investigation but also those which are or can be used as evidence in support of the prosecution. AIR 1934 Bom 74 (76) = 35 Cri LJ 1028 (DB).

(3) Word "thing" refers to physical or material object — Summons for purpose of taking specimen signature or handwriting is not for production of any document or thing. AIR 1970 Mad 85 (86, 87).

4. Effect of converting the thing, the subject-matter of an offence, into cash.— (1) Where the currency notes which were the subject of criminal breach of trust were encashed it was held that if the proceeds could be reasonably connected with the subject-matter of the charge, the Magistrate has power to order their production in Court. (1892) 19 Cal 52 (61, 62) (DB).

5. "Is necessary or desirable".— (1) The only condition laid down for passing order under Section 94 (1) is that the Court must be satisfied that document is necessary or desirable for any of the purposes mentioned in sub-s. (1) which includes trial. (1967) 69 Bom LR 421 (440) (DB) = ILR (1969) Bom 349 (DB) ** (1969) 1 Andh WR 530 (533) =

other document or any parcel or thing in the custody of the Postal or Telegraph authorities.

[1882 — S. 94; 1872 — S. 365; 1861 — Nil.] [Cf: S. 19E of Foreign Exchange Regulation Act, 1947 (VII of 1947).]

[*] For protection against testimonial compulsion granted to persons accused of any offence, see Art. 20 (3) of the Constitution of India.

STATE AMENDMENTS

Gujarat

Section 15 of the Ahmedabad City Courts Act, 1961 (Guj. Act XIX of 1961) (which Act has constituted the City of Ahmedabad a Sessions division) runs as follows :—

"15. In the Criminal Procedure Code for the words "Presidency-town" and the words 'Greater Bombay" wherever they occur, the words "City of Ahmedabad" shall be substituted unless the context otherwise requires."

Maharashtra

In its application to the State of Bombay, in sub-section (1) of S. 94—

(1) for the words "beyond the limits of the towns of Calcutta and Bombay" substitute the words "beyond the limits of Greater Bombay".—Bom. Act XXIII of 1951, S. 2 and Schedule (1-7-1953).

(2) the words "in any place beyond the limits of Greater Bombay" shall be deleted—Bom. Act XX of 1956, S. 4 (18-4-1956).

Section 94 — Note 5 (contd.)

(1969) Mad LJ (Cri) 435. (The power under Section 94 cannot be equated to his being compelled to exercise that power whenever the accused prays for the production of certain documents.) ** AIR 1962 Guj 290 (292) = 1962 (2) Cri LJ 610 = (1962) 3 Guj LR 833.

(2) The word "necessary" pre-supposes that evidence is relevant under provisions of Indian Evidence Act. It also pre-supposes that the Court must be satisfied that document is necessary. (1967) 69 Bom LR 421 (440) = ILR (1969) Bom 349 (DB).

(3) Whether production of a document or thing is necessary or desirable is to be decided by the Court before issuing the summons. AIR 1943 Sind 51 (53) = 44 Cri LJ 324 (DB) ** AIR 1966 Bom 253 (266) = 1966 Cri LJ 1395 = 67 Bom LR 748.

(4) The document or thing called for may turn out to be wholly irrelevant to inquiry but so long as it is considered necessary or desirable for the purposes of the inquiry, the power is there. (1892) 19 Cal 52 (64) (DB).

(5) Where the relevancy of the documents asked for does not speak for itself, and the application itself discloses no grounds why production of the documents is necessary or desirable, it is the duty of the Magistrate to consider whether their production is necessary or desirable, and it is not open to him to evade his responsibility on the plea that he might have to hear the nature of the defence which the accused might make. AIR 1943 Sind 51 (54) = 44 Cri LJ 324 (DB).

(6) The expression 'for the purpose of investigation' cannot be interpreted as 'during the investigation'. Where a Magistrate on the basis of a statement on oath made before him by a police officer issues a search warrant in connection with or for the purpose of an investigation into an offence even if such an offence is non-cognisable, it can be said that the issue of a search warrant itself indicates an implied order to investigate into the offence if such order should be necessary. 1964 Mad LJ (Cri) 361 = (1964) 2 Mad LJ 5 (11).

6. "Such Court."— (1) Magistrate cannot, on a telegram from another Magistrate requesting him to seize certain books of account of a person in the jurisdiction of the former, issue a summons for their production before himself. (1897) Rat 880 (880) (DB).

7. "May issue summons".— (1) No right is conferred on any party to a Criminal proceeding to obtain production of any document or thing under S. 94. AIR 1966 Bom 253 (266) = 1966 Cri LJ 1395 = 67 Bom LR 748.

(2) It is clear that the provisions of the section can be invoked at any stage of any investigation enquiry or trial as is indicated by the expression 'whenever', used at the commencement of the section. AIR 1966 Bom 253 (266) = 1966 Cri LJ 1395 = 67 Bom LR 748 ** (1967) 69 Bom LR 421 (440) = ILR (1969) Bom 349 (DB) ** (1964) 2 Mad LJ 5 (9). (If under Section 94 a Court can issue summons for production of document for the "purpose of investigation", that would be at a stage before enquiry or trial.) ** AIR 1963 Andh Pra 362 (363, 364, 365) = 1963 (2) Cri LJ 253 = (1963) 1 Andh WR 851 (DB) ** AIR 1961 Mys 198 (201) = 1961 (2) Cri LJ 509 =

Section 94 — Note 7 (contd.)
39 Mys LJ 389 ** (1912) 13 Cri LJ 693 (700) = 39 Cal 953 (PC). (Process for production may be issued even before proceedings of any kind are initiated and in view of an enquiry "about to be made" under the Code.)

(3) The issue of a summons is in the discretion of the Court to be exercised judicially. AIR 1940 Bom 361 (361) = 42 Cri LJ 58 (DB) ** 1966 Bom 253 (266) = 1966 Cri LJ 1395 = 67 Bom LR 748 ** AIR 1962 Guj 290 (292) = 1962 (2) Cri LJ 610 = (1962) 3 Guj LR 833.

(4) In determining whether the production of a particular document or thing is necessary or desirable, the Court has to satisfy itself that the document or thing has a bearing upon, and is relevant to, the case. AIR 1941 Bom 259 (260) 42 Cri LJ 831 (DB) ** AIR 1936 Nag 250 (251) = 38 Cri LJ 482 ** AIR 1966 Bom 253 (266) = 1966 Cri LJ 1395 = 67 Bom LR 748 ** 1970 Cri LJ 618 (620) = (1969) 1 Andh WR 530.

(5) The discretion should be exercised in such a way as not to conflict with the policy of the Legislature as disclosed in Section 162 of the Code and in Sections 123 to 125 of the Evidence Act. AIR 1940 Bom 361 (361) = 42 Cri LJ 58 (DB) ** AIR 1962 Guj 290 (292) = 1962 (2) Cri LJ 610 = (1962) 3 Guj LR 833.

(5a) Unless and until the Court is satisfied in each case taking into consideration the facts and circumstances that it is necessary and desirable to call for the documents the Court is not bound or obliged to send for such document. 1970 Cri LJ 618 (620) = (1969) 1 Andh WR 530.

(6) Complainant can apply for summoning document even after the preliminary inquiry under section 202. AIR 1953 All 781 (782) = 1953 Cri LJ 1806.

(6-a) The consideration or satisfaction contemplated under the section is a proper, reasonable and objective one and the Court has to give justiciable reasons for its conclusion to enable the appellate or revisional Court to know whether the Court had applied its mind to the point at issue and decided the same in accordance with law. 1970 Cri LJ 618 (620).

(7) The Court might also consider whether such document or thing is being suppressed or might be tampered with or destroyed by the party in whose possession it is or might be lost altogether or whether it would come before it in a normal way without resorting to the provisions of Section 94. AIR 1966 Bom 253 (266) = 1966 Cri LJ 1395 = 67 Bom LR 748.

(8) It is necessary and desirable in the interest of ensuring fair trial that the prosecution should be compelled to furnish copies of statements of witnesses whom the prosecution proposed to examine. And the provisions of Sec. 94 should be pressed into service provided the conditions laid down therein are fulfilled. (1967) 69 Bom LR 421 (442, 443) (DB).

(9) Warrant case instituted on complaint by Customs Officer — Customs authorities making investigation before lodging complaint — Statements of witnesses recorded during investigation. The accused has a right to copies of such statements of witnesses whom the prosecution is going to examine or documents on which the prosecution is going to rely and if the prosecution withholds or altogether refuses to supply copies of such statements the Magistrate can resort to the provisions of Section 94. AIR 1966 Bom 253 (266) = 1966 Cri LJ 1395 = 67 Bom LR 748. (Prosecution agreeing to make copies available—No occasion for use of powers under Section 94.)

(10) Application under Section 94, for calling for certain document from concerned department — Even the documents forming part of unpublished official record and relating to any affairs of State can be given in evidence if Head of Department concerned grants permission for it. AIR 1965 Tripura 33 (33) = (1965) (2) Cri LJ 415.

(11) Section 94 being a general provision under which the power can be exercised by a Court whenever occasion arises, would also include cases where even the accused applies to the production of documents. The power contained in Section 251-A (9) or Section 257 cannot strictly be said to be the only mode of the exercise of the power under Section 94, while no doubt it is one of the occasions when it exercises its power to summon the documents. AIR 1963 Andh Pra 362 (363, 364, 365) = 1963 (2) Cri LJ 253 = (1963) 1 Andh WR 85 (DB). ((1955) Andh WR 409 **Differed from.)**

[See however 1955 Andh WR 409 (410).]

(12) The application made by the advocate of the complainant to produce the original letter which was received from the State Government by the complainant from the brief of the advocate of the accused -- No basis for supposing that the letter was in the brief of the advocate — Application made not to assist Court in arriving at truth but humiliating the advocate of the accused and screening his client, the complainant, from apprehended perjury; **Held** that in the circumstances of the case the order passed by the Magistrate

Section 94 — Note 7 (contd.)

under Section 94 (1) was obviously illegal and must be set aside. AIR 1962 Guj 290 293, 295) = 1962 (2) Cri LJ 610 = (1962) 3 Guj LR 833.

(13) Under Section 94 Cr. P. C. power is given to the Court to issue summons to any person to produce documents in his possession or power. To this general power of Court an exception as it were, has been mentioned in Section 95 with regard to the documents in the possession of the postal and telegraph department. 1969 Cri LJ 1190 (1192) = 70 Punj LR 819 ** AIR 1965 Raj 160 (162) = 1965 (2) Cri LJ 408 = 1965 Raj LW 207 ** AIR 1960 All 405 (407) = 1960 Cri LJ 871 = 1960 All WR (HC) 158.

(14) As to the difference between S. 94 (3) and Order 11, Rule 19 (2), Civil P. C. see the following. 1957 Cri LJ 134 (135) (Madh B).

8. To whom summons or order should be issued.— (1) The Court can make an order for discovery against:—

- (a) A person suspected though not accused of an offence. AIR 1919 All 207 (208) = 20 Cri LJ 174.
- (b) Third party such as a solicitor. (1936) 37 Cri LJ 825 (825) = 62 Cal 1037 (DB).
- (c) The police. AIR 1925 Mad 424 (425). = 26 Cri LJ 426.
- (d) Public officer. AIR 1940 Mad 746 (747). (Assistant Commissioner of Salt and Revenue.)

(2) No order can, however, be passed against an Income-tax Officer to produce the Income-tax returns or statements relating thereto, under this section. AIR 1950 East Punj 306 (Prs. 8, 11, 33) = ILR (1950) Punj 283 = 51 Cri LJ 1273 (FB) ** **AIR 1962 SC 1121 (1122) = 1962 (2) Cri LJ 254.**

(3) Statements made during investigation of different offences — No question of privilege involved in granting certified copies of statements — Prosecution should be directed to make those statements available in Court to enable accused to take .certified copies. AIR 1967 Ori 189 (190) = 1967 Cri LJ 1552 = 33 Cut LT 576.

(4) Commissioner of Commercial Taxes cannot be compelled to produce documents mentioned in Sec. 25 of the Bengal Finance Act 1941 unless they are required for the purpose of a prosecution under Indian Penal Code in respect of the statements, returns, accounts, documents or evidence. He is not required to produce documents for the purpose of prosecution for any and every section of I. P. C. (1966) 18 STC 429 (432) (Cal) (DB).

9. Where the document or thing is in the possession of an accused person.— (1) Per Majority (Shah, J., Contra); Section 94 on its true construction, does not apply to an accused person under trial. **AIR 1965 SC 1251 (1259, 1260) = 1965 (2) Cri LJ 256 = 1965 (2) SCR 457** ** AIR 1951 Cal 101 (FB), **Overruled** 12 Cal WN 1016 and ILR 38 Cal 304; 9 Ind Cas 564 (Cal), **Approved.** AIR 1963 Guj 178, **Affirmed.)** ** (1966) 2 Mad LJ 240 (241) = 1966 Mad LJ (Cri) 669 ** AIR 1963 Guj 178 (181 to 183) = 1963 (2) Cri LJ 135 = (1963) 4 Guj LR 638.

[But see AIR 1951 Cal 101 (Prs 17, 31) = 52 Cri LJ 946 (FB). (12 Cri LJ 98 (Cal); 8 Cri LJ 224 (Cal) and 38 Cal 304 = 12 Cri LJ 8 ** AIR 1918 Pat 590 (592) = 19 Cri LJ 217 ** AIR 1915 Mad 17 (17) = 13 Cri LJ 493 (494). (Notwithstanding that it might incriminate him.) ** 1957 Nag LJ 302 (303). (AIR 1951 Cal 101 (FB), **Foll.)** ** (1892) 19 Cal 52 (64) (DB) ** (1888) 15 Cal 109 (122) (DB).]

10. Person having a lien on the thing ordered to be prduced.— (1) The mere fact that person in possession of the articles ordered to be produced has a lien over them, does not affect power of the Court to order their production and is not a sufficient reason for their non-production. (1936) 163 Ind Cas 224 (225, 226) = 37 Cri LJ 825 (DB) (Cal).

11. Summons or order to attend and produce.— (1) Magistrate should not make an order for production unless there are materials before him to justify his doing so. (1888) 15 Cal 109 (141) (DB).

(2) The summons should not be general in terms but should distinctly specify the particulars of the document or thing called for. (1911) 12 Cri LJ 8 (9) = 38 Cal 304 (DB).

(3) A police officer desiring to make an order for production of documents must issue a written order. AIR 1943 Lah 28 (31) = 44 Cri LJ 301 (DB).

(4) Application under Section 94 filed by accused for production of certain documents. Magistrate without recording reasons for not calling these documents at that stage passed an order directing the prosecution to proceed. Magistrate held could not refuse to call these documents, merely on the ground that these could be summoned in defence, if at all needed. AIR 1955 Punj 17 (Pr 4) = 1955 Cri LJ 315. (AIR 1935 Sind 13 = 36 Cri LJ 581 (FB), **Foll.)**

(5) Stopping of payment of certain bills presumably with a view to passing of some order with regard to the amount due to the accused, at the termination of the proceedings is not covered by this section. AIR 1951 Assam 24 (Pr. 5) = ILR 1951-3 Assam 27.

12. Person summoned, if a witness.— (1) Person summoned merely to produce

Section 94 — Note 12 (contd.)

a document or thing does not become a witness by appearing in Court for its production and he cannot be cross-examined unless and until he is cited as a witness in the proceedings. See AIR 1937 Oudh 331 (337) = 38 Cri LJ 491.

13. Seizure of account books by the Police.— (1) A Magistrate, on taking cognizance of a complaint, may issue a summons for production of accounts relevant to inquiry but he is not competent to pass an order directing the police to take possession of the same. (1910) 11 Cri LJ 525 (526) = 38 Cal 68 (DB).

(2) Where a warrant is issued under Section 96 in aid of an order under Section 94 the thing seized comes into the custody of the court and their disposal thereafter is within its power and direction. The destination indicated under Section 94 is not necessarily the destination once the court acts under Section 96. ILR (1959) Ker 165 (172).

(3) Even a police officer obtaining a document or thing under Section 94 or under Section 165 and 166 Criminal Procedure Code is bound to see that no unnecessary hardship is caused to the person in possession. ILR (1959) Ker 165 (171).

14. Inspection of things or documents produced.— (1) Court has jurisdiction to allow parties to inspect the documents or things produced. (1888) 15 Cal 109 (128, 143) (DB) ** AIR 1935 Sind 13 (20) = 36 Cri LJ 581 (FB).

(2) Inspection of documents must be made in Court after their production and not in any other place. (1903) 5 Bom LR 978 (979) (DB).

(3) The inspection ought to be made in the presence of the person producing the document or thing and the Magistrate should give definite instructions as to where and when the inspection is to be held and by which officer. AIR 1920 Cal 349 (350) = 21 Cri LJ 577 (DB).

(4) Usually, inspection should only be allowed of particular documents shown to be relevant and not of documents in bulk. AIR 1941 Bom 259 (260) = 42 Cri LJ 831 (FB).

(5) A party producing documents in compliance with the Court's order is not precluded from objecting to their subsequent inspection. AIR 1938 Bom 33 (35) = 39 Cri LJ 207 (SB).

(6) Unless the party seeking inspection makes out a prima facie case in support of his charge and in support of his allegation that the documents in question would be relevant to support that charge, inspection should not be allowed. AIR 1941 Bom 259 (260) = 42 Cri LJ 831 (FB) ** AIR 1938 Bom 33 (36) = 39 Cri LJ 207 (SB).

(7) An accused person should be allowed a reasonable opportunity of inspecting the documents of the prosecution. See AIR 1946 All 227 (229, 230) = 47 Cri LJ 1041.

15. Documents produced, if can be compelled to be put in evidence.— (1) Section 163 of the Evidence Act does not apply to criminal proceedings. Accused summoned to produce a document under this section and the same is inspected by the prosecution. Accused cannot insist upon the prosecution putting it in evidence and it is for the prosecution to determine whether it is to be put in evidence or not. (1888) 15 Cal 109 (126, 143) (DB).

[See also AIR 1933 Cal 65 (66) = 34 Cri LJ 283 (DB).]

16. Security for production.— (1) Section 94 does not enable a Court to demand security for production of articles when required. The Court can only issue a summons for their production in Court. (1903) 7 Cal WN 522 (524).

17. Document protected under S. 126, Evidence Act.— (1) Sub-section (3) does not exempt documents protected under Section 126, Evidence Act, and the production of such documents is incumbent under Section 162 of the Evidence Act, notwithstanding any objection which there may be as to the production or admissibility. The validity of the objection has to be decided by the Court after production. AIR 1939 Mad 914 (914) = 41 Cri LJ 186 ** AIR 1962 Guj 290 (292) = 1962 (2) Cri LJ 610 = (1962) 3 Guj LR 833. (An order under sub-section (1) of Section 94 is not illegal merely because it violates the privilege conferred by Section 126, Evidence Act.)

18. Bankers' books.— (1) Officer in charge of a police-station conducting an investigation is entitled to inspect bankers' books even without an order of Court. Section 5, Bankers' Books Evidence Act (18 of 1891), does not prevent him from doing so. AIR 1937 Lah 160 (162) = 38 Cri LJ 435.

(2) Enquiry or trial before a Magistrate — Question of production and inspection of bankers' books in such a proceeding would be governed by the Bankers' Books Evidence Act, and not by this section. AIR 1938 Bom 33 (35) = 39 Cri LJ 207 (SB). (**Dissenting from** ILR (1938) Bom 31.)

(3) It is not the practice of the Court to allow inspection of bankers' books under the Bankers' Books Evidence Act, unless a prima facie case is made out for thinking that there is some matter on which the books of the bank are bound to be relevant. AIR 1938 Bom 33 (37) = 39 Cri LJ 207 (SB).

95. Procedure as to letters and telegrams.—(1) If any document, parcel or thing in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate,° High Court or Court of Session, wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph authorities, as the case may be, to deliver such document, parcel or thing to such person as such Magistrate or Court directs.

Section 94 — Note 18 (contd.)

(4) Commercial concerns other than banks are equally entitled to protection from disclosure of matters which have nothing to do with the case before the Court. AIR 1943 Sind 51 (53) = 44 Cri LJ 324 (DB).

19. Effect of non-compliance with an order under the section.— (1) Summons under this section not complied with. Search warrant may be issued under Section 96. (1903) 5 Bom LR 978 (979) (DB) ** AIR 1915 Mad 17 (18) = 13 Cri LJ 493 (494).

(2) Where a summons is issued without the Court considering it necessary or desirable for the purposes of any investigation, trial or other proceeding, it is illegal and a disobedience thereof is not punishable under Section 175 of the Penal Code. AIR 1918 Pat 590 (592) = 19 Cri LJ 217.

20. This section and Article 20 (3) of the Constitution.— (1) A notice to produce a document is addressed to the party concerned and his production in compliance therewith constitutes a testimonial act by him within the meaning of Article 20 (3) of the Constitution of India. **AIR 1954 SC 300 (Pr 18) = 1954 SCR 1077 = 1954 Cri LJ 865** ** AIR 1956 Mad 165 (Pr 2) = 1956 Cri LJ 248 (1) (DB) ** AIR 1959 All 219 (220) = 1959 Cri LJ 410 ** (1961) 2 Cri LJ 56 (57) (All). (Requiring the accused charged for forgery to produce the alleged forged document under Section 94 Cr. P. C. is violation of Art. 20 (3).) ** AIR 1961 Bom 242 (243) = 1961 (2) Cri LJ 200 = 63 Bom LR 559 (DB) ** AIR 1960 J & K 55 (56) = 1960 Cri LJ 470 ** AIR 1961 Guj 137 (139) = 1961 (2) Cri LJ 338 = (1961) 2 Guj LR 415 (DB). (Article 20 (3) is not confined to old testimony but also extends to any compulsory process for production of evidenciary documents which are reasonably likely to support the prosecution against the accused.)

[But see AIR 1957 Madh B 68 (70) = 1957 Cri LJ 195 (DB) ** 1957 Nag LJ 302 (303). (Guarantee under Article 20 (3) is confined to oral evidence only. AIR 1951 Cal 101 (FB), **Foll.** — Not good law in view of Supreme Court decision.)]

(2) The answer to the question whether the order requiring the production of a document by an accused person is hit by the prohibition contained in Clause (3) of Article 20 of the Constitution would depend upon the nature of that document. AIR 1964 Punj 325 (327) = 1964 (2) Cri LJ 199 = 1964 Cur LJ 306 (DB).

(3) Protection against testimonial compulsion envisaged by Article 20 (3) not applicable in case of public documents — Food Grains Stock Register in custody of accused — Order for production under Section 94 — Document being public document Article 20 (3) cannot be invoked and accused must comply with it — Accused incurs penalty prescribed by law on his failure to produce. AIR 1958 Orissa 1 (4) = ILR (1957) Cut 564 = 1958 Cri LJ 59 (DB).

(4) Section 94 does not contravene Article 20 (3) of the Constitution. AIR 1951 Cal 101 (Pr 31) = 52 Cri LJ 946 (FB).

21. Revision.— (1) Except for very good reasons, the High Court should not interfere with the discretion conferred on trial Courts in matter of summoning documents. **AIR 1970 SC 962 (967).** (69 Bom LR 421, **Reversed.)**

(2) High Court can interfere in revision where a Magistrate has either refused to exercise a discretion vested in him by law or has exercised that discretion in an improper manner or on improper grounds. AIR 1940 Bom 361 (361, 362) = 42 Cri LJ 58 (DB) ** AIR 1963 J and K 20 (22) = 1963 (1) Cri LJ 356.

(3) Magistrate refused erroneously to make an order for production of certain currency notes in possession of accused and his solicitor High Court set aside the order and directed the Magistrate to proceed according to law. (1892) 19 Cal 52 (60) (DB).

Section 95 — Note 1

(1) Section 95 has to be read along with Section 94. AIR 1959 All 337 (340) = 1959 Cri LJ 668 ** AIR 1965 Raj 160 (161) = 1965 (2) Cri LJ 408 = 1965 Raj LW 207.

(2) Before Section 95 (2) can be utilised it is necessary (1) that the document, parcel or thing should in the opinion of a Magistrate be such that its production is necessary or desirable; (2) the document, parcel or thing must be required for the purpose of investigation, inquiry, trial or some other proceedings; (3) the decision that the document, parcel or thing is of that nature and is required for one of those purposes must be the

(2) If any such document, parcel or thing is, in the opinion of any other Magistrate, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document, parcel or thing pending the orders of any such District Magistrate, Chief Presidency Magistrate* or Court.

[1882 — S. 95; 1872 — S. 369; 1861 — Nil.]

[*] Chief Magistrate in the City of Ahmedabad has the powers and exercises the jurisdiction of a Chief Presidency Magistrate.—See Guj. Act XIX of 1961, S. 14 (3) (4-11-1961).

STATE AMENDMENTS

Maharashtra

In its application to the State of Maharashtra, in sub-section (2) of Section 95 for the words "District Superintendent of Police" substitute the words "Superintendent of Police."—Maha. Act XLVI of 1962, S. 3 and Sch. (1-7-1964).

Punjab: Haryana: Chandigarh

In its application to the States of Punjab and Haryana and the Union Territory of Chandigarh, in Section 95, after the words "District Magistrate", wherever occurring, substitute the words "Chief Judicial Magistrate."—Punj. Act XXV of 1964, S. 2 and Sch., Pt. I, item (25) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Union Territories (except Chandigarh)

In its application to the Union territories, in S. 95, after the words "District Magistrate" wherever they occur, insert the words "Chief Judicial Magistrate".—Act 19 of 1969, S. 3 and Sch., item 26 (in Delhi on 2-10-1969.)

West Bengal

In its application to the State of West Bengal, in S. 95, after the words "District Magistrate", in the two places they occur insert the words "Sub-divisional Judicial Magistrate".—W. B. Act VIII of 1970, S. 2 and Sch., item 36.

B. — Search-warrants.

96. When search-warrant may be issued.—(1) Where any Court has reason to believe that a person to whom a summons or order under Section 94 or a requisition under Section 95, sub-section (1), has been or might be addressed,

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Section 95 — Note 1 (contd.)
decision of any district Magistrate, Chief Presidency Magistrate, High Court or Court of Session; (4) the order under Clause (2) of Section 95 can be passed not by the District Magistrate, Chief Presidency Magistrate, High Court or Court of session making the decision above mentioned but by some other Magistrate. AIR 1959 All 337 (340) = 1959 Cri LJ 668 ** 1969 Cri LJ 1190 (1192) = 70 Pun LR 819.

(3) Order passed by District Magistrate directing the post-master to withhold delivery of all letters, money orders or any other postal communication addressed to the applicant firm — Magistrate not applying his mind to question whether those things would be necessary to be produced for any of purposes in Section 94 — Order held was invalid. AIR 1959 All 337 (340, 341) = 1959 Cri LJ 668.

[See however AIR 1960 Punj 412 (414) = 1960 Cri LJ 1134 = 62 Pun LR 646.]

(4) An order under Section 95 directing the postal authorities to deliver 'parcles, letters, etc.,' addressed to accused, to a certain person is vague and is liable to be misinterpreted and therefore the vague portion should be quashed. AIR 1960 All 405 (407) = 1960 Cri LJ 871 = 1960 All WR (HC) 158.

(5) Things which are to come into custody of postal authorities in future cannot be subject matter of order under Section 95. AIR 1960 All 405 (407) = 1960 Cri LJ 871 = 1960 All WR (HC) 158 ** AIR 1965 Raj 160 (162) = 1965 (2) Cri LJ 408 = 1965 Raj LW 207.

(6) 'Document, parcel or thing' includes Postal money order. AIR 1960 Punj 412 (414) = 1960 Cri LJ 1134 = 62 Pun LR 646.

SECTION 96 — SYNOPSIS

1. **Scope.**
2. **This section and Article 20 (3) of the Constitution.**
3. **This section and Article 19 (1) (f) of the Constitution.**
4. **"Court."**
5. **"Has reason to believe."**
6. **Record of reasons.**

will not or would not produce the document or thing as required by such summons or requisition,

or where such document or thing is not known to the Court to be in the possession of any person,

or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) Nothing herein contained shall authorise any Magistrate other than a District Magistrate or Chief Presidency Magistrate* to grant a warrant to search for a document, parcel or other thing in the custody of the Postal or Telegraph authorities.

[1882 — S. 96; 1872 — S. 366, S. 368 Paras. 1 to 3, S. 369 Para. 1; 1861 — S. 114.]

[*] Chief Magistrate in the City of Ahmedabad has the powers and exercises the jurisdiction of a Chief Presidency Magistrate—See Guj. Act XIX of 1961, Section 14 (3).

Section 96 — Synopsis (contd.)

7. **"Person," if would include an accused person.**
8. **"Document or thing."**
9. **General search or inspection.**
10. **"May issue a search-warrant."**
11. **Seizure without search-warrant.**
12. **Search-warrants under special or local laws.**
13. **Security for production.**
14. **Inspection.**
15. **Power to search includes power to take into possession.**
16. **Power to invoke aid in reading documents.**
17. **Form of search-warrant.**
18. **Magistrate, if can search himself.**
19. **Resistance to illegal search.**
20. **Revision.**

1. Scope. (1) The first two clauses of sub-section (1) relate back to and are governed by the provisions of Sections 94 and 95. ('98) 22 Bom 949 (956) (DB) ** (1890) 13 Mad 18 (20) (DB).

(2) The third clause of Section 96 (1) is independent of Sections 94 and 95. AIR 1954 Bom 104 (106) (DB).

(3) An order of a Magistrate for the issue of a search-warrant for the seizure of the bus is without jurisdiction. AIR 1939 Cal 45 (45, 46) = 40 Cri LJ 216 (DB).

(4) Magistrate is prohibited from issuing a search-warrant against the Income-tax Officer for production of a document referred to in Section 54 (1), Income-tax Act. AIR 1950 East Punj 306 (Prs 3, 11, 34) = ILR (1950) Punj 283 = 51 Cri LJ 1273 (FB).

(5) The Code is not exhaustive in the matter of search warrants. AIR 1954 Mad 983 (Pr 25) = ILR (1955) Mad 887 = 1954 Cri LJ 1521 (DB).

2. This section and Article 20 (3) of the Constitution. — (1) Section 96 cannot be read as importing any statutory recognition of a theory that search and seizure of documents is compelled production thereof. Hence searches made in pursuance of warrants issued under Section 96, cannot be challenged as illegal on the ground of violation of fundamental right under Article 20 (3) of the Constitution of India. **AIR 1954 SC 300 (Prs 18 and 19) = 1954 SCR 1077 = 1954 Cri LJ 865** ** AIR 1957 Madh B 68 (70) = 1957 Cri LJ 195 (DB) ** AIR 1966 Goa 23 (26) = 1966 Cri LJ 1258 (SB).

(2) There is nothing in Article 20 or in any of its other articles to prohibit the police from searching either the person of the accused or the premises in the manner laid down by the Criminal Procedure Code. AIR 1955 Mad 685 (Pr 3) = 1955 Cri LJ 1602 (1).

(3) A notice to the accused to show cause why his premises should not be searched for the purpose of seizing certain incriminating documents practically amounts to stating that either he produces the documents, or else the premises will be searched. The notice will amount to a testimonial compulsion and will stand on the same footing as the summons to produce the same documents. Such a notice offends Article 20 (3). AIR 1955 Mad 716 (Pr 2) = 1955 Cri LJ 1602 (2).

(4) Guarantee against testimonial compulsion — Scope and extent — Order requiring accused to produce self-incriminating document — Article 20 (3) is violated. (1961) 2 Cri LJ 55 (57) (All).

3. This section and Article 19 (1) (f) of the Constitution. — (1) No question of violation of Article (19)-(1) (f) is involved where search warrants which purport to be under the first alternative of

STATE AMENDMENTS

Punjab: Haryana: Chandigarh

In its application to the States of Punjab and Haryana and the Union Territory of Chandigarh, in sub-section (2) of Section 96, after the words "District Magistrate", insert the words "or Chief Judicial Magistrate."—Punj. Act XXV of 1964, Sec. 2 and Sch., Pt. I, item (26) (2-10-1964) and Act 31 of 1966 Ss. 29 and 89 (1-11-1966).

Union Territories (except Chandigarh)

In its application to the Union territories in Section 95, after the words "District Magistrate", insert the words "or Chief Judicial Magistrate."—Act 19 of 1969, S. 3 and Schedule, item 27 [the Act has now been enforced so far in Delhi only on 2-10-69.]

Section 96 — Note 3 (contd.)
Section 96 (1) of the Cr. P. Code are issued. **AIR 1954 SC 300 (Pr 2) = 1954 SCR 1077 = 1954 Cri LJ 865.**

(2) Where more than two years elapsed since the seizure of document and there was no likelihood of taking the matter to Court, High Court ordered return of the documents. (1964) 2 Mad LJ 5 (12).

4. "Court." — (1) A Magistrate acting judicially is a Court within the meaning of the Code. AIR 1919 Mad 620 (622) = 20 Cri LJ 90 (DB) ** AIR 1955 Him Pra 51 (Pr 10) = 1955 Cri LJ 1585.

[See also AIR 1953 Orissa 49 (Pr 3) = 1953 Cri LJ 514 (DB).

(2) Schedule V, Form No. 8 shows that a search-warrant may be issued before proceedings of any kind are initiated and in view of an enquiry about to be made. (1912) 13 Cri LJ 693 (700) = 39 Cal 953 (PC).

(3) Magistrate with third class powers — Such Magistrate with others constituting Bench of Magistrates — He can issue search warrant under Section 96. (1963) 2 Cri LJ 61 (62) (All).

5. "Has reason to believe." — (1) Act of issuing a search-warrant is a judicial act. (1912) 13 Cri LJ 693 (700) = 39 Cal 953 (PC) ** AIR 1966 Goa 23 (27) = 1966 Cri LJ 1258 (SB) ** (1961) 42 ITR 753 (759) (Cal).

(2) Before issuing search-warrant Magistrate is bound to apply his mind to the facts and weigh the circumstances and then make up his mind on the question. AIR 1953 Orissa 153 (Prs 12, 13) = 1953 Cri LJ 1041 (DB) ** (1951) 1 Mad LJ 12 (13) ** AIR 1920 Cal 43 (44) = 21 Cri LJ 313 (DB).

(3) Mere statement in an affidavit that, in the opinion of the deponent a summons may not have the desired effect or a mere statement by a police officer that it is necessary to issue a search-warrant is not sufficient to justify the issue of a search-warrant. AIR 1918 Mad 587 (587) = 18 Cri LJ 837 ** AIR 1920 Cal 43 (44) = 21 Cri LJ 313 (DB).

(4) It is a condition precedent to the issue of a search-warrant that one or other of the circumstances mentioned in the section should exist. (1911) 12 Cri LJ 175 (177) (All) ** AIR 1957 Orissa 130 (143) = 1957 Cri LJ 769 ** AIR 1920 Cal 352 (353) = 21 Cri LJ 573 (DB). (Per Choudhuri J.) ** (1968) 9 Guj LR 364 (369) = ILR (1968 Guj 117 (DB).

(5) Complaint of cheating — Complainant asking for issue of search warrant for production of specified machinery by accused — Machinery stated by complainant to be important piece of evidence — No reasons given in order issuing such warrant — Order not valid within Section 96 (1). ILR 1966 Guj 982 (992) = (1966) 7 Guj LR 963.

6. Record of reasons. — (1) Magistrate should keep notes of materials upon which he has acted in issuing a search-warrant so as to enable High Court to form an opinion as regards the materials upon which Magistrate has acted. AIR 1920 Cal 352 (353) = 21 Cri LJ 573 (DB) ** AIR 1916 Lah 274 (275) = 17 Cri LJ 60 ** AIR 1966 Goa 23 (27, 32) = 1966 Cri LJ 1258 (SB).

[See however AIR 1953 Orissa 153 (Prs 12, 13) = 1953 Cri LJ 1041 (DB).]

(2) The fact that no reasons are mentioned on the search-warrants for their issue does not make the warrants themselves bad. AIR 1958 Cal 128 (130) = 1958 Cri LJ 368. (AIR 1953 Cal 341, Foll.)

7. "Person," if would include an accused person. — (1) The word "person" in this section will include accused persons also. AIR 1951 Cal 101 (Prs 15, 17, 34) = 52 Cri LJ 946 (FB). (12 Cri LJ 98 (Cal); 38 Cal 304 = 12 Cri LJ 8 and 8 Cri LJ 224, **Overruled.**)

(2) Search-warrant can be issued against an accused person if circumstances specified in section exist. **AIR 1914 Lah 587 (588, 589) = 16 Cri LJ 225.**

Section 96 (contd.)

8. "Document or thing." — (1) When the premises to be searched are those of an accused person, the warrant need not be only for the finding of the document, etc., in respect of which the alleged offence has been committed but also may be for any document or thing, the production and inspection of which are necessary and desirable or will serve the ends of justice. AIR 1914 Lah 587 (590) = 16 Cri LJ 225.

(2) A woman is not a "thing" within this section. (1907) 6 Cri LJ 38 (39) (DB).

(3) The word "thing" would not include the configuration of a wall or any place inside a house. AIR 1928 All 185 (186) = 29 Cri LJ 272.

(4) Even when a warrant is issued under Section 96 in aid of an order made under Section 94, the things seized come into the custody of the Court and their disposal thereafter is within its power and discretion, the discretion is to be properly exercised having regard to the purpose of seizure. ILR (1959) Ker 165 (171, 172, 173).

9. General search or inspection. — (1) A general search-warrant can only be issued if the Court considers that the purposes of any enquiry, trial or other proceeding under the Code would be served by such search. AIR 1934 Bom 104 (107) = 35 Cri LJ 1024 (DB).

(2) A warrant may be issued for the purposes of an enquiry about to be made. AIR 1940 Cal 97 (100) = 41 Cri LJ 329 (DB) ** AIR 1934 Bom 104 (107) = 35 Cri LJ 1024 (DB).

[See also AIR 1953 Orissa 153 (Pr 10) = 1953 Cri LJ 1041 (DB).]

(3) The words "inquiry, trial or other proceeding under this Code" in Cl. (3), sub-section (1), will not include an investigation. AIR 1940 Cal 97 (100) = 41 Cri LJ 329 (DB) ** AIR 1937 Rang 206 (208) = 38 Cri LJ 983.

[But see AIR 1965 Mys 214 (218) = 1965 (2) Cri LJ 225 (DB). (AIR 1937 Rang 206, Diss. from.)]

(4) Prima facie warrants issued for the production of a particular category of documents with reference to an alleged or suspected but particular offence may be a warrant for a particular search as opposed to a general search. AIR 1953 Orissa 153 (Prs 9, 11) = 1953 Cri LJ 1041 (DB).

(5) Articles entrusted to accused by an order under Section 516-A Cri P. C. on his executing a security bond — on failure to file charge-sheet within stipulated time, bond stood cancelled— Police later on filing charge-sheet — Magistrate can call upon accused to produce those articles and on his failure, issue a general search warrant to police officer to search and produce them. (1966) 2 Mad LJ 240 (242) = (1966) Mad LW (Cri) 129.

10. "May issue a search-warrant." — (1) The issue of a search-warrant is in the discretion of the Court. Where the order is sought to be made on the basis of a complaint, the complainant should be examined on oath under Section 200 before issuing the order. (1911) 12 Cri LJ 175 (177) (All) ** (1910) 11 Cri LJ 535 (536) (Mad) (DB) ** AIR 1966 Goa 23 (26) = 1966 Cri LJ 1258 (SB) ** 1963 (2) Cri LJ 61 (62) (All).

[See also AIR 1953 Orissa 153 (Pr 6) = 1953 Cri LJ 1041 (DB) ** AIR 1950 East Punj 306 (Pr 36) = ILR (1950) Punj 283 = 51 Cri LJ 1273 (FB).]

(2) A mere application by the police based on a telegram received by them should not be treated as information on which a Magistrate is entitled to act. (1898) 22 Bom 949 (956) (DB).

(3) Section 96 read with Section 94 does not prohibit the issue of warrants for search even at a stage prior to commencement of actual investigation into suspected offençe. (1964) 2 Mad LJ 5 (10).

(4) Where action is taken on a complaint it is not necessary that the Magistrate should wait until a preliminary enquiry is held and all the witnesses for the prosecution are examined and cross-examined. (1890) 13 Mad 18 (20) (DB).

(5) Where in a case of theft, an application was made for the issue of a search-warrant with the object of securing, for the purpose of the trial identification of the property and to ascertain whether it was really in the possession of the accused, it was held that a delay of three weeks in the issue of the warrant was not proper. AIR 1919 Cal 959 (960) = 19 Cri LJ 707 (DB).

(6) Issue of search warrant — Previous notice to person complained against not necessary. AIR 1966 Goa 23 (31) = 1966 Cri LJ 1258 (SB).

11. Seizure without search-warrant. — (1) Order calling upon police to take possession of account books in possession of a certain person without issuing a search-warrant is illegal. (1910) 11 Cri LJ 525 (526) = 38 Cal 68 (DB) ** 1963 (2) Cri LJ 100 (102) (Manipur).

(2) Sub-divisional Magistrate making order for search and seizure of certain articles without issuing a search-warrant. Order though illegal was within the jurisdiction under Section 1 of the Judicial Officers Protection Act (18 of 1850). AIR 1938 Cal 177 (178) (DB).

(3) When the properties not mentioned in the warrant have also been seized and produced before the Court, they cannot be considered to be property before the Court. (1888) 15 Cal 109 (144) (DB).

12. Search-warrants under special or local laws. — (1) The procedure under

Section 96 — Note 12 (contd.)
this Code has been held to apply to searches held in pursuance of the provisions of the following Acts:—

- (a) The United Provinces Excise Act, 4 of 1910, (Section 54 to the extent prescribed). AIR 1927 Oudh 132 (133) = 28 Cri LJ 321.
- (b) The Indian Arms Act, 11 of 1878, Sections 25 and 30. AIR 1919 Mad 620 (621) = 20 Cri LJ 90 (DB) ** (1909) 2 Ind Cas 436 (437, 452) = 36 Cal 433 (SB).
- (c) The Indian Copyright Act, 3 of 1914. AIR 1920 Cal 83 (85, 86) = 21 Cri LJ 391 (DB).
- (d) The Indian Public Gambling Act, 3 of 1857, Section 5. (1908) 7 Cri LJ 19 (21) = 30 All 60.
  [But see AIR 1922 Lah 458 (458, 459) = 23 Cri LJ 621.]
- (e) The Sea Customs Act (1878), Section 172. AIR 1956 Cal 609 (611) = 1956 Cri LJ 1396.
- (f) The Madras Hindu Religious and Charitable Endowments Act (19 of 1951), Section 87 (c). 1957 Cri LJ 259 (260) (Mad).
- (g) Indian Income-tax Act (1961), Section 136. AIR 1965 All 487 (491) = ILR (1964) 2 All 377 (DB).
- (h) Hyderabad Gambling Act (2 of 1305F), S. 5. AIR 1966 Mys 289 (292) = 1966 Cri LJ 1280 = (1966) 1 Mys LJ 110.
- (i) Foreign Exchange Regulation Act (7 of 1947), Section 19 (3) (as far as they are made applicable). **AIR 1965 SC 1 (4) = 1965 (1) Cri LJ 100 = (1964) 7 SCR 724** ** AIR 1964 Bom 127 (131) = 1964 (1) Cri LJ 643 = 65 Bom LR 812 ** AIR 1962 Tripura 50 (58) = 1962 (2) Cri LJ 794.

(2) Madras Police Act, Section 42 — Search warrant by Deputy Commissioner — Provisions of Section 96 of the Code not applicable. AIR 1935 Mad 98 (100) = 36 Cri LJ 566.

(3) Before issuing search warrant under Section 25 of the Indian Arms Act, it is necessary for the Magistrate to record his grounds of belief that arms are kept for an unlawful purpose. If this condition is not complied with, the search under that section would be illegal. (1909) 2 Ind Cas 436 (438, 440) = 36 Cal 433 (SB). (This view was upheld in appeal in 13 Cri L Jour 693 = 39 Cal 953 (PC), but the decision was reversed on another point.) ** AIR 1957 Orissa 130 (140, 141) = 1957 Cri L Jour 769.

(4) A Magistrate issuing a search-warrant under Section 25 of the Arms Act must be taken to be acting as a Court. AIR 1919 Mad 620 (621, 622) = 20 Cri LJ 90 (DB).

(5) A search under Section 19-A of the U. P. Opium Smoking Act made by a second officer of a police station though empowered by a notification under Section 10 (2) (e) of the U. P. Excise Act or made without recording grounds for conducting the same in writing is not regular. But both these circumstances are procedural irregularities and they will not vitiate the search. It will only make a Court extremely cautious and critical of the evidence that is placed before it. AIR 1956 All 234 (Pr 7) = 1956 Cri LJ 449.

(6) Documents seized in execution of search warrant issued under Section 172, Sea Customs Act — Customs authorities not entitled to their custody — Final disposal of documents to be under Magistrate's order. **AIR 1962 SC 759 (763) = 1962 (1) Cri LJ 692 = 1962 Supp (1) SCR 545.**

(7) Under Section 19 (3) of Foreign Exchange Regulation Act, Magistrate can order search of foreign currency. AIR 1962 Tripura 50 (53, 54) = 1962 (2) Cri LJ 794. (AIR 1959 Tripura 33, **Dissented from.**)

13. Security for production. — (1) Section does not enable a Court to demand security for the production of the article when required. (1903) 7 Cal WN 522 (524) (DB).

(2) When a search-warrant has been issued, the Court can stay execution of the warrant conditionally on the execution of the bond by such person for production of the articles in Court whenever called upon. AIR 1920 Cal 83 (85) = 21 Cri LJ 391 (DB).

14. Inspection. — (1) The word "inspect" in the third clause of sub-section (1) applies only to a locality or place but not to a document or other thing. (1888) 15 Cal 109 (124) (DB).

(2) The right of seizure of documents or things implies and carries with it the right of inspection. (1903) 5 Bom LR 980 (982) (DB) ** AIR 1929 Cal 176 (176) = 30 Cri LJ 705 (DB).

(3) The documents or things must be brought to the Court before they are allowed to be inspected, and inspection should be allowed in Court or where and when the Court orders and in the presence of the person concerned. (1888) 15 Cal 109 (143) (DB) ** AIR 1920 Cal 349 (350) = 21 Cri LJ 577 (DB).

(4) The inspection must be limited to the books, etc., named in the search-warrant and cannot be had of other books, etc., seized under it. (1888) 15 Cal 109 (133, 144) (DB).

15. Power to search includes power to take into possession. — (1) Sections 94 to 96 and Section 165, and the form of the search-warrant, make it clear that the intention of the law is that power to search includes power to take into possession. ('93) Rat 677 (678) (DB) ** (1888) 15 Cal 109 (141) (DB).

16. Power to invoke aid in reading documents. — (1) A Criminal Court has

97. Power to restrict warrant.—The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

[1882 — S. 97; 1872 — S. 368 Para. 4; 1861 — S. 114.]

98. Search of house suspected to contain stolen property, forged documents etc.—(1) If a District Magistrate, Sub-divisional Magistrate, Presidency Magistrate‡ or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

or for the deposit or sale or manufacture of forged documents, false seals or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps or for forging,

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Section 96 — Note 16 (contd.)

power to invoke the aid of persons capable of helping it to read and understand the contents of a document, books, etc., produced. AIR 1914 Lah 587 (590) = 16 Cri LJ 225.

17. Form of search-warrant. — (1) If the description in the search-warrant is otherwise adequate to identify the place without ambiguity, it is immaterial that the boundaries of the place are not mentioned. AIR 1941 Nag 16 (16). = 42 Cri LJ 32.

18. Magistrate, if can search himself.—(1) A Magistrate who is competent to issue a search-warrant is also competent to conduct the search himself or in his presence. 1884 All WN 213 (214) ** (1912) 13 Cri LJ 693 (700) = 39 Cal 953 (PC).

19. Resistance to illegal search. — (1) A resistance even to an illegal search is not justified if the officer was acting in good faith under colour of his office within the meaning of Section 99 of the Penal Code. (1913) 14 Cri LJ 142 (144) (DB) (Lah) ** AIR 1951 All 637 (Pr 7) = 52 Cri LJ 912 (2) ** AIR 1915 All 430 (433) = 16 Cri LJ 819 (DB) ** AIR 1933 All 620 (621) (DB).

[But see ('55) 59 Cal WN 649 (651) ** AIR 1933 All 759 (761) = 34 Cri LJ 1211 (DB) ** (1911) 12 Cri LJ 8 (9) = 38 Cal 304 (DB) ** (1912) 13 Cri LJ 764 (765) (DB) (Cal) ** (1897) 24 Cal 324 (329, 330) (DB) ** (1912) 13 Cri LJ 65 (75) (Cal) ** (1907) 6 Cri LJ 38 (39, 40) (DB) (Cal).]

(2) Process issued under Section 100 drawn up in form prescribed for a warrant under Section 96 or 98 with necessary alterations — Held that there was only a defect in form and not in substance and that a resistance to such search was not justified. AIR 1918 Cal 74 (75) = 20 Cri LJ 47 (DB) ** (1912) 13 Cri LJ 186 (187) = 39 Cal 403 (DB).

(3) Officer having power under Abkari Act to make a search after recording reasons. Search without making such record — Resistance thereto not justified. (1896) 19 Mad 349 (350) (DB).

(4) If in the exercise of the power of an officer under the taxation on Income (Investigation Commission) Act, 1947 to execute search warrant, improper or unlawful obstruction or resistance is encountered, there must be the right to use reasonable means to remove the obstruction or overcome the resistance. **AIR 1956 SC 44 (Pr 23) = 1955-2 SCR 925 = 1956 Cri LJ 140.**

20. Revision. — (1) Unless order for issue of a search-warrant is either illegal or vitiated by material irregularity, High Court will not interfere in revision. (1890) 13 Mad 18 (21) (DB) ** AIR 1966 Goa 23 (31) = 1966 Cri LJ 1258 (SB).

(2) Where Magistrate has not applied his mind in exercising a proper discretion and has acted on insufficient material, High Court will interfere in revision. AIR 1940 Cal 97 (101) = 41 Cri LJ 329 (DB).

Section 98 — Note 1

(1) The conditions to be fulfilled before a search can be made are important and mandatory and not merely directory. (1968) 9 Guj LR 364 (369) = ILR (1968) Guj 117 (DB).

(2) The pendency of any proceeding before the Magistrate is not a condition precedent to the issue of a search-warrant. (1908) 8 Cri LJ 235 (240) = 35 Cal 1076 (DB).

(3) When the Magistrate is about to issue a search-warrant on the strength of information as distinguished from a complaint, he should, if possible, examine the informant on oath, and if evidence cannot be taken on oath, he should act with a due appreciation of the fact that he is taking upon himself the responsibility of considering the weight of the information, as information preparatory to issuing an order of a very serious nature. (1911) 41 Cri LJ 175 (177, 178) (All). (A case under S. 96.)

(4) Where one D by a petition to Court asked for a search warrant for recovery of a cow from the possession of A and a description of the cow was given and it was stated that she might be recovered without delay lest she be sold to some other person and a search war-

or that any forged documents, false seals or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps or for forging, are kept or deposited in any place,

°[or, if a District Magistrate, Sub-divisional Magistrate or a Presidency Magistrate,‡ upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit, sale, manufacture or production of any obscene object such as is referred to in Section 292 of the Indian Penal Code or that any such obscene objects are or kept deposited in any place;] he may by his warrant authorise any police-officer above the rank of a constable—

(a) to enter, with such assistance as may be required, such place, and

(b) to search the same in manner specified in the warrant, and

(c) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also of any such instruments and materials °[or of any such obscene objects] as aforesaid, and

(d) to convey such property, documents, seals, stamps, coins, instruments or materials °[or such obscene objects] before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of saftey, and

(e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments or materials °[or such obscene objects] knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been

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Section 98 — Note 1 (contd.)

rant was issued under Section 98 on the basis of this petition — **Held,** that there being no allegation that the place intended to be searched was used as a place for deposit of stolen property the warrant was illegally issued and the inquiry, presumably under Section 523, which followed, was held without jurisdiction. 1957 Cri LJ 669 (671) (Cal) ** AIR 1969 Goa 48 (49) = 1969 Cri LJ 608.

(5) Where a form under this section is used for a warrant under Section 100 with necessary alterations, the defect is only one of form and not in substance and a resistance to such a warrant is not justified. (1912) 13 Cri LJ 186 (187) = 39 Cal 403 (DB).

(6) Under Section 79 a warrant issued under this section can be endorsed over to any other police-officer of the same rank for execution. (1909) 10 Cri LJ 3 (5) = 3 Sind LR 56 (DB).

(7) A search under this section made without a search-warrant is illegal. (1911) 12 Cri LJ 8 (9) = 38 Cal 304 (DB) ** (1955) 59 Cal WN 649 (651).

(8) A police-officer investigating into a charge of theft is entitled under Section 165 to search without a warrant, and such a search will not be illegal. AIR 1919 All 41 (42) = 20 Cri LJ 695.

[See however 1959 Ker LR 731 = 1959 Ker LT 801 (803). (Sub-Inspector not recording grounds of his belief as required by Section 165 — Preliminary step in conducting search is not complied with.]

(9) A warrant illegally issued under Section 96 cannot be treated as valid under this section. (1908) 8 Cri LJ 235 (240) = 35 Cal 1076 (DB).

(10) As to searches under other Acts, see the following cases:

Under the Arms Act 11 of 1878:

('93) 15 All 129 (130) (DB). (Magistrate to record grounds of belief.) ** AIR 1925 All 434 (434) = 26 Cri LJ 1112 (DB). (Illegality of search will not vitiate conviction if there is evidence of offence.)

Under the Calcutta Police Act of 1866:

('93) 20 Cal 670 (672) (DB). (A Deputy Commissioner of Police is empowered to issue search-warrant.) ** AIR 1930 Cal 369 (369) =31 Cri LJ 1152. (House not stated in the warrant searched — Illegal search.)

Under the Explosives Act of 1884:

(1912) 13 Cri LJ 433 (435) = 39 Cal 119 (DB).

Under the U. P. Excise Act of 1910:

AIR 1932 Oudh 249 (250) = 33 Cri LJ 492. (Non-recording of reasons for search is only an irregularity that does not vitiate proceedings.)

Under the Opium Act of 1878:

(1909) 10 Cri L Jour 85 (86) = 5 Low Bur Rul 56 (FB). (An entry into a 'vessel' for search under this Act must forged, falsified or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or stamps or for forging *[or the said obscene objects to have been or to be intended to be sold, let to hire, distributed, publicly exhibited, circulated, imported or exported.]

(2) The provisions of this section with respect to—

(a) counterfeit coin,

(b) coin suspected to be counterfeit, and

(c) instruments or materials for counterfeiting coin,

shall, so far as they can be made applicable, apply respectively to—

(a) pieces of metal made in contravention of the Metal Tokens Act, 1889, or brought into †[India] in contravention of any notification for the time being in force under Section 19 of the Sea Customs Act, 1878,§

(b) pieces of metal suspected to have been so made or to have been so brought into †[India] or to be intended to be issued in contravention of the former of those Acts, and

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Section 98 — Note 1 (contd.)

be authorized either under Section 15 or Section 19.)

Under the Madras Prohibition Act (10 of 1937).

AIR 1954 Mad 993 (1000) = ILR (1955) Mad 887 = 1954 Cri L Jour 1521 (DB). (Provisions of Sections 28 to 32 of Madras Prohibition Act are not repugnant to provisions of Sections 96 and 98, Criminal P. C.)

Under the Public Gambling Act, 1867:

AIR 1953 Mad 243 (Prs 6, 8) = 1953 Cri L Jour 492. (Section 5 does not present form for warrant — Search warrant — Misdescription in — Warrant wrongly describing the house in question as standing in name of accused — Warrant giving sufficient particulars to identify that house had been rented and was being occupied by accused — Misdescription is immaterial and does not vitiate the warrant.) ** AIR 1952 J & K 14 (Prs 6, 7) = 1952 Cri L Jour 298. (Warrant issued in name of officer who was not correctly designated in it — Said officer not following direction given in warrant and also exceeding authority given to him — House searched not the one mentioned in the warrant — **Held,** conviction of the accused could not be sustained.) ** 1939 Nag LJ 357 (357, 358). (Magistrate issuing search warrant relying simply on uncorroborated information received by Sub-Inspector — Warrant not containing description of boundaries of house to be searched — Warrant held not in accordance with law.)

Under the Bengal Public Gambling Act, 1867:

AIR 1930 Cal 365 (366) = 31 Cri L Jour 999. (Credible information that house is used as a common gaming house is necessary.)

Under the Bombay Prevention of Gambling Acts of 1866 and 1887:

(1947) 48 Cri L Jour 644 (645) (DB) (Bom). (When the warrant is made out on a form intended for a warrant of search under Section 96, Criminal P. C. and not a form intended for search under Section 6 of the Bombay Prevention of Gambling Act the presumption that whenever a warrant was issued by an authorised officer all preliminary procedure was duly followed by him does not arise.) ** AIR 1929 Bom 157 (160) = 30 Cri L Jour 595 (DB). (The only person who can execute a warrant is the officer who is named in the warrant. He cannot endorse it to another for execution.) ** AIR 1933 Bom 79 (79, 80) = 34 Cri L Jour 137 (DB). (Omission to state suspicion that house is used as a gaming house is only an irregularity.)

Under Sea Customs Act (1878)

AIR 1956 Cal 609 (611) = 1956 Cri L Jour 1396. (The scope of search warrant under Section 172, Sea Customs Act, is similar to that of a search warrant issued under Section 98, but is independent of that section.) ** **AIR 1962 SC 759 (763) = 1962 (1) Cri LJ 692 = 1962 Supp (1) SCR 545.** (Where documents are seized in execution of search warrant issued under Section 172, Sea Customs Act, Customs authorities are not entitled to their custody and their final disposal must be under Magistrate's order. AIR 1956 Cal 253, AIR 1958 Cal 682, **Overruled.** Cri. Revn. No. 500 of 1960 (Cal), **Reversed.)**

Under Foreign Exchange Regulation Act, 1947:

AIR 1956 SC 1 (5, 6) = 1965 (1) Cri LJ 100 = 1964 (7) SCR 724. (The Magistrate cannot exercise his powers under Criminal P. C. in connection with property seized under sub-section (3) of Section 19 of Foreign Exchange Regulation Act (1947) — **Held,** order of Magistrate allowing Director of Enforcement to retain articles till final disposal of proceedings under Section 23 of the Act though without authority was one giving effect to spirit behind Section 19-A of the

(c) instruments or materials for making pieces of metal in contravention of that Act.

[1882 — S. 98; 1872 — S. 377; 1861 — S. 127.]

[*] Inserted by the Obscene Publications Act, 1925 (VIII of 1925), S. 3.

[†] Substituted for "the States," by the Code of Criminal Procedure (Amendment) Act (I of 1951), S. 2 (1-4-1951).

[‡] Magistrates in the City of Ahmedabad have the powers and exercise the jurisdiction of Presidency Magistrates.—See Guj. Act XIX of 1961, S. 14 (3) (4-11-1961).

[§] See now the Customs Act, 1962 (LII of 1962), S. 11 (1-2-1963).

STATE AMENDMENTS

Punjab: Haryana: Chandigarh

In its application to the States of Punjab and Haryana and the Union Territory of Candigarh, in S. 98, after the words "District Magistrate", wherever occurring, insert the words "or Chief Judicial Magistrate."—Punj. Act XXV of 1964, S. 2 and Sch., Pt. I, item (27) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Union Territories (except Chandigarh)

In its application to the Union territories, in S. 98, after the words, "District Magistrate", wherever they occur, insert the words, "Chief Judicial Magistrate".—Act 19 of 1969, S. 3 and Sch., item 27 (in Delhi on 2-10-1969).

West Bengal

In its application to the State of West Bengal, in Section 98—

(i) in the first paragraph, for the words "Sub-divisional Magistrate, Presidency Magistrate or", substitute the words "Sub-divisional Judicial Magistrate, Presidency Magistrate, Sub-divisional Executive Magistrate or Judicial or Executive;

(ii) in the fourth paragraph for the words "Sub-divisional Magistrate", substitute the words "Sub-divisional Judicial Magistrate, Sub-divisional Executive Magistrate."—W. B. Act 8 of 1970, S. 2 and Sch., item 38.

99. Disposal of things found in search beyond jurisdiction.—When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made, are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court

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Section 98 — Note 1 (contd.)

Act — Judgment of Calcutta High Court in Crl. Revn. No. 1525 of 1959, D/- 20-6-1960 (Cal), **Reversed.**)

Under Forward Contracts (Regulation) Act 1952

AIR 1968 All 338 (348) = 1968 Cri L Jour 1320. (The proceedings consequent on the search conducted, for investigating offences under the Forward Contracts (Regulation) Act without requisite warrant from a Magistrate are ab initio void.)

Under Income-tax Act (1961).

AIR 1965 All 487 (491) (DB). (Reference to Criminal P. C., in sub-s. (2) of Section 132 of Income-tax Act is indication that, in conducting searches, an Income-tax Officer ought to proceed on the lines of Sections 96, 98 and 165, Criminal P. C.)

Section 99 — Note 1

(1) Where a Presidency Magistrate, on being requisitioned by a telegram by a District Magistrate to take possession of certain books of a person within the jurisdiction of the former and to send them to the latter, summoned the person to produce the same and when they were produced sent them to the District Magistrate: **Held,** that as the things were not found in execution of a search warrant, neither Section 96 nor this section applied to the case and that the sending of the books in accordance with the requisition was not justified. (1897) Rat 880 (880) (DB).

(2) Section 99 empowers the Magistrate endorsing the search-warrant for execution, to exercise his discretion in the matter of authorising the removal of the goods concerned to the issuing Court. He can refuse to execute the search warrant in respect of the properties which are not properly described. AIR 1969 Cal 340 (342) = 1969 Cri LJ 879 = 73 Cal WN 97.

issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such Court.

[1882 — S. 99; 1872 — S. 373 Paras. 2, 3 and S. 374; 1861 — Ss. 118, 11.]

°[99A. **Power to declare certain publications forfeited and to issue search-warrants for the same.**—(1) Where—

(a) any newspaper, or book as defined in the Press and Registration o Books Act, 1867, or

(b) any document,

wherever printed, appears to the †[State Government] to contain any †§[seditious or obscene matter] ‡[or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of §[the citizens o India]] °†[or which is deliberately and maliciously intended to outrage the religious feelings of any such class by insulting the religion or the religious beliefs of that class], that is to say, any matter the publication‡‡ of which is ‡§[punishable under Section 124A or Section 153A or Section 292 or Sec. 293 or Section 295A], of the Indian Penal Code, the †[State Government] may, by notification in the °‡[Official Gazette], stating the grounds of its opinion, declare

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Section 99-A — Note 1

(1) "Newspaper" involves the idea of periodicity and also the fact that what is contained in the paper is public news or comment thereon. (1910) 7 Ind Cas 641 (644) = 11 Cri L Jour 515 (DB) (Cal). (Case under Newspapers Act of 1908.)

(2) It is not necessary for the application of this section that the document sought to be forfeited should by itself disclose the seditious intent. AIR 1930 All 401 (402) = 31 Cri L Jour 840 (FB).

[See also AIR 1957 All 538 (539) = ILR (1957) 1 All 528 = 1957 Cri L Jour 912 (SB).]

(3) The fact that a document is an advertisement of a forthcoming book is, by itself, not sufficient to protect it from forfeiture if it contains seditious matter, but in the absence of such matter, the mere fact that it is intimately connected with the book which contains seditious matter is not sufficient to enable the forfeiture thereof under this section. AIR 1930 All 401 (402, 403) = 31 Cri L Jour 840 (FB).

(4) It must appear to the State Government that the newspaper, book or document contains any seditious matter. The condition implies that the publication had been seen and read by the State Government prior to its declaration of forfeiture. AIR 1914 Cal 242 (243) = 14 Cri L Jour 497 (SB).

(5) The requirement as to statement of grounds is mandatory and a notification which does not state the grounds of opinion is not a compliance: with the terms of the section. AIR 1914 Cal 242 (243) = 14 Cri L Jour 497 (SB) ** AIR 1959 Andh Pra 572 (577) = 1959 Cri L Jour 1280 (SB). (But the defect in the order cannot be a ground for the High Court to quash the order.) ** AIR 1957 All 538 (540) = ILR (1957) 1 All 528 = 1957 Cri L Jour 912 (SB) ** AIR 1968 Delhi 13 (15, 16) = 1968 Cri LJ 50 = (1967) 69 Pun LR 279 (FB). (Infirmity of notification cannot be cured by filing of affidavit.)

(6) A mere citation of the words of the section is not a statement of the grounds of opinion. AIR 1914 Cal 242 (243) = 14 Cri L Jour 497 (SB) ** AIR 1957 All 538 (540) = ILR (1957) 1 All 528 = 1957 Cri LJ 912 (SB) ** AIR 1968 Delhi 13 (15, 16) = 1968 Cri LJ 50.

[See also AIR 1951 Raj 113 (Pr 15) = 52 Cri L Jour 600 (SB).]

(7) This section is wider in its applicability than Section 153-A of the Penal Code because intention to promote enmity or hatred between different classes of the community is a ground of action under this section, while under Section 153-A it is the actual promotion or attempt to promote enmity or hatred that constitutes the offence. AIR 1936 All 314 (317) = 37 Cri L Jour 599 (SB) ** AIR 1957 All 538 (541) = ILR (1957) 1 All 528 = 1957 Cri L Jour 912 (SB).

(8) "Matter of such a nature as is referred to in S. 99-A (1)" — Interpretation of — High Court not satisfied with grounds of Government's opinion — Duty of High Court — Grounds of opinion not stated — Order of forfeiture should be set aside. **AIR 1961 SC 1662 (1665, 1666).** (AIR 1925 All 195 = ILR 47 All 298 = 26 Cri LJ 679 (FB); AIR 1951 Raj 113 = 52 Cri LJ 600 (SB); AIR 1959 Andh Pra 572 = (1959) 2 Andh WR 269 = 1959 Cri LJ 1280 (SB) and AIR 1960 All 715 = 1960 All LJ 481 = 1960 Cri LJ 1528 (SB), **Overruled.;** AIR 1957 All 538, **Reversed.)**

every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to *§[Government], and thereupon any police-officer may seize the same wherever found in ††[India] and any Magistrate may by warrant authorise any police-officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

(2) In sub-section (1) "document" includes also any painting, drawing or photograph, or other visible representation.]

[*] Section 99A was inserted by the Press Law Repeal and Amendment Act, 1922 (XIV of 1922).

[†] Substituted for 'Provincial Government' by A. L. O., 1950.

[‡] Inserted by the Code of Criminal Procedure (Third Amendment) Act, 1926 (XXXVI of 1926), Section 2.

[§] Substituted for "His Majesty's subject" by A. L. O., 1950.

[*†] Inserted by the Criminal Law Amendment Act, 1927 (XXV of 1927), S. 3.

[*‡] Substituted for 'local official Gazette' by A. O., 1937.

[*§] Substituted for 'His Majesty' by A. L. O., 1950.

[††] Substituted for "the States", by the Code of Criminal Procedure (Amendment) Act (I of 1951), S. 2 (1-4-1951).

[†§] Substituted for the words "seditious matter" by the Indian Penal Code (Amendment) Act, 1969 (36 of 1969), S. 3 (a) (7-9-1969).

[‡§] Substituted for the words "punishable under S. 124A or Section 153A or Section 295A", ibid.

[‡‡] For Press Consultative Committee Rules, 1969 (made under powers conferred by S. 6 of Act 35 of 1969), see Gaz. Ind., 17-10-1969, Pt. II, S. 3 (ii), Ext., p. 1357.

Section 99A — Note 1 (contd.)

(9) It cannot be laid down as a general proposition that translations should be permitted when the originals have not been proscribed. Translation in Indian vernaculars may become accessible to a very large population and the danger arising therefrom may be immensely greater, calling for the intervention of the Government. AIR 1936 All 561 (564) = 37 Cri L Jour 943 (SB).

(10) Where books are seized by the Police Officer under this section the trial Court while acquitting the accused under Section 295-A, Penal Code, has no power to confiscate or destroy the books under this section. The Court can only direct the restoration of the books to the authorities who seized the books. AIR 1955 Mad 429 (430) = ILR (1955) Mad 1307 = 1955 Cri L Jour 1081.

(11) Section 99-A comes within the range of Clause (2) of Article 19 of the Constitution. The restriction imposed by Section 99-A is not disproportionate to the evil sought to be remedied. The section is not hit at by Article 19 (1) (a). AIR 1959 Andh Pra 572 (575) = 1957 Cri L Jour 1280 (SB).

(12) Section 99-A has no impact on Article 19 (1) (f) of the Constitution. Assuming it has such effect it is protected by Article 19 (5). AIR 1959 Andh Pra 572 (576) = 1959 Cri L Jour 1280 (SB).

(13) The procedure for forfeiture laid down in Section 99-A, Criminal P. C., is only consequential to the substantive law laid down in Section 295-A, Penal Code. Since Section 295-A, Penal Code is not ultra vires or unconstitutional, Sec. 99-A, Criminal P. C., and the sections following cannot be attacked as ultra vires. AIR 1960 All 715 (717) = 1960 Cri LJ 1528 = 1960 All WR (HC) 389 (SB). **(Overruled** on another point in **AIR 1961 SC 1662.)**

(14) Notification in the official Gazette of the forfeiture under Section 99-A is a sufficient publication. Hence the section cannot be attacked on the ground that it makes no provision for personal service thereby making the right of application under Section 99-B. illusory, such defect rendering encroachment on right under Article 19 (1) (a) of the Constitution unreasonable. AIR 1959 Andh Pra 572 (576) = 1959 Cri L Jour 1280 (SB).

(15) In order to gather the effect which a book is likely to produce on the mind of the reading public, it should be read as a whole. AIR 1959 Andh Pra 572 (578) = 1959 Cri L Jour 1280 (SB).

(16) The operation of Section 99-A cannot be confined only to isolated parts of the book, which come within the mischief of that section. The section does not prescribe that each and every part of the book should in itself be of the nature

STATE AMENDMENTS

Gujarat

In its application to the State of Gujarat, the amendment made in Sec. 99A by Bombay Act XVIII of 1955, which was in force in the Bombay area of the State by reason of the provisions of Section 87 of the Cent. Act XI of 1960, has now been extended to the rest of the State, with effect from 10-4-1962 by Guj. Act XII of 1962, Section 2.

Maharashtra

(1) In its application to the pre-reorganisation State of Bombay, in Section 99A, after the words "appears to the State Government to contain" insert the words "in respect of any judicial proceedings any indecent or obscene matter or any indecent or obscene details, whether medical, surgical or physiological which would be calculated to injure the public morals, or".—Bom. Act XVIII of 1955, S. 7 and Sch. (4-10-1956).

NOTE.—The above amendment is made by the Bombay Judicial Proceedings (Regulation of Reports) Act, 1955 (Bom. Act XVIII of 1955), the relevant portion of Section 7 of which is that the provisions of said S. 99A "as amended shall, notwithstanding anything contained in Section 4 (of the Bombay Act XVIII of 1955), apply in respect of any newspaper, book or document, which appears to the State Government to contain any matter in contravention of the provisions of this Act."

(2) After the reorganization of the State of Bombay in 1956, the amendment made in Section 99A by the above-mentioned Bombay Act is extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Mysore

Bombay Area.—In its application to the Bombay area of the State of Mysore, the amendment made in Sec. 99A is the same as that of Maharashtra.—See Cent. Act XXXVII of 1956, S. 119. (1-11-1956).

NOTE.—While it is true that this Bombay Act, that is, Bombay Act 18 of 1955, has not been specifically adapted by Mys. A. L. O., 1956, it is equally true that

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Section 99A — Note 1 (contd.)

indicated in that section. Hence, it cannot be said that only such parts of the book as would offer insults that should be extracted from the writing and forfeited. AIR 1959 Andh Pra 572 (578) = 1959 Cri L Jour 1280 (SB).

(17) (Per Majority): A book can be in more than one volume and each volume does not necessarily constitute a separate book. The expression "book" is of wide import and covers every part and every volume of it. In considering whether a particular volume is a book or not the main test is whether the treatise deals with one subject and it does not depend upon whether a book is bound in one volume or in more volumes. If each volume deals with a distinct subject, it forms a book by itself. AIR 1959 Andh Pra 572 (579) = 1959 Cri L Jour 1280 (SB).

(18) It is only insults to religious beliefs deliberately and maliciously made that would bring into play Section 99-A. But the intention of the author has to be gathered primarily from the language used. AIR 1959 Andh Pra 572 (577) = 1959 Cri L Jour 1280 (SB).

(19) (Per Majority): Assuming that there are writings in other countries which are of the same character as the one in question and no action was taken in regard to them, that would not absolve the author of a document or a book from liability if it attracts the applicability of Section 99-A. AIR 1959 Andh Pra 572 (578) = 1959 Cri L Jour 1280 (SB).

(20) (Bhimasankaram J.): Preventing a book-seller from publishing a matter which has the effect of disrupting the public order is clearly no more than imposing a reasonable restriction on the exercise of his right to carry on business. AIR 1959 Andh Pra 572 (583) = 1959 Cri L Jour 1280 (SB).

(21) (Per Majority, Bhimasankaram, J., contra.) — It is no defence to a charge under Section 99-A, Criminal P. C. or Section 295-A, Penal Code that author had incidentally attacked other religious beliefs also. AIR 1959 Andh Pra 572 (578) = 1959 Cri L Jour 1280 (SB).

(22) Where an order under Section 99-A of 6-11-1961, passed by Government of West Bengal was published by Government of Bihar Gazette, Part III of 3-1-1962 for information, such order of Government of Bihar was not an order for forfeiture passed by that Government under Section 99-A. It could not be set aside under Section 99-D. AIR 1963 Pat 284 (285) = 1963 (2) Cri LJ 168 = 1963 BLJR 634 (FB).

it has not been repealed by the said A. L. O. nor by Mys. Act XIII of 1965, which has repealed many Bombay Acts amending the Criminal Procedure Code in their application to the Bombay Area. It would thus seem that Bombay Act 18 of 1955 which came into force on 4-10-1956, continues to be applicable to Bombay Area of the State of Mysore.

Rajasthan

Abu Area.—In its application to the Abu Area of the State of Rajasthan, the amendment made in Section 99A is the same as that made in Maharashtra.—Central Act XXXVII of 1956, S. 119 (1-11-1956).

Tamil Nadu

In its application to the State of Madras, in sub-section (1) Section 99A—

(i) after the words "appears to the State Government to contain" insert the words "in relation to any judicial proceeding, any indecent or obscene matter, or any indecent or obscene details, which would be calculated to injure public morals, or" and

(ii) after the words "that is to say" insert the words, brackets, letter and figures "any matter referred to in clause (a) of sub-section (1) of Section 3 of the Madras Judicial Proceedings (Regulation of Reports) Act, 1960, or."—T. N. Act XXI of 1960, S. 6 and Sch. (30-11-1960): Tamil Nadu A. L. O., 1969.

NOTE.—Section 6 of T. N. Act XXI of 1960 is as follows:

"**6. Forfeiture and seizure of newspaper, etc., under Section 99A of Central Act V of 1898.**—The provisions of Sections 99A, 99B and 99D of the Code of Criminal Procedure, 1898, are hereby amended as specified in the Schedule to this Act and the provisions of Sections 99A to 99G of the said Code as amended as aforesaid shall, notwithstanding anything contained in Section 4, apply in respect of any newspaper, book or document, which appears to the Government to contain any matter in contravention of the provisions of sub-section (1) of Section 3."

*[**99B. Application to High Court to set aside order of forfeiture.**—Any person having any interest in any newspaper, book or other document, in respect of which an order of forfeiture has been made under Section 99A, may, within two months from the date of such order, apply to the High Court to set aside such order on the ground that the issue of the newspaper, or the book or other document, in respect of which the order was made, did not contain any †[seditious

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Section 99-B — Note 1

(1) The words "within two months from the date of such order" are not to be read as meaning "within two months from the date on which notice of the order was served". AIR 1914 Lah 8 (8, 9) = 15 Cri LJ 222 (SB) ** AIR 1962 AP 526 (527) = (1962) 2 Cri LJ 740 (SB).

(2) Where the order of forfeiture of a book was made under Section 99-A by the Government of West Bengal by a notification in the Gazette and the Government of Andhra Pradesh re-published that notification, whereupon the compiler of the book made an application under Section 99-B to the High Court of Andhra Pradesh for setting aside the order of forfeiture: **Held,** that the action of the petitioner did not fall under Sec. 99-B. AIR 1962 Andh Pra 526 (527) = (1962) 2 Cri LJ 740 (SB).

(3) Order of forfeiture, passed by one State, republished by another State — Limitation to be counted from date of order and not from date of its republication by the other State. AIR 1962 AP 526 (527) = (1962) 2 Cri LJ 740 (SB) ** AIR 1963 Pat 284 (285) = 1963 (2) Cri LJ 168 = 1963 BLJR 634 (FB).

(4) Limitation as to time under Section 99-B cannot by itself render provisions of Section 99-A unconstitutional. AIR 1959 Andh Pra 572 (583) = 1959 Cr LJ 1280 = (1959) 2 Andh WR 269 (SB). **(Overruled** on another point in **AIR 1961 SC 1662.)**

(5) Limitation as to time prescribed by Section 99-B affects the availability of special mode of relief provided by the section. AIR 1959 Andh Pra 572 (583) = 1959 Cr LJ 1280 = (1959) 2 Andh WR 269 (SB). **(Overruled** on another point in **AIR 1961 SC 1662.)**

(6) The ground under which an application can be made under Section 99-B is the ground which, if established, would require the High Court to set aside the order under Section 99-D. **AIR 1961 SC 1662 (1664) = (1961) 2 Cri LJ 815 = (1962) 2 SCR 487.**

or other matter of such a nature as is referred to in sub-section (1) of Section 99A.]]

[*] Section 99B was inserted by the Press Law Repeal and Amendment Act, 1922 (XIV of 1922).

[†] These words were substituted for the words 'seditious matter" by the Code of Criminal Procedure (Third Amendment) Act (XXXVI of 1926).

STATE AMENDMENT

Tamil Nadu:

In its application to the State of Tamil Nadu, in S. 99B, for the words "seditious or other matter", substitute the word "matter".—T. N. Act XXI of 1960, S. 6 and Sch., (30-11-1960): Tamil Nadu A.L.O., 1969.

*[99C. **Hearing by Special Bench.**—Every such application shall be heard and determined by a Special Bench of the High Court composed of three Judges.]

[*] This section was inserted by the Press Law Repeal and Amendment Act, 1922 (XIV of 1922).

*[99D. **Order of Special Bench setting aside forfeiture.**—(1) On receipt of the application, the Special Bench shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained †[seditious or other matter of such a nature as is] referred to in sub-section (1) of Section 99A, set aside the order of forfeiture.

Section 99B — Note 1 (contd.)

(7) Forfeiture of book by one State Government — Republication of notification by another State Government — Application to set aside forfeiture — High Court of that State which promulgated order will have jurisdiction and not the State which republished it. AIR 1962 Andh Pra 526 (527) = (1962) 2 Cri LJ 740 (SB) ** AIR 1963 Pat 284 (285) = 1963 (2) Cri LJ 168 = 1963 BLJR 634 (FB).

(8) No order of forfeiture under Section 99-A by State Government — Application under Section 99-B not competent. AIR 1964 Punj 269 (270) = 1964 (1) Cri LJ 696 (FB).

(9) Forfeiture of book can be challenged under this section on the ground that the order did not mention the grounds for the order. AIR 1968 Delhi 13 (16) = 1968 Cri LJ 50 = (1967) 69 Pun LR 279 (FB).

(10) Sections are not ultra vires. AIR 1960 All 715 (717) = 1960 Cri LJ 1528 = 1960 All WR (HC) 389 (SB). **(Overruled** on another point in **AIR 1961 SC 1662.)**

(11) Order of forfeiture under Section 99-A passed by one State — Republication of the order by another State — Republication does not give cause of action for petition under Section 99-B. AIR 1962 AP 526 (527) = (1962) 2 Cri LJ 740 (SB).

(12) As to onus of proof see under Section 99-D.

Section 99-D — Note 1

(1) The words 'matter of such a nature as is referred to in sub-section (1) of Section 99-A' appearing in Section 99-D mean only those matters on which the order of forfeiture was based. that is, those which for the reasons stated by it, the Government thought were punishable under one or more of Sections 124-A, 153-A and 195-A, Penal Code, mentioned by it. It is the duty of the High Court under Section 99-D to set aside an order of forfeiture if it is not satisfied that the grounds on which the Government formed its opinion that the books contained matters the publication of which would be punishable under any one or more of Sections 124-A, 153-A and 295-A of the Penal Code, could justify that opinion. **AIR 1961 SC 1662 (1665, 1666) = (1961) 2 Cri LJ 815 = (1962) 2 SCR 487.** (AIR 1925 All 195 = 26 Cri LJ 679 (FB); AIR 1951 Raj 113 = 52 Cri LJ 600 (SB); AIR 1959 Andh Pra 572 = 1959 Cri LJ 1280 (SB) and AIR 1960 All 715 = 1960 Cri LJ 1528, **Overruled.** Where the Government did not state the grounds of its opinion, the High Court must set aside the order under Section 99-D. 59 Cal WN 495, Approved; AIR 1957 All 538, **Reversed.)**

(2) Where the grounds for forfeiting book were not mentioned in notification but contained in affidavit, it was held that Court would not itself go into matter to see whether different passages in book contravened Section 153-A, of Penal Code. AIR 1968 Delhi 13 (15, 16) = 1968 Cri LJ 50 = (1967) 69 Pun LR (D) 279 (FB).

(3) Where a series of books are published the whole series must be looked to in order to determine whether the passages contained therein are seditious. AIR 1925 All 195 (196) = 26 Cri L Jour 679 (FB).

[See also AIR 1957 All 538 (539) = ILR (1957) 1 All 528 = 1957 Cri L Jour 912 (SB).]

(2) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges.]

[*] This section was inserted by the Press Law Repeal and Amendment Act, 1922 (XIV of 1922).

[†] These words were substituted for the words "seditious matter of the nature" by the Code of Criminal Procedure (Third Amendment) Act (XXXVI of 1926).

STATE AMENDMENT

Tamil Nadu:

In its application to the State of Tamil Nadu, in Sec. 99D, for the words "seditious or other matter", substitute the word "matter".—T. N. Act XXI of 1960, S. 6 and Sch., (30-11-1960): Tamil Nadu A.L.O., 1969.

Section 99D — Note 1 (contd.)

(4) Under this section, the High Court is not concerned with the policy underlying forfeiture. The sole consideration is whether the books contain any objectionable matter referred to in Section 99-A. AIR 1936 All 561 (564) = 37 Cri L Jour 943 (SB).

(5) It is not necessary to look for any external evidence when the words used in a booklet have a clear tendency to promote class hatred. AIR 1951 Raj 113 (Pr 12) = 52 Cri L Jour 600 (SB).

(6) The fact that a translation has been proscribed by the Government while the original has not been proscribed is no ground for setting aside the order of the Government. AIR 1936 All 561 (564) = 37 Cri L Jour 943 (SB).

(7) Where a book or other document has been proscribed by the Government on the ground of its containing matter which promotes feelings of class hatred, to sustain the order, it is not necessary that the author's intention to promote such feelings should be established. AIR 1951 Raj 113 (Pr 13) = 52 Cri L Jour 600 (SB) ** AIR 1936 All 314 (316) = 37 Cri LJ 599 (SB).

(8) To sustain the order it is not necessary that the words used actually brought hatred and enmity between the different communities. AIR 1951 Raj 113 (Pr 13) = 52 Cri L Jour 600 (SB).

(9) Where, after hearing the application, the High Court is in doubt as to the book or other document containing objectionable matter of the nature specified in Section 99-A, the High Court must set aside the order of forfeiture and not confirm it. AIR 1936 All 314 (315) = 37 Cri L Jour 599 (SB) ** AIR 1927 All 649 (653) = 29 Cri L Jour 968 (SB).

(10) The onus of proving that the order of the Government is wrong is on the applicant and he has the right to begin. AIR 1936 All 314 (315) = 37 Cri L Jour 599 (SB) ** AIR 1957 All 538 (539) = ILR (1957) 1 All 528 = 1957 Cri L Jour 912 (SB) ** AIR 1951 Raj 113 (Pr 14) = 52 Cri L Jour 600 (SB).

[But see AIR 1928 Lah 245 (246) = 29 Cri L Jour 899 (SB).]

(11) Where the language is such as to produce or promote feelings of enmity or hatred, the writer must be presumed to have intended the effect which his act was likely to produce. AIR 1936 All 314 (316) = 37 Cri L Jour 599 (SB) ** AIR 1927 All 649 (652) = 29 Cri L Jour 968 (SB) ** AIR 1932 Lah 99 (99) = 34 Cri L Jour 473 (SB).

(12) Whatever be the ostensible motives, if the effect of the article is seditious, the Government cannot be said to be wrong in ordering a forfeiture under Section 99-A. See AIR 1914 Lah 1 (4) = 15 Cri L Jour 490 (SB) ** AIR 1920 Cal 478 (482, 491) = 21 Cri L Jour 98 (SB) ** AIR 1915 Lah 1 (4) = 16 Cri L Jour 274 (SB).

(13) In an application under Section 99-B a plea that the statements contained in the publication are supported by authority or are true can neither be pleaded nor proved and is immaterial. AIR 1927 All 649 (653) = 29 Cri L Jour 968 (SB) ** AIR 1932 Lah 99 (99) = 34 Cri L Jour 473 (SB).

(14) In a prosecution for an offence under Section 124-A or Section 153-A or Section 295-A of the Penal Code, a judgment under this section refusing to set aside an order of forfeiture is admissible as evidence under Section 11 or under Section 13 of the Evidence Act, 1872. AIR 1927 All 654 (656) = 28 Cri L Jour 785.

(15) It is no defence to a charge under Section 295-A, Penal Code for an accused to plead that he was writing a book in reply to the one written by one professing another religion who has attacked his own religion. AIR 1955 Punj 28 (29) = ILR (1954) Punj 1020 = 1955 Cri L Jour 337 (SB).

(16) Sections 99-A to 99-G form a single scheme dealing with the same subject-matter. Forfeiture of objectionable literature. These seven sections have, to be read together. If Sections 99-B, 99-C, 99-D and 99-G are read together it becomes clear that the only question for consideration by the Special Bench is that mentioned in Section 99-D. The Special Bench has to confine its inquiry within the limits of Section 99-D. AIR 1960 All 715 (716, 717) = 1960 Cri LJ 1528 =

*[**99E. Evidence to prove nature or tendency of newspapers.**—On the hearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, †[in respect of which the order of forfeiture was made].]

[*] This section was inserted by the Press Law Repeal and Amendment Act, 1922 (XIV of 1922).

[†] These words were substituted for the words "which are alleged to be seditious matter", by the Code of Criminal Procedure (Third Amendment) Act, 1926 (XXXVI of 1926), Section 5.

*[**99F. Procedure in High Court.**—Every High Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such applications, the amount of the costs thereof and the execution of orders passed thereon, and until such rules are framed, the practice of such Courts in proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications.]

[*] This section was inserted by the Press Law Repeal and Amendment Act, 1922 (XIV of 1922).

*[**99G. Jurisdiction barred.**—No order passed or action taken under Section 99A shall be called in question in any Court otherwise than in accordance with the provisions of Section 99B.]

[*] This section was inserted by the Press Law Repeal and Amendment Act, 1922 (XIV of 1922).

C.—Discovery of Persons wrongfully confined.

100. Search for persons wrongfully confined.—If any Presidency Magistrate,* Magistrate of the first class or Sub-Divisional Magistrate

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Section 99D — Note 1 (contd.)

1960 All WR (HC) 389 (SB). **(Overruled on another point in AIR 1961 SC 1662.)**

(17) Sections 99D and 99A are not ultra vires. AIR 1960 All 715 (717) = 1960 Cri LJ 1528 = 1960 All WR (HC) 389 (SB). **(Overruled on another point in AIR 1961 SC 1662.)**

Section 99-E — Note 1

(1) This section is wider than Section 14, Evidence Act. AIR 1920 Cal 478 (492) = 21 Cri L Jour 98 (SB).

(2) This section does not exclude any other evidence that may be otherwise admissible. AIR 1920 Cal 478 (493) = 21 Cri L Jour 98 (SB).

(3) The section applies only where, if the article stood alone, there may be doubt or ambiguity as to the character, nature or tendency of the words used and not when the meaning of the article is apparent on its face. AIR 1920 Cal 478 (485) = 21 Cri L Jour 98 (SB).

(4) The section does not apply to publications other than newspapers. AIR 1920 Cal 478 (493) = 21 Cri L Jour 98 (SB).

(5) The section may be utilised by the person affected by the order of forfeiture precisely in the same manner as by the Crown. AIR 1920 Cal 478 (485, 493) = 21 Cri L Jour 98 (SB) ** AIR 1918 Mad 1210 (1253) = 18 Cri L Jour 157 (235) (SB).

(6) A copy of the newspaper other than the one forfeited is admissible in evidence only "in aid of the proof of the nature or tendency of the words." etc. AIR 1920 Cal 478 (485, 497) = 21 Cri L Jour 98 (SB) ** AIR 1915 Lah 383 (384) = 16 Cri L Jour 555 (556) (SB) ** AIR 1927 All 649 (652) = 29 Cri L Jour 968 (SB) ** AIR 1914 Lah 1 (4) = 15 Cri L Jour 490 (SB).

(7) Copy must be such that a perusal of the same throws appreciable light on the nature or tendency of the article forfeited. AIR 1918 Mad 1210 (1243) = 18 Cri L Jour 157 (224) (SB).

(8) The use of the word "tendency" does not show that intention is an essential element in the determination of the true character of the words. AIR 1920 Cal 478 (490) = 21 Cri L Jour 98 (SB). (Per Mookerjee, J.)

Section 99-F — Note 1

(1) The exclusion of the practice in "suits" and the provision for an order for the payment of costs suggest that regard is intended to be had to the practice in miscellaneous civil proceedings. AIR 1930 All 401 (406) = 31 Cri L Jour 840 (FB).

(2) The costs of one successful party, so far as they may be found to have been reasonably incurred, should be paid by the other side to whose action the incurring of costs was due. AIR 1930 All 401 (406) = 31 Cri L Jour 840 (FB).

Section 100 — Note 1

(1) The section is limited to persons wrongfully confined and is not as wide as the powers of the High Courts under Section 491 to issue directions in the

has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

[1882—S. 100—Same; 1872 and 1861—Nil.]

[*] Magistrates in the City of Ahmedabad have the powers and exercise the jurisdiction of a Presidency Magistrate—See Guj. Act XIX of 1961, S. 14(3).

STATE AMENDMENT

West Bengal:

In Section 100, for the words "Magistrates of the first class, or Sub-Divisional Magistrates", substitute the words "Sub-Divisional Executive Magistrate, Executive Magistrate of the first class, Sub-Divisional Judicial Magistrate or Judicial Magistrate of the first class".—West Bengal Act 8 of 1970, Section 2 and Schedule, item 39.

Secion 100 — Note 1 (contd.)

nature of habeas corpus. ('96) Rat 839 (839) (DB).

(2) A Magistrate cannot issue a warrant under this section unless he has reason to believe that a person is wrongfully confined. AIR 1936 Cal 306 (308) = 37 Cri L Jour 548 ** AIR 1957 Cal 139 (139) = 1957 Cri L Jour 365 ** AIR 1916 Lah 281 (285) = 17 Cri L Jour 491 (495) (DB).

(3) A Magistrate is not bound to hold regular enquiry before issuing the warrant. AIR 1928 Pat 550 (550) = 30 Cri L Jour 175 ** 2 Cal WN cccxxxiii (cccxxxiv) ** AIR 1916 Lah 281 (285) = 17 Cri L Jour 491 (495) (DB).

(4) Section 100 makes not even a whisper that the issue of a notice of the petition to the respondent is a pre-requisite. The absence of notice to be issued to the other side when an application is filed for action to be taken under this section, could be said to be in consonance with the manner in which a Magistrate has to act in an emergency of that kind. Section 100 does not contemplate that what is patent from the allegations in the affidavit should also be ascertained by means of a further enquiry after giving notice to the other side. 1963 Mad LJ (Cri) 242 = (1963) 1 Andh WR 376.

(5) A Magistrate should not merely rely on the allegation of an interested person of whom he knows nothing. AIR 1945 Oudh 170 (171) = 47 Cri L Jour 76 ** AIR 1916 Lah 281 (285) = 17 Cri L Jour 491 (495) (DB).

(6) The allegations need not reach that precision and particularity so as to establish definitely that the confinement is in fact an offence. It would be enough if there are materials for the Magistrate's satisfaction that the confinement amounts to an offence. AIR 1957 Cal 139 (139) = 1957 Cri L Jour 365.

(7) It is not open to the police officer to disregard the finding of the Magistrate and abstain from searching and taking to the Magistrate the person for whose search the warrant has been issued, on the ground that such person has not been unlawfully detained as supposed by the Magistrate. AIR 1936 All 306 (308) = 37 Cri L Jour 548.

(8) Magistrate can issue a warrant only in those cases where the confinement amounts to an offence. AIR 1958 Madh Pra 24 (25) = 1958 Cri L Jour 48 ** AIR 1958 Raj 267 (269) = ILR (1957) 7 Raj 938 = 1958 Cri L Jour 1245 ** AIR 1957 Pat 689 (691) = 1957 Cri L Jour 1445 (DB) ** AIR 1938 Cal 704 (704) = 40 Cri L Jour 58 (DB) ** AIR 1969 Delhi 304 = 1969 Cri LJ 1370.

(9) Under Section 100 the Magistrate has to be satisfied that the person was wrongfully confined. 1962 (2) Cri LJ 159 (Tripura).

(10) There is no form prescribed for a warrant under the section. AIR 1918 Cal 74 (74, 75) = 20 Cri L Jour 47 (DB) ** (1912) 13 Cri L Jour 186 (187) = 39 Cal 403 (DB).

(11) A search warrant issued under this section can direct the arrest of the person illegally confined and is not illegal on that account. AIR 1951 All 637 (Pr 7) = 52 Cri L Jour 912 (2).

(12) Where a particular place is specified in the warrant, the officer to whom the warrant is directed has no power to search outside that place and take the person into custody. AIR 1928 Pat 550 (551) = 30 Cri L Jour 175.

(13) When a Magistrate issues a search warrant under Section 100 to search, beyond the local limits of his jurisdiction all that he has to do to make it effective is to follow the procedure prescribed in Section 83 or Section 84. AIR 1954 Trav-Co 157 (158) = 1954 Cri L Jour 289 (DB) ** ILR (1953) Trav-Co 296 (298) (DB) ** AIR 1957 Cal 139 (140) = 1957 Cri L Jour 365.

D.—General Provisions relating to Searches.

101. Direction, etc., of search warrants.—The provisions of Sections 43, 75, 77, 79, 82, 83 and 84 shall, so far as may be, apply to all search warrants issued under Section 96, Section 98, °[Section 99A] or Section 100.

[1882—Section 101; 1872 — Sections 370, 371, 372, 373, paragraph 1, 375, 376; 1861—Sections 115, 116, 117, 118, 120, 121.]

[°] Added by the Press Law Repeal and Amendment Act, 1922 (XIV of 1922), S. 5 and Schedule III.

102. Persons in charge of closed place to allow search.—(1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of such place shall, on demand of the officer° or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by Section 48.

Section 100 — Note 1 (contd.)

(14) A search warrant can be executed at any place in India. AIR 1957 Madh Pra 7 (8) = 1957 Cri L Jour 455 (1).

(15) Where, in an investigation of a case under Section 363, Penal Code a police-officer searched a house, without a warrant under this section, but with a reasonable suspicion that the person concerned in the offence according to his information, were in the house, it was held that the search was not illegal. AIR 1942 Pat 281 (282) = 43 Cri L Jour 279.

(16) When a person wrongfully confined is taken before a Magistrate, he is bound to hear the parties concerned, and he should, after such enquiry as may be necessary, pass such orders as may seem proper. (1910) 11 Cri L Jour 450 (450) (Lah) ** (1898) 2 Cal WN cccxxxiii (cccxxxiv).

(17) In a proceeding under this section started against the husband on behalf of the wife on the ground that the wife was being illtreated and confined in the house, the Magistrate even if he disbelieves the story has no power to order the wife to go to her husband and to order the husband to execute a bond for good behaviour. (1952) 5 Sau LR 76 (77) (DB) ** 1963 (2) Cri LJ 541 (542) (All).

(18) There was no provision in the Criminal P. C. under which a person produced before Court under Section 100 could be called upon to give bail. 1962 Cri LJ 159 (Tripura).

(19) Where the person for whom a search-warrant is issued voluntarily appears before a Magistrate, the Magistrate should decline to take further action under this section. (1909) 10 Cri L Jour 219 (220) = 2 Sind LR 2 (DB).

(20) Section 100 does not empower a Magistrate to order protective detention of a person recovered, who is "sui juris" and who was not an accused and could not, therefore, be arrested and detained and who does not require protection. (1957) 61 Cal WN 330 (333) (DB).

(21) Section 100 does not give power to Magistrate to interfere with liberty of an adult person. 1962 (2) Cri LJ 159 (Tripura).

(22) Provisions in Chapter VII including Sections 98 to 103 of Criminal P. C. will be applicable to searches made for investigating offences under Forward Contract (Regulation) Act — Search and seizure for suspected contravention of the provisions of Forward Contracts (Regulation) Act cannot be carried out without complying with Section 22-A. AIR 1968 All 338 (341).

(23) A Government circular which acknowledged that Gherao resulted in confinement yet directed that before deciding upon police intervention for rescue of confined personnel the matter ought to be referred to the Labour Minister and his direction obtained, amounted to an interference with Magistrate's judicial function under Section 100. AIR 1968 Cal 407 (432, 469) (SB).

Section 102 — Note 1

(1) This section relates only to formal searches under Sections 96 and 98. AIR 1945 Mad 523 (524) = ILR (1946) Mad 510 (DB).

(2) The provisions of this section have been made applicable, so far as may be, to searches under Section 165. AIR 1927 All 516 (517) = 28 Cri L Jour 652.

(3) Neither this section nor Section 48 justifies the search officer to scale the outer wall and effect a burglarious entry into the house. AIR 1915 All 208 (208) = 16 Cri L Jour 495 (496).

[See however AIR 1933 All 438 (439) = 34 Cri L Jour 641.]

(4) Police party entering a Math by breaking open back doors, though main gate was open, without demanding head of Math to allow them to enter — **Held,** entry was illegal. AIR 1957 Orissa 130 (145, 146) = 1957 Cri L Jour 769 (DB).

(5) Where foreign currency is seized from a person, at the police station

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman, the directions of Section 52 shall be observed.

[1882—S. 102; 1872—Ss. 382, 383, 384; 1861—Ss. 122, 123, 124.]

[*] By notifications issued under Section 1 (2) of this Code, the State Government of West Bengal has extended Section 102 of the Code to the Commissioner of Police and the police in the town of Calcutta—See Notifications No. 1048J dated 15-3-1943 read with Nos. 1002J dated 25-3-1946 and 3019J dated 25-9-1946.

103. Search to be made in presence of witnesses.—(1) Before making a search under this Chapter, the officer* or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search †[and may issue an order in writing to them or any of them so to do.]

(2) The search shall be made in their presence, and list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

Section 102 — Note 1 (contd.)

before the search of his business premises the seizure is illegal and Section 102 (3) has no application. AIR 1959 Tripura 33 (35) = 1959 Cri L Jour 1025.

(6) Search of person — Provisions of Section 103 do not apply — It is not obligatory to keep witnesses during such search. 1966 Cr LJ 331 (332) (Guj).

(7) There is no provision in the Bombay Prevention of Gambling Act (4 of 1887) applying the provisions of Section 102 to a search under Section 6 of the said Gambling Act. AIR 1961 Guj 127 (128) = 1961 (2) Cri LJ 85 = (1961) 2 Guj LR 431.

SECTION 103 — SYNOPSIS

1. Scope and object.
2. Place of search.
2A. Time of search.
3. Search witnesses.
4. Who can call search witnesses.
5. Respectable inhabitants.
6. Of the locality.
6A. Search of search party.
7. Search shall be made in their presence.
8. Shall not be required unless summoned.
9. Duty of prosecution to call search witnesses.
10. Refusal or neglect to attend and witness a search.
11. List of things seized.
12. Signed by the witnesses.
13. Occupant of the place searched.
14. Right of occupant to be present.
15. Irregularities in search.
16. Searches under other Acts.
17. Illegal search.
18. Recovery under Section 27, Evidence Act (1872).

1. Scope and object. — (1) The object of the section is—

(a) to prevent possible chicanery and unfair dealings on the part of the officers entrusted with search-warrants. (1906) 4 Cri LJ 390 (393) = 12 Bur LR 248 ** AIR 1914 Low Bur 128 (134) = 15 Cri LJ 441 (FB) ** (1925) 91 Ind Cas 249 (249, 250) = 27 Cri LJ 73 (Lah) ** 1963 (1) Cri LJ 669 (674) (DB) (Ker).

(b) to safeguard the rights of the subject and to ensure that a search is conducted honestly. AIR 1919 All 41 (42) = 20 Cri LJ 695 ** AIR 1955 Sau 4 (7) = 1955 Cri LJ 31 (DB).

(c) to ensure confidence in the neighbours and in the public generally that anything incriminating which may be found in the premises searched shall be really "found" and shall not be "planted". (1906) 4 Cri LJ 390 (393) = 12 Bur LR 248 ** AIR 1917 Low Bur 91 (92) = 18 Cri LJ 1009 (1009) ** AIR 1919 Pat 452 (453, 454) = 20 Cri LJ 742 ** (1908) 7 Cri LJ 479 (487) = 4 Low Bur Rul 213 (FB) ** AIR 1969 Bom 353 (358) 1969 Cri LJ 1344 = 70 Bom LR 794 (799) ** 1963 Ker LJ 86 = 1963 (1) Cri LJ 669 (673, 674) (DB).

(d) to obtain as reliable evidence as possible of the search and exclude the possibility of any concoction or malpractice of any kind. AIR 1930 Cal 141 (143) = 31 Cri LJ 667 (DB) ** (1910) 11 Cri LJ 746 (747) (Low Bur).

(2) The provisions of the section are enacted for greater certainty and security and not because the statements of certain officers can under no circumstances be

(3) **Occupant of place searched may attend.**—The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witness, shall be delivered to such occupant or person ‡[* *].

(4) When any person is searched under Section 102, sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person ‡[* *].

†[(5) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under Section 187 of the Indian Penal Code.]

[1882—S. 103; 1872—S. 385; 1861—S. 125.]

[*] By notifications issued under Section 1 (2) of this Code, the State Government of West Bengal has extended Section 103 of the Code to the Commissioner of Police and the police in the town of Calcutta—See Notifications Nos. 1048J dated 15-3-1943, read with Nos. 1002J dated 25-3-1946 and 3019J dated 25-9-1946.

[†] Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), Section 14.

[‡] The words "at his request" were omitted by the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), Section 15 (1-1-1956).

Section 103 — Note 1 (contd.)

accepted. AIR 1936 Rang 15 (17) = 37 Cri LJ 331.

(3) The provisions of this section will apply so far as may be to search under Section 165. AIR 1927 All 516 (517) = 28 Cri LJ 652.

(4) The officer who intends to search a person cannot issue an order in writing to any inhabitants of the locality to be witnesses for such a search. AIR 1941 Rang 333 (334) = 43 Cri LJ 217 ** AIR 1942 Oudh 221 (224) = 43 Cri LJ 416 ** AIR 1933 Nag 99 (100) = 34 Cri LJ 721.

2. Place of search. — (1) A cart is not a place such as is contemplated in this section and therefore it will not apply to the search of a cart. Cr. Rg. 18-6-1885.

(2) Section 103 applies when a search is to be made of a place, it does not apply to the search of a person. Section 103 would not apply to the seizure of the shoes which were being worn by the accused at the time he was with the investigating police officer. There is no question of search either of a place or of a person in such a case. **AIR 1956 SC 411 (414, 415) = 1956 Cri LJ 801** ** 1966 Cri LJ 331 (332) (Guj) ** AIR 1965 Tripura 45 (47) = 1965 (2) Cri LJ 814 ** 1963 (1) Cri LJ 342 (343) (All).

2A. Time of search. — (1) Searches, when not inconvenient should be conducted during day time — Lack of time not alleged — Search without warrant not proper. 1963 Ker LJ 86 = 1963 (1) Cri LJ 669 (673, 674) (DB)

3. Search witnesses. — (1) Under this section it is obligatory on the officer about to execute a search-warrant to call on and get two or more respectable inhabitants of the locality to witness the search. (1908) 7 Cri LJ 479 (482, 483) = 4 Low Bur Rul 213 (FB) ** AIR 1921 Pat 508 (508, 509) ** ('62) 64 Punj LR 91 (92).

[See also ('62) 64 Bom LR 784.]

(2) The search witnesses must be called before the search is started. (1903) 2 Low Bur Rul 43 (45) ** (1908) 7 Cri LJ 479 (481) = 4 Low Bur Rul 213 (FB).

(3) Though the presence of witnesses at a search is always desirable and their absence will weaken and may sometimes destroy the acceptance of evidence as to the finding of the articles, their attendance at the search is not always essential in order to enable evidence as to the search to be given. AIR 1946 PC 16 (19) = 47 Cri LJ 489 = 72 Ind App 305 = ILR (1946) Lah 1.

(4) The section merely requires an honest effort on the part of the officer in charge of the search to secure the presence of respectable witnesses of the locality but the search is not vitiated if no such witness is available. AIR 1947 All 165 (167) = 48 Cri LJ 611 = ILR (1947) All 370.

(5) Where no attempt is made to have respectable witnesses of the locality for a search it would not be a search conducted in the manner provided by law. AIR 1953 All 506 (Pr 5) = 1953 Cri LJ 1181 ** AIR 1947 All 165 (167) = 48 Cri LJ 611 = ILR (1947) All 370 ** AIR 1949 All 291 (299) = ILR (1949) All 658 = 50 Cri LJ 498 (DB) ** 1963 Ker LJ 86 = 1963 (1) Cri LJ 669 (673, 674) (DB).

(6) The Court is not bound to accept evidence of the witnesses for the search as to the fact of the search, as true where they are shown to be false, or where there are discrepancies therein. AIR 1936 Rang 15 (16) = 37 Cri LJ 331 ** AIR 1918 All 113 (114) = 19 Cri LJ 949 ** AIR 1923 Lah 683 (683, 684) = 25 Cri LJ 495.

Section 103 — Note 3 (contd.)

(7) If it is established that a panch witness is likely to be a pliable agent in the hands of the police or may be looked upon as a police agent his evidence should not be relied upon. AIR 1951 Bom 468 (Pr 3) = ILR (1952) Bom 207 = 52 Cri LJ 1528 (DB).

(8) Search witness a person of choice of raiding officer, or a person who appeared in police cases before — Recovery of articles becomes doubtful. (1965) 67 Punj LR 128 (130) = 1965 Cur LJ 71.

(9) Witnesses of questionable responsibility brought from outside even when respectable witnesses were available on spot conviction could not be based on their evidence. 1956 All LJ 182 (183, 185) = 1956 All WR (HC) 112 ** (1962) 64 Raj LR 91 (92).

(10) Merely because the police take the panchas with themselves before the raid, the panchas do not become members of the raiding party and cannot be looked upon as partisan witnesses. AIR 1956 Bom 287 (294) = ILR (1956) Bom 343 = 1956 Cri LJ 585 (DB) ** (1963) 65 Pun LR 223 (228).

(11) In deciding whether the evidence of a panch witness should be believed or not his status and position in life and whether he is in the habit of frequently acting as a panch should be considered. AIR 1951 Bom 468 (Pr 3) = ILR (1952) Bom 207 = 52 Cri LJ 1528 (DB).

(12) The evidence of a person cannot be distrusted solely on the ground that on a previous occasion he had acted as a witness in another search. AIR 1951 Bom 468 (Pr 3) = ILR (1952) Bom 207 = 52 Cri LJ 1528 (DB) ** AIR 1933 Nag 99 (100) = 34 Cri LJ 721 ** (1908) 7 Cri LJ 87 (88) = 4 Low Bur Rul 121.

(13) The mere fact that the witnesses for the search helped the police in making the search will not make the search invalid. AIR 1927 Rang 241 (242) = 28 Cri LJ 701.

(14) Accused making a statement to police in presence of witnesses at one place — Search carried out in pursuance of the statement — Not necessary that the same witness should be present during search carried out at a different place. 1956 All LJ 182 (184) = 1956 All WR (HC) 112.

(15) Two search witnesses — One becoming hostile — Recoveries cannot be held to be not established on the ground of the witness being hostile. 28 Cut LT 625 (633) (DB).

(16) The Courts are bound to attach the greatest importance to the evidence of panch witnesses and in order that the Court should attach such importance to panch witnesses it is essential that panch witnesses should be independent witnesses unbiased and without being in any way under the control of the police. 1965 MLJ (Cri) 202 = 1963 (2) Cri LJ 454 (456, 457) (Ker).

4. Who can call search witnesses. —

(1) It is only the officer about to make the search and not any other person that can call witnesses for search. (1898) 21 Mad 83 (89) (DB).

(2) Police officer getting information that accused was on his way home with contraband gold — Such officer himself having authority to make the search and to collect witnesses to attend the search — In such a case the choice of witnesses is entirely in the discretion of the police officer and there is no duty on his part to go to police station to lodge information. AIR 1967 Mys 47 (49) = 1967 Cri LJ 553 = 3 Law Rep 193 (DB).

5. Respectable inhabitants. — (1) The search should be conducted in the presence of two or more respectable inhabitants of the locality. AIR 1938 Cal 701 (701) = 40 Cri LJ 52 (DB) ** AIR 1935 All 520 (520) = 36 Cri LJ 551 ** AIR 1969 All 109 (112) = 1969 Cr LJ 347. (Signatures of the witnesses must be taken.) ** (1963) 65 Punj LR 823 (824).

(2) Any person is entitled to claim respectability provided he is not disreputable in any way. AIR 1936 All 707 (707) = 37 Cri LJ 1108 ** AIR 1959 Mad 450 (452) = 1959 Cri LJ 1189.

(3) It is necessary that the persons selected should be absolutely unprejudiced and uninterested in the result of what they have to take part in. AIR 1938 Cal 701 (701) = 40 Cri LJ 52 (DB) ** (1908) 7 Cri LJ 479 (482, 483) = 4 Low Bur Rul 213 (FB) ** (1911) 12 Cri LJ 251 (253) = 10 Ind Cas 796 (FB) (Low Bur).

(4) The selection of officers connected with the police, or persons who are not impartial, is not contemplated by the section. AIR 1951 Bom 468 (Pr 5) = ILR (1952) Bom 207 = 52 Cri LJ 1528 (DB) ** (1908) 7 Cri LJ 479 (483) = 4 Low Bur Rul 213 (FB).

(5) Having been a prosecution witness is not sufficient to deprive one of one's title to "respectability". AIR 1936 All 707 (707) = 37 Cri LJ 1108.

(6) The mere fact that witnesses are brought from another locality should not be looked upon as a factor militating against their respectability. AIR 1951 Bom 468 (Pr 4) = ILR (1952) Bom 207 = 52 Cri LJ 1528 ** 1963 Ker LT 992 = 1963 (2) Cri LJ 454 (457).

(7) The fact that the relative of witness belonged to the opposite party of accused, whose house was searched, does not made the witness an interested witness, when he had come to stay with his relative only on the previous evening. 1961 (1) Cr LJ 595 (599, 600) = 1960 All WR (HC) 226 (DB).

6. Of the locality. — (1) Only respectable persons of the locality are to be

Section 103 — Note 6 (contd.)
selected as witnesses for the search. AIR 1934 Nag 156 (157) = 35 Cri LJ 1163 ** AIR 1957 Andh Pra 286 (288) = 1957 Cri LJ 830 ** AIR 1934 All 374 (375) = 36 Cri LJ 742 ** 1956 All LJ 182 (183) = 1950 All WR (HC) 112.

(2) The words "of the locality" do not mean that they should be living within a stone's throw of the house to be searched. AIR 1934 Oudh 90 (91) = 35 Cri LJ 397 ** AIR 1959 Mad 450 (452) = 1959 Cri LJ 1189 ** AIR 1934 All 873 (874) = 36 Cri LJ 362 (DB).

(3) The words "of the locality" are not restricted to mean the same quarter. (1911) 12 Cri LJ 479 (479) (Low Bur) ** AIR 1934 Sind 159 (161) = 36 Cri LJ 704 (DB).

(4) The words "of the locality" include places even within three or four miles of the place of search. AIR 1931 Oudh 115 (116) = 32 Cri LJ 699 (DB) ** (1910) 11 Cri LJ 746 (747) (Low Bur).

(5) In a thinly populated locality where houses are situated furlongs apart a man living at some distance can be chosen as the search witness. AIR 1952 Mad 604 (Pr 9) = 1952 Cri LJ 1198.

(6) The fact that the witnesses are from a different locality will not necessarily make the search invalid, or make the evidence of such witnesses inadmissible. AIR 1959 Mad 544 (547) = 1959 Cri LJ 1445 ** AIR 1958 Tripura 40 (44) = 1958 Cri LJ 1549 ** AIR 1952 Bom 327 (Pr 9) = ILR (1952) Bom 979 (DB)

(7) The mere fact that the witnesses are taken from another locality should not be looked upon as a factor militating against their respectability. AIR 1951 Bom 468 (Pr 4) = ILR (1952) Bom 207 = 52 Cri LJ 1528 (DB).

(8) The emphasis of the section is on the word "respectable" and not on the word "locality". AIR 1941 Lah 297 (299) = 42 Cri LJ 812 (DB) ** (1810) 11 Cri LJ 746 (747) (Low Bur) ** AIR 1932 Pat 66 (68) = 33 Cri LJ 233. ** 1967 Cur LJ 682 (687) = 69 Punj LR 935 (DB) ** AIR 1965 Orissa 136 (138) = 1965 (2) Cri LJ 112 = 31 Cut LT 122 ** AIR 1965 Tripura 45 (47) = (1965) 2 Cr LJ 814 ** AIR 1964 Pat 565 (566, 567) = 1964 (2) Cri LJ 715 = 1964 BLJR 754.

(9) Under the amended Section 32 of the J. and K. Excise Act read with Section 103 of the Criminal P. C., it is sufficient if the search is conducted before respectable persons though not of the same locality. AIR 1959 J and K 134 (135) = 1959 Cri LJ 1436.

(10) Witness not permanent resident of locality where search was carried out but staying in the locality as guest of a relative — Witness is a witness from the locality. 1961 (1) Cri LJ 595 (599) = 1960 All WR (HC) 226 (DB).

6A. Search of search party. — (1) Before entering house of a person suspected of possessing excisable article, the personal search of every one to be engaged in the raid must be given. 26 Cut LT 322 = 1961 (1) Cri LJ 828 (829) (Orissa).

(2) Evidence of search of persons of witnesses contradictory— Does not affect legality of search — It only affects weight to be attached to evidence of such persons. AIR 1965 Orissa 136 (138) = 1965 (2) Cri LJ 112 = 31 Cut LT 172.

7. Search shall be made in their presence. — (1) It is not a sufficient compliance with this section that the witnesses should be merely summoned and kept present outside a building while the search is being carried on within it and then called in to see what has been found. AIR 1930 Bom 169 (170) = 31 Cri LJ 927 (DB).

(2) If the place searched is visible to witnesses from outside the room or house, they need not be inside it. (1914) 15 Cri LJ 19 (21) = 35 All 575.

(3) The mere fact that the witnesses were not present throughout the search and did not witness every detail of it would not justify the setting aside of the conviction, but where such a circumstance has left the evidence in an unsatisfactory condition, a conviction cannot be sustained. AIR 1930 Bom 169 (172) = 31 Cri LJ 927 (DB).

(4) It is not necessary that the search witnesses must have been present at the scene before the arrival of the officer making the search. It is sufficient if they arrive on the scene before the search begins. AIR 1938 Pat 403 (406) = 39 Cri LJ 796 (FB)** AIR 1934 Bom 16 (20) = 35 Cri LJ 523 (DB).

(5) Seizure list attested by witness at police station — Witnesses not going inside house of accused but standing at threshold — Irregularity in search held would not affect legality of the prosecution. (1962) 4 OJD 156 = ILR 1962 Cut 366 = 1964 (2) Cr LJ 487 (491) (DB) (Orissa).

(6) Where the presence of the panchas is obligatory at the time of search, then ordinarily conviction should not rest on the uncorroborated testimony of the police officer conducting the search. AIR 1960 Guj 24 (26) = 1960 Cri LJ 1447 = (1960) 1 Guj LR 77.

8. Shall not be required unless summoned. — (1) A person called upon to attend and witness a search cannot be compelled by the officer conducting the search to attend the Court to give evidence without a summons in that behalf. AIR 1920 Mad 286 (286) = 21 Cri LJ 33 (DB) ** (1906) 28 All 62 (69) = 2 Cri LJ 395 (DB).

9. Duty of prosecution to call search witnesses. — (1) An officer connected with the investigation cannot be deemed to be an entirely satisfactory witness for the purpose of proving the search. AIR

Section 103 — Note 9 (contd.)
1930 Cal 141 (143) = 31 Cri LJ 667 (DB).

(2) Ordinarily, the prosecutor should produce the search witnesses and he would be guilty of suppressing material evidence if he does not do so. AIR 1932 All 185 (186) = 33 Cri LJ 943.

(3) It is not the duty of the prosecutor to put every search witness in the witness-box. The discretion is left to the Court to require or not the attendance of such witnesses. AIR 1928 Cal 27 (35) = 29 Cri LJ 49 (SB) ** 1965 All Cri R 1 = 1964 All WR (HC) 727 (728).

(4) The prosecution should specifically mention the names of search witnesses in charge-sheet so that the Court may summon them if it so desires. 1953 Raj LW 165 (168) (DB).

(5) When the officer desires that the evidence of the witnesses is required to fortify his own evidence, then he must call those witnesses. AIR 1932 Bom 181 (183) = 33 Cri LJ 389 (DB).

(6) When the law requires a search to be made in the presence of witnesses, a punchnama should usually be insisted upon and the conviction should not ordinarily be based on the uncorroborated testimony of the police officer. AIR 1951 Bom 186 (Pr 6) = 52 Cri LJ 41 (DB).

(7) Where it is not possible to make a search in the presence of panches it would be open to the Court to convict the accused on the evidence of the police officers alone provided the Court is satisfied as to its truth. AIR 1951 Bom 186 (Pr 6) = 52 Cri LJ 41 (DB).

[See also 1956-1 Mad LJ 51 (52).]

(8) The police-officer may state as a witness that he held a punchnama and offer to produce the record if the accused asks for it, but he cannot bring it on record in his evidence-in-chief. AIR 1941 Bom 149 (151) = 42 Cri LJ 556 (DB).

(9) The putting in of a punchnama without calling a panch is not only an infringement of the rules of evidence against the admission of hearsay evidence, but also unfair to the accused. AIR 1941 Bom 149 (151) = 42 Cri LJ 556 (DB) ** AIR 1932 Bom 181 (183) = 33 Cri LJ 389 (DB).

10. Refusal or neglect to attend and witness a search. — (1) The words "attend and witness a search" in subsection (5) will not include signing the search list and a refusal to sign such list will, therefore, not be an offence under that sub-section. AIR 1938 Pat 403 (407) = 39 Cri LJ 796 (FB).

(2) A refusal to sign the search list does not amount to a refusal to render assistance to a public servant within the meaning of S. 187, Penal Code. AIR 1938 Pat 403 (412) = 39 Cri L Jour 796 (FB). (Chatterji, J., contra.)

(3) If the witnesses attend and witness a search on a verbal request of the officer concerned but refuse to sign the search list they are not guilty of any offence under Section 187, Penal Code. AIR 1938 Pat 403 (412) = 39 Cri LJ 796 (FB).

11. List of things seized. — (1) An officer conducting a search should prepare a search list in the manner specified. AIR 1915 Low Bur 64 (66) = 16 Cri LJ 264 (266).

(2) The officer should exercise the greatest caution in fulfilling the formalities of the law for making a search and providing for every possible safeguard so as not to leave any scope for adverse criticism. AIR 1929 All 901 (903) = 31 Cri LJ 10.

(3) The properties found and places searched should ordinarily be proved by the production of the search list which should be exhibited as relevant evidence of those matters. (1911) 12 Cri LJ 489 (493) = 5 Sind LR 31 (DB) ** AIR 1933 Sind 220 (222) = 34 Cri LJ 848 (DB).

(4) Other evidence of its contents is admissible, Section 91 of the Evidence Act does not apply to such cases. AIR 1938 Pat 403 (409) = 39 Cri LJ 796 (FB) ** (1910) 11 Cri LJ 576 (577) (FB) (Mad). (**Overruling** 2 Weir 47; 2 Weir 515.)

(5) If prohibited articles are found in the possession of the accused a conviction based thereon will be valid. AIR 1933 Rang 146 (147) = 34 Cri LJ 652.

(6) Separate search should be made with respect to each person and, the persons who are sought to be made liable with the help of the search-list should be asked to sign the search-list. The failure of the officer to observe these elementary precautions renders search-list useless. ILR (1951) 1 Cal 539 (542) (DB).

(7) It is not necessary that the recovery list should be prepared with all the details. 1957 Cri LJ 688 (693) (Raj).

(8) Police bound to prepare list of all articles found in the container which contained the incriminating articles. (1966) 1 Andh WR 161 = (1966) 1 Andh LT 154 (155).

(9) The practice of obtaining the signatures or thumb impressions of the accused by the police to the panchanamas is highly objectionable. AIR 1959 Andh Pra 313 (317) = 1959 Cri LJ 689 (DB).

(10) Search list prepared by subordinate to Spl. Police Officer — No need of counter-signature by Spl. Police Officer. AIR 1969 Cal 451 (454) = 1969 Cri LJ 1120 = 73 Cal WN 547.

(11) Recovery memo of personal search signed by witnesses under Section 103 (2) is not a statement to a police officer under Section 161 — Not rendered inadmissible in evidence under Section 162. 1963 Cur LJ 348 = 65 Pun LR 745 (746) (DB).

(12) **Search list must be prepared where seizure is made or accused apprehended — Preparation of list at the**

Section 103 — Note 11 (contd.)

police station not proper. 40 Mys LJ 656 (657) = 1964 Mad LJ (Cri) 484 (Mys).

(13) Whenever fire-arms or fired cartridges are recovered during the course of investigation, the investigation officer should not only make a list of them but see that they are properly sealed and the sealed covers are signed by the Motbirs who have witnessed the recovery. 1959 Raj LW 196 (204) = ILR (1959) 9 Raj 107 (DB).

(14) Copy of search list not furnished to accused — Irregularity is curable under S. 537 — Search is not invalid. 1965 All Cri R 1 = 1964 All WR (HC) 727 (728).

(15) Failure to deliver, copy of list of seized articles signed by the witnesses, to occupant of place searched or to his representative does not vitiate the search. (1961) 1 Cr LJ 595 (599) = 1960 All WR (HC) 226 (DB).

12. Signed by the witnesses. — (1) The search list should be signed by the witnesses for the search and unless it is so signed no presumption based upon such list can be drawn against the accused. (1908) 7 Cri LJ 411 (412) = 4 Low Bur Rul 134.

13. Occupant of the place searched. — (1) The words "occupant of the place" refer back to the person mentioned in Section 102, i.e., "a person residing in or being in charge of the place." AIR 1914 Cal 456 (470, 471) = 15 Cri LJ 385 (DB).

14. Right of occupant to be present.— (1) Where the occupant is present and demands to be allowed to be present at the search, he must be permitted to do so. The rule is one not merely of technicality but of substance. AIR 1914 Cal 456 (468) = 15 Cri LJ 385 (DB).

(2) It is only where the delay caused in procuring the attendance of the occupant might frustrate the object of the search that the Police would be justified in dispensing with his presence and conducting the search in the presence of some one on his behalf. AIR 1955 Sau 4 (7) = 1955 Cri LJ 31 (DB).

(3) Where the search officer insists on keeping the occupant out and the occupant causes hurt to the officer in attempting to go into his house on physical resistance being offered by the officer, he cannot be held guilty of an offence under Section 332, Penal Code. AIR 1932 All 449 (450) = 34 Cri LJ 439.

(4) It is not necessary that the occupant must be present at the search. AIR 1928 Cal 27 (35) = 29 Cri LJ 49 (SB).

15. Irregularities in search. — (1) No irregularity in a search can vitiate the trial nor affect the conviction of the accused unless the accused has been prejudiced by the defect. ILR (1947) 1 Cal 439 (443, 444) (DB) ** AIR 1959 Mad 544 (548) = 1959 Cri LJ 1445 ** AIR 1956 Bom 528 (529) = 1956 Cri LJ 981 (DB) ** AIR 1941 Rang 333 (333) = 43 Cri LJ 217 ** AIR 1934 Oudh 321 (323) = 35 Cri LJ 939 (DB) ** 1964 All WR (HC) 727 (728) = 1965 All Cr R 1 ** 1964 Cur LJ 89 = ('64) 66 Punj LR 84 (84) ** 1962 Raj LW 628 (629) (DB) ** AIR 1964 Pat 565 (567) = 1964 (2) Cri LJ 715 = 1964 BLJR 754 ** AIR 1967 Orissa 206 (208) = 1967 Cri LJ 1675 = 33 Cut LT 407 ** AIR 1965 Orissa 136 (137, 138) = 1965 (2) Cri LJ 112 = 31 Cut LT 172.

(2-3) The following are irregularities which will not vitiate the trial in the absence of proof of failure of justice resulting therefrom:—

(a) The failure to call respectable persons of the locality to witness the search. AIR 1953 All 353 (Pr 6) = 1953 Cri LJ 762 ** AIR 1950 All 436 (Pr 4) = 51 Cri LJ 1152 ** AIR 1956 SC 411 (415) = 1956 Cri LJ 801. (At the highest the irregularity in the search and the recovery in so far as the terms of Section 103 had not been fully complied with would not affect the legality of the proceedings. It only affected the weight of evidence.) ** AIR 1955 Ajmer 10 (11) = 1955 Cri LJ 595 ** Madh B L J 1954 HCR 1325 (1340) ** AIR 1967 Mys 47 = 1967 Cri LJ 553 = (1965) 3 Law Rep 193 (197, 198) ** AIR 1965 Tripura 45 (47) = 1965 (2) Cri LJ 814 ** AIR 1962 Punj 548 (552) = 1962 (2) Cri LJ 779 = ILR (1961) 2 Punj 803 (DB).

[But see (1904) 1 Cri LJ 993 (994) = 10 Bur LR 253.]

(b) The failure to prepare a search list on the spot. (1910) 11 Cri LJ 463 (464) = 37 Cal 467 (DB).

(c) The addition of new items to the search list after it has been signed by the witnesses. AIR 1914 Low Bur 258 (258) = 15 Cri LJ 523.

(d) Non-compliance by investigating officer with sub-section (3) of Sec. 103 and sub-section (5) of Section 165 does not vitiate trial. 1965 BLJR 742 (743).

(e) Breach of the provisions of Section 103 (3), does not result in vitiating the search, though it might affect the probative value which is to be attached to the recovery of the incriminating articles. 1961 (1) Cr LJ 595 (599) = 1960 All WR (HC) 226 (DB). (Reversed on another point in AIR 1963 SC 822.)

(4) Although the failure to comply with the provisions regulating searches may cast doubt on the bona fides of the officer conducting the search, the evidence as to an irregular search does not

Section 103 — Note 15 (contd.)

become inadmissible on that ground. 1953 Raj LW 165 (169) (DB) ** AIR 1957 Assam 74 (75) = ILR (1955) 7 Assam 443 = 1957 Cri LJ 502 ** AIR 1955 Cal 129 (131) = 1955 Cri LJ 433 (DB) ** AIR 1951 Nag 237 (Pr 18) = ILR (1951) Nag 349 ** AIR 1940 Cal 85 (86) = 41 Cri LJ 316 (DB) ** 1963 (1) Cri LJ 669 (674) = 1963 Ker LJ 86 (DB).

(5) In case of non-compliance with provisions of Sections 102, 103 and 165, where the search is irregular evidence of irregular search is admissible and trial is not vitiated. AIR 1961 Ker 8 (11, 12, 13) = 1961 (1) Cri LJ 70 = 1960 Ker LT 753 (FB).

(6) Witnesses not inhabitants of the locality — Indiscriminating articles produced before the search — Not material factors — Real question is whether the witnesses were truthful and their evidence is reliable. AIR 1967 Mys 47 (49) = 1967 Cri LJ 558 = (1965) 3 Law Rep 198 (DB).

(7) Irregularity in a search would always afford ground for scrutiny and may furnish a reason for distrusting the evidence produced by the prosecution. AIR 1953 All 506 (Pr 5) = 1953 Cri LJ 1181 = AIR 1953 All 353 (Pr 6) = 1953 Cri LJ 762 ** AIR 1950 All 147 (Prs 8, 12) = 51 Cri LJ 456 ** AIR 1933 Nag 99 (100) = 34 Cri LJ 721 ** 1963 Ker LJ 86 = 1963 (1) Cri LJ 669 (674) (DB) ** 64 Pun LR 874 (877). (Charge under — Search by Police Officer on charge of selling faked railway tickets — Railway servants employed as witnesses — Search conducted in absence of accused.)

(8) Where the salutary provisions of this section are not complied with, the burden lies upon the prosecution to explain the circumstances which made it impossible to comply with those provisions. AIR 1950 All 147 (Pr 8) = 51 Cri LJ 456 ** AIR 1957 Andh Pra 829 (829) = 1957 Cri LJ 1210.

(9) Contravention of Sections 103, 165 in search — Trial not vitiated — Evidence of Search Officer is admissible. 1961 Ker LJ 1154 = 1961 Ker LT 999 (998).

(10) Irregularity in a search does not vitiate seizure of the articles. AIR 1963 SC 822 (824) = 1963 (1) Cri LJ 809 = (1963) Supp (1) SCR 408 ** 1969 Cri LJ 1282 (1285) (Delhi). (Search and recovery of kidnapped girl.)

16. Searches under other Acts. — (1) Prevention of Food Adulteration Act 1954:

(a) Composite memo. under Section 10 (7) and Section 11 not invalid — Non-compliance with Section 10 (7) by itself does not render trial invalid. AIR 1962 Punj 548 (552) = 1962 (2) Cri LJ 779 = ILR (1961) 2 Punj 803 ** AIR 1969 All 109 (112) = 1969 Cri LJ 347. (Witnesses need not be respectable.) ** AIR 1968 Orissa 12 (13) = 1968 Cri LJ 73 = 33 Cut LT 1145. (Seizure witnesses need not be respectable or independent.) ** AIR 1967 Orissa 206 (208) = 1967 Cri LJ 1675 = 33 Cut LT 407. (The Food Inspector must justify any departure from this sale in particular case.)

(b) Section 103 (1) is stricter than Section 10 (7), of the Act because it does not contain the words 'as far as possible'.) ** AIR 1966 Andh Pra 96 (99) = 1966 Cri LJ 393 = (1965) 2 Andh WR 359 (366).

(c) Provisions of S. 10 (7) of Prevention of Food Adulteration Act not complied with — Sale and seizure can be acted upon, on careful scrutiny of evidence, for finding accused guilty. AIR 1966 Andh Pra 96 (99) = 1966 Cri LJ 393 = (1965) 2 Andh WR 359.

(d) Power of Food Inspector under S. 10, Prevention of Food Adulteration Act, to enter premises for taking samples is similar to that of Police Officer under S. 103, Cr. P. C. AIR 1969 Bom 353 (358) = 1969 Cri LJ 1344 = (1968) 70 Bom LR 794 (799).

(e) Irregularity in taking sample cannot vitiate the taking of sample. AIR 1969 All 109 (112) = 1969 Cri LJ 347.

(f) Honest effort should be made to secure presence of respectable persons of the locality. But the search would not be vitiated if no such respectable person of the locality is available. AIR 1966 Cal 51 (53) = 1966 Cri LJ 135 = 70 Cal WN 1005.

(g) Rule 165 (e) of Bihar Police Manual is not referred to in Section 10 of the Prevention of Food Adulteration Act (1954) or in Section 103 of Cr. P. C. and does not apply to search by Food Inspector under Section 10 of the Act. AIR 1964 Pat 565 (567) = 1964 (2) Cri LJ 715 = 1964 BLJR 754.

(h) Object is to ensure regulating and to secure evidence of action of Food Inspector — Provisions of section are directory. 1968 Cri LJ 683 (685, 686) = 1967 Ker LT 825 (DB).

(i) Non-observance of provisions is not fatal if evidence adduced at trial is sufficient and reliable. 1968 Cri LJ 683 (685, 686) = 1967 Ker LT 825.

(2) Prevention of Gambling Acts:

(a) There is no provision in Bombay Prevention of Gambling Act to search place before panchas — Section 102 and

Section 103 — Note 16 (contd.)
Section 103, Criminal P. C., do not apply. AIR 1961 Guj 127 (128) = 1961 (2) Cri LJ 85 = (1961) 2 Guj LR 431.

(b) Section 103 applies to searches under warrant issued under Section 5 of Hyderabad Gambling Act (2 of 1305F). AIR 1966 Mys 289 (292, 293) = 1966 Cri LJ 1280 = (1966) 1 Mys LJ 110.

(3-4) Prohibition Acts:

(a) Procedure to be followed in conducting search — Search of motor car carried under provisions of Bombay Prohibition Act — Section 103 does not apply to such search. 1963 (2) Cri LJ 694 (696, 697) = (1963) 3 SCR 386 (SC).

(b) Arrest of accused in crowded street for offence under Prohibition Act — Absence of panchanama — It weakens the prosecution case — But accused would not be entitled to acquittal merely on that ground. AIR 1967 Bom 199 (200) = 1967 Cri LJ 731 = 66 Bom LR 5 (DB).

(c) Contraband Arrack seized in prohibition raid under Madras Prohibition Act (10 of 1937) — No search witnesses though time of raid was such that witnesses would have been available — Accused held entitled to benefit of doubt. (1965) 1 Mad LJ 381 = ILR (1964) 2 Mad 983 (984).

(d) The contravention of the provisions of Sections 103 and 165 of the Cr. P. Code making the search defective will not vitiate the trial or make the evidence of the search officers inadmissible in evidence. AIR 1961 Ker 8 (11, 12, 13) = 1961 (1) Cri LJ 70 = 1960 Ker LT 753 (FB).

(5) Sales Tax Acts:

(a) Seizure of account books openly kept — As there was no search compliance with provisions of Section 103, Cr. P. C. was not necessary. (1960) 11 STC 850 (854) (AP).

(b) The delegatee of Commissioner conducting search under S. 17, Bihar Sales Tax Act (19 of 1947) (Since repealed by Act 19 of 1959) does not conduct such search in the course of investigation of an offence and hence the provisions of Section 165 (a) read with Section 103, Cr. P. C. do not apply. **AIR 1968 SC 1517 (1520) = 1969 Cri LJ 37 = (1968) 2 SCJ 941.**

(6) Excise Acts:

(a) Police officers while organising raiding parties, especially after receiving information, should have non-officials of some status, not aligned with any party as witnesses. 1965 Cur LJ 71 = ('65) 67 Punj LR 128 (129).

(b) Search witnesses — Excise case — ASI raiding house of accused under Punjab Excise Act (I of 1914) with witnesses two of whom were brought from town 25 miles away — Both those witnesses also appearing as witnesses, for prosecution in other cases — One of remaining witnesses found on inimical terms with accused and therefore not relied on by trying Magistrate — Recovery of article held could not be said to have been satisfactorily proved. ('63) 65 Pun LR 823 (824).

(c) Mere seizure of money, together with other articles by Excise Officers does not indicate that their motive was dishonest, when the amount was duly deposited in the Excise Office. AIR 1966 All 42 (44) = 1966 Cri LJ 4 = 1966 All WR (HC) 149.

(d) Excise offence — Midnight raid in village — Witnesses from place away from village in which raid is to be carried out — Section 103 does not strictly apply — Non-compliance with its strict provisions does not nullify or vitiate proceedings. ('64) 66 Pun LR 81 (84) = 1964 Cur LJ 39.

(e) While going for excise raids and recoveries at least two respectable non-officials are to be joined to the raiding party. 1967 Cur LJ 212 (214).

(7) Opium Act (1878):

(a) Presence of panchas — Panchas need not actually enter room from which property is seized if they can see from outside. AIR 1961 Madh Pra 13 (15) = 1961 (1) Cri LJ 92 = 1961 MPLJ 1379. (Overruled on another point in AIR 1963 Madh Pra 337 (DB).)

(b) Search in presence of panchas — Panchas need not be immediate neighbours. AIR 1961 Madh Pra 13 (15) = 1961 (1) Cri LJ 92 = 1961 MPLJ 1379. (Overruled on another point in AIR 1963 Madh Pra 337 (DB).)

(c) Where the search of the accused and the seizure of a tin containing opium was effected under Section 15, Clause (b) of Opium Act no question arises of any compliance with the provisions of Section 103, in effecting the search. AIR 1965 Tripura 45 (47) = 1965 (2) Cri LJ 814.

(8) Suppression of Immoral Traffic in Women and Girls Act (1956):

(a) Search under Section 15, Suppres-

E.—Miscellaneous.

104. Power to impound document, etc., produced.—Any Court may, if it thinks fit, impound any document or thing, produced before it under this Code.

[1882—S. 104; 1872—S. 367; 1861—Nil.]

105. Magistrate may direct search in his presence.—Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search warrant.

[1882 — S. 105; 1872 — S. 378, Para. 2; 1861 — S. 128.]

Section 103 — Note 16 (contd.)

sion of Immoral Traffic in Women and Girls Act (1956) — Requirements contemplated by section are at par with requirements under Sections 165 and 103, Criminal P. C. — Procedural defects like non-recording of reasons or failure to obtain warrant from Magistrate — Effect — Evidence in respect of such search is not rendered inadmissible. (1968) 9 Guj LR 278 (285 to 287, 291) = ILR (1967) Guj 1046.

(b) Failure to record grounds of belief about commission of offence and failure to call woman of locality to witness the search does not render the search illegal. AIR 1969 Cal 451 (457) = 1969 Cri LJ 1120 73 Cal WN 547.

(9) No specific provision in Foreign Exchange Regulation Act (1947) relating to the stage of actual search — Provisions of Sections 101, 102 and 103 of Criminal P. C. apply only to this stage. **AIR 1965 SC 1 (4, 5) = 1965 (1) Cri LJ 100 = (1964) 7 SCR 724.**

(10) Procedure laid down under Section 13 of Railway Protection Force Act 1957, and in Criminal P. C. Section 103 does not apply to searches in the course of administration duties. AIR 1969 Mad 201 (202) = (1968) 2 Mad LJ 191.

(11) In view of specific provision of sub-section (2) of Section 22-A, Forward Contracts (Regulation) Act (1952), only the provisions in Chap. VII, Criminal P. C. including Sections 98 to 103 will be applicable to searches made for investigating the offences under the Forward Contracts (Regulation) Act. Section 103 provides the procedure for the search. Under it two respectable inhabitants of the locality have to be present to witness the search. AIR 1968 All 338 (341) = 1968 Cri LJ 1320.

(12) Search under Section 132, Income-tax Act, 1961 — Provisions of Criminal P. C. apply. **AIR 1970 SC 292 (297).** (AIR 1965 All 487, Reversed.) ** AIR 1969 Cal 431 (442) (DB). (Irregularity in Panchanama does not vitiate search.)

(13) Search and seizure of incriminating articles by Drugs Inspector — Failure to comply with Section 103, Criminal P. C. — Proceedings not vitiated. 1968 All WR (HC) 78 (80) = 1968 All Cri R 45.

17. Illegal search. — (1) Information gathered as a result of illegal search and seizure can be used in evidence subject to its admissibility. AIR 1969 Delhi 91 (111) = 71 ITR 550 (DB) ** AIR 1965 Orissa 136 (138) = 1965 (2) Cri LJ 112 = 31 Cut LT 172.

(2) Seizure of articles during search of premises on authority of search warrant issued without seal of Court is invalid. AIR 1966 Mys 289 (293) = 1966 Cri LJ 1280 = (1966) 1 Mys LJ 110.

(3) Search in contravention of Sections 103 and 165 can be resisted by the person whose premises are sought to be searched. **AIR 1963 SC 822 (824) = 1963 (1) Cri LJ 809 = (1963) Supp (1) SCR 408.**

(4) Search under Section 15 of Suppression of Immoral Traffic in Women and Girls Act (1956) — Reasons for failure to obtain warrant from Magistrate not recorded — Accused can resist search. (1968) 9 Guj LR 278 (285 to 287, 291) = ILR 1967 Guj 1046.

18. Recovery under Section 27, Evidence Act (1872). — (1) Witness to recovery of articles in consequence of statement made by accused, under Section 27, Evidence Act not of the locality — His evitence cannot be rejected on that ground — Section 103 is not applicable to recovery made under Section 27 of the Evidence Act. 1967 Cri LJ 682 (686, 687) = 69 Pun LR 935 (DB).

Section 104 — Note 1

(1) The High Court can impound an alleged forged document produced in the case before it on revision. (1910) 11 Cri L Jour 448 (449) = 38 Cal 106 (DB).

(2) A District Magistrate cannot impound any document which is produced in a case pending before a subordinate Magistrate. (1904) 1 Cri L Jour 1060 (1061) (All).

(3) When, a document is not produced under the provisions of the Code, it cannot be impounded under this section, (1904) 1 Cri L Jour 1060 (1060) (All) ** (1897) Rat 880 (880) (DB).

Section 105 — Note 1

(1) A Magistrate who is competent to issue a search-warrant under this Code

*[CHAPTER VIIA

SPECIAL RULES REGARDING PROCESSES IN CERTAIN CASES

105A. Special rules regarding processes in certain cases.—(1) Where a Court in the territories to which this Code extends (hereinafter in this section referred to as the said territories) desires that—

(a) a summons to an accused person, or

(b) a warrant for the arrest of an accused person, or

(c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or

(d) a search warrant,

issued by it shall be served or executed at any place within the local limits of the jurisdiction of a Court in the State of Jammu and Kashmir or a Court established or continued by the authority of the Central Government in any area outside the said territories, it may send such summons or warrant in duplicate by post or otherwise, to the presiding officer of that Court to be served or executed; and where any summons referred to in clause (a) or clause (c) has been so served, the provisions of Section 74 shall apply in relation to such summons as if the presiding officer of the Court to whom it is sent were a Magistrate in the said territories.

(2) Where a Court in the said territories has received for service or execution—

(a) a summons to an accused person, or

(b) a warrant for the arrest of an accused person, or

(c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or

(d) a search warrant,

issued by a Court in the State of Jammu and Kashmir or a Court established or continued by the authority of the Central Government in any area outside the said territories, it shall cause the same to be served or executed as if it were a summons or warrant received by it from another Court in the said territories for service or execution within the local limits of its jurisdiction; and where—

(i) a warrant of arrest has been executed, the person arrested shall, so far as possible, be dealt with in accordance with the procedure prescribed by Sections 85 and 86;

(ii) a search warrant has been executed, the things found in the search shall, so far as possible, be dealt with in accordance with the procedure prescribed by Section 99.]

[*] Chapter VII-A was inserted by the Code of Criminal Procedure (Amendment) Act, 1958 (XXVI of 1958), Section 3 (3-9-1958).

Section 105 — Note 1 (contd.)
can also direct a search to be made in his presence. (1912) 13 Cri L Jour 698 (700, 701) = 39 Cal 953 (PC) ** AIR 1925 All 434 (436) = 26 Cri L Jour 1112 (DB).

(2) Where a Magistrate does not enter the house or room to be searched, but stands outside it, and sends the complainant or the police inspector to search, he cannot be said "to direct the search to be made in his presence". (1907) 6 Cri L Jour 60 (67) = 31 Bom 438 (DB) = AIR 1933 Lah 234 (234) = 34 Cri L Jour 252.

(3) Where the trap was laid by the Magistrate himself and the police knew nothing about it and they appeared on the scene only after the notes had been tendered and actually accepted by the accused and the notes were recovered from the accused by the Magistrate in the presence of A. S. I. and the search witnesses it was held that the search was perfectly legal. AIR 1955 Him Pra 51 (53) = 1955 Cri L Jour 1585.

PART IV

PREVENTION OF OFFENCES

CHAPTER VIII.*

OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR

A.—Security for keeping the Peace on Conviction.

106. Security for keeping the peace on conviction.—(1) Whenever any person accused of †[any offence punishable under Chapter VIII of the Indian Penal Code, other than an offence punishable under Section 143, Section 149, Section 153A or Section 154 thereof, or of] assault or other offence involving a breach of the peace, or of abetting the same, ‡[* * *] or any person accused of committing criminal intimidation, is convicted of such offence before a High Court, a Court of Session or the Court of Presidency Magistrate, a District Magistrate, a Sub-Divisional Magistrate or a Magistrate of the first class,

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for

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SECTION 106 — SYNOPSIS

1. Scope.
2. "Person accused of any offence".
3. Offence punishable under Sec. 143 of the Penal Code.
4. Offence punishable under Section 149 of the Penal Code.
5. Offence of rioting.
6. "Assault".
7. "Assault or other offence involving a breach of the peace".
8. "Criminal intimidation".
9. "Is convicted of such offence".
10. Conviction in summary trial.
11. "Such Court is of opinion . . . . . peace".
12. "At the time of passing sentence".
13. Form and contents of order under the section.
14. "With or without sureties".
15. Setting aside of conviction — Effect of sub-section (2).
16. Alteration of conviction to one under a different section.
17. Power of appellate or revisional Court to order security — Sub-section (3).
18. Appeal.
19. Revision.

1. Scope. — (1) The purpose of an order for security is not to punish but to prevent future commission of offences. If the required security is furnished, this purpose is considered to have been attained. AIR 1942 Sind 122 (128) = 44 Cri L Jour 367.

(2) Chapter VIII of the Code is not repugnant to Article 22 of the Constitution. Nor is it discriminatory in character. Far from persons proceeded against under Chap. VIII being unfavourably discriminated against, they are given substantial procedural rights and advantages which the detenus under Preventive Detention laws do not have. The primary purpose of the proceedings under Chap. VIII is to take security for keeping the peace or for good behaviour after a judicial inquiry while the primary object of Preventive Detention law is to imprison a person by executive action without inquiry. AIR 1957 Andh Pra 90 (93) = 1957 Cri L Jour 624.

(3) The proceedings under this section are not administrative, they are judicial proceedings. AIR 1953 All 375 (Pr 5) = 1953 Cri L Jour 813.

2. "Person accused of any offence". — (1) The power to order security under this section exists only as against an accused person. A complainant cannot be ordered to give security under this section. 1902 Pun Re (Cr) No. 3, p. 9 (10).

3. Offence punishable under Sec. 143 of the Penal Code. — (1) On a conviction under Section 143 of the Penal Code the accused cannot be ordered to give security for keeping the peace under this section. AIR 1927 All 136 (137) = 28 Cri L Jour 140.

4. Offence punishable under Sec. 149 of the Penal Code. — (1) An offence under Section 149 of the Penal Code read with another section of the Penal Code is not one on conviction for which the accused can be bound over to keep the peace. AIR 1944 All 272 (272, 273) = 46 Cri L Jour 118 ** AIR 1925 Pat 117 (117) = 26 Cri L Jour 426 (DB) ** AIR 1934 Oudh 279 (280) = 35 Cri L Jour 1159.

(2) When there is a separate conviction for an offence involving a breach of the peace in addition to the conviction for an offence under Section 149 of the Penal Code, this section will apply. AIR 1939 Mad 787 (787) = 41 Cri L Jour 17

keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

(2) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(3) An order under this section may also be made by an Appellate Court §[° ° °] or by the High Court when exercising its powers of revision.

[1882: S. 106; 1872: S. 489, paras. 1 and 3, Ss. 490, 493; 1861: Ss. 280, 281 and 284.]

[°] Bombay Children Act, 1948 (Bombay Act (LXXI of 1948), S. 70, runs thus:—

> "70. Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1898, no proceeding shall be instituted and no order shall be passed against a child under Chapter VIII of the Code."

For similar provisions, see East Punjab Children Act, 1949 (XXXIX of 1949), S. 28; Hyderabad Children Act, 1951 (XXXII of 1951), S. 22; U. P. Children Act, 1951 (I of 1952), S. 28; Mysore Children Act, 1964 (XIX of 1964), S. 63; West Bengal Children Act, 1959 (XXX of 1959), S. 27 and Children Act, 1960 (Central Act LX of 1960), S. 23; Bihar Children Act, 1970 (Presi. Act X of 1970), S. 23. The Central Act of 1960, which applies to all the Union Territories, has so far been enforced in Himachal Pradesh w.e.f. 2-10-1961—See Him. Pra. Gaz., 29-9-1962, Pt. I, p. 565; in Pondicherry from 1-10-1963—See Reg. VII of 1963, S. 3 and in Goa, Daman and Diu from

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Section 106 — Note 4 (contd.)
** AIR 1938 Oudh 95 (96) = 39 Cri L Jour 341.

5. Offence of rioting. — (1) An accused person convicted of rioting can be bound over to keep the peace under this section. AIR 1939 Mad 787 (787) = 41 Cri L Jour 17 ** AIR 1938 Oudh 95 (96) = 39 Cri L Jour 341 ** 1929 Mad WN 583 (587) (DB).

6. "Assault". — (1) In the case of such an offence of assault it is not necessary to record an express finding as to a breach of the peace. AIR 1923 Mad 618 (619) = 24 Cri L Jour 455 ** AIR 1924 All 306 (307) = 25 Cri L Jour 906.

[But see AIR 1926 All 144 (144, 145) = 26 Cri L Jour 1457.]

7. "Assault or other offence involving a breach of the peace". — (1) Assault is an offence which involves a breach of the peace within the meaning of the section. AIR 1933 All 609 (611) = 34 Cri L Jour 859 (DB) ** AIR 1919 Mad 770 (771, 772) = 19 Cri L Jour 929 ** AIR 1924 All 306 (307) = 25 Cri L Jour 906.

(2) The breach of the peace contemplated by the section is not necessarily a breach of the public peace. AIR 1933 All 609 (611) = 34 Cri L Jour 859 (DB) ** AIR 1919 Mad 770 (771, 772) = 19 Cri L Jour 929. (Dissenting from AIR 1916 Mad 829 = 16 Cri L Jour 611.)

(3) The mere use of abusive language and causing disturbance by disorderly behaviour, without resort to actual violence or threats of violence, will not amount to a breach of the peace. AIR 1940 Rang 50 (52) = 41 Cri L Jour 421 ** AIR 1957 Mys 49 (49) = ILR (1956) Mys 315 = 1957 Cri L Jour 520.

[But see AIR 1938 Mad 795 (795) = 40 Cri L Jour 165. (AIR 1936 All 140 (141) = 37 Cri L Jour 385. Doubted.]

(4) The words "offence involving a breach of the peace" must mean an offence, one of the constituting elements of which is the commission of or the intention to commit, a breach of the peace on the part of the offender. AIR 1940 Rang 95 (96) = 41 Cri L Jour 495 ** AIR 1957 Mys 49 (49) = ILR (1956) Mys 315 = 1957 Cri L Jour 520 ** AIR 1939 Cal 484 (484) = 40 Cri L Jour 836 (DB) ** AIR 1920 Bom 402 (406, 407) = 22 Cri L Jour 513 (DB) ** AIR 1924 Lah 311 (312) = 24 Cri L Jour 271 ** AIR 1924 Mad 808 (808, 809) = 25 Cri L Jour 1096.

[See however AIR 1940 Rang 50 (52) = 41 Cri L Jour 421. (AIR 1931 Cal 645, Dissented from.) ** AIR 1939 Oudh 45 (47) = 40 Cri L Jour 183.]

(5) The offence of causing hurt or grievous hurt is an "offence involving a breach of the peace". AIR 1933 All 609 (611) = 34 Cri L Jour 859 (DB) ** AIR 1934 Oudh 425 (426) = 35 Cri L Jour 284 ** AIR 1929 All 349 (350) = 30 Cri L Jour 686 ** AIR 1932 Lah 435 (436) = 33 Cri L Jour 746 ** AIR 1923 Mad 618 (619) = 24 Cri L Jour 455.

[See however AIR 1921 Oudh 140 (140, 141).]

(6) Offence of criminal trespass — Entry made with intent to commit offence of hurt or assault — Such criminal trespass will be an "offence involving a breach of the peace". (1903) 7 Cal WN 25 (26) ** ('73) 20 Suth WR (Cr) 37 (37) (DB) ** AIR 1925 Lah 621 (621) = 26 Cri L Jour 1462 ** AIR 1920 All 164 (164) = 21 Cri L Jour 288.

[See (1903) 30 Cal 93 (94) (DB).]

[See however AIR 1939 Cal 320 (320) = 40 Cri L Jour 721 (DB) ** AIR 1939 Oudh 45 (47) = 40 Cri L Jour 183.]

1-1-1964—See Goa Gaz., 18-12-1963, p. 430: this Act has been extended to the Union territory of Dadra and Nagar Haveli by Reg. VI of 1963 as amended by Reg. 2 of 1965.

[†] Substituted for the word 'rioting' by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 15.

[‡] The words "or of assembling armed men or taking other unlawful measures with the evident intention of committing the same" were omitted, ibid.

[§] The words "including a Court hearing appeals under Section 407" which were inserted by Act XVIII of 1923, were omitted by the Repealing and Amending Act, 1957 (XXXVI of 1957), Section 3 and Schedule II.

STATE AMENDMENTS

Gujarat:

In its application to the State of Gujarat the amendment made in S. 106 is the same as that made in Maharashtra—See Central Act XI of 1960, S. 87.

NOTE.—Magistrates in City of Ahmedabad have the powers and exercise the jurisdiction of a Presidency Magistrate—See Guj. Act XIX of 1961, S. 14 (3).

Section 106 — Note 7 (contd.)

(7) Entry made with intent to commit theft, or to have sexual intercourse with the complainant's wife — The criminal trespass will not be an offence involving a breach of the peace. ('08) 8 Cri LJour 476 (478) = 4 Low Bur Rul 277 ** ('97) 25 Cal 628 (630) (DB).

(8) An offence under Section 510, Penal Code, is not an offence involving a breach of the peace and a person convicted of it cannot therefore be ordered to execute a bond to keep the peace under this section. AIR 1940 Mad 755 (755) = 42 Cri L Jour 16.

(9) An offence which does not require the commission of, or the intention to commit. a breach of the peace as a necessary element thereof is not one involving a breach of the peace. AIR 1940 Mad 55 (56) = 41 Cri L Jour 235 ** AIR 1939 Oudh 38 (39) = 40 Cri L Jour 138 ** ('97) 1 Cal WN 186 (187) (DB) ** (1892) Rat 622 (622) (DB) ** ('02) 26 Mad 469 (469, 470).

(10) The fact that in the course of commission of offence not comprising of breach of the peace as a necessary element thereof, the accused, as a matter of fact, does acts involving a breach of the peace, or which are likely to lead to a breach of the peace, or which are likely to provoke persons, other than the offender, to commit a breach of the peace, will not make the offence itself one "involving a breach of the peace". AIR 1939 Cal 484 (484) = 40 Cri L Jour 836 (DB) ** AIR 1940 Oudh 323 (324) = 41 Cri L Jour 505 ** (1909) 9 Cri L Jour 88 (88) (Mad) ** AIR 1940 Rang 95 (96) = 41 Cri L Jour 495.

[But see AIR 1959 Mad 405 (406) = 1959 Cri LJ 1092.]

(11) If in committing an offence, of which a breach of the peace is not an element, the accused does commit acts amounting to a breach of the peace, he should be charged of and convicted for the offence of which such breach of the peace is an element. See AIR 1932 Oudh 33 (34) = 33 Cri L Jour 193 (DB).

(12) As the offence of rape or an attempt to rape does involve an assault upon the person against whom the offence is committed, such offence is also one involving a breach of the peace. AIR 1938 Mad 615 (615) = 39 Cri L Jour 816.

8. "Criminal intimidation". — (1) This is one of the offences on conviction for which the accused can be bound down to keep the peace. It is important to note that there should be a conviction for criminal intimidation; the mere fact that the facts of the case disclose the commission of such an offence by the accused is not enough. (1910) 11 Cri L Jour 680 (681) (Lah) ** AIR 1921 Lah 96 (97) = 22 Cri L Jour 709 ** (1904) 1 Cri L Jour 447 (449) (DB) (Cal).

9. "Is convicted of such offence". — (1) The jurisdiction to pass an order for security under this section arises only on conviction of an accused person for any of the offences mentioned therein. ('75) 24 Suth WR (Cr) 10 (10) (DB) ** (1906) 3 Cal L Rep 72 (73) (DB).

(2) Where the accused person is acquitted he cannot be ordered to give security under this section. ('74) 22 Suth WR (Cr) 9 (10) (DB).

(3) The conviction must be for one of the offences mentioned in this section. AIR 1941 Mad 488 (489) = 43 Cri L Jour 40.

(4) Accused convicted under Section 504, Penal Code — Magistrate passing order for security under this section — **Held,** that as the facts disclosed an offence of assault, the error in the order of the Magistrate was only one of form and not of substance — High Court refused to interfere. AIR 1939 Cal 484 (485) = 40 Cri L Jour 836 (DB).

[See also AIR 1940 Rang 50 (53) = 41 Cri L Jour 421.]

(5) Where the accused is only convicted of an attempt to commit one of the offences mentioned in the section, there

Maharashtra:

(1) In its application to the State of Maharashtra, in sub-section (1) of Section 106, delete the words "a District Magistrate, a Sub-Divisional Magistrate"—Bom. Act XXIII of 1951, S. 2 and Schedule (1-7-1953).

(2) After the reorganisation of the State of Bombay in 1956, the amendment made in sub-section (1) of Section 106 by the above-mentioned Bom. Act is extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Mysore:

In its application to the State of Mysore, the amendment made in sub-section (1) of Section 106 is the same as that of Maharashtra—Mys. Act XIII of 1965, Section 21, (1-10-1965).

Punjab: Haryana: Chandigarh:

In its application to the States of Punjab and Haryana and the Union Territory of Chandigarh in sub-section (1) of Section 106, for the words "Court of a Presidency Magistrate, a District Magistrate, a Sub-Divisional Magistrate or a Magistrate", substitute the words "Court of a Chief Judicial Magistrate or any other Judicial Magistrate"—Punj. Act XXV of 1964, S. 2 and Schedule, Pt. I, Item 28 (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Section 106 — Note 9 (contd.)
is no jurisdiction to pass an order for security against him on such conviction. (1860) 3 Shome LR 33.

10. Conviction in summary trial. — (1) An order for security under this section can be passed even if the accused is convicted in a summary trial. 1886 All WN 181 (181) ** (1904) 1 Cri L Jour 1054 (1055) = 7 Oudh Cas 338.

11. "Such Court is of opinion . . . . . peace." — (1) Person convicted and sentenced for one of the offences mentioned in this section — It is necessary that the Court should be of opinion that "it is necessary to require such person to execute a bond for keeping the peace". AIR 1952 Pepsu 138 (Pr 18) = ILR (1952) Patiala 258 = 1952 Cri L Jour 1467 ** AIR 1955 Mad 596 (597) = 1955 Cri L Jour 1505. (Magistrate should record his opinion.) ** AIR 1950 Mad 31 (Pr 2) = 51 Cri L Jour 253 ** AIR 1927 Pat 37 (37, 38) = 27 Cri L Jour 1112 ** AIR 1933 All 609 (611) = 34 Cri L Jour 859 (DB).

(2) In forming the opinion the Magistrate must take into consideration only the legal evidence and should not act on the statement made by the prosecution. AIR 1943 Mad 169 (170) = 44 Cri L Jour 321.

(3) Magistrate should not act on the request of an officer superior to him to consider the advisability of taking action under this section in the case pending before him. AIR 1953 All 375 (Pr 3) = 1953 Cri L Jour 813.

(4) If the circumstances indicate that a breach of the peace is likely to recur, an order for security is justified, otherwise not. AIR 1943 Mad 169 (170) = 44 Cri L Jour 321 ** AIR 1936 Pat 36 (37) = 37 Cri L Jour 63 ** AIR 1929 All 349 (350) = 30 Cri L Jour 686 ** AIR 1952 Pepsu 138 (Pr 18) = ILR (1952) Patiala 258 = 1952 Cri L Jour 1467 ** AIR 1918 Pat 252 (253) = 19 Cri L Jour 1000 (DB).

(5) Accused sentenced to a long term of imprisonment or transportation — Order for security is unnecessary. AIR 1952 Pepsu 138 (Pr 18) = ILR (1952) Patiala 258 = 1952 Cri L Jour 1467 ** (1909) 10 Cri L Jour 69 (72) = 5 Low Bur Rul 34 (FB).

(6) If the order for security would have the effect of preventing the accused from exercising his legal rights such an order should not be made. (1907) 6 Cri L Jour 40 (41) (DB) (Cal) ** ('07) 6 Cri L Jour 321 (325) (DB) (Cal).
[But see (1907) 5 Cri L Jour 19 [illegible] (DB) (Cal).]

(7) This section should be very sparingly invoked where the offence committed is a petty one. AIR 1943 Mad 169 (170) = 44 Cri L Jour 321 ** AIR 1938 Mad 795 (798) = 40 Cri L Jour 165.

(8) The period for which the bond is required to be furnished should be in proportion to the gravity of the offence committed. AIR 1943 Mad 169 (170) = 44 Cri L Jour 321.

(9) It is generally undesirable where a person is charged with some petty offence to tack on to some small sentence of fine an order under Section 106, Criminal P. C. AIR 1955 Mad 596 (597) = 1955 Cri L Jour 1505.

(10) It is desirable that Court should record its reasons for forming an opinion that it is necessary to require security though there is no provision for doing so. AIR 1942 Mad 501 (501) = 43 Cri L Jour 674 ** AIR 1955 Mad 596 (597) = 1955 Cri L Jour 1505 ** AIR 1933 All 609 (611, 612) = 34 Cri L Jour 859.

Rajasthan:

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendment made in Section 106 is the same as that made in (1) of Maharashtra.—Central Act XXXVII of 1956, Section 119 (1-11-1956).

Union territories (except Chandigarh):

In its application to the Union territories, in sub-section (1) of Section 106, for the words "Court of a Presidency Magistrate, a District Magistrate, a Sub-Divisional Magistrate or a Magistrate", substitute the words "Court of a Chief Judicial Magistrate or any other Judicial Magistrate".—Act 19 of 1969, S. 3 and Schedule, item 29 (in Delhi, on 2-10-1969).

West Bengal:

In its application to the State of West Bengal, in Section 106 (1), for the words "a District Magistrate, a Sub-Divisional Magistrate or a Magistrate of the first class," substitute the words "a Sub-Divisional Judicial Magistrate or a Judicial Magistrate of the first class." — W. B. Act VIII of 1970, Section 2 and Schedule, item 40.

Section 106 (contd.)

12. "At the time of passing sentence". — (1) An order for security under this section must be passed at the time of the conviction and the passing of a sentence. ('71) 15 Suth WR (Cr) 56 (56) (DB) ** AIR 1924 All 230 (231) = 25 Cri L Jour 965.

(2) The order for security must be part of the decision in the main case. AIR 1925 All 443 (444) = 26 Cri L Jour 981.

(3) But the Court must not only record a conviction but pass a substantive sentence before the provisions of Section 106 can come into play. ('03) 2 Low Bur Rul 53 (54).

(4) The restriction as to the order for security being passed at the time of passing a sentence does not apply to an appellate or revisional Court ordering security under sub-section (3). AIR 1928 Bom 134 (135) = 29 Cri L Jour 502 (DB).

(5) No notice to show cause why security should not be required is necessary before an order is passed under this section. AIR 1943 Mad 406 (406) = 44 Cri L Jour 639 ** AIR 1936 Pat 36 (37) = 37 Cri L Jour 63 ** AIR 1924 All 230 (231) = 25 Cri L Jour 965.

[See however AIR 1927 Pat 37 (38) = 27 Cri L Jour 1112.]

13. Form and contents of order under the section. — (1) Courts have no power to require security for good behaviour under this section. AIR 1952 Pepsu 138 (Pr 18) = ILR (1952) Patiala 258 = 1952 Cri L Jour 1467 ** ('83) 9 Cal 215 (217) (DB) ** AIR 1918 All 95 (95) = 19 Cri L Jour 439.

(2) An order which directs that the prisoner shall, at the conclusion of the term of his imprisonment, execute a bond for keeping the peace would not be a proper order under the section. 7 NWPHCR 328 (329).

[But see 7 Suth WR (Cr) [illegible] [illegible] (DB).]

(3) An order under the section must specify the amount for which security is required; otherwise the order is bad. 1881 All WN 86 (86).

(4) The Court has no power to order that securities under this section should be furnished in landed property. (1904) 1 All L Jour 162n (162n).

14. "With or without sureties." — (1) Court cannot direct that a particular person must be one of the sureties. AIR 1918 All 95 (95) = 19 Cri L Jour 439.

(2) An order requiring a surety for a higher amount than that for which the accused is directed to execute a bond is wrong. (1912) 13 Cri L Jour 482 (482) (Low Bur).

15. Setting aside of conviction — Effect of sub-section (2). — (1) Conviction set aside — Order for security, based on such conviction, also automatically falls to the ground. AIR 1925 Pat 17 (20) = 25 Cri L Jour 919 (DB) ** AIR 1924 All 696 (698) = 25 Cri L Jour 481 ** (1900) 27 Cal 566 (570) (DB).

16. Alteration of conviction to one under a different section. — (1) If the conviction is not set aside on appeal but is merely altered to one under a different section, which also is within the ambit of Section 106, the order for security can be allowed to stand. AIR 1921 All 261 (262) = 22 Cri L Jour 621.

[See also AIR 1940 Oudh 323 (324) = 42 Cri L Jour 505.]

17. Power of appellate or revisional Court to order security — Sub-section (3) — (1) The power under sub-section (3) cannot be exercised where the offence, for which the accused is convicted does not fall within the purview of sub-section (1). AIR 1923 Mad 133 (133) = 25 Cri LJ 294 ** (1902) 29 Cal 393 (394) (DB) ** 1901 Pun LR No. 127 p. 334 (335).

(2) A District Magistrate, exercising powers of revision, has no power to order security under this section. AIR 1918 All 216 (216) = 19 Cri LJ 732.

18. Appeal. — (1) No appeal will lie against an order to furnish security

B.—Security for keeping the Peace in other Cases and security for Good Behaviour.

107. Security for keeping the peace in other cases.—(1) Whenever a Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquillity, the Magistrate *[if in his opinion there is sufficient ground for proceeding] may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.

Section 106 — Note 18 (contd.) under this section. 2 Weir 460 (460) (DB).

(2) Where the right of appeal depends on the length of the period to which the accused is sentenced to imprisonment, the mere fact that he has been ordered to give security under this section will not enable him to appeal, if otherwise he cannot do so, although the period of imprisonment, to which he would become liable, in case of his non-compliance with the order, added to the substantive sentence passed against him, would reach or exceed the appealable limit. (1904) 1 Cri LJ 1054 (1055) = 7 Oudh Cas 338 (DB).

[See also AIR 1935 Rang 363 (363) = 36 Cri LJ 1510 ** 2 Weir 460 (460) (DB).]

(3) The Appellate Court can, while upholding the conviction, set aside the order for security to keep the peace passed against the accused under this section. (1903) 30 Cal 101 (102) (DB) ** 1881 All WN 154 (155).

19. Revision. — (1) The question of requiring security for keeping the peace is a matter left largely to the discretion of the Court convicting the accused — The High Court in revision will generally be reluctant to interfere with the exercise of such discretion. AIR 1921 Pat 472 (473) ** (1904) 1 Cri LJ 3 (4) (DB) ** AIR 1920 All 164 (164) = 21 Cri LJ 288.

(2) High Court can interfere if the circumstances of any case require such interference. AIR 1926 All 168 (168) = 27 Cri LJ 240.

SECTION 107 — SYNOPSIS

1. Scope.
1A. Proceedings under S. 107.
2. "Is informed".
3. Whether proceedings can be initiated on orders of superior Court.
3A. Dropping of proceedings under this section.
4. Information which has already been subject of judicial proceeding, whether can be basis of action under this section.
5. Information under this section whether "complaint."
6. Person proceeded against, whether entitled to a copy of information received by Magistrate.
7. Whether suit for malicious prosecution lies in respect of information given under this section.
8. Whether suit for defamation lies in respect of information under this section.
9. "Any person is likely to commit a breach of the peace or disturb the public tranquillity."
10. "Wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity."
11. Disturbance of public tranquillity.
12. "If in his opinion there is sufficient ground for proceeding."
13. Power of Magistrate to call for report from police or subordinate Magistrate.
14. May require him to show cause.
15. Burden of proof.
16. "With or without sureties."
17. Territorial jurisdiction.
18. Transfer of proceedings to another Magistrate for disposal.
19. Sub-sections (3) and (4).
20. Revision.
21. Appeal. — See S. 406.
22. Security.
23. Disputes relating to land, waterways etc.
24. Proceedings under Sections 107 and 117.
25. Powers of Magistrates under this section.

1. Scope. — (1) If the Magistrate fails to avail himself of his powers under Section 106 he cannot draw up proceedings against the accused under the present section, on the same materials. (1871) 3 NWPHCR 96 (97).

(2) The section is preventive and not punitive. AIR 1952 Trav-Co 556 (Prs 4, 5) = 1950 Trav-Co LR 596 = 1953 Cri LJ 49 ** AIR 1959 Mad 339 (341) = 1959 Cri LJ 998 ** AIR 1955 Punj 139 (140) = 1955 Cri LJ 989 = ILR (1955) Punj 392 ** 1969 Cr LJ 685 (686) = (1968) 2 Andh WR 152 ** AIR

†[(2) Proceedings under this section may be taken before any Magistrate empowered to proceed under sub-section (1) when either the place where the breach of the peace or disturbance is apprehended is within the local limits of such Magistrate's jurisdiction or there is within such limits a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such limits.]

(3) **Procedure of Magistrate not empowered to act under sub-section (1).**— When any Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such Magistrate may, after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons.

Section 107 — Note 1 (contd.)
1969 Guj 267 (269) = 1969 Cri LJ 1133 = 10 Guj LR 847 ** (1967) 2 Andh WR 327 = 1968 Cri LJ 815 (815) = 1967 Mad LJ (Cr) 761 ** AIR 1968 Cal 364 (365) = 1968 Cri LJ 1058 = 71 Cal WN 851 ** AIR 1967 Ker 194 (195) = 1967 Cri LJ 1330 = 1966 Ker LT 966 (DB) ** 1958 All WR (Sup) 138 = 60 Pun LR 513.

(3) The section is applicable notwithstanding that the acts alleged as giving rise to an apprehension of breach of the peace on the part of a person constitute in themselves specific offences for which he may be punished. AIR 1918 Pat 183 (185) = 19 Cri LJ 246 ** AIR 1959 Mad 339 (341) = 1959 Cri LJ 998.

[But see 1968 Cri LJ 815 (815, 816) = (1967) 2 An WR 327.]

(4) It is not illegal for a Magistrate in proceedings under this section to admit evidence of a specific charge or offence which is the subject of a separate, concurrent trial. AIR 1943 Mad 394 (394) = 44 Cri LJ 756 ** AIR 1959 Mad 339 (341) = 1959 Cri LJ 998.

(5) In proceedings commenced under this section the Magistrate has no power to order attachment of property. AIR 1924 Oudh 345 (346) = 25 Cri LJ 350.

[See also AIR 1968 Manipur 24 (26) = 1968 Cri LJ 188.]

(6) The institution of proceedings under the section is not an accusation of an offence, and, therefore, if the information proves to be false, the Court has no power to act under Section 250. ILR (1952) 2 Raj 568 (568) ** AIR 1959 Mad 339 (341)= 1959 Cri LJ 998 ** AIR 1935 Lah 29 (30) ** 1967 All WR (HC) 776 (781) = 1967 All Cr R 488 ** AIR 1967 Ker 194 (195) = 1967 Cri LJ 1330 = 1966 Ker LT 966 (DB) ** 1966 All WR (HC) 774 (775) = 1966 All Cri R 481 (2).

[See also AIR 1958 Pat 160 (161) = 36 Pat 1311 = 1958 Cri LJ 404 (DB).]

(7) The principle of autrefois acquit or autrefois convict (Section 403) cannot apply to proceedings under this section. AIR 1952 Trav-Co 556 (Prs 4, 5) = 1950 Trav-Co LR 596 = 1953 Cri LJ 49.

(8) Questions as to the morality or otherwise of the actions of the contending parties are irrelevant in proceedings under this section. AIR 1939 Sind 238 (240) = 40 Cri LJ 803.

(9) An elaborate enquiry as to ownership and title is entirely out of place in proceedings under this section. (1936) 19 Nag LJ 264 (267).

(10) The very nature of the proceedings under Section 107 indicates that for fresh happenings fresh proceedings can be drawn up. AIR 1958 Cal 140 (141) = 1958 Cri LJ 371.

(11) A prolongation of the proceedings (nearly two years having elapsed from the date of the order under Section 112, Criminal P. C.) for whatever reasons, is not calculated to achieve this object. 1959-2 Andh WR 454 (455).

1A. Proceedings under Section 107. — (1) Proceedings under Section 107 are directed against a person or persons who are likely to commit breach of peace, by their wrongful act. 1965 (1) Cri LJ 512 (514) (Manipur).

(2) Proceedings under Sections 107/151 are intended to deal with threatened apprehension of breach of peace. Prompt action is necessary. 1966 Cri LJ 866 (867, 868) = (1966) 68 Pun LR 143 ** 1967 Cr LJ 1119 (1120) = 1966 BLJR 177 (DB) ** (1967) 69 Pun LR 230 (231, 232).

(3) Order of remand in Section 107 proceedings — By virtue of the proviso to Cl. (1-A) to Section 344 a remand order under Section 344 can be passed in Section 107 proceedings also. 1960 All LJ 227 (229) (DB).

(4) Applicability of Section 342 to inquiry under Section 117, initiated under Section 107 — Section 342 is applicable not because person arraigned under Section 107 is an accused person but because Section 117 (2) attracts S. 342. AIR 1965 Raj 40 (41) = 1965 (1) Cr LJ 224.

(4) A Magistrate before whom a person is sent under ‡[sub-section (3)] may in his discretion detain such person in custody §[pending further action by himself under this Chapter.]

[1882: Ss. 107 and 108; 1872: Ss. 491, 494 Proviso, S. 498, Para 1, S. 502, Para 7; 1861: Ss. 282, 285 and 289.]

[*] These words inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), Section 16.

[†] Substituted for former sub-section (2) by the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), Section 16 (1-1-1956).

[‡] Substituted for the words "this section" by Act XVIII of 1923, Section 16.

[§] Substituted for the words "until the completion of the inquiry hereinafter prescribed", ibid

STATE AMENDMENTS

Gujarat:

In its application to the State of Gujarat, the amendment made in sub-section (1) of Section 107 is the same as that made in Maharashtra.—See Central Act XI of 1960, Section 87.

NOTE.—(1) Magistrates in the City of Ahmedabad have the powers and exercise the jurisdiction of a Presidency Magistrate.—See Guj. Act XIX of 1961, Section 14 (3).

(2) Salaried Magistrates for the City of Ahmedabad have been empowered for the purposes of this section.—See Guj. Gaz., 9-11-1961, Pt. IV-A, p. 287.

Section 107 — Note 1-A (contd.)

(5) Complaint under Sections 107 and 151 dismissed for default of complainant — Application of accused under Section 476 for initiating proceedings against complainant for giving false evidence is maintainable. AIR 1966 Punj 458 (460) = 1966 Cr LJ 1323 (1324) = 1966 Cur LJ 64.

(6) Dismissal of proceedings under Section 107 on the ground of non-appearance of witnesses despite several adjournments — Witnesses found not to have been summoned in fact — Order of discharge is illegal — District Magistrate can order further enquiry. 64 Punj LR 295 (296) = 1962 All WR Sup 48.

(7) Police have no power to arrest persons without warrant for starting proceedings against them under Section 107. 1965 (1) Cr LJ 512 (514) (Manipur).

(8) Sub-Magistrate ordering arrest under Section 151 but not proceeding with the matter— Police filing independent charge under Section 107 before a First Class Magistrate — Proceeding under Section 107 was an independent action and the First Class Magistrate was competent to pass order under Section 112. (Section 109 seems to be mentioned wrongly instead of Section 107 Ed.). AIR 1960 Ker 227 (228) = 1960 Cri LJ 907 (1) = 1960 Ker LJ 21 (DB).

(9) In a proceeding under Section 107, summoning parties to ascertain whether facts and circumstances exist for taking proceeding under the section is illegal. AIR 1969 Manipur 12 (13) = 1969 Cri LJ 220.

(10) Security proceeding under Section 107 pending — Application for withdrawal of proceeding by Court Inspector at instance of Superintendent of Police acting under mistaken impression of law did not amount to contempt of Court. AIR 1963 Cal 336 (337) = 1963 (1) Cr LJ 754 (755) (DB).

(11) Section 494 does not apply to proceedings under Section 107. AIR 1963 Cal 336 (337) = 1963 (1) Cr LJ 754 (DB).

(12-13) Proviso to S. 496 makes it clear that the substantive portion of the section applies to proceedings under Section 107. AIR 1960 Punj 31 (31, 32) = 1960 Cri LJ 115.

(14) Enquiry in respect of a proceeding under Sections 107, 108 and 109 has to be in accordance with procedure applicable to trial of summons cases contained in Ch. XX. AIR 1969 Guj 267 (269) = 1969 Cri LJ 1133 = 10 Guj LR 847.

(15) There is nothing illegal that both the proceedings under Sections 107 and 110 of the Criminal Procedure Code should continue against the petitioners. 1961 Pat LR 128 = 1962 (1) Cr LJ 665 (666) (Pat).

(16) Proceeding under Sec. 107 pending between brother of prosecution witness and accused at time of trial of such case — Evidence of such witness not discussed but rejected — Rejection unreasonable. 1969 Cri LJ 828 (830) (Pat).

(17) Proceeding under Section 107 on basis of specific incident — Rejection of evidence — Subsequent trial in respect of that incident is not barred on principle of issue estoppel. AIR 1970 SC 771 (776).

2. "Is informed." — (1) A Magistrate has no jurisdiction under this section to proceed against any person where there

Maharashtra:

(1) In its application to the State of Maharashtra, in sub-section (1) of Section 107, for the words "Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class", substitute the words "Presidency Magistrate specially empowered by the State Government in this behalf or a District Magistrate or Sub-Divisional Magistrate or a Taluka Magistrate specially empowered by the State Government in this behalf".—Bom. Act XXIII of 1951, Section 2 and Schedule (1-7-1953).

(2) After the reorganization of the State of Bombay in 1956, the amendment made in sub-section (1) of Section 107 by the above-mentioned Bombay Act is extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Mysore:

In its application to the State of Mysore, in sub-section (1) of Section 107, for the words "Magistrate of the first class", substitute the words "a Magistrate of the first class specially empowered by the State Government in this behalf".—Mys. Act XIII of 1965, S. 22 (1-10-1965).

Punjab: Haryana: Chandigarh:

In its application to the States of Punjab and Haryana and the Union territory of Chandigarh, in Section 107, for the words "Magistrate of the first class", substitute the

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Section 107 — Note 2 (contd.)
is no information against him. AIR 1920 Lah 100 (101) = 21 Cri LJ 511.

(2) This section requires a Magistrate to make up his mind on the basis of the information which he receives. He cannot issue summons unless he has first recorded order under Section 112. 1968 All WR (HC) 451 = 1968 All Cr R 290 (291).

(3) There is no restriction as to the source of the information on which a Magistrate can act under this section. AIR 1953 Cal 109 (Pr 15) = 1953 Cri LJ 344 (DB) ** (1881) 3 All 545 (553) (FB) ** AIR 1930 Mad 975 (976) = 32 Cri LJ 217.

(4) The Magistrate can draw up proceedings on the basis of a police report, or the report of a subordinate Magistrate, or the information given by a private individual. AIR 1932 All 670 (672) = 34 Cri LJ 42 ** (1969) 4 Beng LR 46 (51) (FB) ** (1871) 8 Bom HCR (Cr) 162 (163) (DB) ** (1969) 6 Bom HCR 1 (5) (DB) ** AIR 1926 Mad 521 (524) (DB) ** AIR 1969 Manipur 90 (92) = 1969 Cri LJ 1512.

(5) Proceedings can be drawn up on the basis of information derived from a previous trial of the person proceeded against wherein he was acquitted. AIR 1922 Oudh 273 (274, 275) ** (1968) 10 Suth WR (Cr) 1 (2) = 2 Beng LR (App Cr) 7n (DB).

(6) **Magistrate should not ordinarily brush aside report of police officer about imminent danger of breach of peace — Failure of station House Officer to appear, when not summoned, does not warrant inference that report is false.** AIR 1963 J and K 56 (57, 58) = 1963 (2) Cr LJ 621 = 1963 Kash LJ 88.

(7) Order of Magistrate not indicating the nature of information which induced him to take action under Section 107 is bad. AIR 1970 Pat 107 (109) = 1969 BLJR 479 ** ILR (1960) 2 Cal 908 (910).

(8) The jurisdiction of the Magistrate under S. 107 depends on the initial allegations. AIR 1962 Pat 369 (372) = 1962 (2) Cri LJ 491 = 1962 BLJR 608.

(9) Proceedings under Section 107 need not be on commission of any overt act itself, but if such overt act leads to any inference of future apprehension of breach of peace, the proceedings will be justified. AIR 1962 Pat 369 (371) = 1962 (2) Cri LJ 491 = 1962 BLJR 608.

3. Whether proceedings can be initiated on orders of superior Court. — (1) The High Court has power under Section 439 to order a Magistrate to take proceedings under Section 107 and the proceedings drawn up in obedience to such order are legal. (1881) 3 All 545 (548, 553) (FB).

(2) The High Court may instruct the Magistrate to act under this section and the High Court's decision may be regarded as one mode of "informing" the Magistrate. (1881) 3 All 545 (553) (FB).

3A. Dropping of proceedings under this section. — (1) No danger of breach of peace —Magistrate can drop proceedings under Section 107. AIR 1969 Manipur 12 (13) = 1969 Cri LJ 220 ** AIR 1968 Pat 326 (327, 328) = 1968 Cri LJ 1114.

(2) **Dropping of proceedings under Section 107 without recording that there was no longer any apprehension of breach of peace — Order illegal.** 1963 All Cr R 348 = 1963 All WR (HC) 621 (622).

words "Executive Magistrate of the first class".—Punj. Act XXV of 1964, Section 2 and Schedule, Pt. I, item 2 (a) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-10-1966).

Rajasthan:

Abu area.—In its application to the Abu area of the State of Rajasthan, the amendment made in Section 107 is the same as that made in (1) of Maharashtra.—Central Act XXXVII of 1956, S. 119 (1-11-1956).

Union territories (except Chandigarh):

In its application to the Union territories, in Section 107, for the words "Magistrate of the first class", substitute the words "an Executive Magistrate of the first class".—Act 19 of 1969, S. 3 and Schedule, item 30 (in Delhi, on 2-10-1969).

West Bengal:

In sub-s. (1) of S. 107 for the words 'Sub-Divisional Magistrate or Magistrate of the first class', substitute the words 'Sub-Divisional Executive Magistrate or Executive Magistrate of the first class' and in sub-sec. (3), for the words 'any Magistrate', substitute the words 'any Executive Magistrate'.—West Bengal Act 8 of 1970, Section 2 and Schedule, item 41.

Section 107 — Note 3-A (contd.)

(3) Dropping of proceedings dependent on Magistrate's subjective satisfaction — Proceeding can be dropped at any stage even after passing an order under S. 112. AIR 1964 All 391 (392, 393) = 1963 All WR (HC) 365 = 1963 All Cr R 197 = 1963 All LJ 746 = 1964 (2) Cr LJ 260.

[Also see 1965 (2) Cr LJ 840 (840) (Pat).]

[But see AIR 1970 Pat 134 (136).]

(4) Dropping of proceeding under Section 107 before inquiry under Section 117 on basis of materials already on record — Held not justified. 1965 (2) Cr LJ 840 (840) (Pat).

(5) Magistrate cannot drop proceedings without making enquiry under S. 117 (1) on ground that case should be dealt with under Section 145. AIR 1965 Tripura 20 (21, 22) = 1965 (1) Cr LJ 602.

(6) Order of Magistrate dropping proceedings under Section 107 does not debar the petitioner from initiating fresh proceedings on happening of fresh circumstances justifying an action under the section. ILR (1966) 16 Raj 762 (768).

(7) The Magistrate can drop the proceeding only when he is satisfied that there is no longer any apprehension of a breach of the peace and there must be a specific finding to that effect. AIR 1968 Pat 326 (327, 328) = 1968 Cr LJ 1114.

(8) Report by police for action under Section 107 — Some of complainant's witnesses examined by Magistrate but order of discharge passed on ground that police were delaying proceedings by unnecessary adjournments and not producing official witnesses—Legality — Magistrate should have decided case on evidence on record or issued process to secure presence of witnesses if he felt it was necessary — He is not justified in abandoning proceedings in despair because of lethargy of police or any other informant. 72 Punj LR 73 = 1969 Cur LJ 885 (Punj).

4. Information which has already been subject of judicial proceeding, whether can be basis of action under this section. — (1) Section 403 or Section 494 does not apply to proceedings under this section. AIR 1952 Trav-Co 556 (Prs 4, 5) = 1950 Trav-Co LR 596 = 1953 Cri LJ 49 ** AIR 1940 Rang 189 (190) = 41 Cri LJ 853.

(2) A person should not be vexed repeatedly with proceedings under this section on the same facts. AIR 1949 All 350 (Pr 4) = 50 Cri LJ 566 ** AIR 1929 Mad 842 (844) = 30 Cri LJ 931.

(3) Where the prior order with reference to an "information" is not one finally disposing of the matter, there is no bar to proceedings being started again on the same basis. AIR 1929 Cal 506 (506, 507) = 31 Cri LJ 58 (DB) ** 14 Cri LJ 559 (560) = 36 Mad 315 (DB) ** AIR 1932 Cal 864 (865) = 33 Cri LJ 858 (DB).

(4) Failure of a criminal prosecution against a person is no bar to the proceeding under this section. AIR 1922 Oudh 273 (274, 275).

5. Information under this section whether "complaint." — (1) An information under this section is not a "complaint" within Section 4 (1) (h). AIR 1932 All 670 (671) = 34 Cri LJ 42 ** AIR 1928 Lah 694 (694) = 29 Cri LJ 866 ** AIR 1968 Mad 225 (226) = 1968 Cri LJ 760 = 1967 Mad LW (Cri) 173.

6. Person proceeded against, whether entitled to a copy of information received by Magistrate. — (1) A Magistrate taking action under this section is not bound to disclose the source of the information received by him and the person ordered to show cause why he should not be required to give security is not entitled to

Section 107 — Note 6 (contd.)

a copy of the information on which the order is based. AIR 1930 Mad 975 (977) = 32 Cri LJ 217.

7. Whether suit for malicious prosecution lies in respect of information given under this section. — (1) Different views are held as to whether a suit for malicious prosecution is maintainable in respect of proceedings under this section:

- (a) Such proceedings are of a quasi-criminal nature and can give rise to an action for damages for malicious prosecution. AIR 1919 All 388 (389) (DB) ** AIR 1955 Punj 139 (140) = 1955 Cri LJ 989 = ILR (1955) Punj 392 ** AIR 1915 Cal 79 (81) = 20 Cri LJ 518 (DB).
- (b) As proceedings under the section do not involve prosecution for an offence they cannot afford a cause of action for a suit for malicious prosecution. (1903) 13 Mad LJ 370 (370) (DB).

(2) There is also a conflict of views on the question whether in cases in which information against a person is laid before a Magistrate under this section, but the Magistrate does not see fit to take any action and no preliminary notice to show cause under Section 112 is issued against the person informed against, a suit for malicious prosecution will lie:

- (a) The prosecution cannot be deemed to have been started at all and hence there can be no suit for malicious prosecution. AIR 1926 Mad 521 (522, 524) (DB) ** (1902) 13 Mad LJ 370 (370) (DB).
- (b) A suit for malicious prosecution will lie even in such a case. AIR 1915 Cal 79 (81) = 20 Cri LJ 518 (DB) ** AIR 1969 Andh Pra 29 (32) (DB).

(3) No suit for malicious prosecution lies in respect of proceedings under this section if they have not been started without reasonable and probable cause. AIR 1925 Pat 469 (470) ** AIR 1947 Oudh 88 (89).

8. Whether suit for defamation lies in respect of information under this section. — (1) Statements contained in an information to the Magistrate under this section are absolutely privileged and cannot be made the ground of a suit for defamation against the informant. AIR 1926 Mad 521 (524, 525) (DB) ** (1913) 18 Ind Cas 737 (742) = 17 Cri LJ 105 (DB) (Cal) ** AIR 1967 All 476 (480) = 1967 All LJ 158.

(2) Statements made by witnesses to a police-officer to whom the Magistrate has referred for investigation and report and the information he has received under this section are privileged. AIR 1926 Mad 521 (523, 525) (DB).

9. "Any person is likely to commit a breach of the peace or disturb the public tranquillity." — (1) The information on which proceedings can be started under the section should be to the effect that the person to be proceeded against is likely to commit a breach of the peace or disturb the public tranquillity or do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. AIR 1943 Lah 99 (99, 100) = 44 Cri LJ 506 ** AIR 1939 Lah 363 (364) = 40 Cri LJ 901 ** 1964 BLJR 117 (117, 118).

(2) The information must be of a clear and definite kind directly affecting the person against whom proceedings are to be drawn up and it should disclose tangible facts and details. ('84) 6 All 26 (30) (FB) ** AIR 1922 Cal 97 (99) = 24 Cri LJ 230 (DB) ** AIR 1921 Pat 440 (443) = 22 Cri LJ 745 ** AIR 1931 Lah 184 (184) = 32 Cri LJ 693 ** AIR 1920 Pat 687 (688) = 22 Cri LJ 86 ** AIR 1967 Ker 194 (195) = 1967 Cri LJ 1330 = 1966 Ker LT 966 (DB) ** (1966) 1 Mys LJ 260 (263) = (1966) 6 Law Rep 7.

[But see AIR 1940 Mad 23 (26) = 41 Cri LJ 238 (FB).]

(3) Proceedings under the section cannot be commenced on the basis of information which merely contains vague recitals borrowed from the words of the section. AIR 1929 Pat 67 (68) = 30 Cri LJ 492 ** 1957 Cri LJ 273 (274) (All) ** AIR 1931 Pat 347 (349) = 32 Cri LJ 1014.

(4) A mere statement that the person in question is using threats of violence to the opposite party or has committed "diverse acts of oppression" is not sufficient to justify action being taken. AIR 1922 Pat 209 (209) = 25 Cri LJ 369 ** (1902) 7 Cal WN 32 (33) (DB).

(5) A police-report which merely says that the person sought to be bound over is an overbearing and quarrelsome man and that it is necessary to place him under security is not sufficient to justify proceedings against him. 1888 Pun Re (Cr) No. 16 p. 30 (30) (DB) ** 1888 Pun Re (Cr) No. 21 p. 40 (41) (DB).

(6) The mere fact that enmity or ill-feeling exists between two parties is no ground for instituting proceedings under this section against one or both of them. AIR 1928 Lah 243 (244) = 29 Cri LJ 417 ** AIR 1914 Oudh 305 (306) = 13 Cri LJ 721 ** (1911) 12 Cri LJ 186 (186) (Lah) ** AIR 1922 Cal 97 (99) = 24 Cri LJ 230 (DB) ** (1966) 1 Mys LJ 260 (263) = (1966) 6 Law Rep 7.

[See also AIR 1954 Punj 135 (136) = ILR (1954) Punj 776.]

(7) A party cannot be bound over merely because he has been boycotting another party. (1913) 14 Cri LJ 238 (238) (All).

(8) Where there is a dispute between two parties, no action can be taken against any one of the persons interested unless the facts show that he is likely to commit a breach of the peace or do any

Section 107 — Note 9 (contd.)

of the other acts mentioned in the section. AIR 1930 All 408 (409) = 31 Cri LJ 710 ** AIR 1943 Pat 417 (418) = 45 Cri LJ 406 ** AIR 1966 J and K 29 (30) = 1966 Cri LJ 145 (146) (J and K) = 1966 Kash LJ 1.

(9) Proceedings can be drawn up under the section against persons who are likely to abet the commission of the acts mentioned in it. AIR 1922 Nag 180 (181) = 23 Cri LJ 394 ** AIR 1947 All 392 (393) = ILR (1947) All 476 ** (1883) 6 All 26 (29) (FB) ** AIR 1916 Pat 52 (53) = 18 Cri LJ 374.

[But see (1912) 13 Cri LJ 126 (126) = 1912 Pun Re (Cr) No. 4.]

(10) A person cannot be bound over to keep the peace merely because his servants, agents or partisans are likely to break the peace or disturb the public tranquillity. (1882) 10 Cal LR 430 (432) (DB) ** (1904) 1 Cri LJ 696 (697) (All) ** (1910) 11 Cri LJ 719 (720) (All).

(11) The mere fact that a person holds a respectable position in his community and wields an enormous influence with its members is not sufficient to institute proceedings against him under this section for acts done by such members. AIR 1939 Lah 363 (364) = 40 Cri LJ 91.

(12) A person cannot escape liability under the section on the ground that the acts imputed to him were committed under the orders of his master. (1905) 2 Cri LJ 554 (568) (SB) (Cal).

(13) It is not necessary for taking action under the section to show that a person has actually done any of the acts mentioned in it. AIR 1943 Nag 88 (90) = 44 Cri LJ 82 ** AIR 1930 All 408 (408) = 31 Cri LJ 710 ** (1904) 1 Cri LJ 58 (59) (DB) (Cal).

(14) The mere fact that a person was likely to commit or has committed a breach of the peace in the past is no ground for proceeding against him under this section. AIR 1943 Mad 394 (394) = 44 Cri LJ 756 ** AIR 1948 Lah 62 (63) = 49 Cri LJ 14 ** AIR 1940 Mad 23 (25) = 41 Cri LJ 238 (FB) ** 1970 Cri LJ 111 (112) (Mys) = (1968) 2 Mys LJ 551 ** 1968 Cri LJ 815 (816) = (1967) Mad LJ (Cr) 761 ** 1969 MLJ (Cri) 13 (15) = (1968) 2 Mys LJ 551 (552) ** AIR 1967 Ker 194 (195) = 1967 Cri LJ 1330 = 1966 Ker LT 966 (DB).

[But see 1969 Cri LJ 685 (686) = (1968) 2 Andh WR 152.]

(15) Though there may be an apprehension of breach of the peace at the time of the commencement of proceedings under the section, if the apprehension ceases subsequently before the final order for security is passed the proceedings must be cancelled. AIR 1927 Pat 231 (232) = 28 Cri LJ 719 ** AIR 1958 Raj 180 (180) = ILR (1958) 8 Raj 192 = 1958 Cri LJ 970 (DB). [1955 Raj LW 532, Overruled.] ** AIR 1949 All 21 (22) = 50 Cri LJ 78 ** 1966 Cri LJ 866 (868) = (1966) 68 Pun LR 143 ** ('64) 66 Pun LR 39 (40) ** ILR (1964) 1 Punj 719 (721, 722).

[See however AIR 1940 Pat 252 (253) = 41 Cri LJ 764 ** 1965 (1) Cr LJ 512 (414) (Manipur).]

(16-17) Where it is likely that a breach of the peace will take place in the near future, security should be taken, even though the occasion on which ill-feelings between the parties first came to a head or were feared has passed away. (1911) 12 Cri L Jour 493 (494) (All) ** AIR 1949 All 21 (22) = 50 Cri L Jour 78.

(18) In proceedings under this section the Court is entitled to take into consideration the utterance of threats by a party on different occasions, as well as the previous relations of the parties and the antecedent and other existing circumstances. AIR 1941 Pat 241 (243) = 42 Cri L Jour 296 ** (1911) 12 Cri L Jour 104 (105) (DB) (Mad) ** (1904) 1 Cri L Jour 344 (348) = 31 Cal 350 (DB).

(19) The mere use of bombastic language without any indication of a design to break the peace does not render the person using it liable to be dealt with under the section. (1911) 12 Cri L Jour 104 (105) (DB) (Mad).

(20) The fact that a person has cast a slur on the character and activity of another person and has been carrying on a campaign of vilification against him is not sufficient for an action under this section. (1943) 47 Cal WN 731 (733) (DB).

(21) The mere absence of actual overt acts on the part of the person sought to be bound over during the past 6 months is not conclusive proof that he is not likely to do any of the acts mentioned in the section. AIR 1919 Cal 469 (470) = 19 Cri LJ 266 (DB).

(22) It is not necessary for proceedings being drawn up under the section against any person that it must be shown that he intends to do any definite act. AIR 1940 Mad 23 (25) = 41 Cri LJ 238 (FB). (The decisions in 2 Weir 49; AIR 1918 Mad 555 = 18 Cri LJ 878; AIR 1937 Mad 356 = 38 Cri LJ 699 and AIR 1930 Mad 859= 32 Cri LJ 27 must be deemed as overruled by this Full Bench decision.) ** AIR 1918 All 93 (93) = 19 Cri LJ 876.

[But see (1897-1901) 1 Upp Bur Rul 16 (18).]

(23) A bare possibility of breach of the peace is not enough to justify proceedings under this section; there must be at least a reasonable probability of such a breach. (1880) 3 Shome LR 37.

[See AIR 1929 Nag 328 (332) = 31 Cri LJ 20 ** AIR 1952 Bhopal 45 (Pr 9) = 1952 Cri LJ 1758.]

(24) The evidence that the accused attempted to commit a breach of the

Section 107 — Note 9 (contd.)

peace during the pendency of the proceedings under this section, is the best evidence to prove their intention to commit further breach. AIR 1930 All 408 (409) = 31 Cri LJ 710.

(25) Overt act committed after initiation of proceedings, indicative of continuation of apprehension of breach of peace — Evidence of such subsequent act can be allowed, but the accused must have opportunity to meet it. AIR 1962 Pat 369 (372) = 1962 (2) Cri LJ 491 = 1962 BLJR 608.

(26) Allegation against petitioners regarding extorting money from community members — Proceedings under Section 107 but not under Section 110 may justly be started. 1961 BLJR 128 = 1962 (1) Cr LJ 665 (666) (Pat).

10. "Wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity." — (1) A rightful act cannot be made the subject of proceedings under this section, even though it may provoke a breach of the peace or disturb the public tranquillity. AIR 1942 Pat 331 (333) = 43 Cri LJ 637 ** AIR 1942 Nag 45 (46) = 43 Cri LJ 357 ** ILR (1963) 1 Punj 290 (296) (DB).

(2) The section must be used to protect persons exercising their legal rights and not to interfere with such rights. AIR 1939 Lah 363 (364) = 40 Cri LJ 91 ** AIR 1939 Sind 167 (169, 170) = 40 Cri LJ 703 (DB) ** AIR 1934 Pat 104 (105) = 35 Cri LJ 1057.
[See (1885) 7 All 461 (477) (FB).]

(3) If an act complained of is not wrongful in itself it cannot become wrongful because somebody else's susceptibilities are likely to be hurt. AIR 1950 Lah 132 (Pr 5) = Pak LR (1950) Lah 172 = 51 Cri LJ 1142 ** AIR 1950 Pat 502 (Pr 5) ** AIR 1942 Nag 45 (47) = 43 Cri LJ 357.

(4) The words "wrongful act" in the section mean "an act forbidden by the penal statutes of India or declared to be penal or wrongful by such statutes" and not merely an improper or immoral act. 1951 Raj LW 137 (139) ** AIR 1920 Pat 550 (552) = 21 Cri LJ 453 ** AIR 1928 Cal 438 (440) = 29 Cri LJ 844 (DB) ** AIR 1920 Pat 661 (662) = 21 Cri LJ 225 ** AIR 1967 Ker 194 (195) = 1967 Cri LJ 1330 = 1966 Ker LT 966 (DB).
[See also AIR 1963 J and K 56 (58) = 1963 (2) Cr LJ 621.]

(5) A woman cannot be bound over under this section on the ground that she is likely to commit adultery and that her act may probably provoke the husband to commit a murder. 1877 Pun Re (Cr) No. 1 p. 2 (2) (DB).

(6) In proceedings under this section, an attempt must always be made by the Magistrate to ascertain the legal rights of the parties before he binds down one or the other of them. AIR 1943 Lah 99 (99, 100) = 44 Cri LJ 506 ** AIR 1948 Nag 76 (77) = ILR (1947) Nag 706 = 49 Cri LJ 61 ** AIR 1931 Pat 347 (348) = 32 Cri LJ 1014 ** AIR 1964 Pat 445 (445, 446) = 1964 (2) Cr LJ 438.
[See also AIR 1954 All 461 (462) = 1954 Cri LJ 976.]

[See however (1906) 4 Cri LJ 456 (459) (DB) (Cal).]

(7) Before taking action against a person on the ground of his being likely to do a wrongful act which may provoke a breach of the peace, it must be shown that some definite act is in contemplation. AIR 1920 Pat 550 (551) = 21 Cri LJ 453 ** (1906) 10 Cal WN xlvii (xlvii).

(8) Breach of the peace or the disturbance of public tranquillity must be not merely possible but a probable result of the wrongful act. AIR 1914 Lah 392 (394) = 15 Cri LJ 605 ** (1906) 4 Cri LJ 278 (278) = 1906 Pun Re (Cr) No. 7 ** AIR 1967 Ker 194 (195) = 1967 Cri LJ 1330 = 1966 Ker LT 966 (DB).

(9) Object of section is to guard against apprehended breach of peace or wrongful act which might lead to breach of peace. AIR 1967 Ker 194 (195) = 1967 Cri LJ 1330 = 1966 Ker LT 966.

11. Disturbance of public tranquillity.— (1) A person who is not likely to commit or provoke a breach of the peace but who is likely to disturb the public tranquillity can also be proceeded against under this section. AIR 1916 All 276 (277) = 17 Cri LJ 301.

(2) Where five members of certain political party went along with a procession to the Collectorate during office hours, shouting slogans by the use of megaphone but there was no evidence on record to prove their intention to shout slogans inside the Collector's office, it was not a case involving breach of peace or public tranquillity. 1960 Jab LJ 649 (651) = 1960 MPC 313.

12. "If in his opinion there is sufficient ground for proceeding." — (1) In each case the Magistrate has to exercise his discretion with reference to the credibility and sufficiency of the information received by him. AIR 1953 Cal 109 (Pr 15) = 1953 Cri LJ 344 (DB) ** AIR 1950 Cal 200 (Pr 4) = 51 Cri LJ 606 (DB) ** AIR 1940 Rang 189 (190) = 41 Cri LJ 853.

(2) If the Magistrate comes to the conclusion that the apprehension as to breach of the peace is unfounded, he need not take any action under this section. AIR 1924 Lah 630 (630, 631) = 25 Cri LJ 89.

(3) Once the Magistrate comes to entertain an opinion that an action on report is not warranted the clear mandate of the law is that he should dis-

Section 107 — Note 12 (contd.)

charge the notice under Section 119. (1966) Mad LJ (Cr) 750 = (1966) 2 Mys LJ 250 (251).

(4) Though an application under this section is not a "complaint" within the meaning of Section 203, the Magistrate can dismiss it by virtue of his powers under this section itself if he considers that the application is groundless. AIR 1924 Lah 630 (630) = 25 Cri LJ 89.

(5) A Magistrate under this section should act in the exercise of his own discretion. He cannot dismiss an application under this section merely on the report of a zaildar. AIR 1928 Lah 119 (120) = 29 Cri LJ 267.

(6) The Magistrate can bring the proceedings to an end only by an order under Section 119 and not by the Government withdrawing from the inquiry. 1950 Ker LT 319 (321) ** AIR 1957 Pat 106 (108) = 35 Pat 833 = 1957 Cri LJ 386 (DB) ** AIR 1940 Rang 189 (190) = 41 Cri LJ 853.

(7) Order requiring execution of interim bonds during pendency of proceedings under Sections 107/117 can only be made if the Magistrate is satisfied that there are strong reasons for taking immediate action to ensure maintenance of peace. 1968 Cri LJ 815 (815) = (1967) 2 Andh WR 327 = 1966 All WR 863 (863) = 1967 All Cri R 15.

(8) The Magistrate must apply his mind to the allegations made or the facts disclosed or even the nature of the order he was going to pass. (1967) 71 Cal WN 1039 (1040).

(9) Sufficient ground for proceeding under Section 107 — Function of Magistrate upto forming of opinion is not only judicial but administrative also — Function of Magistrate after that decision becomes judicial. 1969 Cri LJ 73 (75) = 1967 All WR (HC) 853.

(10) Application under Section 107 alleging apprehension of breach of peace by other party in connection with possession of land — Magistrate must satisfy himself that the applicant is in possession before starting proceedings against other party. AIR 1964 Manipur 19 (20) = 1964 (1) Cri LJ 406.

(11) Before deciding to bind down a person during pendency of Section 107 proceeding, the Magistrate must be satisfied that the person is prone to extremely unruly conduct and shows inclination to commit acts of violence. 1968 Cri LJ 844 (845) = 34 Cut LT 391.

[See also 1964 All WR (HC) 342 (2) (343, 344).]

(12) Under Section 145, Magistrate's jurisdiction is not affected merely because he has not recorded a formal order stating that an apprehension of a breach of peace exists, provided there are materials on record to show that such an apprehension was justified. ILR (1961) 11 Raj 1180 (1181).

13. Power of Magistrate to call for report from police or Subordinate Magistrate. — (1) The procedure provided for in Sections 202 and 203 does not in terms apply to a petition asking for an order for security being passed against a person. AIR 1953 Cal 109 (Pr 15) = 1953 Cri L Jour 344 (DB) ** AIR 1949 All 350 (Pr 4) = 50 Cri L Jour 566.

(2) The Magistrate has inherent power to refer the matter to the police or to a subordinate Magistrate for investigation or enquiry and report, before he makes up his mind as to whether notice must issue or not. AIR 1953 Cal 109 (Pr 14) = 1953 Cri L Jour 344 (DB) ** 1957 Cri L Jour 273 (274) (All) ** AIR 1938 Lah 861 (863, 864) = 40 Cri L Jour 193 (DB) ** AIR 1932 All 670 (672) = 34 Cri L Jour 42 ** (1891) 2 Weir 51 (51).

(3) The Magistrate cannot direct another Magistrate to make a report as to whether action under this section is necessary. AIR 1947 Pat 235 (236) = 48 Cri L Jour 703.

(4) Clause (3) of Section 107 comes into play only when proceedings are to be initiated by a Magistrate not empowered by Clause (1) of the section. AIR 1960 Ker 227 (228) = 1960 Ker LJ 21 = 1960 Cri LJ 907 (1) (DB).

14. May require him to show cause. — (1) The words "in the manner hereinafter provided" are essential words and the Magistrate cannot discover a manner of his own. AIR 1953 Cal 109 (Prs 12, 13) = 1953 Cri L Jour 344 (DB) ** AIR 1967 Ker 194 (195) = 1967 Cri LJ 1330 = 1966 Ker LT 966 (DB).

(2) An order directing a person to enter into a bond for keeping the peace is illegal if he was not summoned to show cause why such an order should not be passed against him. (1912) 13 Cri L Jour 844 (845) (All) ** AIR 1949 Oudh 83 (Pr 2) = 51 Cri L Jour 89 ** AIR 1969 Delhi 304 (310) = 1969 Cri LJ 1370 ** AIR 1969 Pat 369 (370, 371) = 1969 Cri LJ 1420 ** AIR 1967 Delhi 31 (34) = 1967 Cri LJ 865.

(3) A preliminary hearing is not necessary for coming to a conclusion that an action under this section should be taken. AIR 1953 Cal 109 (Prs 12. 13) = 1953 Cri L Jour 344 (DB) ** AIR 1941 Pat 241 (242) = 42 Cri L Jour 296.

(4) Proceedings under Section 107 — Magistrate ordering issue of summons without passing order under Section 112 — Order must be quashed. 1964 All Cri R 527 (528) = 1964 All WR (HC) 723 = 1965 All LJ 49.

(5) Where in a notice served on the party calling upon them to show cause why they should not be ordered to enter into bonds to keep peace etc., though only Section 107 is mentioned and not

Section 107 — Note 14 (contd.)

112, the mere non-mention of Section 112 is of no consequence because a notice itself is exactly of the same effect. AIR 1961 Madh Pra 302 (305) = 1962 All Cri R 209 = 1962 All WR (Sup) 52 = 1961 Jab LJ 443 = 1961 (2) Cri LJ 642 (DB).

(6) Accused arrested and detained — Order under Section 107 read with Section 112 read out subsequently — On denial of charge by him order under Section 117 (3) passed — Accused cannot be released in view of a valid order passed under Section 117 (3) subsequently. (1965) 2 Cri LJ 271 (272) = 1963 All WR (HC) 439 (DB) (All).

(7) Proceedings under Sections 107/117 — Issue of notice requiring execution of interim bond under Section 117 (3) without making order under Section 112 is illegal. 1966 All WR (HC) 863 (863) = 1967 All Cri R 15.

(8) Initiation of proceedings under Section 112 — Formation of requisite opinion under Section 107 is condition precedent — Initiation of proceedings without forming requisite opinion vitiates entire proceedings. 1964 All WR (HC) 342 (2) (343, 344).

[See also (1969) Mad LJ (Cr) 13 (14) = (1968) 2 Mys LJ 551 (552).]

(9) Proceeding under Section 107 — Magistrate forming opinion that it was fit case to proceed under Section 107 on basis of facts alleged in affidavit — It was his duty to make reference to that affidavit in the order passed under Section 112. 1969 Cri LJ 73 (74, 75) = 1967 All WR (HC) 853.

(10) Proceedings under Section 107 are maintainable even after expiry of the period mentioned in the notice under Section 112. (1967) All Cr R 477 = 1967 All WR (HC) 768 (772).

(11) Arrest in security proceedings — Compliance with proviso to Section 114 is necessary. AIR 1964 Manipur 62 (63) = 1964 (2) Cr LJ 684.

(12) Where a Magistrate deems it necessary to require the petitioners to show cause why action should not be taken under Section 107, he is competent to pass orders under Section 112 and proviso to Section 114. AIR 1969 Manipur 90 (92) = 1969 Cri LJ 1512.

(13) If any evidence of subsequent conduct or event is given it should be incorporated in a supplementary order under Section 112. AIR 1962 Pat 369 (372) = 1962 BLJR 608 = 1962 (2) Cr LJ 491.

15. Burden of proof. — (1) The burden of proof is on the prosecution and not on the person proceeded against to prove his innocence. (1887) 9 All 452 (460, 461) ** (1893) 7 CP LR (Cr) 9 (11).

16. "With or without sureties". — (1) In the case of landed proprietors required to give security for keeping the peace, their personal security should be considered sufficient. (1921) 63 Ind Cas 829 (829) = 22 Cri L Jour 701 (All).

17. Territorial jurisdiction. — (1) Where the territorial jurisdiction of a Magistrate to take proceedings under this section is challenged, it is incumbent upon him to enter into the matter and decide it, after taking evidence if necessary, before proceeding further. (1905) 10 Cal WN xxii (xxiii).

(2) Amended sub-section (2) is applicable to proceedings pending on 1-1-1956. Prima facie a Sub-divisional Magistrate has the requisite jurisdiction within amended sub-section (2) although the person informed against is not a resident with the limits of his jurisdiction. AIR 1957 All 831 (832) = 1957 Cri L Jour 1386.

18. Transfer of proceedings to another Magistrate for disposal. — (1) District Magistrate can transfer the proceedings to any other Magistrate who is subordinate to him and who, though lacking territorial jurisdiction, is otherwise competent to complete the proceedings. (1901) 24 All 151 (152) ** AIR 1957 All 831 (832) = 1957 Cri L Jour 1386 ** AIR 1924 Cal 540 (540) = 24 Cri L Jour 367 (DB) ** AIR 1930 Mad 859 (860) = 32 Cri L Jour 27.

(2) Where proceedings have not been initiated at all but only an information under the section has been received, the case cannot be transferred to another Magistrate for disposal. AIR 1918 Mad 555 (557) = 18 Cri L Jour 878 (DB) ** AIR 1917 Pat 8 (9) = 19 Cri L Jour 96.

(3) The High Court has, under Section 526, power to transfer proceedings under this section from one district to another. AIR 1942 Oudh 186 (189) = 43 Cri L Jour 365.

(4) A Sub-Divisional Magistrate who has actually initiated proceedings under Section 107 has power to transfer the same to any first class Magistrate subordinate to him. AIR 1956 Cal 315 (316) = 1956 Cri L Jour 745 (DB).

19. Sub-sections (3) and (4). — (1) The Magistrate to whom a person is sent under sub-section (3) must go through all the procedure laid down in Sections 112 to 118 before he can bind down the person for keeping the peace. (1909) 10 Cri L Jour 309 (311) = 1900 Pun Re (Cr) No. 7 (DB).

(2) Sub-section (4) confers jurisdiction on a Magistrate to detain only a person sent to him under sub-section (3); he cannot detain any other person though he may be before the Court. (1908) 7 Cri L Jour 360 (360) = 31 Mad 315 (FB).

(3) A Magistrate has no power to order arrest with a view to his taking action under this section unless the case falls

Section 107 — Note 19 (contd.)
under sub-section (3). AIR 1949 All 21 (22) = 50 Cri L Jour 78.

20. Revision. — (1) The High Court seldom interferes in the preliminary stage with the discretion of the Magistrate in taking action under the preventive sections of the Code. AIR 1939 Sind 167 (168) = 40 Cri L Jour 703 (DB) ** AIR 1959 Mad 339 (342) = 1959 Cri L Jour 998 ** AIR 1934 Pat 463 (465, 466) = 36 Cri L Jour 257 ** 1969 Cr LJ 73 (75) = 1967 All WR (HC) 853.

(2) When the material on which orders are based is clearly insufficient to support them, the High Court will interfere. AIR 1924 Cal 114 (114) = 25 Cri L Jour 189 (DB) ** AIR 1918 Upp Bur 53 (54) = 18 Cri L Jour 512.

[See also AIR 1964 Manipur 19 (20) = 1964 (1) Cri LJ 406.]

(3) Where the order passed has no legal basis and the Magistrate proceeds on a wrong legal principle applying the section equally to the wrong doers as well as to the wronged, the High Court will interfere in revision. AIR 1939 Sind 167 (169) = 40 Cri L Jour 703 (DB) ** 1961 Jab LJ 386 (387) = 1961 MPLJ 496.

(4) When an application under this section is dismissed, further enquiry cannot be ordered under Section 436. AIR 1925 Oudh 138 (138) = 25 Cri L Jour 1149.

(5) Initiation of proceedings at the instance of private person — Order dropping proceedings — Since order of Magistrate came to the knowledge of the High Court in revision it could consider legality of the order. AIR 1968 Pat 326 = 1968 Cr LJ 1114.

[See also AIR 1963 J and K 56 (58, 59) = 1963 (2) Cr LJ 621.]

(6) Sessions Judge has no jurisdiction to entertain an application in revision against an impugned order passed by an Executive Magistrate in a proceeding under Section 107. 1968 Cri LJ 1665 (1667) = 10 Guj LR 58.

(7) Revision against order passed by Executive Magistrate under Section 107 can be entertained by the District Magistrate or sub-divisional Magistrate under Section 435 (2). 1968 Cr LJ 1665 (1667) = 10 Guj LR 58.

(8) Rights of parties determined by competent Court — Appeal pending — Magistrate has a choice between taking action under Section 145 or Section 107 — Magistrate taking action under Section 145 to uphold decision of civil Court — Interference in revision not justified. 1963 (1) Cr LJ 512 (513) (All).

(9) Courts of Session should be very slow and cautious in entertaining revisions by private complainants against orders for dropping proceedings under this section ILR (1966) 16 Raj 762 (767).

(10) Order to show cause why party should not execute bond for peace for one year — No direction in order that the period of one year should commence from any particular date — Expiry of period — Order need not be set aside in revision. AIR 1970 Pat 107 (109) = 1969 BLJR 479. (AIR 1949 All 21, Dissented from.)

(11) Order drawing up proceeding under Section 107 and calling on party to show cause — Specification required under law not mentioned in order — Order is revisable. AIR 1970 Pat 107 (108) = 1969 BLJR 479.

21. Appeal — See Section 406.

22. Security. — **(1) The purpose of requiring a person to furnish security under Section 107 is to prevent him from committing a breach of the peace and not to punish him or to keep him in prison and the amount demanded from him must, therefore, be sufficient to secure the accomplishment of this object. 1958 All Cri R 458 (458) = 60 Pun LR 513.**

(2) Previous conviction need not necessarily be taken into account while considering quantum of amount of security. AIR 1969 Guj 267 (269) = 1969 Cri LJ 1133 = 10 Guj LR 847.

(3) Bond for keeping the peace can be forfeited by the Magistrate only when he is satisfied on proof furnished before him that a breach of the terms of the bond has been committed. A police report is not sufficient for him to take action under Section 514 (1). AIR 1960 Pat 325 (326) = 1960 Cr LJ 978.

(4) An order requiring the execution of the bond under Section 118, Criminal P. C., should become operative where the original order is confirmed by the Court of Sessions in appeal or by the High Court in revision from the date of the order of the Court of Session or of the Court of revision unless such Court expressly fixes some other date for the order to come into operation. (1965) MLJ (Cr) 861 (863) = (1965) 1 Mys LJ 537.

23. Disputes relating to land, waterways, etc. — (1) One party put in possession of property through Civil Court — In case of apprehension of breach of peace, the unsuccessful party should be bound down under Section 107. AIR 1968 Orissa 239 (240) = 1968 Cri LJ 1629 ** 1967 Cr LJ 1119 (1120) = 1966 BLJR 477 ** (1965) 31 Cut LT 581 (584, 585) = ILR (1965) Cut 174 ** 1964 (1) Cr LJ 95 (99, 100) = (1963) Kash LJ 217 (DB) ** AIR 1964 Manipur 62 (64) = 1964 (2) Cr LJ 684 ** 1964 (1) Cr LJ 244 (246) (Manipur) ** 1963 (1) Cr LJ 512 (513) (All) ** ILR (1963) Cut 771 (773).

[See 1961 All Cr R 374 = 1961 All LJ 873 (875).]

Section 107 — Note 23 (contd.)

(2) If Civil Court has already taken cognizance of the dispute regarding property, the Magistrate should drop proceedings under Section 145 and take action under Section 107 against the party disregarding the civil Court's order. 1964 All WR (HC) 46 (46).

(3) Where dispute between parties related to property, action under Ss. 107, 117 is not necessary. 1964 All WR (HC) 46 (46) ** 1966 Cri LJ 145 (146) = AIR 1966 J and K 29 = 1966 Kash LJ 1. (Case under J and K Cr. P. C. (23 of Svt 1989), Ss. 107, 145.) ** 1966 BLJR 383 (384) ** AIR 1964 Manipur 62 (64) = 1964 (2) Cr LJ 684 ** (1964) MLJ (Cri) 127 (128) (Mys) ** AIR 1964 Tripura 71 (72) = (1965) 1 Cri LJ 88.

[See also ILR (1961) 11 Raj 1180 (1182).]

[But see AIR 1965 Tripura 20 (22) = 1965 (1) Cr LJ 602 ** 1962 (1) Cr LJ 821 (823) (Manipur).]

(4) Where bona fide dispute exists between two parties on account of land dispute a proceeding under Section 145 should be started against them, but the Magistrate has discretion to start proceedings under Section 107 against both parties. AIR 1964 Pat 445 (445) = 1964 (2) Cri LJ 438 ** AIR 1966 J and K 29 (30) = 1966 Kash LJ 1 = 1966 Cr LJ 145 ** AIR 1961 J and K 4 (4) = (1961) 1 Cri LJ 62.

(5-6) Dispute as to possession of land — Proceedings under one of the Sections (viz., Ss. 107, 144, 145), can be taken according to discretion of Magistrate — Order under S. 107 can be passed only if Magistrate holds that the dispute is no longer is likely to cause breach of peace. ILR (1960) 2 Cal 908 (911) ** AIR 1967 Orissa 198 (199) = 1967 Cri LJ 1672 = 34 Cut LT 118 ** AIR 1967 Orissa 17 (18, 19) = 1967 Cri LJ 231 = 32 Cut LT 472 ** ILR (1966) Cut 882 (886) = 32 Cut LT 1036.

(7) Scopes of Section 107 and S. 145 are different and they should not be mixed up in the same proceedings. AIR 1961 Madh Pra 302 (303) = 1961 (2) Cri LJ 642 = 1961 Jab LJ 443 ** AIR 1969 Mys 297 (298) = 1969 Cri LJ 1250 = (1969) 1 Mys LJ 420.

(8) The difference between Section 107, Criminal P. C. and Section 145, Criminal P. C. is firstly that under Section 107 there need be no dispute relating to land and secondly in the case of Section 107, the proceedings are started against a person who is likely to commit a breach of the peace, whereas under Section 145 as a result of land dispute, a breach of the peace is likely to be caused. 1963 (1) Cr LJ 823 (825) (Manipur).

(8a) When the police report which forms the very basis of the initiation of proceedings under Section 107 Cr. P. C. does not mention any specific immovable property as the cause of the disturbance but alleges only overt acts of one of the parties against the other, no proceeding under Section 145 should be drawn up and the proceeding under Section 107 should not be converted into one under Section 145. Further, if a civil suit is pending, the better choice for the Magistrate is always to start a proceeding under Section 107 in preference to a proceeding under Section 145. 1969 Pat LJR 359.

(9) Proceedings initiated under S. 107 on basis of police report that petitioner wan in possession of the disputed field and order under Section 112 passed against the other party — Proceedings under Section 107 should not be converted into those under Section 145. ILR (1961) 11 Raj 657 (664) (FB).

[See also AIR 1969 Mys 181 (183, 184) = 1969 Cri LJ 752 = (1969) 1 Mys LJ 1.]

(10) Mixing of proceedings under both sections is not proper — Proceedings however erroneously mixed up — Order passed is not vitiated unless it results in prejudice and miscarriage of justice. AIR 1961 Madh Pra 302 (305) = 1961 Jab LJ 443 = 1961 (2) Cr LJ 642 (DB).

(11) Petition under Section 107 made by Pradhan representing all other villagers — Order of S. D. M. under Section 145, not vitiated by non-joinder of all the villagers. AIR 1969 Manipur 52 (53) = 1969 Cri LJ 985.

(12) The Criminal Court must give effect to the decision of the Civil Court regarding immovable property. 1969 Cri LJ 331 (334) = 1968 Ker LT 503 ** AIR 1964 Manipur 19 (20) = (1964) 1 Cri LJ 406.

[See also AIR 1963 Assam 38 (41) = 1963 (1) Cr LJ 565.]

(13) Conversion of proceedings under Section 107 into one under Section 145— Magistrate can do so in a proper case — Likelihood of decrease in food production is not valid ground for such conversion. 1963 (1) Cr LJ 823 (825) (Manipur).

(14) Magistrate coming to a finding that both parties are in possession — S. 146 cannot be invoked — Proper order is one under Section 107. AIR 1963 Pat 320 (323) = 1963 (2) Cri LJ 313 (DB).

(15) Proceedings under Section 145 — Reference by Magistrate under Section 146 regarding possession — Civil Court holding that both parties are in joint possession — Section 146 is not attracted — Proper course is not to drop proceedings but to start proceedings under Section 107. AIR 1963 Pat 320 (324) = 1963 (2) Cr LJ 313 (DB).

(16) In a dispute relating to land, if Magistrate is of opinion that claim of one party is mere pretence or there is no dispute bona fide, proceeding under Section 107 can be started against that party. AIR 1967 Orissa 17 (19) = 1967 Cri LJ 231 = 32 Cut LT 472 ** AIR

108. Security for good behaviour from persons disseminating seditious matter.— Whenever a Chief Presidency or District Magistrate, or a Presidency Magistrate or Magistrate of the first class specially empowered by the °†[State Government] in this behalf, has information that there is within the limits of his jurisdiction any person who, within or without such limits, °‡[(i) either orally or in writing *[or in any other manner intentionally] disseminates or attempts to disseminate, or in anywise abets the dissemination of,—

(a) any seditious matter, that is to say, any matter the publication of which is punishable under Section 124A of the Indian Penal Code, or

(b) any matter the publication of which is punishable under Section 153A of the Indian Penal Code, or

(c) any matter concerning a Judge which amounts to criminal intimidation or defamation under the Indian Penal Code,

°‡[(ii) makes, produces, publishes or keeps for sale, imports, exports, conveys, sells, lets to hire, distributes, publicly exhibits or in any other manner puts into

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Section 107 — Note 23 (contd.)

1967 Orissa 198 (199) = 1967 Cri LJ 1672 = 34 Cut LT 118.

(17) A proceeding under Section 107 of the Code should ordinarily be started against both and not against one of the parties. That would put the party against whom no proceeding is started in an unfair advantage over the other party. AIR 1967 Orissa 198 (199, 200) = 1967 Cri LJ 1672 = 34 Cut LT 118 ** AIR 1967 Orissa 17 (19) = 1967 Cri LJ 231 = 32 Cut LT 472.

24. Proceedings under Sections 107 and 117. (1) Composite order drawing up proceeding under Section 107 and also calling upon parties to furnish interim bonds under Section 117 (3) is illegal. 1961 BLJR 297 (298). (AIR 1957 Pat 106, Foll.)

(2) Reading and explaining its substance to the accused is a necessary condition precedent to making of an order under Section 117 (3). Non-compliance with this provision vitiates the order. AIR 1960 Mys 259 (260) = 38 Mys LJ 487 = 1960 Cr LJ 1348.

(3) Section contemplates execution of bond for 'keeping the peace' — Magistrate has no jurisdiction to ask execution of bond for 'maintaining good behaviour' under Section 107 (1). 1961 BLJR 860 = 1962 (2) Cr LJ 575 (576).

(4) There is no provision in the Criminal Procedure Code for a Magistrate to direct party who appears before him in answer to a summons under Section 107, Cr. P. C. to furnish bail. AIR 1965 Tripura 20 (21) = 1965 (1) Cri LJ 601 ** AIR 1964 Manipur 62 (63) = 1964 (2) Cr LJ 684.

25. Powers of Magistrates under the section. — (1) Taluka Magistrate in Mysore State has no power either under the ordinary powers falling within the list in Part III-A of Sch. III or under the additional power under Sub-Part IV of Part I of Sch. IV to require security to keep the peace under Section 107, Cr. P. Code. (1968) 1 Mys LJ 282 = (1968) Mad LJ (Cr) 241 (246).

Section 108 — Note 1

(1) This section is not intended to provide for punishment of offences already committed, but to prevent the commission of offences. AIR 1940 Nag 134 (135) = 41 Cri L Jour 713 ** AIR 1928 All 344 (344) = 30 Cri L Jour 216 ** AIR 1942 Sind 122 (128) = 44 Cri L Jour 367 (DB). (Per Weston J.) ** AIR 1969 Guj 267 (269) = 1969 Cri LJ 1133 = 10 Guj LR 847.

(2) Proceedings under this section are not intended to be taken so as to avoid the trouble and possible refusal of the Government to launch prosecutions under Sec. 153A or Sec. 124A of the Penal Code. AIR 1928 All 344 (344. 345) = 30 Cri L Jour 216.

(3) In order that a person may be bound over under this section it must be shown that the person concerned is in the habit of intentionally disseminating or attempts to disseminate any such matter as is referred to in the section. AIR 1941 Oudh 98 (100) = 42 Cri L Jour 35 (DB) ** AIR 1932 Lah 7 (9) = 32 Cri L Jour 1172 ** AIR 1934 Oudh 70 (72) = 35 Cri L Jour 562.

(4) It is necessary to show that the person proceeded against was connected with the dissemination of the matter in question. The mere writing of the matter disseminated or the authorship thereof is not sufficient to bring a person under this section. AIR 1923 Bom 255 (257) = 25 Cri L Jour 150 (DB).

(5) Where persons proceeded against were merely volunteers, said to have taken part in parades, drills, and route-marches and there was no evidence of dissemination of seditious matter by them, an order under this section was held not justified. AIR 1933 Lah 236 (238, 239) = 35 Cri L Jour 408.

(6) It is essential for the applicability of clause (a) that the matter disseminated must be shown to be seditious. AIR 1916 Bom 9 (48) = 18 Cri LJ 567 (DB).

(7) The following are not seditious matters:

(a) The advocacy of "Home Rule for India" or "Swaraj" with the object circulation any obscene matter such as is referred to in Section 292 of the Indian Penal Code,]

Such Magistrate *[if in his opinion there is sufficient ground for proceeding] may (in manner hereinafter provided) require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under †[and edited, printed and published] in conformity with, the rules*§ laid down in the Press and Registration of Books Act, 1867, †[with reference to any matters contained in such publication] except by the order or under the authority of ‡[* * * * *] the *†[State Government] or some officer empowered §[by the *†[State Government]] in this behalf.

[*] Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), Section 17.

[†] Substituted for "or printed or published" ibid.

[‡] The words "the Governor-General in Council" were repealed by A.O., 1937.

[§] Substituted for "by the Governor-General in Council", ibid.

[*†] Substituted for "Provincial Government" by A.L.O., 1950.

[*‡] Bracket and figure "(i)" inserted and after clause (c), "item (ii)" added by the Indian Penal Code (Amendment) Act, 1969 (36 of 1969), S. 3 (b) (7-9-1969).

[*§] For Press Consultative Committee Rules, 1969 (made under Section 6 of Act 35 of 1969), see Gaz. Ind., 17-10-1969, Pt. II, S. 3 (ii), Ext., p. 1357.

Section 108 — Note 1 (contd.)

of obtaining for Indians an increased and gradually increasing share of political authority. AIR 1916 Bom 9 (44, 48) = 18 Cri L Jour 567 (DB) ** ('07) 6 Cri L Jour 297 (300) = 34 Cal 991 (DB).

(b) The mere preaching of the boycott of British goods. AIR 1932 Lah 7 (9) = 32 Cri L Jour 1172.

(c) Speeches and agitation the trend of which is mainly to redress a particular grievance such as an insult of the religious sentiments of the students of a college. AIR 1932 Lah 559 (563) = 33 Cri L Jour 831.

(8) If there is no attempt to promote **enmity,** the mere fact that the matter **may** have a tendency to promote enmity **is not** enough to proceed against person **under this** section. AIR 1926 Cal 1133 (1136, 1137) = 27 Cri L Jour 1154 (DB).

(9) In order that a person may be bound over under this section for sedition, it must be shown that there is danger of his continuing the seditious activities unless he is prevented from doing so under this section. AIR 1932 Lah 7 (9, 10) = 32 Cri L Jour 1172.

(10) The test is whether there is any fear or probability of the repetition of the offence. AIR 1932 Pat 213 (214) = 33 Cri LJ 711 ** ('09) 10 Cr LJ 379 (380) (DB) (Bom) ** AIR 1928 All 344 (345) = 30 Cri LJ 216 ** AIR 1932 Lah 7 (9, 10) = 32 Cri LJ 1172.

(11) In order to make the printer liable under this section the knowledge of the contents will have to be proved against him. AIR 1923 Bom 255 (258) = 25 Cri LJ 150 (DB).

(12) The publisher must be presumed to have knowledge of the contents and his publishing is dissemination or at least an abetment of the same. AIR 1923 Bom 255 (258, 260) = 25 Cri LJ 150 (DB).

(13) Demanding security from a person who disseminates or attempts to disseminate or abets the dissemination, of any seditious matter is imposing reasonable restrictions on the right conferred by Article 19 (1) (a) in the interests of the security of the State and public order. Section 108 as it stands does not, therefore, contravene Article 19 (1) (a) of the Constitution of India. AIR 1956 All 270 (271) = 1956 Cri LJ 473 (DB).

(14) In view of the provisions contained in Sections 496, 499 and 500 there is no necessity of any specific provision authorising the Court to take or keep a person against whom proceedings under Section 108 are proceedings in custody. AIR 1956 All 270 (271) = 1956 Cri LJ 473 (DB).

(15) Person arrested on suspicion under Section 55 — Previous convictions need not necessarily be taken into account while considering quantum of amount. AIR 1969 Guj 267 (269) = 1969 Cri LJ 1133 = 10 Guj LR 847.

(16) Substance of accusation explained to accused and he was asked to show cause why he should not be bound over — Accused stated that he was prepared to execute surety bond — Held, when

STATE AMENDMENTS

Gujarat:

In its application to the State of Gujarat the amendment made in Section 108 is the same as that made in Maharashtra.— See Central Act XI of 1960, Section 87.

NOTE.—The Chief Magistrate and the Magistrates in the City of Ahmedabad have the powers and exercise the jurisdiction of a Chief Presidency Magistrate and a Presidency Magistrate respectively.—See Guj. Act XIX of 1961, S. 14 (3).

Maharashtra:

(1) In its application to the State of Maharashtra, in Section 108, for the words "or a Presidency Magistrate or Magistrate of the first class", substitute the words "or Sub-Divisional Magistrate or a Presidency Magistrate".—Bom. Act XXIII of 1951, S. 2 and Schedule (1-7-1953).

(2) After the reorganization of the State of Bombay in 1956, the amendment made in Section 108 by the above-mentioned Bombay Act is extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Mysore:

In its application to the State of Mysore, in S. 108, after the words "District Magistrate", insert the words "or Sub-Divisional Magistrate".—Mys. Act XIII of 1965, S. 23 (1-10-1965).

Punjab: Haryana: Chandigarh:

In its application to the States of Punjab and Haryana and the Union territory of Chandigarh, in S. 108, for the words "Magistrate of the first class", substitute the words "Executive Magistrate of the first class".—Punj. Act XXV of 1964, Section 2 and Sch., Pt. I, item (29) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Rajasthan:

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendment made in Section 108 is the same as that made in (1) of Maharashtra.—See Central Act XXXVII of 1956, Section 119.

West Bengal:

In Section 108, for the words "Magistrate of the first class", substitute the words "Executive Magistrate of the first class". — West Bengal Act 8 of 1970, Section 2 and Schedule, item 42.

Union territories (except Chandigarh):

In its application to the Union territories, in S. 108, for the words "Magistrate of the first class", substitute the words "an Executive Magistrate of the first class".—Act 19 of 1969, Section 3 and Schedule, item 30 (in Delhi, on 2-10-1969).

109. Security for good behaviour from vagrants and suspected persons.—Whenever a Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class receives information—

(a) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason

Section 108 — Note 1 (contd.)
procedure contemplated both under Sections 112 and 113 as also in Section 243 had been followed as required in S. 117 (2). it could not be said that even then enquiry contemplated under Section 117 (1) should have taken place. AIR 1969 Guj 267 (268, 269) = 1969 Cri LJ 1133 = 10 Guj LR 847.

SECTION 109 — SYNOPSIS

1. **Scope and object.**
2. **Simultaneous proceedings for substantive offence as well as under this section.**
3. **"Is taking precautions to conceal his presence within . . . . jurisdiction" — Clause (a).**
4. **Concealment, meaning of.**
5. **"With a view to committing any offence."**
6. **"Who has no ostensible means of subsistence" — Clause (b).**
7. **"Who cannot give a satisfactory account of himself" — Clause (b).**
8. **Discretion of Magistrate.**
9. **Revision.**

1. Scope and object. — (1) This section deals with proceedings against persons who, in English law, would be classed as rogues and vagabonds. See ('12) 13 Cri LJ 239 (240) (DB) (Cal).

(2) Clause (a) and clause (b) correspond to different charges and it is not

to believe that such person is taking such precautions with a view to committing any offence, or

(b) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

[1882—S. 109; 1872—S. 504, Paras. 1 and 4 and S. 515, Para. 2; 1861—S. 295.]

STATE AMENDMENTS

Gujarat:

In its application to the State of Gujarat, the amendment made in Section 109 is the same as that made in Maharashtra—See Central Act XI of 1960, S. 87.

NOTE.—(1) Magistrates in the City of Ahmedabad have the powers and exercise the jurisdiction of a Presidency Magistrate—See Guj. Act XIX of 1961, S. 14 (3).

(2) Salaried Magistrates for the City of Ahmedabad have been empowered for the purposes of this section—See Guj. Gaz., 9-11-1961, S. IVA, p. 287.

Section 109 — Note 1 [contd.]
possible to switch from cl. (a) to cl. (b). If charges under both the clauses are framed, the evidence must be examined separately. AIR 1943 All 367 (367) = 45 Cri LJ 219.

(3) The first part of cl. (b) refers to ordinary beggars and vagrants but the latter part deals with cases of persons who cannot give satisfactory account of themselves in general. A person may be financially well off but he may still be unable to give a satisfactory account of himself being engaged, for instance, in concaine traffic. AIR 1943 All 367 (368) = 45 Cri LJ 219.

(4) The object of the section is to frustrate the criminal designs of such persons before they are carried out. AIR 1929 All 33 (36, 37) = 30 Cri LJ 145 (FB).

(5) The section is not intended for taking security from persons suspected of having committed a particular offence. ('72) 1872 Rat 63 (63) (DB).

(6) The section is not meant to be used as a means of getting every suspected habitual offender and village loafer confined in jail, thus saving trouble to the police and the village authorities. It is only when the ordinary means of detection and prevention of crime and ensuring good behaviour have been adopted and have failed, resort to the special means provided by this and the next section is justifiable. ('07) 5 Cri LJ 377 (381) = 13 Bur LR 91.

(7) The section being restrictive of the liberty of the subject must be applied only when it is strictly applicable. AIR 1938 Nag 465 (465) = 39 Cri LJ 807.

(8) The section applies as much to persons residing within the Magistrate's jurisdiction as to persons coming from outside. The residence of persons against whom information is received is an absolutely irrelevant consideration in determinining the scope of this section. AIR 1950 All 134 (Pr 21) = ILR (1950) All 935 = 51 Cri LJ 436. (AIR 1929 All 33 = 30 Cri LJ 145 (FB), foll.)

(9) An order under this section cannot be passed against a person on the gorund that it is not safe in the interest of justice to allow him unrestricted personal liberty. ('38) 42 Cal WN 816 (817) (DB).

(10) A person proceeded against under a preventive section like Section 109 is not accused of any offence nor is he prosecuted. The proceedings against him do not, therefore, end in his 'acquittal" or 'conviction' which words are properly applied to the result of criminal trial. AIR 1950 All 134 (Pr 9) = ILR (1950) All 935 = 51 Cri LJ 436.

(11) The statement of the person proceeded against under the section is not a confession. AIR 1950 All 134 (Pr 43) = ILR (1950) All 935 = 51 Cri LJ 436.

[See also AIR 1942 Oudh 246 (248) = 43 Cri LJ 342.]

2. Simultaneous proceedings for substantive offence as well as under this section. — (1) Where a person who was found riding a stolen camel was challenged by the police and on his being unable to give a satisfactory account of himself, was arrested and convicted under Section 411 of the Penal Code, simultaneous proceedings under this section for the same act were held not justified. AIR 1928 Lah 928 (929) = 29 Cri LJ 1043.

(2) The mere fact that a person can be tried for a substantive offence cannot preclude proceeding under this section if the case is otherwise covered by the section. AIR 1942 Oudh 246 (246) = 43 Cri LJ 342.

3. "Is taking precautions to conceal his presence within . . . . . jurisdiction — Clause (a). — (1) A person may come within cl. (a) even if his residence within

Maharashtra:

(1) In its application to the State of Maharashtra, in S. 109, for the words "Presidency Magistrate, Sub-Divisional Magistrate or Magistrate of the first class", substitute the words "Presidency Magistrate specially empowered by the State Government in this behalf, or a District Magistrate or a Sub-Divisional Magistrate".—Bom. Act XXIII of 1951, S. 2 and Sch. (1-7-1953).

(2) After the reorganization of the State of Bombay in 1956, the amendment made in Section 109 by the above-mentioned Bombay Act is extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom Act XCVII of 1958.

Mysore:

In its application to the State of Mysore, in Section 109, for the words "Magistrates of the first class", substitute the words "Magistrate of the first class specially empowered by the State Government in this behalf".—Mys. Act XIII of 1965, S. 24 (1-10-1965).

Section 109 — Note 3 (contd.)

the local limits of the Magistrate's jurisdiction was well known. The words "within the local limits of the Magistrate's jurisdiction" modify the word "conceal" so that if the concealment is to be effected within the jurisdiction of the Magistrate, cl. (a) will apply even though the residence within jurisdiction is well known. AIR 1929 All 33 (36) = 30 Cri LJ 145 (FB). (AIR 1927 All 50 (51); AIR 1927 All 592 (592) (DB), **Overruled.)** ** AIR 1950 All 134 (Pr 21) = ILR (1950) All 935 = 51 Cri LJ 436 ** AIR 1935 Pat 69 (72) = 36 Cri LJ 846 ** AIR 1938 Nag 465 (465) = 39 Cri LJ 807 ** AIR 1941 Oudh 509 (510) = 42 Cri LJ 617 ** AIR 1953 Bhopal 12 (Pr 12) = 1953 Cri LJ 698.

[But see AIR 1929 Cal 729 (730) = 31 Cri LJ 408 (DB) ** AIR 1918 Cal 887 (887, 888) = 18 Cri LJ 825 (DB) ** AIR 1929 Cal 775 (776) = 31 Cri LJ 569 (DB) ** AIR 1926 Pat 569 (571) = 27 Cri LJ 1128 (DB).]

(2) The words "is taking" in the clause mean "has taken" or "has been taken" and apply to a person who has been arrested by the police under Section 55, although in such a case it cannot be said that at the time of his being produced before the Magistrate he is taking precautions to conceal his presence. AIR 1935 Pat 69 (72) = 36 Cri LJ 846. (Following AIR 1926 Pat 569 = 27 Cri LJ 1128.)

(3) The section applies to the taking of precautions to conceal one's presence whether such precautions are successful or not. AIR 1938 Nag 465 (466) = 39 Cri LJ 807.

(4) In spite of the similar language used in Section 55 and Sec. 109, a person need not be arrested in accordance with Section 55 before he can be proceeded against under this section. Both these sections relate to different subjects and are independent of each other. AIR 1950 All 134 (Pr 15) = ILR (1950) All 935 = 51 Cri LJ 436.

(5) It must be shown that the persons proceeded against had taken some active steps to conceal their presence in a certain place or done something to show that they did not wish it to be known that they were present at that place and that such steps were taken with a view to commit some offence. The mere fact that the persons were in a certain place and ran away on the approach of the police is not enough. AIR 1950 All 184 (Pr 3) = 51 Cri LJ 609.

4. Concealment, meaning of. — (1) Concealing a man's presence is not identical with his concealing himself and a man may not conceal his presence at a place and yet may conceal his identity. AIR 1929 All 33 (35) = 30 Cri LJ 145 (FB).

[But see AIR 1934 All 45 (50, 51) = 35 Cri LJ 442 (DB).]

(2) Giving out a false name is concealment of the identity of the individual concerned but is not necessarily a concealment of his presence. AIR 1924 All 202 (203) = 25 Cri LJ 950. (Giving out false names to the police does not amount to concealment of the presence with a view to commit an offence.) ** AIR 1956 Him Pra 43 (Pr 7) = 1956 Cri LJ 996.

(3) The giving out of false name by a man, in conjunction with other circumstances, for example, when he disguises himself or hides himself, or when it is his duty to disclose his identity or absence from residence, as in the case of a criminal ordered to notify his residence under Section 565 of the Code, may amount to "concealing his presence." AIR 1929 All 33 (35) = 30 Cri LJ 145 (FB).

(4) The words "to conceal his presence" are very wide and are sufficient to cover the concealment of bodily presence in a house or grove or under a bridge, as well as to cover the case of a man who conceals his appearance by wearing a mask or covering his face or disguising himself by a uniform or in some other manner. AIR 1943 All 367 (367) = 45 Cri L Jour 219. (AIR 1929 All 33 = 30 Cri L Jour 145, Followed — It would have been better if the Legisla-

Punjab: Haryana: Chandigarh:

In its application to the States of Punjab and Haryana and the Union territory of Chandigarh, in Section 109, for the words "Magistrate of the first class", substitute the words "Executive Magistrate of the first class".—Punj. Act XXV of 1964, Section 2 and Schedule, Pt. I, item (29) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Rajasthan:

Abu Area.— In its application to the Abu area of the State of Rajasthan, the amendment made in Section 109 is the same as that made in (1) of Maharashtra.—Central Act XXXVII of 1956, Section 119 (1-11-1956).

Union territories (except Chandigarh):

In its application to the Union territories, in S. 109, for the words "Magistrate of the first class", substitute the words "an Executive Magistrate of the first class".—Act 19 of 1969, S. 3 and Schedule, item 30 (in Delhi, on 2-10-1969).

West Bengal:

For the words 'Sub-Divisional Magistrate or Magistrate of the first class', substitute the words 'Sub-divisional Executive Magistrate or Executive Magistrate of the first class.'—West Bengal Act 8 of 1970, Section 2 and Schedule, item 43.

Section 109 — Note 4 (contd.)

ture in 1923 had added the words 'conceals or disguises his presence'.)

(5) There can be no concealment of a man's presence when he gives true informations as to his name and address when asked. AIR 1938 Cal 409 (411) = 39 Cri L Jour 647 (DB) ** AIR 1929 Cal 729 (730) = 31 Cri L Jour 408 (DB).

(6) A man who is deliberately preparing to commit a burglary and when challenged by the police admits his intention, cannot be said to be concealing his presence and cannot be dealt with under this section. AIR 1927 All 592 (592) = 28 Cri L Jour 567 (DB). (**Oevrruled** on another point by AIR 1929 All 33 = 30 Cri L Jour 145 (FB).)

(7) Where accused requested others not to mention their business to others, it does not imply that they were taking precautions to conceal their presence; nor would the fact that they refused to give their names to an ordinary person justify such an inference. AIR 1924 All 202 (203) = 25 Cri L Jour 950.

(8) See also the following cases. AIR 1943 All 368 (369) = 45 Cri L Jour 157. (Persons wearing ordinary clothes and just leaving railway platform — Order under Section 109 (a), held could not be passed although they were reasonably suspected as they cannot be said either to have concealed or disguised their presence.) ** AIR 1955 J & K 28 (Prs 3, 5) = 1955 Cri L Jour 1594. (Where the evidence only shows that a person, alleged to be previously convicted, merely tried to run away to avoid observation by police officers at 11 o'clock at night it does not mean that he was trying to conceal his presence with a view to commit an offence.) ** 1955-2 Mad L Jour 336 (337). (Mixing with the crowd, or moving in and out of the crowd or dashing into it does not amount to taking precautions to conceal one's presence within the local limits of a Magistrate's jurisdiction within the meaning of Section 109 (a).) ** 1955-2 Mad L Jour 659 (660). (Merely because a person hid his face by means of a cloth when his presence was noticed by somebody going on the road, it cannot be said that he was taking precautions to conceal his presence. There is no concealment whatsoever of his presence, though undoubtedly there is a concealment of his face. Similarly from the mere fact that at the sight of the police officer he began to move briskly and when called out he ran, it cannot be said that he was taking precautions to conceal himself.) ** AIR 1941 Oudh 509 (510) = 42 Cri L Jour 617. (Police discovering accused concealing himself at night with his companions in hedges near village — Accused arrested and on being questioned giving wrong name and address — Accused unable to explain his presence in hedges at night with house-breaking implement and refusing to disclose identity of his companions who had escaped into jungle — Section 109 (a) held was applicable though Section 109 (b) was not.) ** AIR 1942 Oudh 246 (246) = 43 Cri L Jour 342. (Where facts found against the accused were, that he belonged to Delhi and not to Fyzabad, that he gave a false name and address to the Police, that he was seen mixing in the crowd at Railway Station and was attempting to feel their waists and pockets, that he further admitted the fact he was a pick-pocket and had come to try his luck, and that he appeared originally at 9 A. M., and suddenly disappeared for two hours and reappeared at 11 A. M. — **Held**, his case was covered by clause (a).) ** AIR 1938 Nag 305 (305) = 39 Cri L Jour 747. (Person not hiding behind anything but standing still with hope that watchman would

Section 109 — Note 4 (contd.)
think him to be inanimate thing — This is not concealing his presence.)

(9) A concealment, in order to come within the section, need not be continuous. No time limit can be placed on taking of precautions and in every case it would be a question of fact and even a single attempt at concealment may be enough. AIR 1953 Bhopal 12 (Pr 11) = 1953 Cri L Jour 698 ** AIR 1950 All 134 (Pr 30) = ILR (1950) All 935 = 51 Cri L Jour 436 ** AIR 1929 All 33 (37) = 30 Cri L Jour 145 (FB) ** AIR 1946 Oudh 230 (232) = 47 Cri L Jour 642 = 21 Luck 251 ** AIR 1935 Pat 69 (71) = 36 Cri L Jour 846 ** AIR 1926 Pat 569 (571) = 27 Cri L Jour 1128 (DB) ** AIR 1938 Nag 465 (465) = 39 Cri L Jour 807.

[But see AIR 1958 Cal 191 (Pr 7) = 1958 Cri L Jour 500 ** AIR 1938 Cal 409 (410) = 39 Cri L Jour 647 (DB) ** AIR 1918 Cal 887 (888) = 18 Cri L Jour 825 (DB). (Per Shamsul Huda, J.) ** AIR 1925 Cal 616 (618) = 26 Cri L Jour 842 (DB).]

(10) Aiding others to conceal themselves is no ground for action under this section. AIR 1938 Nag 465 (465) = 39 Cri L Jour 807.

(11) Whether a particular behaviour or conduct aims at concealment within the meaning of the section is a matter for the decision of a Magistrate and not a matter for the opinion of a witness. AIR 1950 All 134 (Pr 44) = ILR (1950) All 935 = 51 Cri L Jour 436.

5. "With a view to committing any offence". — (1) The object of the concealment must be with a view to committing some offence. Concealment with a view to avoid observation or arrest, does not by itself amount to concealment within the meaning of the section. AIR 1953 Bhopal 12 (Pr 13) = 1953 Cri L Jour 698 ** AIR 1958 Cal 191 (Pr 7) = 1958 Cri L Jour 500 ** AIR 1950 All 134 (Pr 45) = ILR (1950) All 935 = 51 Cri L Jour 436 ** AIR 1925 Cal 616 (618) = 26 Cri L Jour 842 (DB) ** AIR 1929 All 33 (45, 47) = 30 Cri L Jour 145 (FB) ** AIR 1926 Lah 368 (368) = 27 Cri L Jour 573 ** AIR 1965 Mys 264 (266) = (1964) 2 Mys LJ 408 = 1965 (2) Cri L Jour 517 ** AIR 1960 Pat 115 (115) = 1959 BLJR 559 = 1960 Cr LJ 386.

(2) A mere disinclination to the society of the police and endeavouring to avoid them by running away on their approach, does not by itself show that the person concealing himself was doing so with a view to commit an offence. AIR 1941 Pat 478 (480) = 42 Cri L Jour 554 ** AIR 1956 Him Pra 43 (Pr 7) = 1956 Cri L Jour 996 ** AIR 1926 Pat 569 (571) = 27 Cri L Jour 1128 (DB).

(3) The mere fact that the persons concerned were armed with lathis and one of them had also a house-breaking implement would not show that the intention of all those persons was to commit some offence and in the absence of the evidence that they had taken any precaution to conceal their presence, no action can be taken against them under this section. AIR 1950 All 184 (Pr 8) = 51 Cri L Jour 609.

(4) If the evidence shows that there is reason to believe that the person, before running away and before being caught concealing himself, was about to commit an offence, he can be bound down under this clause. AIR 1943 All 369 (370) = 45 Cri L Jour 280 ** AIR 1943 All 367 (367) = 45 Cri L Jour 219.

(5) The words "taking precautions to conceal himself" are wide enough to include the case of any one who is presumably about to commit an offence but is unexpectedly startled and then conceals himself to prevent arrest, as the object of this clause is to prevent the commission of particular offence. AIR 1943 All 369 (370) = 45 Cri L Jour 280.

(6) Where, persons on being accosted by the police while going away from the village, give false names in the first instance and then give the correct names, that by itself, will not amount to taking precautions with a view to commit an offence. AIR 1924 All 202 (203) = 25 Cri L Jour 950 ** AIR 1956 Him Pra 43 (Pr 7) = 1956 Cri L Jour 996. (This would at most amount to an attempt to conceal identity.)

(7) Where A went about in Madras under an alias alleging falsely that he was going up for the B. A. examination, it was held that this conduct showed a desire to conceal the fact of his presence in Madras, but that in the absence of proof of intention to commit an offence he could not be called upon to furnish security under this section. 1932 Mad WN 1347 (1348, 1349).

(8) The fact that the accused took precautions to conceal his presence within jurisdiction, together with the fact that he ran away on the approach of the police warranted the inference that he was taking precautions with a view to commit an offence. AIR 1930 Pat 497 (498) = 31 Cri L Jour 1125.

(9) A person who gives a false name and delivers letters secretly containing incitement to commit crime or demanding money for the means of committing crime is hit by Clause (a). AIR 1914 Cal 585 (585) = 15 Cri L Jour 255 (DB).

(10) The clause is, however, one which should be used with proper discretion; it is never intended to apply to a person merely found talking at some time of a night with bad characters in a place which is open to the public. AIR 1926 Pat 569 (571) = 27 Cri L Jour 1128 (DB).

[See also AIR 1941 Pat 478 (479) = 42 Cri L Jour 554.]

Section 109 — Note 5 [contd.]

(11) Where a person falsely personates another with a view to commit an offence by such personation, he does not come within this section, the reason being that his object is to commit an offence by false personation and not by concealing his presence. AIR 1934 All 45 (51) = 35 Cri L Jour 442 (DB). [Per King and Kendall, JJ., Sulaiman, C. J., Dissenting.]

6. "Who has no ostensible means of subsistence" — Clause (b). — (1) To be penniless or out of work is not an offence. Many an honest man will find himself in either predicament. It cannot be the object of the law that such people should be put on security. AIR 1953 Bhopal 12 (Pr 14) = 1953 Cri L Jour 698 ** AIR 1926 Cal 648 (649) = 27 Cri L Jour 497 (DB).

(2) That a person had no means of livelihood or residence in a town where he was hauled up under Section 109, cannot be accepted as a ground for directing him to furnish security, as it would be a denial of the fundamental right conferred on all citizens under Article 19 (d) and (e) of the Constitution. AIR 1956 Him Pra 43 (Pr 7) = 1956 Cri L Jour 996.

(3) Unless, there is reasonable ground for suspecting that a person, who is unable to prove the source of his livelihood, is sustaining himself by dishonest means, he will not come within the purview of this section. AIR 1953 Bhopal 12 (Pr 14) = 1953 Cri L Jour 698 ** AIR 1926 Cal 648 (649) = 27 Cri L Jour 497 (DB).

(4) Under Section 118 the Magistrate has to consider whether the order for security is really necessary either for keeping the peace or for maintaining good behaviour, which is a matter for Magistrate's judicial discretion. ('94) 1894 Rat 723 (724) (DB) ** AIR 1926 Cal 648 (649) = 27 Cri L Jour 497 (DB).

(5) If a cooly could not show any immediate work, it does not mean he has no ostensible means of livelihood. AIR 1925 Cal 616 (619) = 26 Cri L Jour 842 (DB).

(6) As long as a young man out of employment is staying in his father's house and the father is a man of substance and able, if necessary, to support him, he cannot be said to be in want of ostensible means of subsistence. ('12) 13 Cri L Jour 161 (162) = 39 Cal 456 (DB) ** ('21) 64 Ind Cas 141 (141) = 22 Cri L Jour 749 (All).

(7) That a person belongs to a wandering tribe, or that he is a gambler or an opium smoker, or that he does not work at present and was previously convicted of bad livelihood, or that he has no means of subsistence except through a play of ring game which by itself is not an offence is not a fact sufficient for demanding security under this section. ('83) 2 Weir 53 (53). (Wandering tribe.) ** ('72-92) 1872-92 Low Bur Rul 246 (246) (Opium smoker.) ** (1900) 5 Cal WN 28 (29). (Previous convict of bad livelihood.) ** ('13) 14 Cri L Jour 452 (453) = 40 Cal 702 (DB). (Subsistence through play of ring game.) ** ('09) 9 Cri L Jour 527 (528) (All). (Ring-game whether illegal depends upon how it is played.)

(8) A person cannot be directed to furnish security on the ground that he was a previous convict however bad his past record might be. AIR 1956 Him Pra 43 (Prs 7, 8) = 1956 Cri L Jour 996.

(9) It is for the prosecution to prove that the person proceeded against had no ostensible means of subsistence. AIR 1954 Him Pra 42 (Pr 2) = 1954 Cri L Jour 857.

(10) Police Sub-Inspector deposing that L had no ostensible means of subsistence not from his knowledge but from enquiry made in course of his official duties — Police officer also stating that L was on active picketing list of thana maintained for criminals suspected to be most active — Evidence is inadmissible. AIR 1941 Pat 478 (480) = 42 Cri L Jour 554.

7. "Who cannot give a satisfactory account of himself" — Clause (b). — (1) Following views are held as to the interpretation of the words "who cannot give a satisfactory account of himself":

(a) The words do not mean "explain what he was doing" or "explain his conduct" at any particular time or place but mean an explanation of a person's general course of conduct as distinct from a momentary behaviour. Thus, according to this view, if a man proves that he is a resident of the neighbourhood and is a man of substance, he must be said to be able to give satisfactory account of himself although he is not able or does not give any convincing explanation why on a particular night he was found prowling about in a lonely place. AIR 1951 East Punj 422 (Pr 10) = 52 Cri L Jour 939 ** AIR 1955 J & K 28 (Pr 4) = 1955 Cri L Jour 1594 ** AIR 1943 All 368 (369) = 45 Cri L Jour 157 ** AIR 1929 All 33 (37) = 30 Cri L Jour 145 (FB). (Per Sulaiman, C. J., Boys, Kendall and Weir, JJ., contra.) ** AIR 1929 Cal 729 730) = 31 Cri L Jour 408 (DB) ** AIR 1920 All 138 (138) = 21 Cri L Jour 366 ** ('11) 12 Cri L Jour 536 (536) (All) ** AIR 1969 J & K 105 (107) = 1969 Cri LJ 1139.

(b) The expression "satisfactory account of himself" means a satisfactory account of his presence at the place and in the circumstances in which he was found, and not merely a satisfactory account of himself generally. Though a man

Section 109 — Note 7 [contd.]

cannot be called upon to explain how he spends his leisure, if he is caught spending a portion of that leisure in a manner giving rise to grave suspicion and can give no account of the incident, he cannot be said to be able to "give a satisfactory account of himself". Thus, if a house-holder catches a man in his garden in the middle of the night armed with a jemmy and he cannot or will not explain what he was doing at that hour in that place, he must be held to be "unable to give a satisfactory account of himself and cannot escape by saying that he is a well-known respectable member of the society. AIR 1953 Bhopal 12 (Prs 15, 16) = 1953 Cri L Jour 698 ** AIR 1938 Cal 409 (411) = 39 Cri L Jour 647 (DB) ** AIR 1938 Nag 303 (307) = 39 Cri L Jour 747 ** AIR 1929 All 33 (43) = 30 Cri L Jour 145 (FB). (Per Boys, J.)

[See also AIR 1935 Pat 69 (72, 73) = 36 Cri L Jour 846.]

(c) The words mean that the person proceeded against has to satisfactorily account for his presence within the limits of the Magistrate's jurisdiction. If a person is present within such limits to which he does not belong and there are circumstances justifying a suspicion that he is not there for an innocent purpose, he has got to explain his presence. See also the under-mentioned case. AIR 1925 Cal 616 (618, 619) = 26 Cri L Jour 842 (DB) ** AIR 1942 Oudh 246 (247) = 43 Cri L Jour 342.

(2) The words "within such limits" have no reference to ostensible means of subsistence but only to the person in question being found within the local limits of the Magistrate's jurisdiction. AIR 1954 Him Pra 42 (Pr 2) = 1954 Cri L Jour 857.

(3) Where the explanation, if true, is consistent with the circumstances it must be held that a satisfactory account has been given. AIR 1940 Pat 410 (411) = 41 Cri L Jour 777 (DB) ** AIR 1927 All 592 (592) = 28 Cri L Jour 567 (DB) ** AIR 1925 Cal 616 (619) = 26 Cri L Jour 842 (DB).

(4) Where A fled to avoid an arrest and after the warrant was withdrawn he came back to his house and kept himself in seclusion to avoid curious inquiries, it was held that he gave a satisfactory account of himself. ('12) 13 Cri L Jour 161 (162) = 39 Cal 456 (DB).

(5) "The greatest criminal in the world is not liable to be questioned as to his presence in his own house unless there is some outstanding charge against him". ('12) 13 Cri L Jour 161 (162) = 39 Cal 456 (DB).

[See also AIR 1925 Cal 616 (618) = 26 Cri L Jour 842 (DB).]

(6) Where there were really no suspicious circumstances against the accused, the mere fact that he did not give his correct name and tried to run away from the police and declined to explain how he happened to be at a particular place, does not amount to his not being able to give a satisfactory account of himself. AIR 1936 Oudh 383 (384) = 37 Cri L Jour 888 ** AIR 1954 Him Pra 42 (Pr 3) = 1954 Cri L Jour 857.

(7) Where a person was found in a district other than his own and in the house of a dangerous political conspirator, and gave an account which was in the main false, it was held that he did not give a satisfactory account of himself. ('12) 13 Cri L Jour 239 (240) (DB) (Cal).

(8) The section contemplates an account to Magistrate and not an account to a police officer. Where, therefore, a person was not at all questioned by the Magistrate on the point, it could not be held that he was unable to give a satisfactory account of himself, as required by the section. AIR 1950 All 134 (Pr 47) = ILR (1950) All 935 = 51 Cri L Jour 436.

(9) The mere opinion of the police officer that a person did not give a proper reply is not sufficient to bring a case within the scope of Clause (b) of Section 109. Whether the account given is satisfactory or not, it is for the Court to Judge. It is necessary for the police officer therefore, to State in Court what exactly the person stated or what account he gave of himself so that the Court may form an opinion as to whether the account given by the person proceeded against is satisfactory or not. 1955-2 Mad L Jour 659 (660) ** AIR 1965 Mys 264 (265) = (1964) 2 Mys LJ 408 = 1965 (2) Cr LJ 517. (Testimony of police witness cannot always be considered as insufficient to found order under Chap. VIII of the Code.) ** 1962 (2) Cr LJ 537 (537) = (1963) 4 Guj LR 162.

(10) Though the evidence of previous convictions is relevant in proceedings under this section, they do not, by themselves, prove that the person is now leading a life of crime or is dependent on the proceeds of crimes committed by others. AIR 1942 Oudh 246 (247) = 43 Cri L Jour 342 ** AIR 1943 All 368 (369) = 45 Cri L Jour 157 ** AIR 1969 Guj 267 (269) = 1969 Cri LJ 1133 = 10 Guj LR 847. (Previous convictions need not necessarily be taken into account while considering quantum of amount.)

(11) Where the account a person gives of his presence within a particular Magistrate's jurisdiction is satisfactory, he cannot be called upon to give an account of his presence within another Magistrate's

110.† Security for good behaviour from habitual offenders.—Whenever a Presidency Magistrate, District Magistrate, or Sub-Divisional Magistrate or a Magistrate of the first class specially empowered in this behalf by the °[State Government] receives information that any person within the local limits of his jurisdiction—

(a) is by habit a robber, house-breaker, ‡[° °] thief §[or forger], or

(b) is by habit a receiver of stolen property knowing the same to have been stolen, or

(c) habitually protects or harbours thieves or aids in the concealment or disposal of stolen property, or

°†[(d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code, or under Section 489A, Section 489B, Section 489C or Section 489D of that Code, or]

Section 109 -- Note 7 (contd.)

jurisdiction. ('12) 13 Cri L Jour 161 (162) = 39 Cal 456 (DB).

8. Discretion of Magistrate. — (1) It is in the discretion of the Magistrate to proceed or not to proceed against a person under this section. In exercising such discretion, care should be taken to see that the stringent provisions of the section are not abused and made an engine of oppression. AIR 1951 East Punj 422 (Pr 12) = 52 Cri L Jour 939 ** AIR 1926 Cal 648 (649).

(2) Proceedings under S. 109 are in nature of preventing any offences being committed as also for enabling accused persons to improve and keep good behaviour. This aspect must be kept in mind while prescribing amount of security. AIR 1969 Guj 267 (269).

9. Revision. — (1) The question whether the circumstances of a case are suspicious is mainly a question of fact, and if a Magistrate is satisfied that the circumstances in which a person was found are not suspicious and that there is no need for him to call upon such person to give security under this section, the High Court will rarely interfere with his decision. ('37) 38 Cri L Jour 889 (890) (DB) (Oudh) ** AIR 1934 All 24 (25) = 35 Cri L Jour 446 ** AIR 1965 Mys 264 (266) = 1965 (2) Cri LJ 517.

SECTION 110 — SYNOPSIS

1. **Scope and object.**
2. **Proceedings under Sections 109 and 110.**
3. **Proceedings under Sections 107 and 110.**
4. **Proceedings under Sections 108 and 110.**
5. **Section 401, I. P. C. and Section 110.**
6. **"Receives information."**
7. **"Within the local limits of his jurisdiction".**
8. **General jurisdiction of the Magistrate.**
9. **"Is by habit a robber, house-breaker", etc. — Clause (a).**
10. **Habitual receiver of stolen property — Clause (b).**
11. **"Habitually protects or harbours thieves", etc. — Clause (c).**
12. **Habitual offender — Clause (d).**
13. **Offences involving a breach of the peace — Clause (e).**
14. **Desperate and dangerous character — Clause (f).**
15. **Practice — Arrest and detention.**
16. **Bond for security.**
17. **Application of Section 54 of Evidence Act, 1872.**

1. Scope and object. — (1) The object of the section is preventive and not punitive, and action under it is not intended as a punishment for past offences. AIR 1940 Bom 416 (416) = 42 Cri L Jour 150 (DB) ** AIR 1948 Nag 28 (29) = 48 Cri L Jour 252 = ILR (1947) Nag 237 ** ('04) 1 Cri L Jour 3 (4) (DB) (Bom) ** AIR 1930 All 23 (24) = 31 Cri L Jour 1 (DB) ** ('13) 14 Cri L Jour 5 (21) (SB) (Cal) ** ('77) 1 Cal L Rep 268 (271) (DB) ** AIR 1921 Lah 179 (179) ** ('66) 1866 Pun Re (Cr) No. 53 p. 61 (61) (DB) ** ('81) 3 Mad 238 (239, 240) (DB).

(2) The section is aimed at protecting society from dangerous characters against the perpetration of crimes by placing them under such substantial but not excessive security as would prevent them from resorting to evil courses. AIR 1943 Pesh 41 (42) = 44 Cri L Jour 478 ** AIR 1929 All 608 (608) = 30 Cri L Jour 756 ** ('11) 12 Cri L Jour 328 (328) (Mad).

(3) The section is intended to deal with ex-convicts or habitual criminals and dangerous and desperate outlaws who are so hardened and incorrigible that the ordinary provisions of the penal law and the normal fear of condign punishment for crime are not sufficient deterrents or adequate safeguards for the public. AIR 1938 Mad 35 (37) = 39 Cri L Jour 230.

(4) The section is obviously not intended for use against merely undisciplined

(e) habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace, or

(f) is so desperate and dangerous as to render his being at large without security hazardous to the community,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit to fix.

[1882—S. 110; 1872—Ss. 505 and 506; 1861—Ss. 296 and 279.]

[*] Substituted for "Provincial Government" by A.L.O., 1950.

[†] (1) As to when an order of restriction may be made in lieu of or in addition to an order under Section 110, see U. P. Habitual Offenders Restrictions Act, 1952 (U.P. Act XXXVIII of 1952), Section 4; Restriction of Habitual Offenders (Punjab) Act, 1918 (Punj. Act V of 1918), S. 3 (2). An order to give security under this section is deemed to amount to the passing of a sentence of substantive imprisonment for the purposes of clauses defining habitual offenders in Madras Act VI of 1948, Section 2 (4); A. P. Act IV of 1962, S. 2 (a).

[‡] The word 'or' was repealed by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

[§] Inserted, ibid.

[*†] Substituted for the original clause (d), ibid.

Section 110 — Note 1 (contd.)

people such as local bosses and faction leaders to clip their wings, to deplete their resources by an expensive inquiry, to humble their pride by treating them as criminal madmen, to advertise publicly their high-handed behaviour. AIR 1938 Mad 35 (37) = 39 Cri L Jour 230.

(5) The section is not confined in its application to persons who are strangers to the locality in which the offences are committed. If the persons or the acts which they commit are such as to make it difficult to deal with them under the ordinary provisions of law, this section can be used. AIR 1938 Mad 482 (482) = 39 Cri L Jour 588.

(6) The object of the section is not to fill the jails with bad characters but to bring reasonable pressure to bear on such persons to respect the law. AIR 1914 Lah 492 (493) = 16 Cri L Jour 337 ** AIR 1914 Sind 13 (14) = 16 Cri L Jour 100 (DB).

(7) The section is not intended to provide an indirect means of securing conviction for the police who have failed in the prosecution of a charge for a substantive offence, or who are afraid that a prosecution for a substantive offence is likely to fail. ('09) 9 Cri L Jour 528 (529) (All) ** AIR 1922 Oudh 26 (26) = 23 Cri L Jour 119 ** AIR 1928 All 682 (684) = 30 Cri L Jour 894 ** AIR 1948 Nag 28 (29) = 48 Cri L Jour 252 = ILR (1947) Nag 237.

(8) Where proceedings under this section follow soon after discharge or an acquittal for a substantive offence, the Court must be satisfied that such proceedings were not instituted with a view to get a person punished indirectly and the Court should scrutinize the evidence with the greatest care and see that the same materials and evidence which formed the basis of the previous charge do not also form the basis of the security proceedings. AIR 1927 All 473 (474) = 28 Cri L Jour 515 ** ('07) 5 Cri L Jour 191 (193, 194) (DB) (Cal) ** ('10) 11 Cri L Jour 36 (37) = 32 All 55 ** AIR 1926 Lah 190 (191) = 27 Cri L Jour 190 ** AIR 1925 Oudh 49 (49) = 25 Cri L Jour 366.

[See AIR 1924 Oudh 84 (85) = 24 Cri L Jour 565.]

[See also AIR 1915 Cal 643 (643) = 16 Cri L Jour 312 (DB).]

(9) The preventive jurisdiction with which the Magistrate is vested under this section serves as a powerful means to secure the interest of the community from injury at the hands of hardened offenders. The powers under this section should, however, be exercised with caution and discretion,. ILR (1947) Kar 322 (339) (DB) ** ('13) 14 Cri L Jour 5 (21) (SB) (Cal) ** AIR 1948 Nag 28 (29) = 48 Cri L Jour 252 = ILR (1947) Nag 237 ** 1967 Cur LJ 612 = 70 Pun LR 805.

(10) The security law is a hard law and ought not to be used as an engine of oppression and for oppressive purposes. ('01) 1901 Pun LR (Cr) No. 18 p. 35 (DB) ** ('98) 1898 Pun Re (Cr) No. 4 p. 9 (DB) ** AIR 1930 All 37 (37) = 31 Cri L Jour 301 (DB) ** 1967 Cur LJ 612 (613, 614) = 70 Pun LR 805. (The application of provisions of Section 110 must be kept within its strict statutory bounds and care should be observed that a person's liberty is not fettered when the acts complained of do not fall with-

STATE AMENDMENTS

Gujarat:

In its application to the State of Gujarat, the amendment made in Section 110 is the same as that made in Maharashtra—See Central Act XI of 1960, Section 87.

NOTE.—(1) Magistrates in the City of Ahmedabad have the powers and exercise the jurisdiction of a Presidency Magistrate—See Guj. Act XIX of 1961, S. 14 (3) (4-11-1961).

(2) Salaried Magistrates for the City of Ahmedabad have been empowered for the purposes of this section—See Guj. Gaz., 9-11-1961, Pt. IV-A, p. 287.

Maharashtra:

(1) In its application to the State of Maharashtra, in Section 110, for the words "Presidency Magistrate, District Magistrate, or Sub-Divisional Magistrate or Magistrate of the first class specially empowered in this behalf by the State Government", substitute the words "Presidency Magistrate specially empowered by the State Government in this behalf, or a District Magistrate or a Sub-Divisional Magistrate."—Bom. Act XXIII of 1951, S. 2 and Schedule (1-7-1953).

(2) After the reorganization of the State of Bombay in 1956, the amendment made in Section 110 by the above-mentioned Bom. Act is extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Section 110 — Note 1 (contd.)

in the ambit of Clauses (a) to (f) of the section.)

(11) Where proceedings under this section are taken against a person after his release from jail where he was undergoing imprisonment in pursuance of a sentence for a substantive offence or for failure to furnish security in pursuance of a prior order under this section, the Court should be careful to see that he has had sufficient locus paenitentiae to reform himself. It is not fair to run a man in as a budmash before he has had sufficient opportunity of showing that he is willing to adopt an honest course of livelihood. ('05) 2 Cri L Jour 86 (87) (All) ** AIR 1916 Cal 344 (347) = 17 Cri L Jour 185 (186) (DB) ** AIR 1917 Oudh 350 (351) = 18 Cri L Jour 710 ** AIR 1926 Sind 69 (69) = 26 Cri L Jour 1398 (DB).

(12) Where a Magistrate specified under this section receives information that a person within the local limits of his jurisdiction falls under one or other of the six categories mentioned in the section, he should pass a preliminary order under Section 112, charging him under one or other of the clauses of this section, issue a summons or a warrant to him under Section 114, and then hold a judicial enquiry as to the truth or otherwise of the information on which he has taken action. AIR 1926 Lah 45 (46) = 26 Cri L Jour 1377 ** AIR 1930 All 274 (274) = 31 Cri L Jour 627 (DB) ** AIR 1927 Oudh 306 (307, 308) = 28 Cri L Jour 744 (DB).

(13) Proceedings under this section are judicial and not executive. ILR (1947) Kar 322, (339) (DB) ** AIR 1948 Nag 28 (29) = 48 Cri L Jour 252 = ILR (1947) Nag 237 ** AIR 1919 Mad 633 (634) = 19 Cri L Jour 905.

(14) The Court cannot while sentencing a man to conviction for a substantive offence, direct him to furnish security after his release without following the procedure prescribed in this Chapter. ('78) 1 All 666 (668) ** ('81) 1881 All WN 154 (155) ** ('65) 2 Bom HCR (Cr) 39 (40) (DB) ** ('80) 1880 Pun Re (Cr) No. 21 p. 36 (DB) ** ('67) 1867 Pun Re (Cr) No. 34 p. 55 (DB).

(15) A District Magistrate cannot, upon the receipt of a police-report that a person is an undesirable man, order him to leave the town at once on pain of being prosecuted as a bad character. AIR 1921 All 145 (145) = 23 Cri L Jour 122.

(16) The police authorities responsible for the initiation of proceedings under this section should take care that the proceedings are not unnecessarily protracted. They should very seriously consider the propriety of clubbing together acts, real or imaginary, extending over a long period of time and trying to prove them at great expense and waste of time. AIR 1951 Orissa 277 (Pr 8) = ILR (1949) 1 Cut 751 = 52 Cri L Jour 848.

(17) The detention to which the clauses of Article 22 of the Constitution of India apply is made otherwise than by an order of a Court. Article 22 has therefore, no application to an order made under Sections 110, 118 and 123 of the Code of Criminal Procedure and the said sections have not been rendered void by Article 22. AIR 1953 All 753 (754) = 1953 Cri L Jour 1759 (DB).

Also see Section 107.

(18) A joint trial of several persons under Section 110 is illegal. ('22) 4 Lah LJ 531 (532).

Punjab: Haryana: Chandigarh:

In its application to the States of Punjab and Haryana and the Union Territory of Chandigarh, in Section 110, for the words "Magistrate of the first class", substitute the words "Executive Magistrate of the first class."—Punj. Act XXV of 1964, S. 2 and Sch., Pt. I, item (29) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Rajasthan:

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendment made in Section 110 is the same as that made in (1) of Maharashtra—Central Act XXXVII of 1956, Section 119 (1-11-1956).

Union territories (except Chandigarh):

In its application to the Union territories, in Section 110, for the words "a Magistrate of the first class", substitute the words "an Executive Magistrate of the first class"—Act 19 of 1969, S. 3 and Schedule, item 30 (in Delhi, on 2-10-1969).

West Bengal:

For the words 'Sub-Divisional Magistrate or Magistrate of the first class', substitute Sub-divisional Executive Magistrate or Executive Magistrate of the first class'.—West Bengal Act 8 of 1970 Section 2 and Schedule, item 44.

Section 110 (contd.)

2. Proceedings under Sections 109 and 110. — (1) The two Sections 109 and 110 contemplate different classes of cases. A person cannot be ordered to be bound over in one and the same proceeding and on the same materials both under S. 109 and this section, especially where the preliminary order under Section 112 is with regard to this section. AIR 1916 Mad 657 (657) = 16 Cri L Jour 626 (626) (DB) ** ('10) 11 Cri L Jour 50 (50) (Mad).

[See also AIR 1937 Rang 544 (544) = 39 Cri L Jour 285.]

(2) An order under this section cannot be passed while an order under Sec. 109 is in force. ('04) 1 Cri L Jour 457 (459) (DB) (Cal).

[But see AIR 1929 Sind 166 (166, 167) = 30 Cri L Jour 849 (DB).]

(3) A person called upon to give security under Section 109 and a person called upon to give security under this section cannot be dealt with together during one and the same inquiry. ('05) 2 Cri L Jour 224 (225) = 8 Oudh Cas 91.

3. Proceedings under Sections 107 and 110. — (1) Where a Magistrate takes proceedings under this section and issues notice for a charge under Clause (e), he cannot after inquiry, pass an order for security under Section 107 without issuing a fresh notice under Section 112. The facts to be proved under Cl. (e) of this section and those to be proved under Section 107 are different. ('07) 30 Mad 282 (283) = 5 Cri L Jour 397 (DB).

[See ('84) 1884 All WN 54 (55).]

(2) Where notice is issued to show cause why a person should not be bound over to keep the peace under Section 107, he cannot be directed. after inquiry, to execute a bond for good behaviour under this section. ('98) 25 Cal 798 (802) (DB).

(3) Where after issuing summons under Section 107, the Magistrate took proceedings under this section and the evidence was recorded at length and the proper procedure as to trial of warrant cases was followed, and there was no prejudice to the parties, it was held to be a mere irregularity which was cured by the provisions of Section 537. ('13) 14 Cri L Jour 65 (65, 66) (Mad).

(4) Simultaneous proceedings under Section 107 and Section 110 not illegal. 1962 (1) Cr LJ 665 (666) (Pat).

4. Proceedings under Sections 108 and 110. — (1) The mere fact that the facts of a case fall within the purview of Section 108 does not make this section inapplicable. AIR 1919 Cal 702 (705) = 19 Cri L Jour 696 (DB).

5. Section 401, I. P. C. and Section 110. — (1) Section 401 of the Penal Code provides for the punishment of persons belonging to wandering or other gangs of persons associated together for the purpose of habitually committing theft or robbery. An order passed under this section is only preventive and is not one by way of punishment for any offence and hence it does not bar a prosecution for the substantive offence under Sec. 401 of the Penal Code. AIR 1920 Cal 87 (88) = 21 Cri L Jour 386 (DB) ** ('12) 13 Cri L Jour 799 (800) (Punj). (The fact that accused had at one time been bound over under Section 110 is immaterial for a conviction under Section 401, Penal Code.)

[See AIR 1934 Sind 195 (196) = 36 Cri L Jour 326 (DB).]

(2) Under Section 401, Penal Code, it is necessary to prove that several persons have associated together forming a gang for the purpose of habitually committing theft or robbery and their activities have in fact materialized into active robberies and thefts or attempts at such offences, whereas under Section 110, Criminal P. C., evidence of strong suspicion and evil repute that such person or

Section 110 — Note 5 (contd.)

persons engage in criminal activities is enough to render them liable. AIR 1947 Oudh 86 (87) = 47 Cri L Jour 1019.

6. "Receives information". — (1) Before a Magistrate can take action under this section he should have information that the person sought to be proceeded against is a habitual offender coming under one or other of the six clauses mentioned in the section. ILR (1947) Kar 322 (335) (DB) ** (1900-2) 1 Low Bur Rul 75 (77, 78).

(2) There is, no limitation as to the nature of the information to be received or as to the manner in which the information is to be communicated or as to the source from which it may be derived. ('04) 1 Cri L Jour 807 (808) = 27 All 472. (Nature of information.) ** AIR 1942 Sind 122 (128) = 44 Cri L Jour 367 (DB). (Manner of information.) ** ILR (1947) Kar 322 (335) (DB). (Source of information.) ** ('13) 14 Cri L Jour 5 (22) (SB) (Cal). (Do.) ** AIR 1922 Pat 586 (587) = 24 Cri L Jour 31 (DB). (Do.)

(3) There is not any quantum of information a necessary condition for the Magistrate to take action. AIR 1927 Oudh 306 (307) = 28 Cri L Jour 744 (DB).

(4) If a Magistrate receives information of the barest kind to the effect that a person is a habitual thief, it is within his powers to take action under this section and the legality of the action cannot be questioned, though undoubtedly a prudent Magistrate might not consider information sufficient to cause him to take action under the preventive sections unless it gave substantial details against the person in question. AIR 1927 Oudh 306 (307) = 28 Cri L Jour 744 (DB) ** AIR 1954 Punj 6 (6,7) = 1954 Cri L Jour 49.

(5) The Magistrate is bound to enquire judicially into the truth of the information under Section 117 and should exercise a proper discretion and see that the information is precise and proper. AIR 1925 Sind 204 (206) = 25 Cri L Jour 1377 ** (1900-02) 1 Low Bur Rul 75 (77, 78) ** AIR 1925 Sind 236 (237) = 26 Cri L Jour 767 (DB).

[See also AIR 1956 Bom 385 (387, 388) = 1956 Cri L Jour 712 (DB).]

(6) The Magistrate can, if he thinks fit, take information on oath before proceeding under Section 112. ('05) 2 Cri L Jour 462 (462, 463) = 1905 Upp Bur Rul (Cr PC) 29.

(7) Where a memorandum was sent by the tenants of a zamindar alleging several acts against him and the report of the Sub-divisional Officer thereon did not substantiate the allegations, it was held that the District Magistrate was not justified in taking proceedings on the basis of the same. AIR 1924 Cal 114 (114, 115) = 25 Cri LJ 189 (DB).

[See also AIR 1938 Pat 533 (535, 536) = 39 Cri LJ 811.]

(8) The information on which the Magistrate institutes proceedings cannot be used as evidence against the person sought to be bound over. ('04) 1 Cri LJ 807 (809) = 27 All 172.

[See also ('71) 8 Bom HCR (Cr) 162 (163) (DB).]

7. "Within the local limits of his jurisdiction." — (1) The section requires that the person proceeded against should be within the local limits of the Magistrate's jurisdiction at the time when proceedings are taken against him. Otherwise, the Magistrate cannot take action under this section. AIR 1940 Bom 204 (204, 205) = 41 Cri LJ 686 (DB) ** ('06) 3 Cri LJ 246 (246, 247) (DB) (Cal) ** AIR 1931 Cal 65 (65) = 32 Cri LJ 425 (DB).

(2) Where proceedings under this section were instituted against A in Barisal District while he was in jail at Calcutta on the date of the making of the report by the police on which report the proceedings were founded, it was held that A was not within the limits of the jurisdiction of the Magistrate of Barisal District and therefore he had no jurisdiction to institute the proceedings. ('28) 29 Cri LJ 842 (843) (DB) (Cal) ** ('05) 3 Cri LJ 246 (247) (DB) (Cal).

(3) A person ordinarily resident within the Magistrate's jurisdiction is a person within such jurisdiction although he may be temporarily absent. AIR 1943 Nag 88 (90) = 44 Cri LJ 82 ** AIR 1940 Bom 204 (205) = 41 Cri LJ 688 (DB).

(4) If a person has gone even temporarily out of the jurisdiction of the Magistrate, he cannot proceed against the person under this section. AIR 1948 All 185 (186) = 49 Cri LJ 194 = ILR (1948) All 139.

(5) It is necessary that the person must be ordinarily resident with the local limits of the Magistrate's jurisdiction. AIR 1943 Nag 88 (90) = 44 Cri LJ 82 ** AIR 1944 Sind 106 (107) = 45 Cri LJ 532 ** 38 Cri LJ 144 (2) (145) = 17 Lah 453 ** AIR 1934 Mad 255 (256) = 35 Cri LJ 625 ** AIR 1932 All 162 (163) = 33 Cri. LJ 230 ** AIR 1931 Cal 65 (65) = 32 Cri LJ 425 (DB) ** ('04) 1 Cri LJ 438 (442) = 31 Cal 419 (DB) ** AIR 1919 Cal 702 (705) = 19 Cri LJ 696 (DB) ** AIR 1922 All 86 (87) = 23 Cri LJ 86 ** ('07) 5 Cri LJ 249 (251) (DB) (Bom).

[See however AIR 1940 Bom 204 (204) = 41 Cri LJ 686 (DB).]

[But see ('01) 1901 Pun Re (Cr) No. 12 p. 33 (34) ** (1900) 27 Cal 993 (995) (DB).]

(6) Mere temporary presence within the limits of the Magistrate's jurisdiction is sufficient. AIR 1943 Nag 88 (90) = 44

Section 110 — Note 7 (contd.)
Cri LJ 82 ** AIR 1937 Cal 520 (521) = 38 Cri LJ 1078 ** ('36) 17 Lah 453 (454, 455) = 38 Cri LJ 144 (2). (27 Cal 993, **Dissented from.)**

(7) The presence must be at the time when the proceedings are initiated. The mere fact that the accused was presented at a certain place is not sufficient to give jurisdiction to the Magistrate of that place to start proceedings against him subsequently. AIR 1943 Nag 88 (90) = 44 Cri LJ 82 ** AIR 1937 Cal 520 (521) = 38 Cri LJ 1078.

(8) The mere fact that a person is undergoing a sentence of imprisonment in jail within the local limits of the jurisdiction of a Magistrate is no ground for holding that he is not within such limits. AIR 1916 Low Bur 1 (2) = 17 Cri LJ 88 (90) (FB). **(Overruling** 4 Low Bur Rul 148 = 7 Cri LJ 447.)

(9) Where a person within the local limits of the jurisdiction of a Magistrate is arrested and brought before him, the latter can take proceedings against such person irrespective of the question whether the arrest was legal or not. ('04) 1 Cri LJ 535 (537) = 31 Cal 557 (DB).

(10) In order to give jurisdiction to a Magistrate the presence of the accused within the local limits of his jurisdiction must be voluntary and not one under compulsion. A person attending the Magistrate's Court in obedience to a summons in connexion with another case or a person brought within the jurisdiction of the Magistrate under arrest for some other purpose, cannot be proceeded against by the Magistrate under Sections 107 to 110. AIR 1932 All 162 (163) = 33 Cri LJ 230 ** ('99) 23 Bom 32 (35) (DB) ** ('85) 1885 Pun Re (Cr) No. 43 p. 89 (DB) ** ('84) 1884 All WN 85 (85).

[But see AIR 1937 Nag 70 (71) = 38 Cri LJ 447 ** AIR 1919 Cal 460 (461) = 20 Cri LJ 133 (DB) ** AIR 1919 Cal 702 (705) = 19 Cri LJ 626 (DB).]

(11) Where the accused ordinarily resides within the jurisdiction of a Magistrate, the mere fact that he absconds and is brought back forcibly within the limits of such jurisdiction does not deprive the Magistrate of his power to proceed against him. AIR 1929 Sind 166 (166) = 30 Cri LJ 849 (DB).

[See also AIR 1917 Low Bur 140 (141) = 17 Cri LJ 319.]

(12) Proceedings under Sections 107 to 110 initiated by a Magistrate not having local jurisdiction are without jurisdiction and must be set aside. AIR 1918 Mad 555 (557) = 18 Cri LJ 878 (DB) ** ('09) 1 Ind Cas 78 (79) = 9 Cri LJ 148 (DB) (Cal) ** 1962 (1) Cr LJ 386 (387). (The defect viz., illegality cannot be cured by transfer of case to proper Magistrate.)

[But see AIR 1937 Nag 70 (71) = 38 Cri LJ 447. (Section 531 will apply.) ** AIR 1926 All 767 (768) = 27 Cri LJ 1132. (Do.)]

(13) An inquiry held by a Magistrate at a place outside his local limits of his jurisdiction is without jurisdiction. ('05) 3 Cri LJ 246 (247) (DB) (Cal).

(14) A Magistrate whose local jurisdiction has not been defined under Sec. 12 has jurisdiction throughout the district. AIR 1932 Cal 864 (864) = 33 Cri LJ 858 (DB) ** AIR 1921 Oudh 162 (162) = 22 Cri LJ 713.

(15) It is competent for a Sub-divisional Magistrate who as a first class Magistrate has also territorial jurisdiction over the entire district to demand security under this section even from a person who is not residing within his sub-division provided that he is residing within the district. 1962 (1) Cri LJ 386 (387) = 1961 All LJ 179.

8. General jurisdiction of the Magistrate. — (1) The section empowers only the Magistrates mentioned therein to deal with cases arising under it. Orders made by any other Magistrate are invalid and without jurisdiction. AIR 1916 All 222 (222) = 17 Cri LJ 141 (142).

(2) A first class Magistrate not specially empowered under this section cannot exercise jurisdiction thereunder. ('96) 1896 Rat 838 (838) (DB) ** AIR 1933 All 676 (677) = 35 Cri LJ 218.

(3) It was held that the proceedings under this section should be disposed of by the Magistrate by whom they were initiated; consequently a first class Magistrate before whom proceedings under this section were initiated could not, after recording evidence, send up the proceedings to the District Magistrate and the latter could not act under Section 27 of the Bombay Regulation, 12 of 1827, and place restrictions upon the liberty of the accused. ('12) 13 Cri LJ 748 (748) (DB) (Bom).

9. "Is by habit a robber, house-breaker", etc. — Clause (a). — (1) To sustain a charge under Clause (a), the person proceeded against must be proved to be by habit a robber, house-breaker, thief or forger. AIR 1939 Lah 269 (270) = 40 Cri LJ 753 ** ('01) 3 Bom LR 269 (270) (DB) ** AIR 1924 Pat 498 (499) = 25 Cri LJ 35.

(2) The word "habit" implies a tendency or capacity resulting from the repetition of the same acts. It implies frequent practice or use and connotes depravity of character as evidenced by the frequent repetition or commission of offences referred to in the section. AIR 1927 Pat 126 (128) = 28 Cri LJ 359.

(3) The word "habit" should not be restricted to mean inclination by nature. It means a persistence in doing an act, a fact which is capable of proof by adducing evidence of the commission of a number of similar acts. AIR 1924 Nag 19 (21) = 25 Cri LJ 60.

Section 110 — Note 9 (contd.)

(4) Habit has to be proved by aggregate of facts and mere suspicion or complicity in isolated offences is not evidence of habit, unless there is direct evidence to establish his complicity in such cases as to lead to a reasonable and definite conclusion that a person is a habitual thief. The evidence must be specific and relate to particular instances within the knowledge of witnesses. AIR 1930 Lah 345 (346) = 32 Cri LJ 62 ** AIR 1924 Pat 500 (501) = 25 Cri LJ 985 ** ('71) 6 Mad HCR 120 (121) (DB).

[See also AIR 1939 Lah 269 (270) = 40 Cri LJ 753 ** ('37) 38 Cri LJ 889 (890) (DB) (Oudh).]

(5) By habitual thief or robber is meant a person who has committed thefts or robberies in the past and is ready to commit them again whenever he gets an opportunity. ('93) Rat 639 (642) (DB).

(6) The mere fact that a man was of a bad character and had been sent to jail or was once convicted of theft, or that he associated with a thief or a bad character, or that a police-officer gave it as his opinion that he was a habitual thief, was held not to be sufficient for binding over a person under this clause. ('01) 3 Bom LR 269 (270) (DB). (Previous convict.) ** ('10) 11 Cri LJ 638 (638) (DB) (Mad). (Do.) ** AIR 1934 All 735 (737) = 36 Cri LJ 33. (Previous conviction 12 years ago.) ** AIR 1933 All 859 (860) = 35 Cri LJ 435. (Association with bad characters.) ** ('07) 6 Cri LJ 403 (404) (DB) (Cal). (Mere association is not sufficient.) ** ('11) 12 Cri LJ 542 (543, 544) (Oudh). (Association.) ** AIR 1930 Nag 148 (148, 149) = 31 Cri LJ 165. (Habitual thief in opinion of police.)

(7) Where the charge against a person is that he is a habitual robber, the fact that he gathers bad characters at his house does not go far enough to be in itself relevant. It would be necessary to show that the bad characters were robbers or have been gathered there for the purposes of committing robbery or theft. AIR 1925 All 694 (696) = 26 Cri LJ 1130 (DB).

(8) Where the only evidence against a person was that he was found hiding himself in a bush and when his person was searched certain articles not claimed by him to be his own were found upon him, and he was not charged with any offence in respect of those articles, it was held that he was not a habitual offender within the meaning of this clause. ('11) 12 Cri LJ 359 (359) (Mad).

(9) The fact that person is by habit a thief, robber, etc., can be proved by the evidence of general repute. It is not necessary, in order to bind over a person under this section on the ground of his being by habit a thief, etc., that a certain number of previous convictions should be proved against him. AIR 1938 Lah 428 (428) = 39 Cri LJ 599 ** AIR 1938 Mad 591 (592) = 39 Cri LJ 898 (DB).

[See also AIR 1918 All 271 (272) = 19 Cri LJ 269.]

(10) This section does not nullify Section 50 of the Evidence Act. AIR 1940 Rang 181 (182) = 1940 Rang LR 562 (DB).

(11) The fact that the allegations involve the imputation of a substantive offence to the person proceeded against is no bar to proceedings under the section when otherwise such proceedings will lie. Where a person is charged with being a member of a gang of dacoits or robbers, he can be prosecuted for an offence under Section 400 or Section 401, Penal Code. But this will not preclude security proceedings being started under this section against such a person. AIR 1930 All 274 (275) = 31 Cri LJ 627 (DB). (AIR 1925 All 250 = 26 Cri LJ 746 and AIR 1929 All 813 = 30 Cri LJ 1086, **Overruled.**)

(12) Habitual forger. — The words "or forger" in this clause have been newly added by the Amending Act, 18 of 1923 and a habitual forger can be proceeded against under this section. See AIR 1914 Lah 575 (576) = 16 Cri LJ 136. (Which is not good law in view of the amendment by Act 18 of 1923.)

10. Habitual receiver of stolen property — Clause (b). — (1) To substantiate a charge under this clause, it must be proved that the person proceeded against is a habitual receiver of stolen property knowing the same to be stolen. This may be proved by adducing evidence of general repute. No specific offence need be proved. ('92) 1892 Pun Re (Cr) No. 12 p. 27 (28).

(2) Mere rumours and suspicions are not, however, enough to substantiate a charge under this clause. ('21) 60 Ind Cas 669(670) = 22 Cri LJ 269 (Lah).

(3) Where the persons proceeded against belonged to a class of people called Mewatis who were considered to be persons occupying themselves in receiving stolen property and offences of similar nature and the villagers were in considerable terror of these Mewatis, it was held that this was not sufficient to sustain a charge under this clause without there being any tangible evidence that they were receivers of stolen property. ('05) 2 Cri LJ 88 (89) (All).

11. "Habitually protects or harbours thieves," etc. — Clause (c). — (1) Where a man, from motives of humanity and without any intention of enabling the fugitive to escape from justice, gives him food and surgical assistance while he was wounded, it has been held that he is not liable to be bound over under this clause. ('10) 11 Cri LJ 490 (492) = 1910 Upp Bur Rul (1st Qr Cr PC) 4.

(2) The fact that a landlord has tenants of bad character, that he lends

Section 110 — Note 11 (contd.)
money or paddy to them whenever they are in difficulties because they are his tenants, and that he settles disputes between two men one of whom is a thief and the other is not, is not sufficient to make him liable under this clause. ('07) 6 Cal LJ 711 (712) = 6 Cri LJ 403 (DB).

(3) The mere association with a gang of dacoits or the failure to oppose them or give assistance to the police when the gang settled in the neighbourhood is not sufficient to justify action under this clause. AIR 1915 All 464 (465) = 16 Cri LJ 805.

(4) The manager of a public shrine which does not belong to him and is not under his exclusive control and which is also open to the public cannot be called upon to furnish security under this clause, although some thieves have been arrested in the shrine on several occasions and it is generally used as a gambling resort visited by bad characters, inasmuch as the shrine is not his house and he cannot be said to harbour thieves. ('10) 11 Cri LJ 603 (604) (Lah).

(5) The mere fact that the person proceeded against derived his subsistence from keeping prostitutes in his house although sometimes thieves visited his house was not a sufficient ground to justify an action under this clause. ('81) 1881 Pun Re (Cr)No. 2 p. 2 (DB).

(6) Where the evidence amounted to nothing more than that some persons said to be of bad character had been seen on occasions at the kothar where the accused did his work, it was held that the Court was not justified in holding that the accused habitually protected and harboured thieves. ('12) 13 Cri LJ 760 (762) = 15 Oudh Cas 263.

(7) Where thieves have been living with A, his son B cannot be held guilty of harbouring them. AIR 1934 Lah 62 (63) = 35 Cri LJ 653.

(8) It is necessary to prove that the person proceeded against is by habit protector or harbourer of thieves. Isolated cases are not sufficient to prove the habit or character. One or two cases may not be sufficient, but a number of similar incidents cease to be isolated facts and become evidence of the habit or character. How many facts have to be proved to enable the Court to draw a reasonable inference of habit cannot be laid down by any hard and fast rule; it depends on the facts and circumstances of each case. AIR 1933 Pat 189 (190) = 34 Cri LJ 643.

(9) A person cannot be called upon to give security under this clause for harbouring dacoits. Such a person should be dealt with under Section 216A of the Penal Code for a substantive offence. AIR 1928 All 682 (684) = 30 Cri LJ 694.

12. Habitual offender — Clause (d). — (1) Where a person repeatedly and persistently committed acts of extortion which consisted of compelling the merchants to sign agreements not to import foreign cloth by resort to picketing and the levying of fines and by also resorting to picketing in the case of merchants who traded in such cloth, it was held that he was liable to be bound over under this clause. AIR 1924 Nag 19 (21) = 25 Cri LJ 60.

(2) This clause does not apply to a person who has a reputation of habitually bringing false claims in a Civil Court though such a person may be punishable under Section 209 of the Penal Code; but he does not by so doing commit the offence either of extortion or of attempting to commit extortion. AIR 1917 Oudh 117 (118) = 18 Cri LJ 651 (652) ** AIR 1917 Nag 32 (32) = 19 Cri LJ 885.

(3) This section will apply only if the person commits offences habitually against people in general. 1962 (1) Cr LJ 665 (666) (Pat).

13. Offences involving a breach of the peace— Clause (e). — (1) A person cannot be bound over under this clause unless it is found that he has habitually committed or attempted to commit or abetted the commission of offences involving a breach of the peace. AIR 1940 Rang 95 (96) = 41 Cri LJ 495 ** AIR 1938 Mad 591 (592) = 39 Cri LJ 898 (DB).

(2) To sustain a charge under this clause proof of previous convictions for offences involving breach of peace is not necessary. AIR 1953 Trav-Co 231 (Pr 4) = ILR (1953) Trav-Co 253 = 1953 Cri LJ 1246 (DB).

(3) Where it was found that the naib of two co-sharer zamindars who were brothers had led several riots in their interests and had been convicted in several cases and that certain lathials were always employed to help their cause, it was held that one of the brothers who was the muktear practising and residing out of the place and who was shown not to have been implicated in the acts ought not to have been bound over, but that the other who resided at the place and whose complicity was established was righty bound over under this clause. ('10) 12 Cri LJ 164 (166) = 38 Cal 156 (DB).

(4) Where a person being aware that violence is the reasonable outcome of the doctrine he preaches, conducts a propaganda against forces of law and order and instigates breaches of the peace, he is an abettor of an offence involving a breach of the peace and can be bound over under this clause. AIR 1931 Cal 18 (19, 22) = 32 Cri LJ 593 (DB).

[See also ('04) 1 Cri LJ 438 (441) = 31 Cal 419 (DB).]

(5) Where an order binding over a person under cl. (f) was passed and on

Section 110 — Note 13 (contd.)

appeal the District Magistrate found that cl. (e) was more appropriate, it was held that inasmuch as cl. (f) described the offence in cl. (e) in an aggravated form, the District Magistrate had power to reduce the security and pass an order under this clause. AIR 1920 Nag 67 (67) = 21 Cri LJ 352.

(6) There is no warrant in law for the view that because the complaints against a person are all made by his relations action under this clause cannot be maintained against him. AIR 1953 Trav-Co 231 (Pr 6) = ILR (1953) Trav-Co 253 = 1953 Cri LJ 1246 (DB).

(7) Witnesses who can depose about good or bad character of a person are witnesses who live in same village or in neighbouring village and their statement cannot be discarded merely because they live in same village or in neighbouring village. 1966 All WR (HC) 729 (730) = 1966 All Cri R 455.

(8) Habitual offender or dangerous character — Mere suspicion cannot amount to proof — In case of evidence of general repute prosecution-evidence despite defence-evidence in rebuttal may be accepted if defence-evidence is not fit to be acted upon or if prosecution-evidence is supported by evidence of specific instances of commission of offences or by evidence of previous convictions. 1966 All WR (HC) 729 (730) = 1966 All Cr R 455.

14. Desperate and dangerous character — Clause (f). — (1) A man of desperate and dangerous character means a person who shows such a reckless disregard of the safety of the person or the property of his neighbours that his being at large without security would be detrimental to the community. AIR 1918 All 318 (319) = 19 Cri LJ 781 ** AIR 1934 Cal 482 (485) = 35 Cri LJ 952 (DB).

(2) Where certain tenants formed themselves into a party to compel the zamindar to settle with them certain lands which were thrown out by a river into the zamindari tract and agreed to divide the lands amongst all of them and many loots and assaults were committed by them against the zamindar and the recalcitrant members, it was held that action could be taken against the tenants under this clause. AIR 1927 Pat 126 (129, 130) = 6 Pat 1.

(3) Where it was proved that a person was associating with a number of persons who were known to be members of a revolutionary party and there were indications that he was in sympathy with them, it was held that he could be bound over under this clause. AIR 1933 All 674 (674) = 35 Cri LJ 284.

(4) Where a person who was present in the precincts of the Court; was proved to have threatened an assessor and warned him that if he did not give his opinion in favour of the accused he would be killed by pistol or bomb, it was held that he was a desperate and dangerous character. AIR 1935 All 638 (638) = 36 Cri LJ 1142.

(5) A person who threatens and beats people can certainly be called a desperate and dangerous character. AIR 1942 Oudh 356 (358) = 43 Cri LJ 398 ** AIR 1949 All 12 (13) = 50 Cri LJ 22.

(6) The mere fact that a person happens to be of a litigious disposition or is a habitual gambler or opium smoker or is of a quarrelsome and turbulent nature or is a general nuisance to his neighbours or is a smuggler or incites the members of an association to demand a higher rate of wages, cannot make him a desperate and dangerous character within the meaning of this clause. AIR 1930 Lah 1051 (1054) = 32 Cri LJ 271. (Litigious disposition.) ** AIR 1918 All 318 (319) = 19 Cri LJ 781. (Do.) ** ('80) 1880 Pun Re (Cr) No. 33, p. 80 (DB). (Habitual gambler and opium smoker — **Overruled** on another point by 1881 Pun Re (Cr) No. 38 (FB).) ** AIR 1931 All 437 (438) = 32 Cri LJ 1070. (Quarrelsome and of turbulent nature.) ** AIR 1948 Nag 28 (29) = 48 Cri LJ 252 = ILR (1947) Nag 237. (Do.) ** AIR 1915 All 352 (353) = 16 Cri LJ 582. (General nuisance.) ** AIR 1935 Pesh 80 (82) = 36 Cri LJ 1127 (DB). (Smuggler.) ** AIR 1940 Rang 95 (96) = 41 Cri LJ 495. (Inciting people to demand higher wages.)

(6A) Clauses (a) to (e) deal with a person who had in the past committed serious crime or is an habitual offender. Clause (f) has to be read ejusdem generis and cannot possibly apply to a person who in a mood of drunkenness is inclined to give offence to other persons but has not actually had proved to have made good his threat to commit an offence. 1967 Cur LJ 612 (613) = 70 Pun LR 805.

(7) Where it was found that the persons proceeded against had made themselves objectionable in the neighbourhood and had been annoying the villagers in various ways by kicking at their doors at night and throwing brickbats on the roofs and annoying respectable women, it was held that they were not liable to be bound over under this clause. ('01) 5 Cal WN 249 (250).

(8) The mere fact that a person was caught while committing adultery or, that he committed an assault for which he was tried and acquitted, was held not to be a circumstance which would make him a dangerous and desperate character. AIR 1930 Lah 1051 (1054) = 32 Cri LJ 271.(Caught while committing adultery.) ** ('10) 11 Cri LJ 663 (664) (Mad). (Acquittal on charge of assault.)

(9) The mere fact that some cases were instituted against the petitioner, or

Section 110 — Note 14 (contd.)
that some cases were instituted against him and he was discharged is not enough to enable the Magistrate to come to an adverse conclusion against the petitioner in respect of his character. AIR 1956 Bom 385 (387) = 1956 Cri LJ 712 (DB).

(10) Where evidence is admissible and has been admitted to show that man is a habitual offender under other clauses of this section and he is also being proceeded against under this clause, it is a mere inference of fact from the nature of the offences as to whether he is not also a dangerous and desperate character. ('09) 10 Cri LJ 460 (462) (DB) (Cal).

(11) A person who is a leader of local factions responsible for constant threat and bullying, is nonetheless dangerous to the community because he lives in a house and owns land, and clauses (e) and (f) of this section apply to such a type of person. AIR 1938 Mad 448 (449) = 39 Cri LJ 595.

(12) The characteristic of being a desperate and dangerous character is a personal attribute and should be proved against every individual charged with that attribute. AIR 1951 Orissa 277 (278) (Pr 3) = ILR (1949) 1 Cut 751 = 52 Cri LJ 848 ** (1967) 2 Andh WR 223 (224, 225) = 1967 Mad LJ (Cri) 707 (709).

(13) Persons carrying lathis to protect themselves from an attack by a gang of ruffians cannot be said to be desperate and dangerous men. AIR 1948 Cal 107 (107) = 48 Cri LJ 541.

(14) Where the petitioner high-handedly committed acts of mischief or assault on no less than four occasions in a month's time and terrorised his victims, for no other reason except that they actively belonged to an opposite political party and the normal fear of prosecution and punishment for offences committed has no deterrent effect on him because he is able to instil such apprehension in his victims as to prevent them from making complaints, the Court is justified in finding that he is so desperate or dangerous as to render his being at large without security hazardous to the community and in demanding security for him. AIR 1957 Andh Pra 268 (Pr 8) = 1957 Cri LJ 826.

(15) In a proceeding under Section 110, to dispense with the necessity of an enquiry by the Magistrate there must be a clear admission by the accused of all the elements which make up the subject-matter of the charge. To constitute an admission of the charge against him under Section 110 (e) and (f), the accused must admit all the necessary ingredients for holding that clauses (e) and (f) of the section apply. 1960 Ker LT 54 (55) = 1959 Ker LJ 1293.

15. Practice — Arrest and detention. — (1) Proceedings under this section may follow an arrest under Sec. 55. AIR 1930 Pat 103 (104) = 31 Cri LJ 717 ** ('13) 14 Cri LJ 618 (618) = 35 All 407.

(2) Where a police-officer arrests a person with a view to take proceedings under this section, he should specify one of the causes given in Sec. 55 although it may be that for the cause so stated he intends to proceed under this section. AIR 1926 Sind 190 (191) = 27 Cri LJ 628 (DB).

(3) A Magistrate should not detain a person in custody until the police are able to make out a case against him under this section specially where he has been arrested on suspicion in a cognizble offence and no case is made out against him. AIR 1921 All 278 (280) = 32 Cri LJ 115.

(4) In an enquiry under this section, the Magistrate derives jurisdiction to issue a warrant only after he has the necessary information and passes the preliminary order under Sec. 112. AIR 1926 Sind 288 (289) = 27 Cri LJ 935 ** AIR 1920 All 268 (269) = 22 Cri LJ 228 (229).

(5) Where the police reported against a person to the Magistrate under this section and the latter neither issued summons nor warrant, it was held that the subsequent arrest by the police was unauthorized. AIR 1925 Lah 623 (623) = 26 Cri LJ 1360.

(6) In enquiry under Section 110, accused declined to cross-examine witnesses and stated specifically that he would not adduce defence evidence, it was held that no prejudice was caused to the accused and enquiry was not vitiated. 1961 BLJR 528 (529).

16. Bond for security. — (1) In proceedings under this section a police-officer is not authorized to take a bond for the production of a person before the police. AIR 1925 Lah 152 (152) = 25 Cri LJ 712.

(2) A surety in a bond for good behaviour under Section 110 of the Code of Criminal Procedure takes a serious responsibility. To see that the person bound over keeps good behaviour is the essence of the bond and the person who undertakes the responsibility must take the consequences. The fact that the person bound over has been punished for the breach of the conditions of the bond has no bearing on the responsibility of the surety, nor will the question that leniency has been shown to that person in the matter of imposing fine be of any avail to the surety for mitigating his own liability under the bond. AIR 1962 Madh Pra 317 (318) = 1961 Jab LJ 1174 = 1962 (2) Cr LJ 498.

17. Application of Section 54 of Evidence Act, 1872. — (1) In a proceeding under Section 110 Cr. P. C. the bad character of the person is itself a fact in issue. That being so, Section 54 of Evidence Act has no application. Therefore, the objection that such evidence is not admissible under Section 54 cannot be entertained. 1961 BLJR 528 (529).

111. Proviso as to European vagrants.—[Repealed by the Criminal Law Amendment Act, 1923 (XII of 1923), Section 8.]

NOTE.—The repealed section ran as follows

> '111. The provisions of Sections 109 and 110 do not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act, 1874."

112. Order to be made.—When a Magistrate acting under Section 107, Section 108, Section 109 or Section 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

[1882 — S. 112; 1872 — S. 492 Para 1, S. 509 Para. 1, S. 515 Para 1; 1861 — Ss. 283, 300, 306.]

SECTION 112 — SYNOPSIS

1. **Scope.**
   - **(a) Proceedings under this section.**
2. **Substance of the information.**
3. **Amount of the bond to be executed.**
4. **Character and class of sureties.**
   - **(a) Period of security.**
5. **Amendment of order.**
6. **Effect of non-compliance with the section.**
7. **Joint order against two or more persons.**
8. **Security against person in imprisonment.**
9. **Order, if a public document.**
10. **Proceedings under Sections 110, 107 and 112.**

1. Scope.— (1) Where a Magistrate gets information of the kind specified in Section 107, Section 108, Section 109 or Section 110, the first thing that he should do is to pass an order in writing under this section against the person concerned. AIR 1914 All 466 (466, 467) = 15 Cri L Jour 288 ** AIR 1957 All 189 (192) = 1957 Cri L Jour 427 ** AIR 1920 All 268 (269, 270) = 22 Cri L Jour 228 ** 1969 Cri LJ 685 (686) = (1968) 2 Andh WR 152.

2. Order under Section 112 not read over to person present in Court — Order under Section 117 (3) is without jurisdiction. AIR 1966 J and K 29 (30) = 1966 Cri LJ 145 = 1966 Kash LJ 1 ** AIR 1967 Delhi 31 (34) = 1967 Cri LJ 865.

(3) The order should be served on person under Section 114 and Sec. 115, or, if he is present in Court, it should be read out to him under Section 113, so that he may have an opportunity to show cause why the proceedings should not be taken against him. (1874) 22 Suth WR (Cr) 68 (69) (DB) ** AIR 1957 All 189 (192, 193) = 1957 Cri L Jour 427 ** (1876) 25 Suth WR (Cr) 50 (50) (DB) ** (1885) 11 Cal 13 (14) (DB).

(4) The provisions of the section ought to be strictly complied with. AIR 1953 Cal 109 (Pr. 13) = 1953 Cri L Jour 344 (DB) ** AIR 1924 All 695 (695) = 26 Cri L Jour 430 ** AIR 1940 Mad 23 (25) = 41 Cri L Jour 238 (FB).

(5) The order need not set forth a list of the witnesses in support of the proceeding. (1907) 7 Cri L Jour 146 (150) = 35 Cal 243 (DB) ** (1913) 14 Cri L Jour 5 (22) (SB) (Cal).

(6) A condition that the person proceeded against should undertake that no attempt would be made by them or their agents to realize rent by force and that nothing would be done to induce a breach of the peace, could not be imposed in an order under this section. (1906) 4 Cri L Jour 456 (459, 460) (DB) (Cal).

(7) An order under this section can only be made by the Magistrate taking cognizance under Section 107. AIR 1953 Cal 109 (114) = 1953 Cri L Jour 344 (DB).

(8) The procedure provided by this section and Section 117 must be followed where it is intended to take preventive action under Section 7 of the Burma Habitual Offenders Restriction Act, 1919. AIR 1925 Rang 69 (70) = 26 Cri L Jour 417.

1 (a). Proceedings under the section. — (1) Magistrate can drop a proceeding even after a formal order under Section 112 is drawn up and before enquiry under Section 117 is held, if on fresh material placed before him no breach of peace is apprehended. But he cannot drop the proceedings on the old material along with some assumptions. 1963 (2) Cr LJ 840 (840) (Patna).

(2) Past misconduct of person proceeded against is not sufficient to justify preliminary order under Section 112. 1970 Cri LJ 111 (112) = 1968 2 Mys LJ 551.

(3) Where on the face of it the preliminary order does not show that there was a likelihood of breach of peace being caused the preliminary order can-

Section 112 — Note 1a (contd.)
not be sustained. 1970 Cr LJ 111 (112) = (1968) 2 Mys LJ 551.

(4) The mention of Section 107 only and the omission to mention this section in a notice issued in a proceeding under Section 107 is a mere irregularity which does not warrant quashing of the proceedings. AIR 1961 Madh Pra 302 (305) = 1961 (2) Cri LJ 642.

(5) Sub-Magistrate ordering arrest of person under Section 151 but not proceeding further — Police filing independent charge under Section 109 before a first class Magistrate — He was competent to go on with the proceedings after passing a preliminary order under Section 112 if the grounds justified such a course. AIR 1960 Ker 227 (228) = 1960 Cri LJ 907 (1) (DB).

(6) Initiation of proceedings under Section 112 without forming requisite opinion under Sec. 107 vitiates entire proceedings. 1964 All Cr R 230 (231, 232) = 1964 All WR (HC) 342 (2).

(7) Proceedings initiated under Section 107 can be dropped at any stage even after passing an order under Section 112. AIR 1964 All 391 (393) = 1964 (2) Cr LJ 260.

(8) Order passed under Section 112 by Magistrate having no territorial jurisdiction — Order is illegal — Defect cannot be cured by transfer of case to proper Magistrate. 1962 (1) Cr LJ 386 (387) (All).

(9) In proceedings under Section 107 the Magistrate is not bound in every case to issue an order under Section 112. 1968 All Cr R 290 (291) = 1968 All WR (HC) 451 ** AIR 1970 Pat 134 (136).

(10) Action under Section 112 constitutes a judicial act. Something more than past misconduct is necessary to justify a notice under this section. 1966 (1) Mys LJ 260 (264) = (1966) 6 Law Rep 7 ** 1965 Mad LJ (Cr) 208 (209) (Ker).

2. Substance of the information.— (1) A Magistrate acting under this section is bound to set forth in his order in writing the substance of the information on which he purports to act. AIR 1953 Cal 491 (Pr. 1) =1953 Cri L Jour 1165 (DB) ** (1907) 6 Cri L Jour 1 (2) (DB) (Cal) ** AIR 1914 Sind 8 (10) = 16 Cri L Jour 235 (DB) ** 1969 All LJ 412 (413) = 1969 All WR (HC) 416 ** AIR 1967 Delhi 31 (34) = 1967 Cri LJ 865 ** 1961 (1) Cri LJ 536 (538) (Mys).

[See also AIR 1956 Cal 315 (316) = 1956 Cri L Jour 745 (DB).]

(2) There has to be no separate notice from the order under Section 112. AIR 1963 All 4 (10, 11) = 1963 (1) Cr LJ 20 (DB).

(3) Order of the Magistrate not indicating the nature of the information received which induced him to take action under Section 107 of the Code is bad. AIR 1970 Pat 107 (108) = 1969 BLJR 479.

(4) The object of this requirement is to make the person proceeded against clearly understand what the matter is upon which he has to show cause, to enable him to come prepared to meet the case against him. AIR 1940 Nag 134 (135) = 41 Cri L Jour 713 ** AIR 1954 Punj 6 (6) = 1954 Cri L Jour 49 ** (1904) 1 Cri L Jour 807 (809) = 27 All 172 ** AIR 1953 Pat 1 (Pr. 8) = 31 Pat 902 = 1953 Cri L Jour 110 ** (1908) 7 Cri L Jour 146 (151) = 35 Cal 243 (DB) ** AIR 1930 Mad 859 (860) = 32 Cri L Jour 27 ** 1969 All LJ 412 (413) = 1969 All WR (HC) 416.

(5) Information in order under Section 112 not giving sufficient information — Police report, on which the order was based, containing vague allegations — No definite allegation or charge against the person that he is likely to commit breach of peace — Preliminary order under Section 112 held not justified. (1966) 1 Mys LJ 260 = (1966) 6 Law Rep 7 ** (1966) 32 Cut LT 515 (518) = (1966) 8 OJD 60 ** 1961 Cr LJ 536 (538) (Mys).

(6) It is not necessary to state more than will show the person proceeded against the particular section or sub-section on which the Court proposes to proceed against him. AIR 1927 Oudh 306 (307, 308) = 28 Cri L Jour 744 (DB) ** AIR 1929 Cal 739 (740, 742) = 31 Cri L Jour 614 (DB) ** AIR 1953 Pat 1 (Pr 7) = 31 Pat 902 = 1953 Cri L Jour 110 (DB) ** AIR 1930 All 274 (274) = 31 Cri L Jour 627 (DB) ** AIR 1940 Nag 134 (135) = 41 Cri L Jour 713.

(7) An order under this section is something in the nature of indictment or charge and, therefore, it should contain substantial particulars indicating the grounds upon which the information is based. AIR 1930 Mad 331 (335) = 31 Cr L Jour 618 (FB) ** AIR 1930 Mad 859 (860) = 32 Cri L Jour 27 ** AIR 1925 Mad 189 (191) = 26 Cri L Jour 673 ** 1937 Mad WN 885 (886) ** AIR 1926 All 759 (760) = 28 Cri L Jour 9 ** AIR 1920 All 268 (269, 270) = 22 Cri L Jour 238 ** AIR 1942 Sind 122 (126, 129) = 44 Cri L Jour 367 ** (1966) 32 Cut LT 515 (518) = (1966) 8 OJD 60.

(8) Failure to give details in the notice under this section will not necessarily vitiate the notice. AIR 1940 Mad 23 (25, 26) = 41 Cri L Jour 238 (FB).

(9) Though it is not necessary to give all possible details of the overt acts, the information cannot stop short at mere generalisation of the nature of such acts. AIR 1952 Orissa 33 (Prs. 9, 10). (AIR 1951 Orissa 277, Criticised.) ** (1966) 32 Cut LT 515 (518) = (1966) 8 Orissa JD 60.

Section 112 — Note 2 (contd.)

[See however AIR 1951 Orissa 277 (Pr. 7) = ILR (1949) 1 Cut 751 = 52 Cri L Jour 848.]

(10) Where no copy of the police report was sent with the notice and the terms of the notice themselves were vague, and did not state the wrongful acts alleged against the accused so that it was not possible for the accused to meet the case against them.

Held, that in these circumstances the accused were prejudiced in their trial and the proceedings were vitiated by reason of the notice not being in accordance with requirements of law. (1958) 24 Cut L Tim 123 (126).

(11) The extent of the information which must be set forth must depend, in each case, upon the circumstances of that case. AIR 1939 Sind 261 (262) = 40 Cri L Jour 887 (DB) ** AIR 1940 Mad 23 (26) = 41 Cri L Jour 238 (FB) ** 1951 Raj LW 137 (139) ** 1896 All WN 73 (73) ** (1884) 6 All 214 (218).

(12) In cases coming under Sec. 110, the information may consist merely of reports which he has heard from sources which he considers reliable. 1896 All WN 73 (73) ** AIR 1919 Pat 337 (338) = 20 Cri L Jour 436.

(13) It is not enough merely to assert that a person has committed an offence generally under Section 110. Clause under which he is charged should be specified. AIR 1926 Lah 45 (46) = 26 Cri L Jour 1377 ** AIR 1948 Nag 28 (29) = ILR (1947) Nag 237 = 48 Cri L Jour 252.

(14) Where a notice was by no means clear whether the accusation which the party had to meet was one under Section 109 or under Section 110 of the Code, it was held that there was no sufficient compliance with the section. (1885) 11 Cal 13 (14) (DB).

[See however AIR 1938 Nag 303 (305) = 39 Cri L Jour 747.]

(15) The Magistrate shall be careful to see that his order is in the terms of the section which he proposes to apply. AIR 1928 All 357 (358) = 30 Cri L Jour 122 (DB) ** AIR 1929 All 813 (813) = 30 Cri L Jour 1086.

(16) The "substance of the information received" will not include the source of the information. (1904) 1 Cri L Jour 807 (808, 809) = 27 All 172 ** (1913) 14 Cri L Jour 5 (22) (SB) (Cal) ** AIR 1930 Mad 975 (976) = 32 Cri L Jour 217.

(17) The Magistrate has the right to test the accuracy of the information received by him before issuing the notice by :—

(a) calling for a report from the police. AIR 1932 All 670 (672) = 34 Cri L Jour 42.

(b) calling for a report from the Subordinate Magistrate. (1891) 2 Weir 51 (51).

(c) taking information on oath in the presence of the accused. (1905) 2 Cri L Jour 462 (462) = 1905 Upp Bur Rul (Cr PC) 29.

(18) Proceeding under Section 107 — Magistrate forming opinion that it was fit case to proceed under Section 107 on basis of facts alleged in affidavit — It was his duty to make reference to that affidavit in the order passed under Section 112. 1969 Cri LJ 73 (75) = 1967 All WR (HC) 853.

3. Amount of the bond to be executed.— (1) It is only reasonable and just that the individual should be afforded a fair chance at least of complying with the required condition of furnishing security before he is awarded imprisonment for default. (1869) 4 Mad HCR (App) xlvi (xlvii) ** 1901 Pun Re (Cr) No. 28, p. 87 (88) ** AIR 1933 All 674 (676) = 35 Cri L Jour 183.

(2) Where an order directed the suspect to execute a bond for Rs. 100 and to furnish two sureties for Rs. 300, it was held that there was only one penalty of a bond and that the principal being bound in that amount, the sureties were bound for the same amount. (1897-1901) 1 Upp Bur Rul 24 (25).

(3) Where an order required the suspect to furnish a bond for Rs. 1000 "with respectable sureties," it was held that it was necessary to specify whether each and all the sureties are liable for the amount of Rs. 1000 or whether they are liable for Rs. 1000 between them. AIR 1914 Lah 492 (492) = 16 Cri L Jour 337.

(4) Quantum of security and the period for which the bond is to continue would be in the discretion of the Magistrate. AIR 1969 Guj 267 (269) = 1969 Cri LJ 1133 = 10 Guj LR 847.

(5) In determining amount of security regard must be had to character of offence, the penalty the law attaches to it, character and criminal record of accused, number of other bonds that have been executed by him, number of such bonds that have been forfeited, probability of establishment of guilt or innocence at trial and financial status and pecuniary circumstances of accused. (1958) 60 Pun LR 513 (515).

(6) The purpose of calling for security is to prevent the person concerned from committing a breach of the peace and not to punish him or keep him in prison. (1958) 60 Punj LR 513 (515).

4. Character and class of sureties.— (1) The order under this section should specify the character and class of sureties, if any, required. (1903-1904) 2 Low Bur Rul 40 (40, 41).

Section 112 — Note 4 (contd.)

(2) The Court cannot in its order under this section direct that the sureties shall be residents of a particular locality. AIR 1914 Cal 445 (446) = 15 Cri L Jour 254 (DB) ** 1880 Pun Re (Cr) No. 38, p. 91 (91) (DB) ** AIR 1922 All 489 (489) = 23 Cri L Jour 400 ** (1899) 1 Bom LR 520 (521) (DB).

[But see AIR 1924 Sind 120 (121) = 26 Cri L Jour 179 (DB) ** (1902) 24 All 471 (472).]

(3) The Court cannot direct that the sureties should be able to control the persons for whom they are sureties. AIR 1914 Bom 5 (6) = 15 Cri L Jour 268 (DB).

(4) An order requiring the sureties to be "respectable house-holders" or to be "land-holders" is valid. (1910) 11 Cri L Jour 198 (198) = 3 Sind LR 168 (DB). (Respectable sureties required.) ** AIR 1914 Bom 5 (5) = 15 Cri L Jour 268 (DB) ** AIR 1924 Sind 120 (121) = 26 Cri L Jour 179 (DB).

[But see AIR 1915 Upp Bur 13 (14) = 16 Cri L Jour 553 ** (1896) Rat 876 (876) (DB). (Do.)]

(5) The power to specify the character and class of the sureties must be reasonably exercised and the order must be such that if a suspect has a bona fide intention to be of good behaviour, it will not be impossible for him to find sureties. AIR 1914 Sind 13 (14) = 16 Cri L Jour 100 (DB) ** (1899) 1 Bom LR 520 (521) (DB).

(6) Where there is an order that the surety should be a close relation of party but the relation does not come forward owing to unpleasantness between him and the party, the order is not legal. AIR 1954 Pepsu 31 (32) = ILR (1953) Patiala 364 = 1954 Cri L Jour 112.

4 (a). Period of security.— (1) Magistrate has no jurisdiction to fix date of commencement of the period in preliminary order under Section 112 until conclusion of enquiry and passing of final order under Section 118. 1967 All WR (HC) 768 (772) = 1967 All Cri R 477 (DB).

(2) Where immediate measures are necessary for prevention of breach of peace or disturbance of public tranquillity a Magistrate can pass an order directing the person proceeded against to execute a bond or to give security for keeping peace or maintaining good behaviour during pendency of the proceedings. 1967 All WR (HC) 768 (772) = 1967 All Cr R 477 (DB).

(3) Where the notice under Section 112 mentions the date of commencement of the period and that period expires before the final order under Section 118 is passed the proceedings have to be dropped as the notice had exhausted itself. 1967 All WR (HC) 768 (772) = 1967 All Cr R 477 (DB).

(4) The period for which the bond of sureties has been required under Section 112 is to commence either on or after the final order has been passed under Section 118 and not from date of notice under Section 112. 1967 All WR (HC) 768 (772) = 1967 All Cr R 477 (DB).

(5) Order to show cause why party should not execute bond for peace for one year — No direction in order that the period of one year should commence from any particular date — Expiry of period — Order need not be set aside in revision. AIR 1970 Pat 107 (109) = 1969 BLJR 479. (AIR 1949 All 21, **Dissented from.)**

5. Amendment of order.— (1) An order under this section requiring security for good behaviour is in the nature of a charge in a warrant case. AIR 1942 Sind 122 (125) = 44 Cri L Jour 367 (DB). ** AIR 1916 Lah 295 (296) = 17 Cri L Jour 84.

(2) It is permissible to amend an order under this section and serve it afresh on the person proceeded against. AIR 1942 Sind 122 (125) = 44 Cri L Jour 367 (DB) ** 1933 Mad WN 551 (552) ** 1895 All WN 241 (241).

(3) There is nothing in this section which prohibits the issuing of supplementary orders. The party concerned should, however, be given sufficient time to consider the supplementary order. AIR 1942 Mad 242 (242) = 43 Cri L Jour 409.

(4) See also the following case. AIR 1959 J and K 125 (126) = 1959 Cri L Jour 1320.

6. Effect of non-compliance with the section.— (1) The provisions of this section are only directory and not mandatory. (1908) 7 Cri L Jour 94 (94) = 10 Oudh Cas 365 ** (1892) 8 Cal 724 (726) (DB) ** (1886) 12 Cal 520 (521) (DB).

[But see 1969 Cr LJ 73 (75) = 1967 All WR (HC) 853. (High Court could interfere in such cases of non-compliance.) ** 1964 All LJ 1103 (1104).]

(2) A failure to comply with the requirements of this section though a grave and substantial irregularity which renders it necessary for the Courts of appeal and revision to scrutinize the proceedings carefully, does not ipso facto vitiate the proceedings without proof of prejudice. AIR 1926 Sind 69 (70) = 26 Cri L Jour 1398 (DB) ** (1955) 8 Sau LR 292 (294) ** AIR 1952 Orissa 33 (Pr. 8) ** AIR 1946 Oudh 230 (231) = 47 Cri L Jour 642 = 21 Luck 251 ** (1966) 32 Cut LT 515 (518, 519) = (1966) 8 OJD 60.

[But see AIR 1960 Mys 259 (260) = 38 Mys LJ 487 = 1960 Cr LJ 1348. (The

Section 112 — Note 6 (contd.)
failure on the part of the Magistrate to read out ,the order under Section 112 or to explain its substance to the accused vitiates an order made under Section 117,(3) and such an omission is not a mere irregularity and goes to the root of the proceedings.)]

(3) The failure to pass an order at all under this section is an irregularity which will not vitiate the proceeding unless a failure of justice ,or prejudice to the accused has been occasioned thereby. 1891 All WN 40 (41) ** ,(1908) 7 Cri L Jour 94 (95) = 10 Oudh Cas,365 ** AIR 1962 Pat 369 (372) = 1962 (2) Cri LJ 491 = 1962 BLJR 608.

[But see 1968 All WR (HC) 451 = 1968 All Cr R 290 (291) ** AIR 1967 Delhi 31 (34) = 1967 Cri LJ 865 ** AIR 1963 All 4 (10) = 1962 All LJ 654 = 1963 (1) Cri LJ 20 (DB) ** AIR 1961 Madh Pra 302 (305) = 1961 (2) Cri LJ 642 = 1961 Jab LJ 443 ** AIR 1960 Mys 146 (147) = 1960 Cr LJ 837 ≐ ILR (1960) Mys 259 ** (1907) 5 Cri L Jour 397 (398) = 30 Mad 282 (DB) ** (1902) 2 Weir 55 (56) ** (1907) 6 Cri L Jour 332 (332) (Mad).]

(4) The omission to set forth in the order the ,particulars specified in the section is only an irregularity which will not vitiate proceedings in the absence of proof of prejudice. ,AIR 1953 Pat 1 (Pr. 9) = 31 Pat 902 = 1953 Cri L Jour 110 (DB) ** AIR 1959 All 346 (347) = 1959 Cri L Jour 672. (Failure to give substance of the information.) ** AIR 1942 Sind 122 (126, 129) = 44 Cri L Jour 367 (DB) ** AIR 1941 Pat 241 (241) = 42 Cri L Jour 296 ** AIR ,1929 Cal 739 (740) = 31 Cri L Jour 614 (SB) ** AIR 1926 Lah 366 (366, 367) = 27 Cri L Jour 575 ** AIR 1930 Mad 331 (331) = 31 Cri L Jour 618 (FB) ** AIR 1927 Oudh 306 (308, 309) = 28 Cri L Jour 744 (DB) ** AIR 1920 Mad 534 (535, 538) = 21 Cri L Jour 354 (DB) ** 1883 All WN 204 (204).

(5) Where the party proceeded against is prejudiced by the failure to comply with the section, the proceedings would be set aside. 11 Cri L Jour 387 (388) (Lah) ** (1910) 11 Cri L Jour 388 (389) (Lah) ** (1909) 6 All L Jour 37n (37n).

(6) If an order made under this section and served upon a person does not contain any particulars which he wants to know he is entitled to complain and to ask to be furnished with such particulars. AIR 1953 Pat 1 (Pr. 8) = 31 Pat 902 = 1953 Cri L Jour 110 (DB).

(7) Where a Magistrate wrote the order under this section on the back of a police report (which gave full details of the information) but did not embody such information in the order, and instead of sending a copy of the order with the summons as required by Section 115, he gave the substance of the information in the summons itself, it was held that the irregularity was one which was covered by Section 537. AIR 1926 All 767 (768) = 27 Cri L Jour 1132.

(8) A preliminary order to show cause will be set aside in revision if it does not comply with this section. AIR 1953 Cal 109 (114) = 1953 Cri L Jour 344 (DB).

(9) Order drawing up proceeding under Section 107 and calling on party to show cause — Specification required under law not mentioned in order — Order is revisable. AIR 1970 Pat 107 (108) = 1969 BLJR 479. (Cri. Rev. No. 351 of 1954 (Pat), D/- 18-11-1954 Not followed.)

(10) Nature of action taken under the section — Proceeding, when can be quashed by High Court — Assault on private person in his own house — Whether amounts to breach of peace. 1965 MLJ (Cr) 208 (209) (Ker).

7. Joint order against two or more persons.— (1) Each person is entitled to a separate notice and not to have the charges which are going to be made against him confused with the charges that are to be made against somebody else. AIR 1929 All 273 (274) = 30 Cri L Jour 562 (DB) ** AIR 1925 Mad 189 (191) = 26 Cri L Jour 673.

(2) Where in proceedings under Section 110, two persons were alleged to be members of a gang of habitual thieves and always associated in the commission of thefts, it was held that the Magistrate was right in issuing one order against both of them. AIR 1933 Oudh 251 (252) = 34 Cri L Jour 852 = AIR 1933 Oudh 195 (196) = 34 Cri L Jour 793.

8. Security against person in imprisonment.— (1) If a person is undergoing only a short sentence it may be that in some cases there may be reason for calling upon him to give security for keeping the peace or for his good behaviour for a period subsequent to the expiration of the sentence. AIR 1916 Low Bur 1 (2) = 17 Cri L Jour 88 (FB). **(Overruling** 4 Low Bur Rul 148.)

9. Order, if a public document.— (1) An order under this section is a public document within the meaning of Section 74 of the Evidence Act. AIR 1914 Cal 388 (388) (DB).

10. Proceedings under Sections 110, 107 and 112.— (1) A Magistrate cannot pass an order under Section 117 without previously passing an order under this section. Such an order is wholly wrong. AIR 1951 Raj 116 (Pr. 2) ** AIR 1957 All 189 (193) = 1957 Cri L Jour 427 ** 1966 All WR (HC) 863 (863) = 1967 All Cr R 15 ** AIR 1960 Mys 146 (147) = 1960 Cri LJ 837 = 38 Mys LJ 43 ** AIR

113. Procedure in respect of person present in Court.—If the person in respect of whom such order is made is present in Court, it shall be read over to him or, if he so desires, the substance thereof shall be explained to him.

[1882 — S. 113; 1872 — S. 492, Expl.; 1861 — Nil.]

Section 112 — Note 10 (contd.)

1960 Punj 225 (226) = 62 Punj LR 76 = 1960 Cr LJ 639.

[See also AIR 1951 Raj 156 (Pr. 7) = ILR (1951) 1 Raj 265 = 52 Cri L Jour 1209 (DB).]

[See however AIR 1969 Delhi 304 (310) = 1969 Cri LJ 1370.]

[Also see 1964 Jab LJ 283 (284, 285).]

(2) Magistrate has no jurisdiction to pass an order under Section 117 (3) along with one under Section 112. AIR 1957 Pat 106 (108) = 35 Pat 833 = 1957 Cri L Jour 386 ** 1957 Cri L Jour 147 (148) (Orissa.) ** AIR 1969 Manipur 90 (92) = 1969 Cri LJ 1512 ** 1962 (2) Cr LJ 575 (577) = 1961 BLJR 860 ** AIR 1960 All 467 (468) = 1960 All LJ 206 = 1960 Cr LJ 1049 (DB).

[See also (1966) 32 Cut LT 515 (520, 521) = (1966) 8 OJD 60.]

[But see AIR 1967 Orissa 133 (134) = 1967 Cri LJ 1166 = 33 Cut LT 386.]

[Also see 1961 (1) Cr LJ 536 (538) = (1962) MLJ (Cr) 51 (Mys).]

(3) The exercise of power under Section 117 (3) is not dependent on commencement of enquiry under Sec. 112. AIR 1967 Orissa 133 (135) = 1967 Cri LJ 1166 = 33 Cut LT 386.

(3-A) It is only after an order under this section is read out to person concerned, the Magistrate can start an enquiry against him and direct him to execute a bond with or without surety for keeping peace during the enquiry period.. 1968 Raj LW 317.

(4) Scope and object — Order under Section 117 (3) passed after order under Section 112 but before inquiry is started under S. 117 (1) — **Held** not without jurisdiction. 1963 (1) Cri LJ 663 (663, 664) = (1963) 4 Guj LR 490 ** AIR 1967 Orissa 133 (134) = 1967 Cri LJ 1166.

(5) Order under Section 117 (3) need not be made in all cases where an order under Section 112 is made. 1961 (1) Cr LJ 536 (538) = (1962) MLJ (Cr) 51 (Mys).

(6) When procedure contemplated both under Sections 112 and 113 as also under Section 243 has been followed by the Magistrate as required in Section 117 (2), enquiry contemplated under Sec. 117 (1) need not be held. AIR 1969 Guj 267 (269) = 1969 Cri LJ 1133 = 10 Guj LR 847.

(7) Where parties have appeared in pursuance of notice under Section 112, Magistrate must proceed further to hold enquiry under Section 117 and make the original order absolute or discharge the notice. (1966) 2 Mys LJ 250 (251) = (1966) 7 Law Rep 710.

(8) Issue of notice under Section 112 on information by police — Order under Section 118 not possible on information — Magistrate must discharge notice — Magistrate calling fresh information from police and issuing second notice — Illegal. 1970 Cri LJ 292 (293) = (1966) 2 Mys LJ 250.

(8) Order under Section 112 directing petitioners to show cause why security should not be called for, for keeping peace but also for good behaviour. As order refers to Section 107 only it shows Magistrate has not applied his mind and the order could not be supported. 1961 (1) Cr CJ 536 (538) = 1962 MLJ (Cr) 51 (Mys)..

(9) Accused arrested and detained — Order under Section 107 read with Section 112 read out subsequently — On denial of charge by him order under Section 117 (3) passed — Accused cannot be released in view of a valid order passed under Section 117 (3) subsequently. (1965) 2 Cr LJ 271 (272) (DB) (All).

(10) Magistrate passing order under Section 112 — Subsequently, emergency compelling him to make an order under Section 117 (3) — Order under Sec. 117 (3) not bad for being on the same information and evidence as the order under Section 112. AIR 1969 Manipur 90 (92) = 1969 Cri LJ 1512.

(11) Where Magistrate was satisfied that there was imminent breach of peace which could be prevented by arrest of the petitioners he was competent to issue one order directing petitioners to show cause and warrant for arrest of the petitioners under Section 112 and proviso to Section 114. AIR 1969 Manipur 90 (92) = 1969 Cri LJ 1512.

Section 113 — Note 1

(1) It is immaterial how the person against whom an order has been passed under Section 112 has come to be present in Court. (1911) 12 Cri L Jour 533 (534) (DB) (Bom) ** (1904) 1 Cri L Jour 535 (537) = 31 Cal 557 (DB) ** AIR 1914 All 466 (467) = 15 Cri L Jour 288.

(2) It is not material whether the arrest under which he has been brought before the Court is legal or not. (1911) 12 Cri L Jour 533 (534) (DB) (Bom) ** AIR 1921 All 278 (280) = 22 Cri L Jour 115.

(3) Fact that a person appears in pursuance of a summons which is not served as required by Section 115 does not affect the validity of the order under S. 112 made in his presence and its reading over to the person. AIR 1920 Mad 1014 (1014) = 20 Cri L Jour 763.

114. Summons or warrant in case of person not so present.—If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is, to bring him before the Court:

Provided that whenever it appears to such Magistrate, upon the report of police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

[1882 — S. 114; 1872 — S. 494, proviso and S. 515, Para. 1; 1861 — S. 285, proviso and S. 306.]

Section 113 — Note 1 (contd.)

(4) Certain persons appeared before a Magistrate in pursuance of an order to show cause why they should not be required to furnish security in a sum of Rs. 2000. On that day the Magistrate passed an entirely fresh order under Section 112 in which the amount of security demanded was Rs. 5000. This latter order was read out to them as required by this section. It was held that the proceedings were not vitiated by the procedure adopted by the Magistrate. AIR 1927 Lah 689 (690) = 28 Cri L Jour 815.

(5) If the person is present in Court, the order should be read over to him and if he so desires, the substance thereof should be explained to him. AIR 1914 All 466 (467) = 15 Cri L Jour 288 ** AIR 1957 All 189 (192, 193) = 1957 Cri L Jour 427.

(6) An omission to read over the order is likely to cause great prejudice to him. (1891) 14 All 45 (47, 48).

(7) The fact that the order under Section 112 is not read over to the person present in Court at the commencement of the proceedings but is read over after the prosecution evidence is recorded does not render it illegal. The defect is curable under Section 537. AIR 1946 Oudh 230 (231) = 21 Luck 251 = 47 Cri L Jour 642.

(8) The error on the part of the Magistrate in failing to read out the order under Section 112 to the accused or to explain its substance to them, vitiates the order under Section 117 (3). AIR 1943 Sind 175 (176) = 45 Cri L Jour 164 (DB) ** AIR 1957 All 189 (193) = 1957 Cri L Jour 427 ** AIR 1966 J and K 29 (30) = 1966 Cri LJ 145 = 1966 Kash LJ 1.

(9) **Procedure in section not expressly followed — Inference of compliance cannot be drawn from mere fact of presence of party in Court when order is passed.** AIR 1966 J and K 29 (30) = 1966 Cri LJ 145 = 1966 Kash LJ 1.

(10) **A mere non-mention of the action taken under Section 113 would have no practical consequence.** AIR 1961 Madh Pra 302 (305) = 1961 Jab LJ 443 = 1961 (2) Cri LJ 642.

(11) The reading or explaining of order under Section 112 as envisaged by Section 113 is inapplicable to cases where procedure under Sections 114 and 115 has been adopted. 1961 Raj LW 491 (494) ** (1966) 32 Cut LT 515 (520) = (1966) 8 Orissa JD 60.

SECTION 114 — SYNOPSIS

1. **"Shall issue a summons."**
2. **Form of summons.**
3. **Sufficient time to appear in Court to show cause.**
4. **"When such person is in custody."**
5. **Immediate arrest.**
6. **Record of information.**
7. **"May at any time."**
8. **Warrant of arrest against person outside jurisdiction.**
9. **Bail.**

1. "Shall issue a summons."— (1) Where a person against whom an order under Section 112 is passed is not present in Court, the Magistrate is bound to issue a summons requiring him to appear or, if he is in custody, a warrant for the same purpose. (1868) 9 Suth WR (Cr) 16 (16) (DB) ** AIR 1964 Manipur 62 (63) = 1964 (2) Cri LJ 684.

(2) No summons or a warrant can be issued against a person who is not present in Court unless an order had first been made against him under Sec. 112. AIR 1926 Sind 288 (289) = 27 Cri L Jour 935 ** AIR 1953 Nag 292 (294, 295) = 1953 Cri L Jour 1569.

2. Form of summons.— (1) Form No. 12, Schedule V of the Code requires that the substance of the information should be set forth in the summons. Where neither the summons set forth the substance of the information nor was a copy of the order under Sec. 112 served along with the summons, it was held that the persons against whom the proceedings were taken were prejudiced by the non-compliance. (1909) 9 Cri L Jour 179 (180) (All).

(2) **Held** that the facts necessary to be proved in order to make a person

115. Copy of order under Section 112 to accompany summons or warrant :— Every summons or warrant issued under Section 114 shall be accompanied by a

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Section 114 — Note 2 (contd.)
liable under Section 110 were different from those necessary to be proved in order to make him liable under Sec. 107, and that the party proceeded against should have been served with a fresh notice with reference to the altered view of the circumstances on which the Magistrate proposed to proceed. (1907) 5 Cri L Jour 397 (398) = 30 Mad 282 (DB).

3. Sufficient time to appear in Court to show cause.— (1) When issuing a summons to any person under this section, sufficient time should be allowed for appearance in Court so as to enable him to get ready with his evidence for the purpose of the inquiry under Section 117. (1873) 20 Suth WR (Cr) 18 (19) (DB) ** AIR 1914 Cal 357 (357) = 15 Cri L Jour 353 (DB).

(2) Where parties required to show cause on the 9th of July were served with a summons on the 5th and 7th of July, it was held that the time allowed was not sufficient and the order requiring them to furnish security was accordingly set aside. (1874) 22 Suth WR (Cr) 70 (71) (DB).

4. "When such person is in custody."— (1) Where the person against whom an order is made under Section 112 is in custody, the Court should issue a warrant directing the officer in whose custody he is to bring him before the Court. AIR 1926 Sind 190 (191) = 27 Cri L Jour 628 (DB).

(2) It is not necessary that the custody should have been under an arrest made within the jurisdiction of the Magistrate acting under this section. AIR 1919 Cal 702 (706) = 19 Cri L Jour 696 (DB).

5. Immediate arrest.— (1) A Magistrate may, under the proviso, order the immediate arrest of the person against whom an order under Section 112 is made, whether a summons or warrant for his production has issued or not. Before, however, such an exceptional measure is taken, two conditions are necessary to be satisfied — (1) the Magistrate must have reason to fear the commission of a breach of the peace, and (2) it must appear to him that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person. AIR 1926 Sind 288 (289) = 27 Cri L Jour 935 ** (1883) 6 All 132 (138) ** AIR 1924 Pat 320 (320) = 24 Cri L Jour 829.

(2) Persons imprisoned during pendency of security proceedings against them cannot be kept in solitary confinement. AIR 1933 All 676 (678) = 35 Cri L Jour 218.

6. Record of information.— (1) The Magistrate is bound to record the substance of the report of information. (1883) 6 All 132 (138) ** AIR 1924 Pat 320 (320) = 24 Cri L Jour 829 ** AIR 1914 All 466 (467) = 15 Cri L Jour 288 ** AIR 1963 All 4 (11) = 1962 All LJ 654 = (1963) 1 Cri LJ 20 (DB).

(2) The provision is intended as a safeguard with a view to the protection of persons whose liberty is affected by such order and who may have resort to a superior Court under Section 498 or any other provision. AIR 1924 Pat 320 (320) = 24 Cri L Jour 829.

(3) Order under — Magistrate not considering the facts or even nature of orders — Orders typed by bench clerk from some other record and not signed by magistrate — **Held,** they were without legal foundation. (1967) 71 Cal WN 1039 (1040).

7. "May at any time."— (1) Where person proceeded against has appeared and has executed a bond under Sec. 117, sub-sec. (3), the Magistrate has no power to issue a warrant of arrest against him on the ground that there is an imminent danger of the breach of the peace. AIR 1944 Mad 575 (576) = 46 Cri L Jour 172 ** AIR 1929 Pat 654 (656) = 30 Cri L Jour 809 ** AIR 1969 Ker 188 (189) = 1969 Cri LJ 735 = 1968 Ker LT 554.

[See also (1904) 1 Cri L Jour 775 (778) = 32 Cal 80 (DB).]

8. Warrant of arrest against person outside jurisdiction.— (1) A Magistrate cannot issue a warrant against a person unless such person is within his jurisdiction. (1912) 13 Cri L Jour 796 (797) (DB) (Bom).

9. Bail.— (1) Section 496 should be read along with other provisions of the Code giving a special right of detention to a Court. (1912) 13 Cri L Jour 447 (448) = 36 Mad 474 (DB).

(2) Under Section 107 (4), a Court can detain a person brought before it, under the circumstances specified therein, until the enquiry is completed. In such a case it cannot be said that the arrested person has an absolute right to be released on bail. This is now made clear by the addition of the proviso to Section 496. (1912) 13 Cri L Jour 447 (448) = 36 Mad 474 (DB) ** AIR 1916 Sind 93 (94) = 17 Cri L Jour 77 ** (1908) 7 Cri L Jour 360 (361) = 31 Mad 315 (FB) ** AIR 1926 Sind 288 (289) = 27 Cri L Jour 935.

SECTION 115 — SYNOPSIS

1. **"Shall be accompanied by a copy of the order."**
2. **Summons must fix reasonable time to show cause.**
3. **Power of the Court to demand security different from the one specified in the order**

copy of the order made under Section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

[1882 — S. 115 — Same; 1872 and 1861 — Nil.]

116. Power to dispense with personal attendance.—The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

[1882 — S. 116; 1872 — S. 495; 1861 — S. 286.]

117. Inquiry as to truth of information.—(1) When an order under Section 112 has been read or explained under Section 113 to a person present in

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Section 115 — Synopsis (contd.)

4. Effect of non-compliance with the requirements of the section.

1. "Shall be accompanied by a copy of the order."— (1) It is necessary that a copy of the order passed under Section 112 should accompany and be delivered to the person against whom a process is issued under Section 114. (1891) 14 All 45 (47) ** (1877) 1 Cal L Rep 130 (131) (DB) ** (1884) 6 All 214 (218, 219) ** AIR 1924 Nag 166 (167, 168) = 25 Cri LJ 132.

2. Summons must fix reasonable time to show cause.— (1) The delivery of the order and the summons must be sufficiently early so as to give the person summoned sufficient time to show cause against the order and to get his witnesses. (1874) 22 Suth WR (Cr) 70 (71) (DB). (Case under Code of 1872.)

3. Power of the Court to demand security different from the one specified in the order.— (1) Where the Court issued summons specifying the nature and the amount of the security required, it cannot, after the person has appeared in response to the summons, ask for a security different in nature and amount than the one specified in the summons. (1872) 18 Suth WR (Cr) 61 (62) = 9 Beng LR (App) 44 (DB) ** (1876) 25 Suth WR (Cr) 50 (51) (DB).

(2) Where a person appears in response to a summons asking for a security of a particular nature there is nothing illegal in the Court drawing up fresh proceedings in his presence for security for a different sum. (1895) 1895 All WN 241 (241).

4. Effect of non-compliance with the requirements of the section.— (1) Where the summons referred to in the section has not at all been served, or where it has been served so late as to deprive the person concerned of a reasonable time and opportunity to show cause and produce his witnesses, the order requiring security is illegal. (1868) 9 Suth WR (Cr) 16 (16) (DB) ** (1874) 22 Suth WR (Cr) 70 (71) (DB).

(2) A failure to serve a copy of the order passed under Section 112 along with the summons will be only an irregularity which will not vitiate the order in the absence of prejudice. AIR 1924 Nag 166 (167, 168) = 25 Cri LJ 132 ** AIR 1920 Pat 25 (28) = 21 Cri LJ 321 (DB) ** AIR 1920 Mad 1014 (1014) ** AIR 1926 All 767 (768) = 27 Cri LJ 1132 ** (1909) 10 Cri LJ 375 (377) (DB) (Bom) ** 1961 Raj LW 491 (493).

[See also AIR 1930 All 274 (274) = 31 Cri LJ 627 (DB) ** 1885 All WN 30 (30) ** (1881) 3 All 545 (553, 554) (FB). (Under Code of 1872.)]

(3) The object of serving a copy of the preliminary order on a person under this section or of reading that order over to him under Sec. 113, is only to acquaint him with the details of the order itself and to enable him to defend himself against the allegations upon which the preliminary order was granted. AIR 1924 Nag 166 (167) = 25 Cri L Jour 132.

(4) Procedure under Section 113 is inapplicable where procedure under Section 115 has been adopted. 1961 Raj LW 491 (494).

(5) Violation of mandatory provisions of Section 112 cannot be cured by issue of summons under Sec. 115 which can only issue if there is an existing valid order under the former section. 1964 All LJ 1103 (1104).

SECTION 116

1. Scope.— (1) The section does not apply to a case where a person is called upon to show cause why he should not be ordered to furnish security for good behaviour. (1903) 2 Weir 54 (55).

2. The Magistrate "may".— (1) The Magistrate has a discretion to dispense or not to dispense with the personal attendance of the person called upon to give security. The discretion is, however, judicial. (1885) 12 Cal 133 (136) (DB).

SECTION 117 — SYNOPSIS

1. **"Shall proceed to inquire."**
2. **Effect of consent to give security — Whether inquiry necessary.**
3. **Reference to arbitration.**
4. **Mode of inquiry.**
5. **Applicability of other provisions of the Code to inquiries under this section.**

Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under Section 114, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

*[(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trials and recording evidence in summons cases.]

†[(3) Pending the completion of the inquiry under sub-section (1) the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under Section 112 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or in default of execution, until the inquiry is concluded:

Provided that—

(a) no person against whom proceedings are not being taken under Section 108, Section 109, or Section 110, shall be directed to execute a bond for maintaining good behaviour, and

(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under Section 112.]

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ection 117 — Synopsis (contd.)

6. Interim security — Sub-section (3).

6-A. Suit against Magistrate for damages for wrongful confinement.

7. Evidence of general repute — Sub-section (4).

8. Evidence of repute against person charged under Section 107, if admissible.

9. "Or otherwise".

10. Admissibility of evidence of previous convictions in Section 110 proceedings.

11. Admissibility of evidence of the commission of a substantive offence in Section 110 proceedings.

12. Sufficient evidence in proceedings under Section 109.

13. Evidence in proceedings under Section 108.

14. Joint inquiry — Sub-section (5).

15. Effect of joint inquiry where there is no association.

16. Admissibility of confession of a co-accused in a joint inquiry.

17. Suit for malicious prosecution.

18. Interference by High Court.

1. "Shall proceed to inquire."— (1) The object of this chapter is not to punish persons for an evil reputation but to guard society from them by placing them under such substantial but not excessive security as will prevent them from resorting to evil courses. 1889 All WN 114 (114).

(2) The section cannot be interpreted as giving a weapon to the Magistrate in his executive capacity for the suppression of crime. He is bound to hold a judicial enquiry and investigate the truth of the information upon which proceedings have been instituted under this chapter. 1899 Pun Re (Cr) No. 10, p. 29 (30) ** (1869) 12 Suth WR (Cr) 54 (55) = 3 Beng LR (App) 155 (DB) ** (1868-69) 4 Mad HCR (App) xxii (xxiii) ** AIR 1914 All 546 (546) = 16 Cri LJ 61 ** AIR 1932 All 670 (672) = 34 Cri LJ 42.

(3) The Magistrate is bound to give a legal finding before passing the final order for security. (1879) 3 Cal L Rep 280 (281) DB) ** AIR 1920 Cal 412 (412) = 21 Cri LJ 826 (DB) ** (1887) 9 All 452 (464) ** AIR 1929 Lah 504 (505) = 30 Cri LJ 839.

(4) When the person sought to be proceeded against is brought before the Magistrate, the latter should then and there prepare a written order under Section 112 and should read over that order to the person. Unless this is done power of remanding him to custody under Section 117 (3) does not vest in the Magistrate. AIR 1957 All 189 (Pr 7) = 1957 Cri LJ 427 (DB).

(5) The Magistrate cannot be too careful to place on record evidence of a cogent, convincing and reliable kind and should not make up for the carelessness,

‡[(4)] For the purposes of this section the fact that a person is an habitual offender †[or is so desperate and dangerous as to render his being at large without security hazardous to the community] may be proved by evidence of general repute or otherwise.

‡[(5)] Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.

[1882 — S. 117; 1872 — S. 491, Expl. and S. 515, Para. 3; 1861 — S. 307.]

[*] Substituted for former sub-section (2), by the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), S. 17 (1-1-1956).

[†] Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 19.

[‡] Original sub-sections (3) and (4) were renumbered (4) and (5) respectively, ibid.

Section 117 — Note 1 (contd.)

incompetence and supineness on the part of the police to bring home a specific crime to a particular person. AIR 1919 All 136 (136) = 20 Cri LJ 689 ** AIR 1925 Sind 204 (206) = 25 Cri LJ 1377.

(6) The Magistrate cannot keep proceedings under Section 107 pending and without enquiry on the ground that such pendency tends to preserve the peace. AIR 1921 Pat 440 (444) = 22 Cri LJ 745.

(7) The Magistrate cannot proceed to hold the enquiry without giving sufficient opportunity to the person proceeded against to show cause why he should not be bound over. AIR 1914 Cal 357 (357, 358) = 15 Cri LJ 353 (DB) ** (1875) 28 Suth WR (Cr) 9 (11) (DB) ** AIR 1920 All 268 (269) = 22 Cri LJ 228 ** AIR 1926 Sind 288 (290) = 27 Cri LJ 935.

(8) The Magistrate cannot order a person to furnish security in the absence of legal evidence. (1875) 5 NWP HCR 233 (235) ** (1883) 6 All 132 (136, 137) ** 1881 All WN 155 (156) ** (1868-69) 5 Bom HCR (Cr) 105 (107) (DB) ** 1891 Rat 585 (586) (DB) ** (1908) 8 Cri LJ 128 (129) = 35 Cal 674 (DB) ** (1869) 4 Beng LR 46 (53) (FB) ** 1882 Pun Re (Cr) No. 27, p. 34 (34) (DB) ** (1907) 6 Cri LJ 278 (278) = 30 Mad 330 ** AIR 1920 Pat 550 (551) = 21 Cri LJ 453.

(9) The evidence must be duly recorded by him in the presence of the person proceeded against. (1870) 2 NWP HCR 406 (407) ** (1869) 6 Bom HCR (Cr) 1 (5) (DB) ** (1872) 18 Suth WR (Cr) 2 (3) (DB).

(10) The Magistrate cannot act on the basis of his own personal and extra-judicial knowledge obtained as a result of local enquiry, or as a result of a previous case tried by him. AIR 1923 All 596 (597) = 24 Cri LJ 593 ** AIR 1924 All 451 (453) = 25 Cri LJ 781 ** (1902) 29 Cal 392 (393) (DB) ** (1875) 22 Suth WR (Cr) 79 (80) (DB) ** AIR 1925 Lah 166 (167) = 25 Cri LJ 808 ** 1898 Pun Re (Cr) No. 4, p. 9 (12) (DB) ** AIR 1925 Oudh 441 (442) = 26 Cri LJ 1149 ** AIR 1925 All 443 (444) = 26 Cri LJ 981.

(11) The Magistrate cannot act on the evidence recorded in a previous case, especially where such evidence has been rejected as unreliable in a charge for a substantial offence. (1875) 24 Suth WR (Cr) 4 (4) (DB) ** (1874) 22 Suth WR (Cr) 36 (37) (DB) ** AIR 1920 Cal 301 (302, 303) = 21 Cri LJ 170 (DB) ** AIR 1919 All 393 (394) = 20 Cri LJ 727 ** AIR 1916 Oudh 122 (123) = 17 Cri LJ 184 (185).

(12) The Magistrate cannot base his finding on evidence recorded by another Magistrate who had no jurisdiction to try the case. 1885 All WN 30 (30) ** (1875) 24 Suth WR (Cr) 52 (53) (DB).

(13) Finding cannot be based upon a police report. AIR 1953 Raj 119 (Pr 6) = ILR (1952) 2 Raj 86 = 1953 Cri LJ 846 ** AIR 1929 Lah 504 (505) = 30 Cri LJ 839 ** (1869) Rat 23 (23) (DB) ** (1869) 11 Suth WR (Cr) 35 (35) (DB).

[But see (1874) 21 Suth WR (Cr) 28 (28) (DB).]

(14) He cannot base his finding on the report of another Magistrate. (1871) 8 Bom HCR (Cr) 162 (163) (DB) ** (1869) 6 Bom HCR (Cr) 1 (5) (DB).

(15) If the Magistrate exercises his discretion in an arbitrary manner and chooses to close the evidence of the one or the other party his order would be open to correction. AIR 1958 Raj 180 (Pr 3) = ILR (1958) 8 Raj 192 = 1958 Cri LJ 970 (DB). (1955 Raj LW 532, **Overruled.**) ** AIR 1964 All 391 (391) = 1964 (2) Cri LJ 260 ** 1963 AllWR (HC) 621 (622).

(16) The enquiry is not restricted by the precise terms of the order issued under Section 112. (1912) 13 Cri LJ 784 (784) (DB) (Cal).

(17) Where the Magistrate after issuing summons under Section 107 started proceedings under Section 110, followed the procedure as in the trial of warrant cases and there was no prejudice to the opposite party, it was held that the irregularity, if any, was

OBJECTS AND REASONS

1923.—We approve of the principle of new sub-section (3) of Section 117 which as an alternative to the immediate arrest allowed by the proviso to Section 114, enables a Magistrate to make an interim order for security. But we see no reason why the interim order should not be, in certain cases, one for security for good behaviour, provided that an order of this nature is not made in proceedings under S. 107. We have also redrafted the proviso to new sub-section (3) in the hope of making its intention clearer.

We decided in favour of maintaining the amendment of present sub-section (3) [now sub-section (4)] — which will enable the fact that a person "is so desperate and dangerous as to render his being at large without security hazardous to the community" to be proved by evidence of general repute. Our colleague Syed Raza Ali dissents from this view. On the other hand, we think that the deletion of the words 'or otherwise' would be a mistake, as the Courts might hold that some change in the law was intended by their omission and that the sub-section was intended to be exhaustive of the methods of proof.—S. C. R. (18 of 1923).

Section 117 — Note 1 (contd.)

cured by the provisions of Sec. 537. (1913) 14 Cri LJ 65 (66) (Mad).

(18) Where in proceedings under Section 107, the preliminary order did not contain sufficient particulars of the information upon which the Magistrate acted and objection was taken on that ground, it was held that the Magistrate had power to order an amendment of the same by giving full particulars. (1902) 29 Cal 389 (390, 391) (DB).

(19) The words "such further evidence as may appear necessary" refer to evidence ejusdem generis with the evidence described in the words immediately preceding. The "further evidence" which a Magistrate can take under this section must relate to the information on which action has been taken. AIR 1914 All 382 (383) = 15 Cri LJ 212.

[But see 1970 Cri LJ 641 (641) = 35 Cut LT 749 (Orissa) ** AIR 1963 Pat 312 (313 and 314) = 1962 (2) Cri LJ 312.]

(20) Inquiries under this chapter are governed by ordinary rules of evidence and evidence not admissible under the Evidence Act cannot be admitted in proceedings under this section. AIR 1914 All 280 (282) = 15 Cri LJ 705.

(21) An investigating officer's statement that he suspected a certain person to have committed a burglary or theft is inadmissible because it is only an opinion of his and not a statement of fact within his personal knowledge. AIR 1959 All 347 (Pr 3) = 1959 Cri LJ 673.

(22) Inquiries under this section ought not to be long drawn out : Magistrate should be careful to see that unnecessary witnesses are not examined. AIR 1914 All 430 (431) = 15 Cri LJ 363.

(23) Detention in prison as a result of orders under Sections 107, 117 and 123 is a kind of preventive detention and a sort of precautionary measure and not a punitive detention. These sections are not repugnant to Article 22 of the Constitution for they deal with different situations and different classes of persons. Chapter VIII is not also discriminatory in character. AIR 1957 Andh-Pra 90 (Prs 2, 3, 7, 8) = 1957 Cri LJ 624.

(24) However summary the proceedings under Chapter VIII, Criminal P. C. may be considered, they are judicial proceedings and have to be conducted in accordance with the Code and the Magistrates holding these proceedings must see that the fundamental elements of the judicial process find expression in the machinery for administering justice. AIR 1969 Delhi 12 (14) = 1969 Cri LJ 43 = (1968) 70 Punj LR (D) 390.

(25) If Civil Court has taken cognizance of civil suit before action under Section 145 is taken, Magistrate can take action under Section 107 read with S. 117 against party disregarding the order of Civil Court. 1964 All WR (HC) 46 (46, 47).

2. Effect of consent to give security — Whether inquiry necessary.— (1) Where, in response to the notice issued under Section 112 the person sought to be bound over appears before the Magistrate his mere consent or readiness to furnish the security as required by the notice, does not amount to a plea of guilty to the charges contained in the preliminary order and the Court is not justified in binding him over on the strength of such consent alone without any inquiry and evidence. (1908) 8 Cri LJ 128 (129) = 35 Cal 674 (DB) ** AIR 1925 Lah 135 (136) = 25 Cri LJ 710 ** (1910) 11 Cri LJ 393 (393) (Mad) ** (1900-1902) 1 Low Bur Rul 79 (80) ** (1902-1903) 1 Upp Bur Rul (Cr P C) 1 (1) ** AIR 1952 Bhopal 45 (Pr 7) = 1952 Cr L Jour 1758.

Section 117 — Note 2 (contd.)

[See also AIR 1936 Cal 292 (293) = 37 Cri LJ 818 (DB) ** (1907). 6 Cri LJ 278 (278) = 30 Mad 330.)]

(2) The High Court of Allahabad has held that where the notice under Section 112 is read over to the person proceeded against and after understanding it he consents to give security, his action really amounts to a plea of guilty and no enquiry is necessary. AIR 1928 All 270 (272) = 30 Cri LJ 6 (DB) ** AIR 1954 All 29 (29, 30) = 1954 Cri LJ 11 ** AIR 1924 All 269 (270) = 25 Cri LJ 750. (Held that consent amounts to a plea of guilty and is itself sufficient evidence.) ** AIR 1927 All 579 (580) = 28 Cri LJ 609 ** AIR 1969 Guj 267 (269) = 1969 Cri LJ 1133 = 10 Guj LR 847.

[But see AIR 1926 All 614 (615) = 27 Cri LJ 370 ** AIR 1920 All 29 (30) = 21 Cri LJ 176 ** AIR 1919 All 19 (20) ** AIR 1916 All 316 (317) = 17 Cri LJ 157.]

(3) According to the Allahabad High Court and the Oudh Chief Court it depends upon the facts and circumstances of each case as to whether the consent to give security amounts to a plea of guilty. AIR 1928 All 357 (359) = 30 Cri LJ 122 (DB) ** AIR 1937 Oudh 289 (289, 290) = 38 Cri LJ 302.

(4) Where the accused-applicants never admitted that there was a likelihood of a breach of the peace and had clearly mentioned in their application that they were willing to offer security provided all the persons of the opposite party were also asked to furnish security this would not be tantamount to a plea of guilty, and the Magistrate is, therefore, not justified in taking this offer as a plea of guilty. Further evidence in support of the report made by the police would be necessary. AIR 1954 All 29 (29, 30) = 1954 Cri LJ 11.

(5) The Rajasthan High Court has held that where the person from whom security is demanded denies all the allegations made against him his preparedness in the end to give security cannot be taken to be a plea of guilty and the Magistrate's order requiring security cannot be justified. 1953 Raj LW 205 (206).

(6) The Judicial Commissioner's Court of Sind has held that even where the person sought to be bound over admits the several allegations contained in the notice under Section 112, the Court is not justified in dispensing with an inquiry. AIR 1925 Sind 321 (321) = 26 Cri LJ 1041.

(7) The Judicial Commissioner's Court of Peshawar has held that it is open to the Magistrate to bind over a person on his own admission of the allegations made against him but that such admission must be clear and unambiguous. AIR 1935 Pesh 116 (118, 119) = 36 Cri LJ 1212 (DB).

(8) A statement made by a person, against whom security proceedings are taken, expressing willingness to give security should be recorded as nearly as possible in the words used by him. (1907) 6 Cri LJ 332 (333) (Mad).

3. Reference to arbitration.— (1) Proceedings for taking security for keeping the peace or for good behaviour cannot be referred to arbitration. AIR 1931 Pat 92 (95) (DB).

4. Mode of inquiry.— (1) Section 117 (3) does not enjoin any particular form of enquiry to justify an order of interim bond in a pending proceeding. AIR 1968 Pat 295 (296) = 1968 Cri LJ 1110 (1).

(2) Before its amendment by Act 26 of 1955, under sub-section (2) in proceedings for security for keeping the peace, the procedure prescribed for the trials of summons-cases was to be followed; while in proceedings for security for good behaviour, the procedure prescribed for the trials of warrant cases was to be followed. Under the sub-section as now amended, in both the cases procedure to be followed is one prescribed for the trial of summons-cases. See 1955 Raj LW 532 (533). **(Overruled in** AIR 1958 Raj 180 (DB) on another point.) ** AIR 1954 Pat 242 (245) = 33 Pat 105 = 1954 Cri LJ 647 (SB).

(3) Where a Magistrate tried a case as to security for keeping the peace as a warrant case and ordered rigorous imprisonment in default of furnishing security, it was held that the order was illegal. AIR 1924 All 695 (696) = 26 Cri LJ 430.

(4) It was held that evidence in proceeding for security for keeping peace should be recorded as required by Section 355 of the Code. AIR 1918 Pat 448 (450) = 19 Cri LJ 169.

(5) In proceedings for security for keeping peace, where the complainant and his witnesses were absent on the date fixed for hearing, the proper course for the Magistrate was to pass an order of discharge under Section 119 holding that it was not proved that the person in respect of whom the inquiry was made should execute a bond. AIR 1952 Trav-Co 268 (269) = 1952 Cri LJ 1271 ** AIR 1927 Cal 343 (343) = 28 Cri LJ 479 (DB).

(6) On the reports of the Tahsildar and the Police officer where an order under Section 112 was passed by Magistrate ordering the party to execute a personal bond and to maintain peace and the party on appearance assured the

Section 117 — Note 4 (contd.)

Magistrate that there was no apprehension of breach of the peace from their side and the Magistrate accepting the assurance dropped the proceedings under Secs. 107 and 117 : **Held,** that the Magistrate failed to make the enquiry enjoined upon him by law under the provisions of sub-section (1) of Section 117. 1963 All WR (HC) 709 (710) = 1963 All Cr R 403.

(7) Where a definite allegation of threat or intimidation to witnesses who were to depose in Court in proceedings under Section 107 had been made against a party and that party had not denied the allegation, it is not necessary for the Magistrate to hold any enquiry into allegations before deciding to pass order under Section 117 (3). AIR 1968 Pat 295 (296) = 1968 Cri LJ 1110 (1).

(8) When once proceedings are started under Section 107 and Magistrate has issued order under Section 112 and parties appear before him, he has under Section 117 (1) to hold enquiry into the truth of the information upon which action has been taken under Section 107. He cannot simply drop the proceedings before holding enquiry. AIR 1965 Tripura 20 (21, 22) = 1965 (1) Cri LJ 602 ** AIR 1968 Pat 326 (327, 328) = 1968 Cri LJ 1114.

5. Applicability of other provisions of the Code to inquiries under this section.

(i) Applicability of Section 250.— (1) The provisions of Section 250 will not apply to enquiries under this section and Court cannot pass an order for compensation. AIR 1927 All 531 (532) = 28 Cri LJ 604 ** AIR 1922 All 321 (321) = 23 Cri LJ 474 ** (1901) 25 Bom 43 (49) (DB) ** (1902) Pun Re (Cr) No. 33 p. 86 (87).

(ii) Applicability of Section 202.— (2) Section 202 does not in terms apply to security proceedings as there is no complaint of an offence in such cases. But the Magistrate has inherent power to direct an inquiry by a subordinate Magistrate or an investigation by the police preliminary to starting proceedings against the person informed against. 1896 All WN 140 (141).

(iii) Applicability of Section 255.— See Note on Section 255.

(iv) Applicability of Section 340.— See Notes on Section 340.

(v) Applicability of Section 350.— (3) The provisions of Section 350 apply to proceedings under this section and a de novo inquiry can be ordered in the case of a change of a Magistrate. AIR 1937 All 438 439) = 38 Cri LJ 804 ** AIR 1954 Pat 242 (244), 246, 247) = 33 Pat 105 = 1954 Cri LJ 647 (SB) ** AIR 1920 Mad 337 (342, 344) = 21 Cri LJ 402 (FB) ** (1879) 4 Cal L Rep 452 (454) (DB).

(vi) Applicability of Section 443.— (4) Section 443 does not apply to inquiries under this section. AIR 1933 Lah 1019 (1920) = 35 Cri LJ 505.

(vii) Applicability of Section 517.—

(5) A proceeding under this section is an "inquiry" within the meaning of Section 517 and the Court is empowered to pass an order with regard to the property produced before the Court though there is no proof of an offence committed with reference to the property. AIR 1919 Mad 20 (21, 22) = 20 Cri LJ 135 (DB).

(viii) Applicability of Section 545.—

(6) Section 545 does not apply to proceedings under this section as no fine can be imposed in those cases. AIR 1924 All 694 (695) = 25 Cri LJ 476.

(ix) Transfer of cases under S. 192. — See Notes on Section 192.

(x) Transfer of cases under S. 526.— See Notes on Section 526.

(xi) Applicability of Section 190, sub-section (1), Clause (c).— (7) Although Section 190 sub-section (1), clause (c) in terms applies only to offences, it has been held that the principle of that section applies to proceedings under this section. AIR 1918 Pat 98 (98) = 19 Cri LJ 899 (DB).

(xii) Bail and detention in custody. — (8) Persons against whom security proceedings are taken are entitled to bail as of right except in cases where the Court takes action under sub-section (3) of this section or under sub-section (4) of Section 107. AIR 1940 Nag 75 (76) = 41 Cri LJ 155 ** AIR 1933 Rang 165 (165) = 34 Cri LJ 1195 ** (1904) 1 Cri LJ 775 (778) = 32 Cal 80 (DB) ** AIR 1964 Manipur 62 (63) = (1964) 2 Cri LJ 684.

[See also ('1911) 12 Cri L Jour 533 (534) (DB) (Bom).]

(9) To send a person to jail while an inquiry under security proceedings is pending against him, is illegal and prejudicial to his interests. AIR 1914 Bom 199 (199) = 16 Cri L Jour 91 (DB).

(10) The Magistrate was held to be justified in remanding the accused persons to jail custody, during the pendency of the inquiry under S. 117 (3), particularly when they did not choose to offer bail for their release during the pendency of the inquiry. AIR 1959 All 346 (Pr 4) = 1959 Cri L Jour 672 (DB). (AIR 1958 All 578, **Foll.)**

(xiii) Applicability of Section 342.— (11) Section 342 does not apply to an enquiry under Chapter VIII. AIR 1958 Cal 140 (Pr 5) = 1958 Cri LJ 371.

[But see AIR 1965 Raj 40 (41) = 1964 Raj LW 471 = 1965 (1) Cr LJ 224.]

(xiv) Applicability of Section 344.— (12) The provisions of Section 344 apply to proceedings under Section 117 not

Section 117 — Note 5 (contd.)

merely because they apply to summons trial but principally by reason of sub-section (2) of Section 117 itself. AIR 1958 All 578 (Pr 16) = 1958 Cri LJ 988 (DB).

6. Interim security — Sub-section (3). — (1) The object of the provision is to empower the Magistrate to direct a person against whom an order under Section 112 has been made to execute a bond for keeping the peace or maintaining good behaviour until the conclusion of the inquiry. AIR 1926 Sind 276 (277) = 27 Cri LJ 1030 (DB) ** AIR 1958 Cal 140 (Pr 7) = 1958 Cri LJ 371 ** AIR 1954 Madh B 192 (192) = 1954 Cri LJ 1544 ** AIR 1930 Lah 529 (529) = 31 Cri LJ 812 ** AIR 1968 Cal 364 (365) = 1968 Cri LJ 1058 = 71 Cal WN 851 ** 1967 All WR (HC) 768 (772) = 1967 All Cri R 477 (DB) ** 1966 All WR (HC) 863 (863) = 1967 All Cri R 15 ** (1966) 2 Mys LJ 537 (538) = (1966) 8 Law Rep 176 ** AIR 1965 Tripura 20 (21) = 1965 (1) Cri LJ 602 ** 1964 Jab LJ 283 (285) = 1964 MPLJ 725 ** AIR 1964 Manipur 19 (20) = 1964 (1) Cri LJ 406 ** 1961 (1) Cri LJ 536 (538) (Mys) ** AIR 1961 Orissa 53 (54) = 26 Cut LT 263 = 1961 (1) Cr LJ 412 (1).

(2) It is incumbent upon the Court to state in writing that the requirements of the section have been fulfilled. AIR 1952 Trav-Co 262 (Pr 5) = ILR (1951) Trav-Co 302 = 1952 Cri LJ 1111 (DB) ** AIR 1943 Sind 173 (174) = 45 Cri LJ 147 (DB) ** 1967 All Cri R 265 = 1967 All WR (HC) 385 (386) (DB).

(3) A mere statement that the order is passed "on account of emergency" is not sufficient. AIR 1927 Sind 148 (150) = 28 Cri LJ 173 (DB).

(4) It is necessary under this sub-section that the Magistrate should give reason in support of the order directing a person proceeded against to execute interim bonds. AIR 1957 Pat 106 (Prs. 6, 8) = 35 Pat 833 = 1957 Cri LJ 386 (DB) ** 1957 Cri LJ 147 (Pr 3) = ILR (1956) Cut 674 ** AIR 1955 Andhra 96 (Prs 3, 4) = 1955 Cri LJ 779 ** AIR 1969 Delhi 12 (13) = 1969 Cri LJ 43 = (1968) 70 Pun LR (D) 390 ** AIR 1969 Manipur 90 = 1969 Cri LJ 1512 ** (1965) (2) Cri LJ 830 (830, 831) = 31 Cut LT 777 ** AIR 1964 Manipur 19 (20) = 1964 (1) Cri LJ 406 ** 1962 (2) Cri LJ 575 (576) = 1961 BLJR 860 ** 1961 (1) Cri LJ 536 (538) (Mys) = 1962 MLJ (Cr) 51 ** AIR 1960 Mys 146 (147) = 1960 Cri LJ 837 = 38 Mys LJ 43.

(5) An order under the sub-section should not be mechanically passed along with an order under Section 112. 1957 Cri LJ 147 (Pr 3) = ILR (1956) Cut 674 ** AIR 1969 Delhi 12 (13) = 1969 Cri LJ 43 = (1968) 70 Pun LR (D) 390 ** 1968 Cri LJ 844 (846) = 34 Cut LT 391 ** AIR 1967 Orissa 133 (130) = 1967 Cri LJ 1166 = 33 Cut LT 386 ** (1966) 32 Cut LT 515 (520, 521) = (1966) 8 Orissa JD 60.

(6) Composite order — Appending of an order under Section 117 (3) to an order under Section 112, is illegal. AIR 1969 Manipur 90 (92) = 1969 Cri LJ 1512.

(7) An order under this sub-section being in the nature of an interim order must be of a kind which could be made in a permanent order in the proceedings. The sub-section will not apply to an attempt to abet or the abetment of the offence of perjury. AIR 1943 Sind 173 (173) = 45 Cri LJ 147 (DB) ** AIR 1959 Mad 339 (Pr 8) = 1959 Cri LJ 998.

[See AIR 1942 Sind 77 (78) = 43 Cri LJ 692 (DB).]

(8) An order under this sub-section is not a mere routine order to be appended to an order under Section 112 and is not meant merely to anticipate the final order that may be made under Section 118. It is designed to meet an emergency. AIR 1953 Pat 132 (Pr 2) = 1953 Cri LJ 916 ** AIR 1959 Mad 339 (Pr 8) = 1959 Cri LJ 998 ** 1951 Raj LW 176 (177) ** AIR 1942 Sind 86 (86) = 43 Cri LJ 788 (DB) ** (1968) 70 Punj LR 6 (7) (Delhi) ** (1966) 8 Law Rep 175 (Mys) ** AIR 1960 Mys 146 (147) = 1960 Cri LJ 837.

(9) If the Magistrate, upon information lodged under Section 107, feels the necessity for further information, he can do that by calling upon parties to adduce further evidence before him in the course of enquiry under Section 117. But he cannot call upon police to file further particulars or lodge fresh information to enable him to issue second notice under Section 112 on the basis of additional information. Where it is not possible to pass an order under Section 118 on the available information, Magistrate must discharge notice. 1970 Cri LJ 292 (293) = (1966) 2 Mys LJ 250.

(10) The Magistrate must direct his consideration particularly to the question of emergency and the necessity of immediate measures as a separate case. AIR 1953 Pat 132 (Pr 2) = 1953 Cri LJ 916 ** AIR 1959 Mad 339 (Pr 8) = 1959 Cri LJ 998 ** 1957 Cri LJ 147 (Pr 3) = ILR (1956) Cut 674 ** (1955) 8 Sau LR 292 (294, 295) ** 1951 Raj LW 176 (177) ** AIR 1942 Sind 77 (78) = 43 Cri LJ 692 (DB).

(11) The Magistrate should not conduct an inquiry within an inquiry. AIR 1943 Sind 122 (128) = 44 Cri LJ 779 ** AIR 1959 Mad 339 (Pr 8) = 1959 Cri LJ 998.

(12) The Magistrate should not take evidence of witnesses on oath and their

Section 117 — Note 6 (contd.)
cross-examination in the usual manner. AIR 1953 Pat 132 (Pr 2) = 1953 Cri LJ 916 ** AIR 1959 Mad 339 (Pr 8) = 1959 Cri LJ 998.

(13) The Magistrate need not commence to take evidence before he passes an order under Section 117 (3). But, it is necessary before he proceeds to take action under Section 117 (3) that the order passed by him under Section 112 has been read or explained to petitioners. AIR 1969 Manipur 90 (92) = 1969 Cri LJ 1512.

(14) If the Magistrate is satisfied that an emergency exists and urgent orders are necessary he can act upon the application of a police-officer or upon the sworn testimony of a police-prosecutor given in the witness-box, or in the form of affidavits. AIR 1953 Cal 238 (Pr 2) = 1953 Cri LJ 574 (DB) ** AIR 1959 Mad 339 (Pr 8) = 1959 Cri LJ 998 ** AIR 1942 Sind 86 (87) = 43 Cri LJ 788 (DB) ** AIR 1966 Orissa 75 = 1966 Cri LJ 432 = 32 Cut LT 742.

(15) An order passed under this sub-section after considering the question of emergency as a separate question is not bad merely because the Magistrate has based it on the same information and the same evidence which were the basis of his order under Section 112. 1951 Raj LW 176 (177) ** AIR 1959 Mad 339 (Pr 8) = 1959 Cri LJ 998 ** AIR 1943 Sind 122 (123) = 44 Cri LJ 779 (DB)** AIR 1969 Manipur 90 (92) = 1969 Cri LJ 1512 ** 1964 Ker LT 249 (251) = 1964 Ker LJ 511.

[See also AIR 1957 Pat 106 (Pr 8) = 35 Pat 833 = 1957 Cri LJ 386 (DB).]

(16) Where a Magistrate starts proceedings under Section 110, Clauses (a), (b) and (c) on a police report which makes general and vague allegations, the order cannot be justified on the ground of emergency. AIR 1942 Sind 77 (78) = 43 Cri LJ 692 (DB).

(17) The existence of a state of martial law is a strong evidence justifying an order under this sub-section. AIR 1943 Sind 173 (174) = 45 Cri LJ 147 (DB).

(18) In so far as an interim order is permitted under Section 117, sub-s. (3) it would be correct to say that this interim order in an emergency can be passed even in the absence of the person affected by the order. AIR 1956 Bom 385 (387) = 1956 Cri LJ 712 (DB) ** 1961 Raj LW 491.

(19) An order under this sub-section has to be passed only after the order under Section 112 has been read and explained to the accused as provided in sub-section (1). An order passed without complying with this procedure is premature and illegal. AIR 1951 Raj 116 (Pr. 2) ** AIR 1958 Raj 349 (Pr. 4) = ILR (1958) 8 Raj 656 = 1958 Cri L Jour 1546 ** 1951 Raj LW 176 (177) ** AIR 1943 Sind 175 (176) = 45 Cri L Jour 164 (DB) ** AIR 1954 Madh B 192 (192) = 1954 Cri L Jour 1544 ** 1968 Raj LW 317 (319) = ILR (1968) 18 Raj 643 ** AIR 1967 Delhi 31 (34) = 1967 Cri LJ 865 ** AIR 1966 J and K 29 (30) = 1966 Cri LJ 145 = 1966 Kash LJ 1 ** AIR 1965 Tripura 20 (21) = 1965 (1) Cri LJ 602 ** (1963) 1 Cri LJ 663 (664) (Guj) ** AIR 1960 Mys 259 (260) = 1960 Cri LJ 1348 ** AIR 1960 Punj 225 (226) = 1960 Cri LJ 639. (Absence of prejudice is no ground for non-compliance.)

[See however AIR 1963 Pat 312 (314) = 1963 (2) Cri LJ 312 ** (1955) 8 Sau LR 292 (294).]

(20) Sections 112 and 117 provide two different procedures for two different ends and the magistrate has no jurisdiction to pass an order under Section 117 (3) along with the one under Section 112. AIR 1957 Pat 106 (Pr. 6) = 35 Pat 833 = 1957 Cri L Jour 386 (DB) ** AIR 1967 Orissa 133 (134) = 1967 Cri LJ 1166 = 33 Cut LT 386 ** 1962 (2) Cri LJ 575 (577) (Pat) ** AIR 1960 All 467 (468) = 1960 Cri LJ 1049 (DB).

(21) The enquiry commences as soon as the Magistrate proceeds in the matter after reading or explaining the order to the person concerned, when he is present in the Court. AIR 1958 Raj 349 (Pr. 4) = ILR (1958) 8 Raj 656 = 1958 Cri L Jour 1546.

(22) An enquiry under Section 117 (1) can be said to commence for the purpose of this sub-section when the persons sought to be proceeded against are brought or appear before the Court to answer the charge against them. AIR 1952 Trav-Co 262 (Prs. 3, 4) = ILR (1951) Trav-Co 302 = 1952 Cri L Jour 1111 (DB) ** 1950 Trav-Co LR 368 (372) (DB).

(23) When the person concerned is before the Court upon summons or warrant he may ask for adjournment for showing cause against the order. AIR 1958 Raj 349 (Pr. 4) = ILR (1958) 8 Raj 656 = 1958 Cri L Jour 1546.

(24) The mere fact that due to the exigencies of the work of the Court the case has to be adjourned from time to time would not mean that the enquiry has not become yet one pending before the Court. AIR 1952 Trav-Co 262 (Prs. 3, 4) = ILR (1951) Trav-Co 302 = 1952 Cri L Jour 1111 (DB).

(25) Under Section 117 (3), it is only after the parties appear in Court and the Magistrate proceeds to inquire into the matter, if he finds any necessity to do so, he can direct execution of interim bond. AIR 1959 J and K 125 (Pr. 4) = 1959 Cri L Jour 1320 ** AIR 1957 Pat

Section 117 — Note 6 (contd.)
106 (Pr. 6) = 35 Pat 833 = 1957 Cri L Jour 386 (DB) ** AIR 1955 Andhra 96 (96) = 1955 Cri L Jour 779. (1934 Mad WN 1353, **Dissented from.**) ** 1966 BLJR 255 (257) = (1965) 1 Lab LJ 672 ** (1960) All LJ 227 = (1960) All WR (HC) 215.

(26) Where the Court passes an interim order for security the terms of the security should not be more onerous than those specified in the order under Section 112. AIR 1926 Sind 276 (277) = 27 Cri L Jour 1030 (DB).

(27) The provisions of Chapter XXXIX of the Code relating to bail do not apply to an order passed under this sub-section. The High Court cannot under Section 498 reduce the amount of security ordered to be furnished by the Magistrate under this sub-section, though it can reduce the same under its inherent powers where it is too high. AIR 1930 Lah 529 (529) = 31 Cri L Jour 812.

(28) The reduction by the High Court of the amount of the interim security does not fetter the discretion of the Magistrate as to the amount of the final security that he may order. AIR 1930 Lah 529 (530) = 31 Cri L Jour 812.

(29) The Court has jurisdiction to pass an order for interim security notwithstanding that an application is made under Section 526, sub-section (8). AIR 1928 All 268 (268) = 29 Cri L Jour 448 (DB) ** AIR 1927 Sind 148 (150, 151) = 28 Cri L Jour 173 (DB).

(30) As the power under this sub-section is vested in the Magistrates for meeting an emergency, unwarranted interference with the action taken by a Magistrate under S. 117 (3) would only lead to public peace and tranquillity being disputed. 1950 Trav-Co LR 368 (372) (DB).

(31) In regard to the taking of interim bonds, the Magistrate who is responsible for maintaining peace in his locality is the proper judge of what should be done in the exigencies and circumstances of the case rendering immediate measures necessary for preventing a breach of peace and the High Court will not ordinarily interfere in revision. 1953-2 Mad L Jour 669 (670).

(32) Where the person who is proceeded against does not choose to offer bail during the pendency of the enquiry under this sub-section, the Magistrate would be justified in remanding him to the jail custody. AIR 1959 All 346 (Pr. 4) = 1959 Cri L Jour 672 (DB).

(33) Illegal order under Section 117 (3) with consequential order under Section 514 — One revision against composite order maintainable. AIR 1969 Manipur 90 (93) = 1969 Cri LJ 1512.

Effect of quashing of proceedings.— (34) Where the Magistrate quashes the security proceedings on the ground that no purpose would be served by continuing them as the persons against whom the inquiry is being held are being tried for murder, the effect of the Magistrate's order is only to terminate the proceedings and not to set them aside. Hence, the interim bond previously taken can be enforced under S. 514 against the surety. AIR 1941 Oudh 321 (322) = 42 Cri L Jour 457.

(35) Stating his satisfaction for taking immediate measures on perusal of affidavits and report of investigating officer — Mere fact that reasons given in order itself are not very elaborate or definite can be no ground for holding that order was passed without jurisdiction. (1969) 35 Cut LT 603.

(36) Execution of bond under Sec. 117 (3) — No need of arrest under Sec. 114 pending enquiry. AIR 1969 Ker 188 (189) = 1969 Cri LJ 735 = 1968 Ker LT 554.

(37) Accused arrested and detained — Order under Section 107 read with Section 112 read out subsequently — On denial of charge by him order under Section 117 (3) passed — Accused cannot be released in view of a valid order passed under Section 117 (3) subsequently. (1965) 2 Cri LJ 271 (272) = 1963 All LJ 744 (DB).

(38) A magistrate is empowered to pass a composite order both under Section 117 (3) and under Section 112 of the Cr. P. Code. It is not necessary that before an order under Section 117 (3) is passed an enquiry under Section 112 must have already been taken up for consideration. AIR 1967 Orissa 133 (134) = 1967 Cri LJ 1166 = 33 Cut LT 386.

(39) Proceedings under Section 107 against both parties in land dispute — Order under Section 117 (3) to execute interim bonds against both parties is justified. AIR 1964 Pat 445 (446) = 1964 (2) Cr LJ 438.

(40) Magistrate acting under Sec. 107 ordering petitioners to show cause and by same order directing them to furnish ad interim bonds on next date — **Held,** as inquiry against petitioners had not commenced, stage for execution of ad interim bonds had not arrived and hence that part of order must be set aside. AIR 1969 Pat 369 (371) = 1969 Cri LJ 1420.

6-A. Suit against Magistrate for damages for wrongful confinement.— (1) In a proceeding under Section 107, against a person, it is within the jurisdiction of the Magistrate to detain the person proceeded against in custody under Sec. 117 (3), till he furnishes a bond with or without sureties, till the conclusion of the enquiry, for keeping the peace. AIR

Section 117 — Note 6-A (contd.)
1962 All 137 (139) = 1961 All LJ 665 = 1962 (1) Cr LJ 234.

7. Evidence of general repute — Subsection (4).— (1) Where a person is charged under Section 110 as being a habitual offender, or as being a desperate and dangerous person, his character becomes a fact in issue. Under Sec. 5 of the Evidence Act read with Explanation 1 to Section 54 of that Act, evidence as to such character becomes relevant. AIR 1920 Oudh 255 (256) = 21 Cri L Jour 810 ** AIR 1959 All 347 (Pr. 8) = 1959 Cri L Jour 673.

[See also 1961 BLJR 528 (529) ** AIR 1936 Oudh 238 (240) = 37 Cri L Jour 390 (DB).]

[See however AIR 1920 Mad 534 (535) = 21 Cri L Jour 354 (DB).]

(2) Reputation means what is thought of a person by others, and the general reputation of a person is the collective opinion of those in whose midst he lives. AIR 1951 Assam 106 (Pr. 54) = ILR (1951) 3 Assam 181 = 52 Cri L Jour 966 (DB) ** AIR 1938 Mad 591 (593) = 39 Cri L Jour 898 (DB) ** AIR 1925 Lah 166 (167) = 25 Cri L Jour 808 ** AIR 1927 All 394 (395) = 28 Cri L Jour 502 (DB).

(3) The opinion need not necessarily be the opinion of the entire community. AIR 1951 Assam 106 (Pr. 54) = ILR (1951) 3 Assam 181 = 52 Cri L Jour 966 (DB) ** AIR 1914 All 280 (282) = 15 Cri L Jour 705 ** AIR 1920 Mad 534 (539) = 21 Cri L Jour 354 (DB).

(4) Evidence which discloses the existence of collective opinion is evidence in proof of general reputation. AIR 1951 Assam 106 (Pr. 54) = ILR (1951) 3 Assam 181 = 52 Cri L Jour 966 (DB) ** AIR 1914 All 280 (282) = 15 Cri L Jour 705.

(5) General reputation must be distinguished from rumour which is inadmissible in evidence. AIR 1951 Assam 106 (Pr. 54) = ILR (1951) 3 Assam 181 = 52 Cri L Jour 966 (DB) ** AIR 1924 Pat 500 (501) = 25 Cri L Jour 985 ** (1904) 1 Cri L Jour 984 (986) (All) ** AIR 1919 Mad 633 (635) = 19 Cri L Jour 905 ** (1896) 23 Cal 621 (628, 629) (DB).

(6) The roots of a bad reputation are often planted in rumour, but it cannot be laid down as any hard and fast rule, how many instances build up a reputation and how long it takes for rumour to ripen into reputation. AIR 1951 Assam 106 (Pr. 54) = ILR (1951) 3 Assam 181 = 52 Cri L Jour 966 (DB) ** AIR 1933 Pat 189 (191) = 34 Cri L Jour 643 ** AIR 1921 Cal 625 (627) = 22 Cri L Jour 377 (DB).

(7) It is hardly necessary to say that evidence of rumour is mere hearsay evidence, and hearsay evidence of a particular fact. Evidence of repute is a totally different thing. A man's general reputation is the reputation which he bears in the place in which he lives amongst all the townsmen, and if it is proved that a man who lives in a particular place is looked upon by his fellow townsmen, whether they happen to know him or not, as a man of good repute that is strong evidence that he is a man of that character. On the other hand, if the state of things is that the body of his fellow townsmen who know him, look upon him as a dangerous man and a man of bad habits, that is strong evidence that he is a man of bad character. (1896) 23 Cal 621 (628, 629) (DB).

[See also AIR 1921 Cal 625 (627) = 22 Cri L Jour 377 (DB) ** 1903 All WN 181 (181) ** AIR 1928 Lah 49 (49) = 28 Cri L Jour 813.]

(8) The individual opinion of specified individuals as to the character of another person does not constitute general reputation, and evidence thereof is merely evidence of opinion which is, under the provisions of the Evidence Act, inadmissible except in the particular cases specified in that Act. AIR 1920 Oudh 255 (257) = 21 Cri L Jour 810 ** AIR 1929 All 273 (276) = 30 Cri L Jour 562 (DB) ** AIR 1920 Mad 534 (537) = 21 Cri L Jour 354 (DB) ** AIR 1924 Pat 500 (501) = 25 Cri L Jour 985.

(9) A mere suspicion on the part of the witness as to the complicity of the person sought to be proceeded against in certain isolated offences, is only his individual opinion and is not per se admissible as evidence of general repute. AIR 1929 All 273 (275, 276) = 30 Cri L Jour 562 (DB) ** AIR 1959 All 347 (Pr. 3) = 1959 Cri L Jour 673 ** AIR 1920 Cal 301 (303) = 21 Cri L Jour 170 (DB) ** (1907) 5 Cri L Jour 191 (193) (DB) (Cal) ** AIR 1919 Mad 633 (635) = 19 Cri L Jour 905 ** AIR 1924 Pat 498 (499) = 25 Cri L Jour 35.

[See however AIR 1929 All 650 (651, 652) = 31 Cri L Jour 755 (DB).]

(10) The mere fact that the witness is a police officer will not make his evidence any the weightier or admissible. AIR 1929 All 273 (275) = 30 Cri L Jour 562 (DB) ** AIR 1915 All 144 (145) = 16 Cri L Jour 281.

(11) Police records of suspected cases or history sheets maintained by the police, or entries in "Thana Village Crime Note Book," or Police diaries, would all be inadmissible as evidence of general repute. (1912) 13 Cri L Jour 9 (13) (All) ** AIR 1933 Oudh 251 (252, 253) = 34 Cri L Jour 852 (DB) ** AIR 1920 Pat 25 (28) = 21 Cri L Jour 321 (DB) ** AIR 1920 Cal 556 (556) = 21 Cri L Jour 700 (DB) ** AIR 1930 All 37 (38) = 31 Cri L Jour 301 (DB).

Section 117 — Note 7 (contd.)

(12) Although suspicion is not substantive evidence of general repute, and the facts which would not be admissible in an ordinary trial are not admissible as evidence under this section, evidence that a person had been suspected and named in a large number of cases extending over a considerable period may be admissible as corroborative evidence of bad repute under Section 11 (2) of the Evidence Act. AIR 1924 Oudh 112 (112) = 24 Cri L Jour 608 ** AIR 1923 All 595 (595) = 25 Cri L Jour 486.

(13) In a doubtful case, the fact that a person has never been suspected of any offence may weaken the evidence of bad repute given against him. AIR 1920 Oudh 226 (227) = 22 Cri L Jour 273 ** AIR 1923 All 595 (595) = 25 Cri L Jour 486.

(14) Enquiries under this section are governed by the ordinary rules of evidence, and, therefore, evidence, whether of general repute or of particular facts which would not be admissible at an ordinary trial, is not admissible under this section. AIR 1929 All 273 (275, 276) = 30 Cri L Jour 562 (DB) ** AIR 1920 Oudh 255 (256) = 21 Cri L Jour 810.

(15) Where evidence of general repute is to be let in under sub-section (4), it must be direct evidence in accordance with the rules of evidence. AIR 1934 All 735 (738) = 36 Cri L Jour 33.

[See also AIR 1948 Pat 84 (85) = 48 Cri L Jour 409.]

(16) If a witness deposes : "I heard the general reputation of X in the village to be so and so," it is direct evidence of the reputation by a person who heard the reputation. AIR 1928 All 1 (3) = 29 Cri L Jour 92 (DB) ** AIR 1920 Oudh 255 (258) = 21 Cri L Jour 810.

(17) It was held that the evidence of reputation must necessarily comprise hearsay evidence but that it was admissible by virtue of the provisions of this sub-section. AIR 1951 Assam 181 (Prs. 53, 54) = ILR (1951) 3 Assam 181 = 52 Cri L Jour 966 (DB) ** AIR 1938 Mad 482 (483) = 39 Cri L Jour 588 (DB) ** AIR 1929 All 650 (652) = 31 Cri L Jour 755 (DB) ** (1909) 10 Cri L Jour 355 (356) = 5 Low Bur Rul 72 (FB).

(18) It was held that if the deponent does not know the person whose reputation is in question, his evidence that he heard the reputation is hearsay and, therefore, inadmissible. AIR 1933 Pat 189 (192) = 34 Cri L Jour 643.

(19) The evidence of a witness who does not know the person about whose reputation he deposes, would necessarily be very weak and would not ordinarily justify an order for security. AIR 1921 All 88 (88, 89) = 22 Cri L Jour 314 (DB) ** AIR 1929 All 273 (276) = 30 Cri L Jour 562 (**DB**) ** (1902) 29 Cal 779 (781) (DB).

(20) That the applicant is by habit a housebreaker, or thief can be proved by proving that he has committed burglaries or thefts to such an extent that he can be said to be a habitual burglar or thief or by proving that his general reputation is that of a habitual burglar or thief. There is no third way of proving the fact. AIR 1959 All 347 (Pr. 3) = 1959 Cri L Jour 673. (22 Cri L Jour 273 (Oudh); AIR 1933 Oudh 58; AIR 1946 Oudh 50; AIR 1938 Lah 428; AIR 1929 All 650; AIR 1936 Oudh 238; AIR 1930 Lah 345 and AIR 1942 Pesh 84, **Diss.**)

(21) As a matter of practice, evidence of general repute ought to be evidence given by respectable persons who are acquainted with the person sought to be bound over, who live in the same neighbourhood, and are aware of his reputation. AIR 1920 Mad 534 (539) = 21 Cri L Jour 354 (DB).

[See AIR 1934 All 735 (738) = 36 Cri L Jour 33.]

(22) It would not ordinarily be sufficient to examine merely officials such as the police, zaildars or sufedposes. AIR 1915 Upp Bur 13 (13) = 16 Cri L Jour 553 (553) ** AIR 1925 Rang 174 (176) = 26 Cri L Jour 528 (DB) ** AIR 1928 All 1 (2) = 29 Cri L Jour 92 (DB) ** AIR 1930 Nag 148 (148, 149) = 31 Cri L Jour 165 ** AIR 1923 Lah 419 (419) = 25 Cri L Jour 314.

(23) The Court ought not to accept the evidence of police witnesses unless they had special means and occasion to know the reputation in the course of their official duties. AIR 1942 Pesh 84 (85) = 44 Cri L Jour 6 (DB) ** AIR 1933 All 674 (675) = 35 Cri L Jour 183.

[See AIR 1935 Pesh 158 (159).]

(24) It would not be safe to reject the evidence of any witness merely because he is a village mukhia or a police officer. AIR 1938 Mad 591 (591) = 39 Cri L Jour 898 (DB) ** AIR 1935 Pesh 80 (82) = 36 Cri L Jour 1127 ** AIR 1935 All 850 (851) = 36 Cri L Jour 1362 (DB).

(25) The vague evidence of witnesses that a man is a habitual thief or that the neighbourhood is of that opinion is not of much value without particulars as to his associates, means of subsistence and as to whether increase of thefts synchronises with his presence in the locality. AIR 1924 Oudh 187 (188) = 24 Cri L Jour 791 ** (1900) 2 Bom LR 57 (58) (DB).

(26) The witnesses need not necessarily be immediate neighbours. AIR 1942 Oudh 356 (357) = 43 Cri L Jour 308 ** AIR 1938 Mad 591 (592) = 39 Cri L Jour 898 (DB).

Section 117 — Note 7 (contd.)

(27) The Court must satisfy itself in each case that the evidence is true and properly appraise the evidence of persons living at a considerable distance. AIR 1925 Rang 174 (175) = 26 Cri L Jour 528 (DB).

(28) Where, in consequence of a series of dacoities in certain villages proceedings are instituted against a person for being a robber by habit, the evidence of general reputation given against him by persons from the different villages in which the dacoities took place would be proper and admissible. (1908) 7 Cri L Jour 146 (155) = 35 Cri 243 (DB).

(29) The Court should exercise a proper discretion in each case and satisfy itself that the evidence of general repute is so general and overwhelming as to leave no doubt that the accused is a habitual thief, robber, etc., as the case may be. AIR 1950 Cal 177 (Pr. 6) = 51 Cri L Jour 856 (DB) ** (1891) 14 All 45 (46) ** 1903 All WN 181 (181) ** AIR 1914 Bom 199 (200) = 16 Cri LJour 91 (DB) ** (1907) 5 Cri L Jour 24 (25) (Lah) ** AIR 1921 Lah 179 (179) = 23 Cri L Jour 507.

[See also AIR 1938 Mad 482 (483) = 39 Cri L Jour 588 ** AIR 1938 Mad 35 (37) = 39 Cri L Jour 230.]

(30) No hard and fast rule can be laid down as to the quantum of evidence necessary before a Court can act thereon nor is it necessary that the suspicion against a person charged under Section 110 must be embodied in a document. AIR 1946 Oudh 50 (51).

(31) The evidence has to be weighed in relation to other facts elicited from the statement of other witnesses. AIR 1951 Assam 106 (Pr. 53) = ILR (1951) 3 Assam 181 = 52 Cri L Jour 966 (DB).

(32) The burden of proof lies, as in any other case, on the prosecution. 1898 Pun Re (Cr) No. 4, p. 9 (11) ** AIR 1920 Cal 412 (412) = 21 Cri L Jour 826 (DB).

(33) The Court should pay particular attention to the evidence of the defence witnesses who speak to good character; such evidence should not be discarded or lightly brushed aside unless there are substantial reasons for discrediting their evidence. AIR 1915 All 415 (416) = 16 Cri L Jour 810 ** AIR 1923 All 35 (37) = 24 Cri L Jour 257 ** AIR 1930 Lah 1051 (1052) = 32 Cri L Jour 271 ** AIR 1933 Pat 112 (113) = 34 Cri L Jour 476 ** AIR 1919 Oudh 310 (311) = 20 Cri L Jour 748.

(34) The mere fact that the defence witnesses are the caste people of the accused, or that the accused is a very influential man in the locality and therefore is in a position to produce a large number of witnesses on his side is, however, no ground for discrediting their evidence. AIR 1950 Cal 177 (Pr. 5) = 51 Cri L Jour 856 (DB) ** AIR 1919 Oudh 310 (311) = 20 Cri L Jour 748 ** AIR 1915 All 464 (465) = 16 Cri L Jour 805 ** AIR 1928 Lah 49 (49) = 28 Cri L Jour 813 ** AIR 1919 All 136 (138) = 20 Cri L Jour 689.

(35) Where the evidence of the prosecution and the defence is equally balanced, and equal, if not greater, number of defence witnesses speak to good character, no order demanding security should be passed. AIR 1952 All 927 (Pr. 10) = 1952 Cri L Jour 1692 ** AIR 1948 Nag 28 (29) = ILR (1947) Nag 237 = 48 Cri L Jour 252 ** AIR 1930 Lah 1051 (1054) = 32 Cri L Jour 271 ** AIR 1930 Oudh 357 (360) = 31 Cri L Jour 1020 (DB) ** AIR 1939 Lah 269 (270) = 40 Cri L Jour 753.

(36) Where a large body of persons have come forward to swear as to the reputation of a person and he is not able to show anything as to why the witnesses have come forward to give him a bad character, such evidence should not be lightly brushed aside. AIR 1946 Oudh 50 (51).

(37) The Court must sift and weigh the evidence carefully. AIR 1950 Cal 177 (Pr. 5) = 51 Cri L Jour 856 (DB) ** AIR 1942 Oudh 356 (357) = 43 Cri L Jour 398 ** AIR 1925 Oudh 501 (501) = 26 Cri L Jour 530.

(38) The commission of a sufficient number of burglaries or thefts must be proved in order to make out a case of being by habit a burglar or thief; but commission of a smaller number of burglaries or thefts may supplement, or be supplemented by the evidence of a general repute. AIR 1959 All 347 (Pr. 8) = 1959 Cri L Jour 673.

8. Evidence of repute against person charged under Section 107, if admissible.— (1) Where a person is called upon to furnish security to keep the peace under Section 107, no evidence of general repute can, under sub-sec. (4) of this section, be let in against him. (1903) 25 All 273 (274, 275) ** 1888 Pun Re (Cr) No. 16, p. 30 (30, 31) (DB).

(2) Reports made by several of the prosecution witnesses on various dates regarding the past conduct of the accused and his disposition to use violence though not substantive evidence of the matters mentioned in them are admissible under Section 157 of the Evidence Act, to corroborate what the witnesses have testified in Court. AIR 1940 Pat 252 (252, 253) = 41 Cri L Jour 746.

9. "Or otherwise."— (1) The words "or otherwise" do not permit the transgression of the general rules of evidence as enacted by the Evidence Act. AIR 1920 Oudh 255 (256) = 21 Cri L Jour 810.

Section 117 — Note 9 (contd.)

(2) The fact that the person proceeded against has committed a number of thefts, or that he associates with proved bad characters can be proved. AIR 1933 All 674 (1) (674) = 35 Cri L Jour 284 ** AIR 1933 All 674 (2) (675) = 35 Cri L Jour 183 ** AIR 1934 Oudh 49 (49) = 35 Cri L Jour 403.

(3) Where a witness deposes to the fact that a person is a habitual offender, the fact that such person was suspected in various cases may be admissible as being one of the grounds of the opinion of the witness that the person is a habitual offender. AIR 1929 All 650 (653) = 31 Cri L Jour 755 (DB).

(4) Statements given to the police are admissible in evidence in proceedings under Section 110 and cannot be shut out by the use of Section 162. AIR 1933 Mad 688 (689) = 34 Cri L Jour 951.

(5) The words "or otherwise" are intended to give the Magistrate a very large discretion as to the nature of the evidence which he may admit. (1904) 1 Cri L Jour 534 (535) (All).

10. Admissibility of evidence of previous convictions in Sec. 110 proceedings.— (1) Any evidence which would be relevant to the charge under inquiry would be admissible even under the Evidence Act. AIR 1919 All 220 (221) = 20 Cri L Jour 206.

(2) The existence of a number of previous convictions for offences such as theft is a matter which may and should be taken into consideration as indicating the character and disposition of the accused (Section 54, Explanation 2 of the Evidence Act.) But the existence of such convictions is not by itself sufficient to justify an order for security. AIR 1929 All 273 (275) = 30 Cri L Jour 562 (DB) ** AIR 1925 Bom 195 (195) = 26 Cri L Jour 1391 (DB) ** (1909) 10 Cri L Jour 122 (124) (DB) (Cal) ** AIR 1921 Lah 179 (179, 180) = 23 Cri L Jour 507.

[See (1900) 2 Bom LR 57 (58) (DB).]

[See also AIR 1956 Him Pra 43 (Prs. 7, 8) = 1956 Cri L Jour 996.]

(3) The fact that the accused has been bound over previously under Section 110 may also be stated and proved as one of the grounds on which witnesses to general repute believe him to be a habitual offender. AIR 1929 All 650 (653) = 31 Cri L Jour 755 (DB).

(4) The Court cannot order security to be furnished on the strength of the previous order alone unless there is evidence of bad character subsequent to the same. AIR 1933 All 369 (369, 370) = 35 Cri L Jour 417 ** AIR 1915 Cal 643 (643) = 16 Cri L Jour 312 (312) (DB) ** (1906) 4 Cri L Jour 486 (487) (Lah) ** (1911) 12 Cri L Jour 359 (359) (Mad).

(5) Proof of previous conviction is not necessary to pass an order under Section 110. AIR 1938 Mad 482 (483) = 39 Cri L Jour 588 ** AIR 1936 Oudh 238 (239) = 37 Cri L Jour 390 (DB).

(6) Where, while disposing of a proceeding initiated on police report under Section 110 (e) and (f) the Magistrate passed preliminary order under Sec. 112 and the accused has admitted his previous conviction but not all the ingredients of charge levelled against him, it was held that Magistrate should have proceeded with the enquiry under Sec. 117. 1959 Ker LJ 1293 (1294).

11. Admissibility of evidence of the commission of a substantive offence in Section 110 proceedings.— (1) Positive evidence as to the actual commission of offence is not necessary in proceedings under Section 110. AIR 1953 Trav-Co 231 (Pr. 4) = ILR (1953) Trav-Co 253 = 1953 Cri L Jour 1246 (DB) ** AIR 1933 Oudh 58 (59) = 34 Cri L Jour 160 (DB) ** (1907) 5 Cri L Jour 178 (179) (DB) (Bom) ** (1881) 3 Mad 238 (239, 240) (DB).

(2) Instances of specific crimes are admissible in evidence although they are not supported by evidence of such amount and value as would secure a conviction for a substantive offence. AIR 1953 Trav-Co 231 (Pr. 4) = ILR (1953) Trav-co 253 = 1953 Cri L Jour 1246 (DB) ** AIR 1930 Oudh 357 (358) = 31 Cri L Jour 1020 (DB) ** AIR 1930 All 274 (275, 276) = 31 Cri L Jour 627 (DB) ** AIR 1933 All 676 (678) = 35 Cri L Jour 218.

(3) Even where a prosecution for a substantive offence has ended in an acquittal, it has been held that evidence relating to the incident which formed the subject matter of the previous trial cannot be excluded: the fact of acquittal although it may diminish and destroy value of the evidence, has not the effect of rendering such evidence inadmissible. AIR 1925 All 694 (697) = 26 Cri L Jour 1130 (DB).

12. Sufficient evidence in proceedings under Section 109.— (1) Where the only evidence against the accused is the statement of a police constable that he is wandering without means of subsistence or "does not work," an order for security will not be justified. (1900-01) 5 Cal WN 28 (29).

(2) Where the only evidence against the accused was that he was seen coming out of a sugarcane field at 10 p. m., and tried to run away when challenged, an order for security will not be justified. AIR 1928 All 476 (476) = 29 Cri L Jour 864 (FB).

(3) An order under this section cannot be passed on suspicion, but there must be good basis of fact. AIR 1919 All 260 (261) = 20 Cri L Jour 401.

13. Evidence in proceedings under Section 108.— (1) Where proceedings under Section 108 (b) are started against

Section 117 — Note 13 (contd.)
a person in order to prevent him from delivering speeches likely to create communal tension, and such proceedings are based on certain speeches delivered by him, speeches delivered by him on prior occasions are admissible in evidence under Section 14 of the Evidence Act, as serving to show the existence of a particular state of mind or intention. AIR 1940 Nag 134 (137) = 41 Cri L Jour 713.

14. Joint inquiry — Sub-section (5).— (1) Sub-section (5) permits a joint inquiry against two or more persons provided that they have associated together in the matter under inquiry. AIR 1925 Pat 131 (137) = 26 Cri L Jour 738 ** AIR 1948 Pat 84 (85) = 48 Cri L Jour 409 ** AIR 1919 All 376 (376) = 20 Cri L Jour 750 ** AIR 1919 Cal 359 (359) = 20 Cri L Jour 551 (DB) ** 1967 Mad LJ (Cri) 707 (709) = (1967) 2 Andh WR 223.

(2) The expression "associated together" means that the persons have been acting in concert or that there is something in the nature of a conspiracy among them in respect of the various acts alleged against them. AIR 1923 Pat 104 (110) = 23 Cri L Jour 100 (DB) ** AIR 1924 Nag 166 (167) = 25 Cri L Jour 132 ** 1967 Mad LJ (Cri) 707 (709) = (1967) 2 An WR 223.

(3) Where certain persons are alleged to belong to a gang of swindlers who act in concert and cheat ignorant people or are alleged to belong to a gang of habitual thieves and robbers who are associating together jointly in the commission of thefts, burglaries and robberies, a joint inquiry against them all is perfectly justified. (1910) 11 Cri L Jour 23 (24) = 37 Cal 91 (DB) ** AIR 1946 Oudh 50 (51) ** AIR 1947 Oudh 86 (86) = 47 Cri L Jour 1019 ** AIR 1934 Rang 121 (122) = 35 Cri L Jour 1257 (DB).

(4) Where the charge is that several persons formed one gang with one purpose, viz., that of harassing and intimidating the complainant, and each act spoken to by witnesses is an act prompted by that common object and directed towards accomplishing it, a joint inquiry has been held to be valid. AIR 1927 Mad 542 (543) = 29 Cri L Jour 77.

(5) The mere fact that the several persons sought to be proceeded against belong to the same tribe and village or, are close neighbours and have been convicted together on previous occasions or, that they happen to be members of an undivided Hindu family or, are in the position of a master and servant, is not proof of association in the absence of any evidence to show that they constitute a gang acting in concert in respect of the charges made against them. 1895 Pun Re (Cr) No. 1, p. 1 (2) ** AIR 1920 Cal 556 (556) = 21 Cri L Jour 700 (701) (DB) ** AIR 1919 Mad 633 (635) = 19 Cri L Jour 905 ** (1906) 3 Cri L Jour 290 (291) = 9 Oudh Cas 69.

(6) Where there is the evidence of association, the mere fact that the several persons jointly tried belong to different villages is not a circumstance which would affect the legality of the joint trial. (1922) 23 Cri L Jour 58 (58) (DB) (Cal).

(7) Where there is evidence that there is a gang of persons associated together to commit such acts as the security sections exist to prevent, it is enough that some members of the gang are shown to have committed the various acts alleged against them; it is not necessary to prove that on every occasion the whole gang acted together. AIR 1923 Nag 53 (54) = 23 Cri L Jour 741.

(8) Where the several servants of a zamindar acted together in the matter of extortion of kabuliats at enhanced rates from the tenants of the master for his benefit and under his directions, it was held that the joint inquiry against all the servants was valid. (1905) 2 Cri L Jour 554 (567) (SB) (Cal).
[See however (1900)27 Cal 781 (784) (DB).]

(9) In order to justify a joint inquiry, there should not merely be association but it is essential that such association should be in the matter under inquiry. (1905) 2 Cri LJ 224 (225) = 8 Oudh Cas 91 ** (1910) 11 Cri LJ 50 (51) (Mad).

(10) Two opposing or contending parties cannot also be tried in a joint inquiry because they are in conflict with one another, and there can be nothing in common between them in respect of the matter under inquiry. AIR 1951 Nag 306 (Pr. 4) = ILR (1950) Nag 859 = 52 Cri L Jour 181 ** 1951 Raj LW 176 (177) ** AIR 1943 Pat 417 (418) = 45 Cri L Jour 406 ** (1905) 2 Cal L Jour 65n (65n) (DB) ** AIR 1916 All 338 (338) = 17 Cri L Jour 165.

(11) Where the charge is such that it is purely personal to one individual alone and does not afford any scope for several persons acting in concert, there can be no association and, therefore, no joint inquiry. (1900) 27 Cal 781 (783) (DB) ** AIR 1951 Orissa 277 (Prs. 5, 6) = ILR (1949) Cut 751 = 52 Cri L Jour 848 ** AIR 1938 Mad 35 (36, 37) = 39 Cri L Jour 230 ** AIR 1925 Mad 189 (191, 192) = 26 Cri L Jour 673.

[But see AIR 1930 Mad 873 (873) = 32 Cri L Jour 144 ** AIR 1934 Cal 482 (485) = 35 Cri L Jour 952 (DB) ** AIR 1921 Cal 625 (626) = 22 Cri L Jour 377 (DB) ** AIR 1933 All 676 (677) = 35 Cri L Jour 218 ** AIR 1953 Pat 1 (Pr. 11) = 31 Pat 902 = 1953 Cri L Jour 110 (DB).]

118. Order to give security.—°If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute

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Section 117 — Note 14 (contd.)

(12) The question as to whether a man is a habitual thief or not is a matter personal to oneself and cannot form the subject of a joint enquiry. (1907) 6 Cri L Jour 284 (284, 285) = 4 Low Bur Rul 46.

(13) Where several persons associated together in a certain matter, a joint inquiry is permissible notwithstanding that in regard to some of them additional charges are made in their individual capacity. AIR 1938 Mad 615 (616) = 39 Cri L Jour 816.

(14) A mere allegation on the part of the prosecution that there is association is enough to justify a joint inquiry although it may subsequently transpire at the trial that there is no association. AIR 1921 Cal 625 (626) = 22 Cri L Jour 377 (DB) ** AIR 1959 Pat 219 (Pr. 6) = 1959 Cri L Jour 639 (DB).

[See also AIR 1925 Pat 131 (137) = 26 Cri L Jour 738.]

[See however AIR 1919 Cal 359 (359) = 20 Cri L Jour 551 ** AIR 1923 Pat 104 (110, 111) = 23 Cri L Jour 100 (DB).]

(15) The preliminary order under Section 112 should itself contain a charge of association where a joint inquiry is contemplated. AIR 1950 Cal 177 (179) = 51 Cri L Jour 856 ** (1905) 2 Cri L Jour 554 (562, 563) (SB) (Cal).

[See also AIR 1933 Oudh 251 (252) = 34 Cri L Jour 852.]

(16) Though the section permits a joint inquiry against several persons where there is association, the Court is not absolved from its duty of giving a separate and distinct finding against each one of them on the merits of the evidence against him. AIR 1925 Sind 204 (205) = 25 Cri L Jour 1377 ** AIR 1958 Cal 140 (Pr. 11) = 1958 Cri L Jour 371 ** AIR 1924 All 195 (196) = 25 Cri L Jour 952 ** AIR 1930 Cal 294 (295) = 31 Cri L Jour 944 ** (1907) 6 Cri L Jour 427 (429) = 35 Cal 138 (DB).

[See however AIR 1946 Oudh 50 (51).]

(17) Where in the proceedings under Section 107 the cases of individual persons have not been separately considered and the evidence against each person has not been summarised, the order under Section 107 cannot be sustained and must be set aside. AIR 1959 Pat 219 (Prs. 7, 8) = 1959 Cri L Jour 639 (DB) ** AIR 1959 Pat 304 (Pr. 4) = 1959 Cri L Jour 887.

15. Effect of joint inquiry where there is no association.— (1) A joint inquiry held in the absence of any association is a mere irregularity which in the absence of prejudice does not vitiate the trial and is curable under Section 537. AIR 1943 Pat 417 (418) = 45 Cri L Jour 406 ** AIR 1924 All 195 (196, 197) = 25 Cri L Jour 952 ** AIR 1921 Cal 625 (626) = 22 Cri L Jour 377 (DB) ** AIR 1925 Mad 189 (191, 192) = 26 Cri L Jour 673 ** AIR 1925 Nag 381 (382) = 26 Cri L Jour 1114.

[But see AIR 1917 Lah 207 (207) = 18 Cri L Jour 617. (25 Mad 61, Foll.) ** (1908) 8 Cri L Jour 154 (154) = 31 Mad 276 (DB). (Do.) ** (1909) 9 Cri L Jour 560 (561) = 5 Nag LR 65. (Do.) ** (1904) 1 Cri L Jour 58 (62) (DB) (Cal) (Do.) ** 1967 Mad LJ (Cri) 707 (709) = (1967) 2 Andh WR 223.]

16. Admissibility of confession of a co-accused in a joint inquiry.— (1) Persons against whom proceedings are being taken jointly under this section cannot be said to be on their joint trial for the same offence within the meaning of Section 30 of the Evidence Act. AIR 1919 All 220 (221) = 20 Cri L Jour 206.

[See also AIR 1934 All 927 (929) = 36 Cri L Jour 198.]

(2) Confessions made by a co-accused in a prior criminal case cannot be used in proceedings under this section against the others. AIR 1921 Cal 557 (557, 558) = 22 Cri L Jour 441 (DB).

17. Suit for malicious prosecution.— (1) A person called upon to furnish security under this chapter is not charged with any offence. (1884) 7 All 67 (72) (DB) ** (1900) 27 Cal 662 (663) (DB) ** AIR 1933 Mad 688 (689) = 34 Cri L Jour 951 ** AIR 1930 Pat 274 (275) = 31 Cri L Jour 958 (DB) ** (1910) 11 Cri L Jour 251 (251) (DB) (Mad).

(2) No action for malicious prosecution lies in respect of action taken under this section on a petition presented by a private individual as there is no prosecution for any offence in such a case. (1903) 13 Mad L Jour 370 (370) (DB).

[But see (1906) 9 Oudh Cas 357 (361) (DB).]

18. Interference by High Court.— (1) The High Court is not entitled in a petition under Article 226, Constitution of India, to enter into the question of the City Magistrate's satisfaction under Section 117 (3), that immediate measures were necessary for preventing a breach of the public peace. 1960 All LJ 227 (231) = 1960 All WR (HC) 215.

SECTION 118 — SYNOPSIS

1. **Final order for security.**
2. **Terms of security — Proviso 1.**
3. **Amount of security — Proviso 2.**
4. **Form and contents of bond for security.**
5. **Power of Court to impose conditions on sureties.**

a bond, with or without sureties, the Magistrate shall make an order accordingly:

Provided—

first, that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under Section 112:

secondly, that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive:

thirdly, that when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

[1882 — S. 118; 1872 — S. 493, Para. 1 and S. 497; 1861 — Ss. 284, 288.]

[*] The brackets and figure "(1)" omitted by the Repealing and Amending Act, 1964 (LII of 1964), S. 3 and Second Sch. (29-12-1964).

Section 118 — Synopsis (contd.)

6. **Power to review a final order for security.**
7. **Bond by a minor — Proviso 3.**
8. **Appeal.** See Section 406 and Notes thereon.
9. **Revision.**
10. **Reference to the High Court under Section 435.**

1. Final order for security.— (1) When passing an order under this section, the Magistrate is bound to consider whether an order for security is really necessary, and should give valid reasons for his finding. 1894 Rat 723 (724) (DB) ** (1888) 10 Bom 174 (175) (DB) ** (1903) 7 Cal WN 32 (32, 33) (DB).

(2) He cannot bind over a person, for instance, on the hypothesis that, if certain things happen, he may commit a breach of the peace. 1931 Mad WN 402 (403).

(3) He cannot bind over one person in order to prevent a breach of the peace by another. (1871) 17 Suth WR (Cr) 54 (54) (DB) ** (1873) 19 Suth WR (Cr) 32 (33) (DB).

(4) The procedure prescribed by the preceding sections of this chapter should be duly followed before an order can be passed under this section. AIR 1916 All 237 (238) = 17 Cri L Jour 527 ** 1888 Rat 421 (421, 422) (DB) ** 1962 (2) Cri LJ 537 (1) (537) (Guj).

(4-A) Issue of notice under S. 112 on information by police — Order under S. 118 not possible on information — Magistrate must discharge notice — Calling fresh information from police and issuing second notice is illegal. 1970 Cri LJ 292 (293) (Mys).

(5) Where several persons are jointly proceeded against, the order under this section must show that the Court has considered the evidence against each of the suspected persons and has found that the case is proved against each of them individually. AIR 1940 Sind 113 (114) = 41 Cri L Jour 724 (DB).

(6) Where the Magistrate passes an order for security under this section, the person ordered to furnish it should be given sufficient time to furnish the same. AIR 1925 Rang 353 (353) = 27 Cri L Jour 318.

(7) Omission to state the date by which security bond is to be furnished does not vitiate the order. AIR 1959 Pat 304 (305) = 1959 Cri L Jour 887.

(8) The period for which the bond or sureties have been required under S. 112 is to commence either on or after the final order has been passed under Section 118 and not from the date on which the preliminary order under Sec. 112 is made. 1967 All WR (HC) 768 (772) = 1967 All Cri R 477 (DB) ** 1962 BLJR 849 (849).

(9) The section does not authorize the award of imprisonment in anticipation of default in furnishing security. 1888 Rat 395 (395) (DB).

(10) A direction, in an order for security, for imprisonmnt for a certain period in default of furnishing the security is illegal. AIR 1936 Nag 265 (265) = 38 Cri L Jour 388.

[But see AIR 1953 All 753 (754) = 1953 Cri L Jour 1759 (DB).]

(11) The Magistrate passing an order for security must specify the date by which the security is to be furnished. But omission to specify the date in the original order could be repaired by a later order. AIR 1948 Pat 84 (85) = 48 Cri L Jour 409.

(12) An order binding over a person under this section is not an order convicting him of any offence. AIR 1936 All 107 (108) = 37 Cri L Jour 155 (DB) ** AIR 1958 Pat 160 (161) = 36 Pat 1311 = 1958 Cri L Jour 404 (DB) ** AIR 1930 Pat 274 (275) = 31 Cri L Jour 958 (DB). [See AIR 1934 Cal 808 (808) (DB).]

(13) Article 22 of the Constitution has no application to an order made under Sections 110, 118 and 123 and the said sections have not been rendered void by Article 22. AIR 1953 All 753 (754) = 1953 Cri L Jour 1759 (DB).

Section 118 — Note 1 (contd.)

(14) The provision in Section 123 (1) makes it clear that after the expiry of the period mentioned in the order a person can neither be called upon to execute the bonds nor can he be detained in prison. 1962 BLJR 849 (849).

2. Terms of security — Proviso 1.— (1) The final order for security must correspond with the preliminary order and notice issued under Sec. 112. The Magistrate cannot increase the amount of security, or alter the nature thereof. 1885 All WN 30 (30) ** (1907) 5 Cri L Jour 219 (219) (Lah) ** (1872) 9 Beng LR (App) 44 (44) (DB) ** (1906) 4 Cri L Jour 405 (405) (All) ** (1876) 25 Suth WR (Cr) 50 (50) (DB).

(2) The Magistrate cannot impose fresh conditions, or increase the period for which the security should remain in force. AIR 1925 Sind 57 (58) = 25 Cri L Jour 1226 (DB) ** AIR 1936 Nag 265 (265) = 38 Cri L Jour 388 ** (1903) 26 Mad 471 (472) (DB).

(3) As to period of security see Notes under Sections 106 to 110, and the following case. AIR 1959 Pat 304 (305) = 1959 Cri L Jour 887. (Order directing security to be furnished for keeping peace for a particular period — Appeal or revision — Order does not become nugatory by expiry of period — Proper procedure. AIR 1949 All 21, **dissented from.**)

3. Amount of security — Proviso 2.— (1) The section being preventive in its nature, the amount should be fixed in such a manner as to afford a fair and reasonable chance of compliance so as not to make the alternative of imprisonment unavoidable. (1877) 2 Cal 384 (385) (DB) ** (1898) 20 All 206 (207) ** (1958) 60 Pun LR 513 (515).

(2) The character and reputation of a person and the degree of danger to be apprehended from him to the community are elements to be considered by the Court in fixing the amount of security. 1890 Pun Re (Cr) No. 30, p. 97 (98) ** (1911) 12 Cri L Jour 110 (110) = 5 Sind LR 10.

(3) The amount should be fixed according to the ability of the person ordered to furnish security, having regard to his means and station in life, and should not go beyond a sum for which there is a fair probability of his being able to find out the security. (1892) 16 Bom 372 (373, 374) (DB) ** 1900 Pun Re (Cr) No. 17, p. 39 (40).

(4) Where the amount fixed is excessive and beyond the means of the person directed to furnish security, the High Court can interfere in revision and reduce the amount of security. (1876) 2 Cal 110 (112, 113) (DB) ** (1877) 2 Cal 384 (385) (DB) ** (1904) 1 Cri L Jour 344 (349) = 31 Cal 350 (DB) ** (1892) 16 Bom 372 (373, 374) (DB) ** (1883) 2 Weir 53 (53).

(5) When once the amount of security has been determined it is not advisable to reduce that amount at the time of forfeiture of the bond. AIR 1933 Pesh 141 (143) = 37 Cri L Jour 849.

4. Form and contents of bond for security.— (1) Forms Nos. 10 and 11 of Schedule V of the Code prescribe the forms in which a bond for keeping the peace and for maintaining good behaviour, respectively, should be executed. See 1878 Pun Re (Cr) No. 1, p. 1 (2) (DB).

(2) Neither this section nor the forms prescribed contemplate the furnishing of a registered hypothecation bond offering as security any property. AIR 1932 All 122 (123) = 33 Cri L Jour 229.

(3) The Magistrate is not authorized to direct the security to be deposited in cash. (1881) 6 Cal 14 (15, 16) (DB) ** 1893 Rat 671 (671) (DB).

5. Power of Court to impose conditions on sureties.— (1) The primary consideration in accepting a surety is to see whether he is likely to fulfil the undertaking given by him. AIR 1932 All 122 (123) = 33 Cri L Jour 229.

6. Power to review a final order for security.— (1) A Magistrate has no power to review a final order for security passed under this section. He cannot, thus, increase the amount of security fixed in the final order by means of a subsequent order on the ground that the preliminary order under S. 112 directed security for a larger amount than that ordered in the final order. AIR 1919 All 329 (329, 330) = 20 Cri L Jour 486.

7. Bond by a minor — Proviso 3.— (1) Where the person ordered to furnish security is a minor, no bond need be executed by him personally but that the bond should be executed only by his sureties. The reason for such a provision is the legal incompetence of a minor to enter into a contract. (1907) 6 Cri L Jour 123 (124) = 4 Low Bur Rul 12 (DB).

(2) Proviso 3 does not apply to a bond under Section 562. (1907) 6 Cri L Jour 123 (124) = 4 Low Bur Rul 12 (DB). (2 Low Bur Rul 137 and 2 Low Bur Rul 168, **Dissented from.**)

8. Appeal.— See Section 406 and Notes thereon.

9. Revision.— (1) An order passed in appeal against an order made under this section can be revised by the High Court. AIR 1914 Lah 281 (283) = 15 Cri L Jour 563 (DB).

(2) The High Court will not ordinarily interfere on the merits, provided the lower Court shows in its judgment that it has really, and not nominally, con-

119. Discharge of person informed against.—If, on an inquiry under Section 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made, should execute a bond, the Magistrate shall make an entry on the record to that effect, and if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

[1882 — S. 119; 1872 — S. 496; 1861 — S. 287.]

Section 118 — Note 9 (contd.)

sidered the evidence on record and has approached the case in a fair way. AIR 1942 Oudh 356 (357) = 43 Cri L Jour 398 ** AIR 1949 All 12 (13) = 50 Cri L Jour 22 ** AIR 1924 All 451 (453) = 25 Cri L Jour 781 ** (1912) 13 Cri L Jour 9 (9) (All) ** (1909) 9 Cri L Jour 528 (529) (All) ** (1921) 22 Cri L Jour 660 (660, 662) (All) ** AIR 1927 All 473 (474) = 28 Cri L Jour 515 ** AIR 1925 Oudh 473 (474) = 26 Cri L Jour 1283.

(3) But the High Court will interfere in revision in security proceedings in the following cases—

(a) where the lower Court has acted in excess of its powers or has made a too summary exercise of its powers: AIR 1916 All 48 (48, 49) = 17 Cri L Jour 461.

(b) where the order of the lower Court is vitiated by any error of law or is tainted with illegality: AIR 1951 Raj 156 (Pr. 7) = ILR (1951) 1 Raj 265 = 52 Cri L Jour 1209 (DB) ** (1908) 7 Cri L Jour 24 (25) (DB) (Bom) ** AIR 1929 All 273 (275) = 30 Cri L Jour 562 (DB) ** AIR 1930 All 23 (24) = 31 Cri L Jour 1 (DB).

(c) where the applicant has not had a fair trial in the lower Court· AIR 1918 Bom 254 (255) = 19 Cri L Jour 329 (DB) ** AIR 1914 Bom 199 (199) = 16 Cri L Jour 91 (91) (DB) ** AIR 1915 Cal 368 (368, 369) = 16 Cri L Jour 114 (115) (DB).

(d) where the lower Court has misapplied the rules of evidence and acted on inadmissible evidence: AIR 1916 All 48 (48, 49) = 17 Cri L Jour 461 ** AIR 1927 All 394 (395) = 28 Cri L Jour 502.

(e) where the finding of the lower Court is perverse, or based on no evidence or upon a misconception of evidence, or in disregard of credible evidence for the defence: AIR 1922 All 86 (87) = 23 Cri L Jour 86 ** (1912) 13 Cri L Jour 720 (720) (Lah) ** AIR 1929 Nag 328 (330, 331) = 31 Cri L Jour 20 ** AIR 1924 All 569 (569) = 25 Cri L Jour 1172 ** AIR 1952 All 927 (Pr. 10) = 1952 Cri L Jour 1692 ** AIR 1923 All 35 (37, 38) = 24 Cri L Jour 257.

(f) Where the order of the lower Court has resulted in a miscarriage of justice: AIR 1923 Nag 53 (54) = 23 Cri L Jour 741.

(g) where the appellate Court's judgment does not show that the case of each of the persons proceeded against has been considered individually: AIR 1940 Sind 113 (113, 114) = 41 Cri L Jour 724 (DB).

(h) where the inquiry has not been held in accordance with law or a wrong conclusion has been arrived at. AIR 1940 Mad 23 (26) = 41 Cri L Jour 238 (FB).

(4) The High Court will not interfere in revision in the following cases—

(a) where there is other remedy open and available to the applicant or, having had that remedy, he has failed to avail of the same: AIR 1914 Sind 139 (140) = 16 Cri L Jour 252 (DB) ** (1905) 2 Cri L Jour 335 (335) (All) ** AIR 1918 All 343 (343, 344) = 19 Cri L Jour 188. (Do.) ** AIR 1918 Pat 588 (590) = 19 Cri L Jour 589 (DB).

(b) where the procedure of the lower Court is merely irregular and the irregularity has not resulted in prejudice and has not occasioned any failure of justice: AIR 1920 Nag 138 (138, 139) = 21 Cri L Jour 591 ** AIR 1920 Mad 1014 (1014) = 20 Cri L Jour 763.

(c) where the finding of fact of the lower Court is based on the demeanour of witnesses. AIR 1916 All 48 (49) = 17 Cri L Jour 461.

(5) No second appeal lies against order under Section 118 — Second appeal filed treated as 'revision'. AIR 1969 J and K 105 (106) = 1969 Cri LJ 1139.

10. Reference to the High Court under Section 435.— (1) Section 435 enables a Sessions Judge to call for the record of proceedings under Section 110, taken before an inferior Criminal Court within his jurisdiction, and make a reference to the High Court. AIR 1923 All 596 (596) = 24 Cri L Jour 593 (DB) ** AIR 1916 All 316 (317) = 17 Cri L Jour 157 (158) ** AIR 1967 Punj 482 (486) = 1967 Cri LJ 1690 = 1966 Cur LJ 886.

Section 119 — Synopsis

1. **Necessity for bond.**
2. **"Discharge."**
3. **Further inquiry.**
4. **Revision.**

1. Necessity for bond.— (1) Where the information against a person is found

Section 119 — Note 1 (contd.)

to be false or there is no evidence to prove it, the person should be discharged. AIR 1927 Cal 343 (343, 344) = 28 Cri L Jour 479 (DB) ** 1884 Pun Re (Cr) No. 37, p. 72 (72) (DB) ** (1905) 2 Cri L Jour 88 (88, 89) (All) ** 1967 Cr LJ 1228 (1229) (Cal).

(2) The following were held not sufficient to require security :—

(a) Mere lending of money to one side of a faction where no breach of the peace can be envisaged to result from the fact. (1875) 7 NW PHCR 233 (234, 235).

(b) Mahomedan starting Sanskrit School with the aid of a Pandit. (1887) 9 All 452 (463).

(c) That the person was charged for false imprisonment. (1866) 6 Suth WR (Cr) 1 (1) (DB).

(d) That the servant of the person was fined for assault and a breach of peace was apprehended by the police. (1869) 12 Suth WR (Cr) 16 (16, 17) (DB).

(e) Extra-judicial information obtained in respect of person's bad character. (1883) 6 All 132 (136, 137).

(3) The expression 'on an enquiry under Section 117' means a full or complete enquiry. AIR 1953 Trav-Co 231 (Pr. 7) = ILR (1953) Trav-Co 253 = 1953 Cri L Jour 1246 (DB).

2. "Discharge."— (1) The word "discharge" in this section means a "permission to depart" and not the acquittal of an offence. (1910) 11 Cri L Jour 162 (163) = 33 Mad 85 ** (1913) 14 Cri L Jour 559 (560, 561) = 36 Mad 315 (DB).

(2) No compensation can be awarded on a discharge under this section. (1910) 11 Cri L Jour 446 (446, 447) (All) ** (1901) 25 Bom 48 (49) (DB) ** (1902) 1902 Pun Re (Cr) No. 33, p. 86 (87).

(3) An order for discharge and not one for acquittal should be passed under this section. AIR 1950 All 134 (Pr. 9) = ILR (1950) All 935 = 51 Cri L Jour 436 ** AIR 1938 All 49 (50) (DB).

(4) Proceedings under Section 107 cannot be brought to an end by Government withdrawing from the inquiry; they can be terminated only by an order for discharge. AIR 1940 Rang 189 (190) = 41 Cri L Jour 853.

(5) There is nothing to prevent the Magistrate from dropping the enquiry in whole or in part and discharging the person proceeded against. AIR 1953 Trav-Co 24 (Pr. 5) = ILR (1953) Trav-Co 65 = 1953 Cri L Jour 244.

[But see AIR 1968 Pat 326 (327) = 1968 Cri LJ 1114. (The magistrate is not competent to discharge the party under Section 119 before the conclusion of the enquiry.)]

(6) Magistrate can discharge accused before the stage under S. 119 is reached. AIR 1970 Pat 134 (135).

(7) Issue of notice under S. 112 on information by police — Order under Section 118 not possible on information — Magistrate must discharge notice under Section 119. 1970 Cri LJ 292 (293) (Mys).

(8) Where the person on whose petition the proceedings are started or other witnesses for the State do not appear, the proper procedure for the Magistrate is not to acquit the 'accused' under Section 247 for absence of the "complainant" but to discharge the 'accused' under this section. AIR 1952 Trav-Co 268 (Pr. 2) = 1952 Cri L Jour 1271 ** AIR 1954 Trav-Co 139 (140) = 1954 Cri L Jour. 211.

(9) Dismissal of proceedings under Section 107 on the ground of non-appearance of witnesses despite several adjournments — Witnesses found not to have been summoned in fact — Order of discharge illegal — District Magistrate can order further enquiry. (1962) 64 Punj LR 295 (296).

3. Further inquiry.— (1) No further inquiry can be ordered against a person discharged under this section. AIR 1944 Pesh 48 (48) = 46 Cri L Jour 156 ** AIR 1928 All 755 (756) = 30 Cri L Jour 63 ** AIR 1924 Rang 207 (208) = 25 Cri L Jour 1146.

(2) A discharge under this section is no bar to a second case being instituted on fresh material. AIR 1923 All 332 (333) = 24 Cri L Jour 232 ** (1913) 14 Cri L Jour 189 (189) (DB) (Cal).

4. Revision.— (1) Initiation of proceedings under Section 107 at instance of private person — Order of discharge under Section 119 — Private person has no locus standi to apply in revision — But High Court can interfere under Section 439 suo motu . AIR 1953 Trav-Co 24 (Prs. 3, 4) = ILR (1953) Trav-Co 65 = 1953 Cri L Jour 244 ** AIR 1968 Pat 326 (328) = 1968 Cri LJ 1114.

(2) An order of discharge under this section passed by a responsible Magistrate after careful consideration of evidence will not be interfered with by the High Court. AIR 1936 Sind 243 (244) = 38 Cri L Jour 117 (DB).

(3) The principle which should guide the Courts of Session in dealing with revisions in security proceedings is that they should not emphasise unnecessarily the form of the order but should look at the substance of the matter and they should make references only when they feel satisfied that an enquiry is necessary to prevent breach of peace. ILR (1966) 16 Raj 762 (765).

C. — Proceedings in all cases subsequent to order to furnish security.

120. Commencement of period for which security is required.—(1) If any person, in respect of whom an order requiring security is made under Section 106 or Section 118, is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment the period for which such security is required shall commence on the expiration of such sentence.

(2) In other cases such period shall commence on the date of such order unless the Magistrate, for sufficient reason, fixes a later date.

[1882 — S. 120; 1872 — S. 489 Paras. 2, 3 and 4, S. 504 Para. 2; 1861 — Nil.]

SECTION 120 — SYNOPSIS

1. **Commencement of the period of security.**
2. **"Unless the Magistrate, for sufficient reason, fixes a later date."**
3. **Second order for security.**
4. **"Shall commence on the date of such order" — Sub-section (2).**

1. Commencement of the period of security.— (1) The fact that an order under Section 123 (2) is passed on the same day on which the order under Section 118 is passed will not affect the commencement of the period. AIR 1937 Sind 203 (204) = 38 Cri L Jour 961 (DB).

(2) Magistrate sentencing a person to imprisonment under Section 106, cannot fix a time for furnishing security before the expiry of the sentence. (1909) 10 Cri L Jour 69 (71, 72, 76) = 5 Low Bur Rul 34 (FB).

(3) If a person is convicted of another offence and sentenced to a fresh term of imprisonment, the period will not commence until the expiry of both imprisonments. 1895 Rat 774 (775) (DB).

(4) Where A was sentenced to imprisonment but was on bail pending appeal against such conviction, and in proceedings instituted in the meanwhile against him under S. 110 security was ordered to be furnished, held that the security did not commence till after the disposal of the appeal and after the expiry of any sentence that might be passed by the appellate Court. AIR 1920 All 286 (286, 287) = 22 Cri L Jour 95.

2. "Unless the Magistrate, for sufficient reason, fixes a later date."— (1) If the suspect is not sentenced to or is not undergoing any sentence of imprisonment, the Magistrate may grant time for furnishing the security. AIR 1926 All 297 (297) = 27 Cri L Jour 377.

(2) When time is granted to the suspect to furnish security, but before the expiry of such time he is convicted of a substantive offence and sentenced to imprisonment, the Court has no power under this section to extend the time for security till the expiry of the sentence. AIR 1927 Sind 166 (167) = 28 Cri L Jour 431 (DB).

3. Second order for security.— (1) A second order to give further security during continuance of the first one is not contemplated by law. AIR 1929 All 608 (608) = 30 Cri L Jour 756 ** (1911) 15 Cal WN cclv (cclv).

(2) If, upon expiry of the first order, the dispute still exists, a further security may be demanded on fresh proceedings properly taken. (1899) 4 Cal WN 121 (122).

4. "Shall commence on the date of such order" — Sub-section (2).— (1) The period of security is to be calculated under sub-section (2) from the date of the final order under Section 118. AIR 1952 Trav-Co 433 (Pr. 3) = ILR (1952) Trav-Co 336 = 1952 Cri L Jour 1523 (DB) ** AIR 1937 Sind 26 (28) = 38 Cri L Jour 363 (DB) ** AIR 1927 Mad 542 (543) = 29 Cri L Jour 77 ** 1967 All WR (HC) 768 (772) = 1967 All Cri R 477 (DB).

(2) The period of security is not suspended during the time the suspect is in jail or on bail. AIR 1937 Sind 26 (28) = 38 Cri L Jour 363 (DB).

(3) A subsequent sentence of imprisonment passed on the suspect will not affect the running of the period for which security is to be furnished. (1900-1902) 1 Low Bur Rul 14 (15).

(4) If a suspect is sentenced to imprisonment for an offence committed prior to the date of order for security under Section 118, the Magistrate cannot fix the date of the expiry of such sentence as the date for computing the period for which security is to be furnished. AIR 1926 Sind 273 (274, 275) = 27 Cri L Jour 865 (FB).

(5) Where the operation of an order to furnish security is stayed pending the decision of an appeal therefrom, and the appeal is ultimately dismissed, the date of commencement of the period for which security is required is the date of the decision in appeal. AIR 1938 Oudh 195 (197) = 39 Cri L Jour 831 ** 1969 BLJR 653 (655).

(6) The order requiring the execution of the bond under Section 118 should become operative where the original order is confirmed by the Court of Session in appeal or by the High Court in revision, from the date of the order of the Court of Session or of the Court of revision unless such Court expressly

121. Contents of bond.—The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

[1882 — S. 121; 1872 — S. 502, Para. 6; 1861 — S. 293.]

Section 120 — Note 4 (contd.)
fixes some other date for the order to come into operation. (1965) 1 Mys LJ 537 (539).

(7) Furnishing of security under Section 118 for good behaviour — Order — Expiry of period mentioned in the order—Execution of bond cannot be insisted upon nor can such person be detained in prison — Order omitting to specify the date by which the security was to be furnished — Period commences from the date of order. 1962 BLJR 849 (849).

SECTION 121 — SYNOPSIS

1. **What constitutes breach of the bond to keep the peace.**
2. **What constitutes a breach of the bond for good behaviour.**
3. **"Wherever it may be committed."**
4. **Breach of bond executed by sureties.**
5. **Amount of surety's bond.**
6. **Construction of bond**

1. What constitutes breach of the bond to keep the peace.— (1) Form No. 10 of Schedule V shows that the person ordered to give security to keep the peace should bind himself not to commit a breach of the peace or do any act that may probably occasion a breach of the peace. (1881) 2 Mad 169 (172) (DB).

[See (1869) 11 Suth WR (Cr) 52 (52) (DB).]

(2) An offence under Section 323 of the Penal Code involves a breach of the peace and the commission of such an offence will entail the forfeiture of a bond for keeping the peace. AIR 1938 Oudh 195 (196) = 39 Cri L Jour 831.

(3) Where the person bound over does not himself commit a breach of the peace, the bond will be forfeited if he has done any act which will probably occasion a breach of the peace. The word "probable" limits the forfeiture of the bond to cases in which a breach of the peace is the probable and not only a possible result of the act of the person bound. AIR 1914 Lah 393 (393, 394) = 15 Cri L Jour 605.

(4) In each case it is for the Court to judge of the character of the act which is alleged to be likely to cause a breach of the peace. (1869) 4 Mad HCR (App) xxxviii (xxxix).

(5) The mere fact that an offence has been committed by the person bound will not be a breach of the bond to keep the peace unless such offence causes or will probably occasion a breach of the peace. Thus, a conviction for theft or wrongful confinement and extortion unattended with any breach of the peace, or a secret attempt to poison a person, or the abduction of a woman will not be a breach of the bond to keep the peace. (1872) 18 Suth WR (Cr) 63 (63) (DB). (Theft.) ** (1878) 19 Suth WR (Cr) 48 (49) (DB). (Extortion). ** AIR 1914 Lah 393 393, 394) = 15 Cri L Jour 605. (Attempt to poison.) ** (1896) 4 Cri L Jour 278 (278) = 1906 Pun Re (Cr) No. 7. (Abduction.)

(6) It is not necessary that any offence should have been committed at all in order to entail a breach of the bond. (1881) 2 Mad 169 (173) (DB).

(7) Forfeiture of bond for keeping peace — A, B and some others were bound down, for keeping peace, for one year — Within one year all prosecuted under Sections 307/149, I. P. Code — A and B only convicted under Section 324 and others acquitted — A. B. and their sureties only could be held liable for default and their bonds could be forfeited and not of acquitted persons and their sureties. AIR 1967 All 580 (585) = 1967 All LJ 638 = 1967 Cr LJ 1588 (DB).

(8) The mere filing of a civil suit will not entail a forfeiture of the bond. Where some Hindus who were bound over to keep the peace under Sec. 107, owing to a dispute between them and certain Mahomedans regarding the location of a slaughter-house, brought a civil suit for an injunction, it was held that the institution of the suit, though provocative, would not justify a forfeiture of the bond. AIR 1920 Lah 440 (443) = 21 Cri L Jour 702.

(9) It is immaterial, in order to constitute a breach of the bond, whether the person bound over did the act, involving such breach himself, or instigated others to do it. ('81) 2 Mad 169 (173) (DB).

(10) It is immaterial whether he committed the breach in respect of the person at whose instance the bond was taken, or in respect of any other person. ('71) 15 Suth WR (Cr) 14 (14) = 6 Beng LR (App) 66 (DB).

(11) The mere fact that the person bound over acted as a "muktear" of one of two parties for whose benefit the breach of peace took place, will not con-

Section 121 — Note 1 (contd.)
stitute a breach of the bond. ('69) 11 Suth WR (Cr) 52 (52) (DB) ** ('10) 11 Cri L Jour 252 (252) = 1910 Pun Re (Cr) No. 5.

(12) Sacrifice of a cow by Mahomedans in open space was held, in the circumstances of the case, to be a wrongful act within the meaning of Section 298, Penal Code and that the bond for keeping the peace could be forfeited. AIR 1937 Lah 717 (718) = 39 Cri L Jour 23.

2. What constitutes a breach of the bond for good behaviour.— (1) In the case of a bond executed by a person binding himself to be of good behaviour, there will be a breach of the bond only if he commits, or attempts to commit, or abets the commission of any offence punishable with imprisonment. 1957 Cri L Jour 164 (Pr. 3) = ILR (1956) Trav-Co 812.

(2) The commission of an offence of hurt or grievous hurt, or of assault, or of criminal trespass, or of an offence under the Gambling Act, or of an offence under the Excise and Opium Acts would amount to a breach of the bond for good behaviour. AIR 1924 Lah 262 (263) = 25 Cri L Jour 1131. (Conviction under Section 223, I. P. C. — **Overruled** on another point in AIR 1937 Lah 133 = 38 Cri L Jour 420.) ** AIR 1914 Lah 563 (564) = 16 Cri L Jour 449 (DB). (Conviction under Section 325, I. P. C.) ** 1889 Pun Re (Cr) No. 11, p. 55 (56) (DB). (Assault.) ** (1906) 3 Cri L Jour 456 (457) = 28 All 629. (Criminal trespass.) ** AIR 1930 Lah 227 (227) = 31 Cri L Jour 130. (Conviction under Section 452, I. P. C.) ** (1906) 3 Cri L Jour 91 (92) (All). (Conviction for gambling in public place.) ** AIR 1936 Pesh 16 (17) = 37 Cri L Jour 342 (DB). (Excise offence.)

(3) The offence need not be ejusdem generis with that for which the person was bound over. When once a bond has been taken for good behaviour, the reasons leading up thereto are no longer relevant when there is a breach of the bond. AIR 1928 All 232 (233) = 30 Cri L Jour 203 ** 1967 Cri L Jour 164 (Pr. 3) = ILR (1956) Trav-Co 812 ** AIR 1936 Pesh 16 (17) = 37 Cri L Jour 342 (DB).

[But see AIR 1914 Lah 563 (564) = 16 Cri L Jour 449 (DB) ** (1913) 14 Cri L Jour 575 (576) = 1913 Pun Re (Cr) No. 15.]

(4) It is not necessary that for the forfeiture of the bond, the person executing the same need be convicted of offence. (1923) 73 Ind Cas 332 (333) = 24 Cri L Jour 588 (Pesh) ** AIR 1928 All 232 (233) = 30 Cri L Jour 203.

(5) There will be no breach of the bond where no offence has been committed. Thus, a bond cannot be forfeited in the following cases:

(a) where the person bound over was found in possession of costly clothes for which he could not satisfactorily account but there was no proof that he had actually stolen them: (1902) 2 Weir 57 (57).

(b) where he was found in joint possession of counterfeit jewellery with his companions. (1910) 11 Cri L Jour 252 (252) = 1910 Pun Re (Cr) No. 5.

(c) where he was found concealing himself under suspicious circumstances in a lonely and abandoned watermill and was unable to give a satisfactory explanation of himself: AIR 1932 All 58 (58) = 33 Cri L Jour 281 (DB).

(d) where there was only a suspicion of his having committed some offence for which he was ordered to furnish security a second time: (1892-1896) 1 Upp Bur Rul 20.

(6) There can be no breach of the bond where the offence complained of was committed prior to the date on which the bond was executed. AIR 1914 Lah 393 (393, 394) = 15 Cri L Jour 605 ** (1923) 73 Ind Cas 332 (333) = 24 Cri L Jour 588 (Pesh).

3. "Wherever it may be committed."— (1) The words "wherever it may be committed" do not apply to bonds for keeping the peace. In such cases, the bond is forfeited only if the breach of peace is committed within the jurisdicton of the Magistrate who ordered the execution of the bond. AIR 1953 All 619 (Pr. 4) = 1953 Cri L Jour 1392 ** AIR 1943 Pesh 41 (42) = 44 Cri L Jour 478.

[But see (1869) 2 Beng LR (App Cr) 11 (12) (DB).]

(2) A bond for good behaviour will be forfeited wherever the offence is committed. Such offence should, however, be in respect of Government or the citizens of India. AIR 1918 Lah 13 (13) = 19 Cri L Jour 924 (DB).

(3) If the offence was committed in a Native State against a British subject it was held to amount to a breach of the bond. (1910) 11 Cri L Jour 635 (636) = 1910 Pun Re (Cr.) No. 28 (DB).

4. Breach of bond executed by sureties.— (1) A breach of the surety bond for good behaviour is committed when the person bound commits or attempts to commit or abets the commission of any offence punishable with imprisonment. AIR 1936 Pesh 16 (17) = 37 Cri L Jour 342 (DB) ** AIR 1932 All 58 (58) = 33 Cri L Jour 281 (DB).

5. Amount of surety's bond.— (1) A surety cannot be required to execute a bond for an amount greater than that for which the principal is required to

*[122. **Power to reject sureties.**—(1) A Magistrate may refuse to accept any surety offered, or may reject any surety previously accepted by him or his predecessor under this Chapter on the ground that such surety is an unfit person for the purposes of the bond† :

Provided that, before so refusing to accept or rejecting any such surety, he shall either himself hold an inquiry on oath into the fitness of the surety, or cause such inquiry to be held and a report to be made thereon by a Magistrate subordinate to him.

(2) Such Magistrate shall, before holding inquiry, give reasonable notice to the surety and to the person by whom the surety was offered and shall in making the inquiry record the substance of the evidence adduced before him.

Section 121 — Note 5 (contd.)

execute a bond. 1893-1900 Low Bur Rul 187 (187).

6. Construction of bond.— (1) The terms of a penal bond such as a bond to keep the peace or for good behaviour must be construed literally and strictly. AIR 1918 Lah 13 (13) = 19 Cri L Jour 924 (DB).

(2) If by mistake a bond for good behaviour is taken, instead of one for keeping the peace, from a person who is ordered to furnish security to keep the peace, the bond is invalid and cannot be forfeited, as the two bonds are different in their nature and scope. (1875) 23 Suth WR (Cr) 1 (1) (DB).

(3) Where a bond for keeping the peace is taken instead of one for good behaviour, the bond is invalid and cannot be forfeited. 1903 Pun Re (Cr) No. 32, p. 78 (81) = 1 Cri L Jour 90.

SECTION 122 — SYNOPSIS

1. **"Magistrate."**
2. **Discretion of Court in refusing or rejecting sureties as unfit.**
3. **Grounds of rejection of surety.**
4. **Enquiry on oath.**
5. **Several sureties — Enquiry as to fitness**
6. **Notice to parties.**
7. **"After considering the evidence so adduced."**
8. **Recording his reasons.**
9. **Order refusing to accept or rejecting surety.**
10. **Opportunity to furnish fresh security on rejection of surety offered.**
11. **Power of the District Magistrate to reject sureties accepted by subordinate Magistrates.**
12. **Revision.**

1. "Magistrate."— (1) The word "Magistrate" means the Magistrate who passed the order under Sections 112 and 118, and includes his successor in office. (1911) 12 Cri L Jour 410 (410, 411) = 5 Sind LR 87 (DB).

2. Discretion of Court in refusing or rejecting sureties as unfit.— (1) The word "may" shows that the Magistrate has a discretion in the matter of refusing to accept or of rejecting a surety. (1908) 10 Cri L Jour 225 (226) = 2 Sind LR 11 (DB) ** AIR 1923 Oudh 165 (166) = 24 Cri L Jour 795 (DB).

(2) The discretion is not arbitrary or absolute but a judicial one. (1908) 10 Cri L Jour 225 (226) = 2 Sind LR 11 (DB) ** AIR 1914 All 489 (489) = 16 Cri L Jour 54 ** AIR 1914 Cal 626 (627) = 15 Cri L Jour 169 (DB) ** AIR 1914 Lah 492 (493) = 16 Cri L Jour 337 ** (1906) 4 Cri L Jour 169 (169, 170) (DB) (Cal).

[See also (1910) 11 Cri L Jour 23 (25) = 37 Cal 91 (DB).]

(3) The section requiries the Magistrate to hold an independent inquiry into the matter. AIR 1914 All 489 (489) = 16 Cri L Jour 54 ** AIR 1935 All 517 (518) = 36 Cri L Jour 1285.

(4) In the exercise of his discretion the Magistrate should not demand impossible conditions to be satisfied. AIR 1920 Bom 292 (293) = 21 Cri L Jour 377 (DB) ** AIR 1925 Sind 57 (58) = 25 Cri L Jour 1226 (DB).

3. Grounds of rejection of surety.— (1) Where a surety is offered in pursuance of the order made under Sec. 112 or Section 118 the Court can reject him on the ground that he is unfit for the purposes of the bond. (1908) 8 Cri L Jour 166 (168) = 1 Sind LR 46 (DB) ** (1874) 22 Suth WR (Cr) 37 (39) (DB).

(2 A surety offered may be unfit for any of the following reasons —

(a) A surety who is himself a suspect or a man of bad character, or is an inhabitant of a village notorious for its bad characters, may be rejected on the ground of unfitness. (1910) 11 Cri L Jour 392 (392) = 37 Cal 446 (DB). (Bad character.) ** (1906) 3 Cr L Jour 468 (468) (DB) (Cal). (Bad character.) ** (1910) 11 Cri L Jour 198 (199) = 3 Sind LR 168 (DB). (Residence of village notorious for bad characters.)

(b) The mere fact that the surety was once challaned for theft, or even the fact that he was once convicted for an offence under the Penal Code cannot be regarded as rendering him unfit for ever to be a surety. AIR 1920 All 170 (170) = 21 Cri L Jour 365 ** AIR 1921

(3) If the Magistrate is satisfied, after considering the evidence so adduced either before him or before a Magistrate deputed under sub-section (1), and the report of such Magistrate (if any) that the surety is an unfit person for the purposes of the bond, he shall make an order refusing to accept or rejecting, as the case may be, such surety and recording his reasons for so doing:

Provided that, before making an order rejecting any surety who has previously been accepted, the Magistrate shall issue his summons or warrant, as he thinks fit, and cause the person for whom the surety is bound to appear or to be brought before him.]

[1882 — S. 122; 1872 — S. 516; 1861 — Nil.]

[*] Substituted for the original section by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 20.

[†] This section shall, so far as may be, apply in the case of bonds and sureties given under the Probation of Offenders Act, 1958 (XX of 1958)—see Sec. 10 of that Act; see also Bom. Act XIX of 1938, Sec. 9; Mad. Act III of 1937, S. 8; U. P. Act VI of 1938, S. 8 and W. B. Act XXXVIII of 1954, S. 8, for similar provisions.

Section 122 — Note 3 (contd.)
Cal 356 (356) = 22 Cri L Jour 483 (DB) ** (1904) 1 Cri L Jour 190 (191) = 26 Cri All 371 (DB).

(c) That the surety is not solvent enough to be able to pay the penalty in case there is a breach of the bond is a ground for his rejection. (1910) 11 Cri L Jour 392 (392) = 37 Cal 446 (DB).

(d) The solvency must be considered with reference to his properties both moveable and immovable. AIR 1916 Cal 348 (348) = 17 Cri L Jour 91 (DB). (Person bound down under S. 109.)

(e) The mere fact that the surety has not got sufficient moveable property (though he has got sufficient immovable property) and that in case there is a breach of the bond the amount cannot under Section 514 be recovered only from his moveable property, is not a valid ground for rejecting a surety. AIR 1916 Cal 908 (908, 909) = 17 Cri L Jour 97 (DB) ** AIR 1918 All 182 (182) = 19 Cri L Jour 711.

(f) Surety may be rejected on ground that he is not in a position to influence and control the actions of the persons for whom he is standing as surety. (1908) 8 Cri L Jour 166 (168) = 1 Sind LR 46 (DB) ** (1906) 3 All L Jour 129n (129n) ** AIR 1914 Cal 626 (627) = 15 Cri L Jour 169 (DB) ** AIR 1917 Cal 209 (210) = 18 Cri L Jour 453 (DB).

[See also AIR 1914 All 487 (488) = 15 Cri L Jour 727.]

[But see (1908) 7 Cri L Jour 439 (440) = 35 Cal 400 (DB). **(Dissented from in AIR 1914 Cal 626 = 15 Cri L Jour 169.)** ** (1910) 11 Cri L Jour 392 (392) = 37 Cal 446 (DB). (Do.) ** (1909) 9 Cri L Jour 256 (256) = 1 Sind LR 14 (DB) AIR 1917 Cal 378 (379) = 18 Cri L Jour 408 (DB).]

(3) The object of requiring security in these cases is not to fill jails with bad characters, or to obtain money for the Government by the forfeiture of recognizance, but to bring reasonable pressure on the suspects to respect the law and to ensure that they shall be of good behaviour. AIR 1914 Lah 492 (493) = 16 Cri L Jour 337 ** 1895 All WN 143 (143, 144) (DB) ** (1898) 20 All 206 (207).

(4) A surety executing a bond in terms of Form No. 11, Schedule V, in fact undertakes thereby to guarantee the good conduct of his principal, and his fitness to stand as surety must accordingly be judged from his standpoint also, and not merely from the standpoint of his pecuniary fitness alone. (1908) 8 Cri L Jour 166 (168) = 1 Sind LR 46 (DB) ** (1910) 11 Cri L Jour 392 (392) = 37 Cal 446 (DB) ** (1908) 8 Cri L Jour 388 (389, 390) (DB) (Cal).

(5) The control which a surety is expected to exercise over his principal is moral control and not a physical control. See AIR 1914 Sind 13 (14) = 16 Cri L Jour 100 (DB).

(6) If a surety is living at such a distance that he will not be able to have control over accused, he may be rejected as unfit. AIR 1953 Cal 238 (Pr. 3) = 1953 Cri L Jour 574 (DB) ** (1898) 20 All 206 (207) ** AIR 1924 Oudh 80 (80) = 25 Cri L Jour 296.

(7) The mere fact that the surety is living at a distance is not by itself sufficient to conclude that he will not be able to have any control or influence over the accused, and cannot render the surety offered unfit. (1913) 14 Cri L Jour 214 (214) (All) ** AIR 1924 Oudh 80 (80) = 25 Cri L Jour 296 ** AIR 1918 All 108 (108) = 19 Cri L Jour 441

Section 122 — Note 3 (contd.)
** (1906) 3 Cri L Jour 468 (468) (DB) (Cal).

[See AIR 1916 Cal 360 (361) = 17 Cri L Jour 95 (DB).]

(8) The Court has to look into all the circumstances of each case on its own merits and come to a judicial conclusion as to whether the distance under the circumstances of the case is such that the surety cannot have any influence or control over the accused. AIR 1920 Bom 292 (293) = 21 Cri L Jour 377 (DB) ** (1910) 14 Cal WN clix (clix).

(9) Where the sureties, though living at a distance, were prepared to take the suspects as their tenants and would therefore have an opportunity of preventing them from getting into mischief, it was held that the sureties should be accepted. AIR 1920 Bom 292 (293) = 21 Cri L Jour 377 (DB) ** AIR 1928 Pat 374 (375) = 30 Cri L Jour 45.

(10) Where the surety undertook to live with the accused in their village and to keep them within his observation, it was held that he might be accepted. AIR 1923 Oudh 165 (166) = 24 Cri L Jour 795 (DB).

(11) Where the sureties offered are solvent and respectable and no other ground of unfitness is shown, they should be accepted. (1928) 29 Cri L Jour 842 (843) (DB) (Cal) ** (1910) 11 Cri L Jour 392 (392) = 37 Cal 446 (DB).

(12) The following grounds are not valid grounds for rejecting a surety as unfit :—

(a) that he is a relation of the suspect or belongs to his caste. (1906) 3 Cri L Jour 468 (468) (DB) (Cal). (Relation.) ** (1902) 25 All 131 (132). (Do.) ** AIR 1914 Lah 492 (493) = 16 Cri L Jour 337. (Relationship.) ** (1909) 9 Cri L Jour 247 (248) = 1 Sind L R 3 (DB). (Do.) ** (1906) 4 Cri L Jour 169 (169) (DB) (Cal). (Do.) ** AIR 1920 All 309 (309) = 22 Cri L Jour 22. (Do.) ** AIR 1914 Sind 13 (14) = 16 Cri L Jour 100 (DB). (Member of caste.) ** (1910) 11 Cri L Jour 23 (25) = 37 Cal 91 (DB). (Do.)

(b) that he is a friend of the suspect and rendered him help in his defence in the proceedings against him. AIR 1918 All 108 (108, 109) = 19 Cri L Jour 441 ** AIR 1920 All 309 (309) = 22 Cri L Jour 22.

(c) that he belongs to a particular political party. AIR 1925 Rang 353 (353) = 27 Cri L Jour 318.

(d) that he was already a surety for another person. AIR 1924 Oudh 132 (133) = 24 Cri L Jour 517.

(e) that he looks young or is an old man. AIR 1921 Oudh 229 (229) = 24 Oudh Cas 292. (Youth of surety.) ** (1908) 8 Cri L Jour 166 (169) = 1 Sind LR 46 (DB). (Surety old in age.)

4. Enquiry on oath.— (1) The section only provides a procedure to be followed by a Magistrate in the case of the rejection of a surety. There is nothing to prevent a Magistrate from accepting persons as sureties without any inquiry on oath. AIR 1937 Cal 233 (233) = 38 Cri L Jour 635 (DB).

5. Several sureties — Enquiry as to fitness.— (1) Where there are a number of sureties for different accused persons the fitness of each surety should be separately determined. A general order without investigation of the circumstances of each of the sureties is not contemplated by law. AIR 1917 Cal 378 (379) = 18 Cri L Jour 408 (DB).

6. Notice to parties.— (1) Since the enquiry into the fitness of a surety is a judicial proceeding, it is necessary that the surety and the person bound over should be given reasonable notice thereof in order to give them a reasonable opportunity of controverting the reasons alleged for rejecting the surety. (1904) 1 Cri L Jour 459 (461) = 7 Oudh Cas 113 (DB) ** (1910) 11 Cri L Jour 243 (243) (DB) (Cal) ** (1912) 13 Cri L Jour 760 (762) = 15 Oudh Cas 263.

7. "After considering the evidence so adduced."— (1) A report by the police as to the sufficiency or otherwise of a surety is not legal evidence on which the Court could come to a conclusion, as to the fitness of a surety. AIR 1935 Pat 421 (422) = 36 Cri L Jour 1473 ** (1910) 11 Cri L Jour 497 (498) = 4 Sind LR 18 (DB) ** AIR 1915 All 177 (177) = 16 Cri L Jour 445.

(2) If the Magistrate wants to consider the information contained in the police report, he should examine the officer that made the report as a witness before him allowing the sureties and the person offering the security to cross-examine him as to the contents of the report. (1908) 8 Cri L Jour 344 (346) = 11 Oudh Cas 267.

(3) Since the sureties are not themselves accused under Section 110, evidence of general repute should not be allowed as against the sureties in an enquiry as to their fitness. AIR 1922 Oudh 227 (227) = 23 Cri L Jour 639. (Hearsay evidence.)

(4) The onus of showing that a surety is a fit person to be accepted is on the person called upon to give security. (1911) 12 Cri L Jour 410 (410) = 5 Sind LR 87 (DB).

(5) If the Magistrate is not satisfied with the evidence of the surety, he must not reject the surety but call for further evidence because the reason given by him for rejecting must be a positive reason for believing the surety to be unfit.

123. Imprisonment in default of security.—(1) If any person ordered to give security under Section 106 or Section 118 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison be detained in prison until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it.

(2) **Proceedings when to be laid before High Court or Court of Session.**—When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give

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Section 122 — Note 7 (contd.)
AIR 1914 Sind 15 (16) = 16 Cri L Jour 479 (DB).

(6) Since the proceedings are judicial proceedings the Magistrate cannot decide without taking evidence, on the ground that no evidence but that of a particular class of witnesses will satisfy him. (1911) 12 Cri L Jour 410 (410) = 5 Sind LR 87 (DB).

(7) A Magistrate cannot import his personal knowledge into the proceeding and reject the sureties merely on his personal knowledge. AIR 1914 Sind 108 (108) = 15 Cri L Jour 378 (DB).

(8) Criminal Courts should not act merely on the certificate of a pleader as to the fitness of a surety. AIR 1934 Sind 142 (143) = 35 Cri L Jour 1455 (DB).

8. Recording his reasons.— (1) The Magistrate refusing to accept or rejecting a surety under this section should record his reasons in writing. AIR 1920 Bom 292 (293, (294) = 21 Cri L Jour 377 (DB) ** (1910) 11 Cri L Jour 243 (243) (DB) (Mad).

(2) The intention of the Legislature in insisting that a Magistrate should record his reasons in refusing to accept a surety is that the Magistrate should exercise his independent judgment in the matter. (1906) 4 Cri L Jour 169 (169) (DB) (Cal).

9. Order refusing to accept or rejecting surety.— (1) An order rejecting or refusing to accept a surety should be passed within a reasonable time so as to give the persons proceeded against an opportunity to furnish fresh sureties. AIR 1925 Rang 353 (353) = 27 Cri L Jour 318.

10. Opportunity to furnish security on rejection of surety offered.— (1) Where upon enquiry a Magistrate refuses to accept or reject, already accepted sureties he should afford to the person called on to furnish security a reasonable opportunity to furnish other suitable sureties. AIR 1917 All 215 (216) = 18 Cri L Jour 1039 ** AIR 1925 Rang 353 (353) = 27 Cri L Jour 318.

11. Power of the District Magistrate to reject sureties accepted by subordinate Magistrates.— (1) When a subordinate Magistrate passes an order calling for security and accepts the sureties offered, the District Magistrate cannot reject them and cancel their bonds. If he wants to pass orders himself he should regularly transfer the case to his own Court and then proceed under this section. 1895 All WN 143 (143) (DB) ** (1911) 12 Cri L Jour 480 (481) (All).

12. Revision.— (1) The discretion given to a Magistrate under this section to refuse a surety is a wide one and the High Court will not interfere lightly with any reasonable exercise of the same. AIR 1914 All 487 (488) = 15 Cri L Jour 727.

(2) Where the Magistrate has based his discretion not on any independent enquiry by him or on any legal evidence but on some police report, the High Court will set aside the order on the ground that the Court failed to exercise the discretion judicially. AIR 1914 All 489 (489, 490) = 16 Cri L Jour 54 ** (1904) 1 Cri L Jour 459 (461) = 7 Oudh Cas 113 (DB) ** (1909) 10 Cri L Jour 230 (231) = 2 Sind LR 15 (DB) ** (1907) 5 Cri L Jour 179 (180) (Lah).

[See (1907) 5 Cri L Jour 181 (181) (Lah).]

(3) Where the Magistrate has refused to accept sureties on invalid and unreasonable grounds the order will be set aside in revision. (1906) 3 Cri L Jour 468 (468) (DB) (Cal) ** AIR 1924 Oudh 132 (133) = 22 Cri L Jour 517 ** (1928) 29 Cri L Jour 842 = 48 Cal L Jour 143 (146) (DB) ** AIR 1921 Cal 356 (356) = 22 Cri L Jour 483 (DB) ** AIR 1917 Cal 209 (210) = 18 Cri L Jour 453 (454) (DB) ** (1910) 11 Cri L Jour 243 (243) (DB) (Cal).

[See (1910) 11 Cri L Jour 497 (497, 498) = 4 Sind LR 18 (DB).]

(4) Orders refusing to accept sureties will be set aside in revision where the Magistrate has not given any reason for the order at all. (1909) 13 Cal WN xxvii.

SECTION 123 — SYNOPSIS

1. **Scope.**
2. **"Does not give such security."**
3. **"Shall be . . . .committed to prison."**
4. **"Or, if he is already in prison."**
5. **Term of imprisonment.**
6. **Sub-section (2) — Detention pending orders of Sessions Court, etc.**

such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge or, if such Magistrate is a Presidency Magistrate,* pending the orders of the High Court; and the proceedings shall be laid, as soon as conveniently may be, before such Court.

(3) Such Court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit:

Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

†[(3A) If security has been required in the course of the same proceedings from two or more persons in respect of any one of whom the proceedings are referred to the Sessions Judge or the High Court under sub-section (2), such reference shall also include the case of any other of such persons who has been ordered to give security, and the provisions of sub-sections (2) and (3) shall, in that event, apply to the case of such other person also, except that the period (if any) for which he may be imprisoned shall not exceed the period for which he was ordered to give security.

(3B) A Sessions Judge may in his discretion transfer any proceedings laid before him under sub-section (2) or sub-section (3A) to an Additional Sessions Judge or Assistant Sessions Judge and upon such transfer, such Additional Sessions Judge or Assistant Sessions Judge may exercise the powers of a Sessions Judge under this section in respect of such proceedings.]

Section 123 — Synopsis (contd.)

7. Nature of the proceedings on reference.

8. Notice to person proceeded against.

9. Discretion of Court on reference.

10. Power to order retrial and remand.

11. Order, contents of.

12. Jurisdiction of Magistrate after reference to accept security.

13. Order for imprisonment on reference — Commencement of.

14. "Shall not exceed three years."

15. Appeal and revision.

16. Kind of imprisonment.

17. Tender of security to jail officer — Sub-section (4).

18. Detention in Borstal School.

1. Scope.— (1) The purpose of security sections is not that in prescribing imprisonment in default of security a person should be punished for not being able to do so, but that the safeguard which the security was intended to provide for should be provided for by his detention in custody. AIR 1928 Lah 64 (65) = 29 Cri LJ 236 ** (1893) 6 CPLR (Cr) 13 (14).

(2) Any attempt, to use the section for punishment of past offences is wrong. (1884) 7 All 67 (72) (DB).

(3) A person imprisoned under this section is not imprisoned for any offence AIR 1921 All 281 (281) = 21 Cri LJ 831.

(4) A youth ordered to be imprisoned under Section 123 cannot be sent under Section 399 to a reformatory school. (1893) 6 CPLR (Cr) 13 (14) ** (1900-02) 1 Low Bur Rul 42 (42).

(5) Where a person is ordered to give security under Section 106 the imprisonment in default does not form part of the substantive sentence so as to give the accused a right of appeal where none existed. (1904) 1 Cri LJ 1054 (1055) = 7 Oudh Cas 338.

(6) The section does not apply to persons ordered to give security under Section 562. AIR 1925 Rang 42 (43) = 26 Cri LJ 285.

(7) The provisions of this section which provide for detention for failure to give security which is ordered after full enquiry is not the kind of detention referred to in Article 22 (4) of the Constitution of India and as such the section is not ultra vires the Constitution. AIR 1956 Mad 292 (293) = 1956 Cri LJ 750 ** AIR 1953 All 753 (754) = 1953 Cri LJ 1759 (DB) ** AIR 1957 Andh Pra 268 (271) = 1957 Cri LJ 826 ** AIR 1957 Andh Pra 90 (93) = 1957 Cri LJ 624.

(8) Security to keep peace — Order under Section 112 is a condition precedent to take further proceedings under Chapter VIII. AIR 1967 Delhi 31 (34) = 1967 Cri LJ 865.

2. "Does not give such security."— (1) Imprisonment under this section cannot be awarded in anticipation of default being made in the furnishing of the required security. AIR 1936 Nag 265 (265, 266) = 38 Cri LJ 388 ** (1906) 5 Cri LJ 148 (151) = 1906 Pun Re (Cr) No. 18 ** AIR 1948 Pat 84 (85) = 48 Cri LJ 409.

(4) If the security is tendered to the officer in charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of such Court or Magistrate.

(5) **Kind of imprisonment.**—Imprisonment for failure to give security for keeping the peace shall be simple.

(6) Imprisonment for failure to give security for good behaviour ‡[shall, where the proceedings have been taken under Section 108 §[° °] be simple and, where the proceedings have been taken under °†[Section 109 or] Sec. 110], be rigorous or simple as the Court or Magistrate in each case directs.

[1882 — S. 123; 1872 — S. 489 Para. 3, Ss. 490, 497, 498, 499 Para. 3 and Ss. 507, 508 and 510; 1861 — Ss. 281, 288, 289, 290, 298, 299 and 301.]

[*] Magistrates in the City of Ahmedabad have the powers and exercise the jurisdiction of a Presidency Magistrate—see Guj. Act XIX of 1961, S. 14 (3).

[†] Sub-sections (3A) and (3B) were inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 21.

[‡] Substituted for 'may', ibid.

[§] The words and figures "or Section 109" were repealed by the Code of Criminal Procedure (Second Amendment) Act, 1926 (X of 1926), S. 2.

[°†] Inserted, ibid.

Section 123 — Note 2 (contd.)

[But see AIR 1953 All 753 (754) = 1953 Cri LJ 1759 (DB).]

(2) The accused should be afforded a fair chance at least of complying with the required condition of security. 1895 Rat 774 (775) (DB) ** (1872) 16 Bom 372 (373) (DB).

(3) Where after furnishing security the person bound down commits an offence rendering his bond liable to forfeiture, the Magistrate has no authority to order the offender to be imprisoned for the remainder of the term of the security. (1897-1901) 1 Upp Bur Rul 26 (26).

3. "shall be . . . committed to prison"—(1) Imprisonment under this section commences from the date fixed for giving security. (1903) 5 Bom LR 26 (27).

(2) A warrant for the detention in prison of the person ordered to give security can only be issued where the security is not furnished, on the commencement of the period of such security. 1889 Rat 432 (432) (DB).

(3) A committal to prison for default in furnishing security should be made on the date on which the period of security commences and not later. (1909) 10 Cri LJ 481 (481) (DB) (Mad) ** AIR 1923 Oudh 44 (45) = 22 Cri LJ 766.

(4) An order for imprisonment under this section is a sentence of imprisonment within the meaning of Section 8 of the Madras Borstal Schools Act, 5 of 1926. AIR 1934 Mad 457 (457, 458) = 35 Cri LJ 1153.

4. "Or, if he is already in prison".—(1) Where an order for security is contemporaneous with a conviction and sentence of imprisonment, the sentence for the substantive offence is to be carried out first and the person to be bound then brought up for the purpose of being bound. (1875) 24 Suth WR (Cr) 13 (14) (DB).

[But see (1871) 3 NWPHCR 126 (128).]

(2) Imprisonment for default in furnishing security should not be ordered to run concurrently with some other sentence that the accused is already undergoing. AIR 1916 Mad 534 (534) = 16 Cri LJ 272 ** AIR 1941 Sind 190 (190, 191) = 43 Cri LJ 105 (DB) ** AIR 1926 Bom 545 (545) = 27 Cri LJ 1163 (DB) ** AIR 1916 Low Bur 1 (2) = 17 Cri LJ 88 (FB).

[But see (1908) 7 Cri LJ 472 (476) = 4 Low Bur Rul 205 (FB) ** (1909) 10 Cri LJ 69 (1872-1876) 5 Low Bur Rul 34 (FB).]

(3) The accused should be given all facilities for furnishing security, but he need not be produced before the Magistrate if he informs the jail authorities that he is unable to furnish the required security. AIR 1926 Bom 545 (546) = 27 Cri LJ 1163 (DB) ** AIR 1927 Sind 166 (167) 28 Cri LJ 431 (DB) ** (1890) Rat 511 (511) (DB).

5. Term of imprisonment. — (1) The term of imprisonment should be the same as that for which security is demanded. (1901) 23 All 422 (423) (DB) ** (1908) 7 Cri LJ 412 (414) = 4 Low Bur Rul 135 ** AIR 1930 Lah 49 (49) = 31 Cri LJ 583.

(2) If the Magistrate thinks that the term ought to be shortened the proper course for him is to report the matter to the District Magistrate for action under Section 124. 1893 Rat 668 (668) (DB).

(3) Imprisonment commences from the date on which security is to be given and lasts until such period expires or until, within such period, the required securty is given. (1903) 5 Bom LR 26

Section 123 — Note 5 (contd.)

(27) ** AIR 1969 J & K 105 (108) = 1969 Cri LJ 1139 ** 1962 BLJR 849 (849). (Furnishing of security under Section 118 for good behaviour — Order — Expiry of period mentioned in the order — Execution of bond cannot be insisted upon nor can such person be detained in prison.)

(4) A Magistrate has no power to keep a man in prison after the date on which the period for which the security was ordered has expired. (1912) 13 Cri JL 62 (62) (Upp Bur).

(5) Where a bond is executed after the date on which the period for security commences, it should plainly state the date on which the period expires. (1912) 13 Cri LJ 62 (62). (Upp Bur).

(6) The order for imprisonment should run thus: "for one year or until such date within that period as the required security may be furnished." (1882) 8 Cal 644 (645) (DB) ** AIR 1927 Mad 976 (976) = 28 Cri LJ 1034 ** 1933 Mad WN 548 (549) (DB).

(7) The term of imprisonment which a Magistrate may order in default of security is not limited by the term of substantive imprisonment for which he is competent to sentence an offender. 1886 All WN 181 (181) ** AIR 1915 All 15 (15, 16) = 16 Cri LJ 350 ** AIR 1927 Mad 976 (976) = 28 Cri LJ 1034.

(8) In computing the period of imprisonment under this section, the period during which the person is released on bail should be deducted. AIR 1934 All 845 (845) = 36 Cri LJ 177.

[But see AIR 1936 Sind 125 (126) = 37 Cri LJ 1003 (DB) ** AIR 1924 Sind 120 (121) = 26 Cri LJ 179 (DB).]

6. Sub-section (2) Detention pending orders of Sessions Court, etc.— (1) A Magistrate demanding security for a term exceeding one year is empowered only to issue a warrant directing the person to be detained in prison pending the orders of the Sessions Judge or of the High Court as the case may be, and to submit his proceedings to such Court as soon as possible for orders. AIR 1945 Sind 55 (55) = ILR (1944) Kar 440 = 46 Cri LJ 553 (DB) ** (1908) 7 Cri LJ 427 (432) = 30 All 334 (FB) ** (1910) 11 Cri LJ 637 (637) = 1910 Pun Re (Cr) No. 29 ** (1908) 7 Cri LJ 412 (413) = 4 Low Bur Rul 135 ** 1960 Ker LR 105 (106) = 1960 Ker LT 54.

[See however 1903 All WN 28 (28) ** (1893) 6 CPLR (Cr) 27 (28).]

(2) Order for a term of imprisonment for two years set aside in appeal and Magistrate decided to lay proceedings before Sessions Judge — Held Sessions Judge could fix the term. 1872-1892 Low Bur Rul 279 (279).

(3) A Magistrate cannot legally amalgamate proceedings started under Sections 109 and 110 and require the execution of two bonds for an aggregate period of 18 months and in default of the same being furnished commit the accused to 18 months' imprisonment. 1897 Rat 946 (947) (DB).

(4) Where a person ordered to give security for more than one year is at the time af such order undergoing sentence of imprisonment, it is premature to refer the matter to the Sessions Judge before expiry of the sentence of imprisonment he is undergoing. 1895 Rat 765 (766) (DB).

[But see (1909) 10 Cri LJ 69 (75, 76) = 5 Low Bur Rul 34 (FB).]

(5) Person sent to prison pending orders from Sessions Judge on reference — **Held** he was undergoing sentence and was not merely in detention. (1908) 7 Cri LJ 427 (431) = 30 All 334 (FB).

(6) Until a case is referred for final orders, proceedings in the Magistrate's Court are not terminated so as to end the liability of the sureties who had undertaken to be responsible for the attendance of an accused person in the Court of the Magistrate. AIR 1926 All 297 (297, 298) = 27 Cri LJ 377.

(7) If a person ordered to find a security for a period over one year does furnish such security, the section does not apply. In such a case it is the High Court alone that has powers of revision under Section 439, Criminal Procedure Code. AIR 1953 Pepsu 25 (Pr 1) = 1953 Cri LJ 407 (DB) ** AIR 1957 Pat 563 (563) = 1957 Cri LJ 1167 (DB) ** (1896) 23 Cal 621 (626, 627) (DB) ** AIR 1918 All 215 (216) = 19 Cri LJ 2.

(8) Where a Magistrate in Sonthal Parganas, demands a security for a term exceeding one year, reference to the Court of Session is competent. AIR 1948 Pat 84 (85) = 48 Cri LJ 409.

7. Nature of the proceedings on reference.— (1) The functions of the Sessions Judge before whom proceedings are laid under this section are more of an administrative than of a judicial character. AIR 1924 Sind 120 (120, 121) = 26 Cri LJ 179 (DB).

(2) The proceedings are not in the nature of an appeal. AIR 1924 Sind 120 (121) = 26 Cri LJ 179 (DB).

(3) The whole case is intended to be dealt with by the Sessions Judge as a Court of first instance. AIR 1932 Sind 88 (89) = 33 Cri LJ 898 (DB) ** AIR 1937 Sind 203 (203, 204) = 38 Cri LJ 961 (DB) ** (1908) 7 Cri LJ 412 (413) = 4 Low Bur Rul 135 ** AIR 1925 Oudh 517 (518) = 26 Cri LJ 656.

(4) The warrant following the order of the Sessions Judge should proceed

Section 123 — Note 7 (contd.)
from the Sessions Court itself. 1893-1900 Low Bur Rule 245 (246).

(5) The power to accept or reject sureties is vested in the Magistrate and that the Sessions Judge exercising jurisdiction under this section has no power to do so. AIR 1934 Cal 482 (487) = 35 Cri LJ 952 (DB).

8. Notice to person proceeded against. — (1) It is necessary in the ends of justice to give notice to the person proceeded against before any order prejudicial to him is passed. (1903) 25 All 375 (377) ** AIR 1933 Pat 276 (276) = 34 Cri LJ 813 (DB) ** AIR 1928 Lah 189 (190) = 28 Cri LJ 657 ** (1909) 10 Cri LJ 69 (72) = 5 Low Bur Rul 34 (FB). (Per Fox, C. J.)

9. Discretion of Court on reference.— (1) The Sessions Judge cannot decline to entertain a reference made to him on the ground that it is belated but should deal with the case on the merits. AIR 1920 Lah 283 (284) = 21 Cri LJ 623 ** (1911) 12 Cri LJ 257 (258) = 35 Bom 271 (DB).

(2) The Sessions Judge has a wide discretion to pass such orders as the circumstances of the case require. (1911) 12 Cri LJ 257 (258) = 35 Bom 271 (DB) ** AIR 1932 Sind 88 (89) = 33 Cri LJ 898 (DB) ** (1908) 7 Cri LJ 412 (413) = 4 Low Bur Rul 135.

(3) The Judge is bound to hear both sides, consider the evidence, if any, adduced by them and then pass orders on the merits. AIR 1924 Sind 120 (120) = 26 Cri LJ 179 (DB) ** (1910) 11 Cri LJ 637 (638) = 1910 Pun Re (Cri) No. 29.

(4) The Judge should examine the proceedings with a view to see whether they are according to law and procedure, whether the order for security is justified and if so for what period and in what sum security should be demanded. An order merely confirming that of the Magistrate is bad. 1872-92 Low Bur Rul 279 (279) ** AIR 1928 Lah 189 (190) = 28 Cri LJ 657 ** AIR 1924 Sind 120 (120) = 26 Cri LJ 179 (DB).

(5) The Judge should not merely find in general terms that it is in the interests of the community at large that the person proceeded against should be bound over to be of good behaviour. (1900) 27 Cal 656 (658) (DB).

(6) The Sessions Judge cannot pass an order for imprisonment for a period less than that for which security is called for. (1901) 23 All 422 (423) (DB).

(7) The Sessions Judge cannot pass an order that the person proceeded against should merely furnish sureties without himself giving a recognizance. (1904) 1 Cri LJ 897 (898) = 27 All 262.

10. Power to order retrial and remand. — (1) The Sessions Judge cannot remand the case for further inquiry. (1897) 24 Cal 155 (156) (DB).

(2) The Sessions Judge cannot order a retrial though he may, under S. 438, refer the case to the High Court for quashing proceedings or for ordering a retrial. AIR 1932 Sind 88 (89) = 33 Cri LJ 898 (DB).

(3) The Sessions Judge may require the Magistrate to furnish him with any further information or evidence. AIR 1925 Cal 191 (192) = 25 Cri LJ 1112 (DB) ** AIR 1945 Sind 55 (56) = ILR (1944) Kar 440 = 46 Cri LJ 553 (DB) ** AIR 1942 Sind 122 (127) = 44 Cri LJ 367 (DB).

(4) The successor of the Magistrate who heard the proceedings may be directed to record any further evidence which the Sessions Judge requires. AIR 1942 Sind 122 (130) = 44 Cri LJ 367 (DB).

11. Order, contents of.— (1) Where there are several persons proceeded against, each of them has a right to have his case considered on its own merits. (1910) 11 Cri LJ 23 (24) = 37 Cal 91 (DB).

12. Jurisdiction of Magistrate after reference to accept security.— (1) Where a case has been referred to the Sessions Judge under this section, the Magistrate is not competent thereafter to release the accused on bail. AIR 1928 Lah 189 (190) = 28 Cri LJ 657.

(2) The Sessions Judge has wide powers under Section 498 and can grant bail. AIR 1942 Sind 132 (133) = 44 Cri LJ 378 (DB) ** AIR 1923 Cal 723 (723) = 24 Cri LJ 953 (DB).

(3) Where pending a reference under this section to the Sessions Judge security is offered by the accused, it may be accepted by the Magistrate and on such acceptance, the reference automatically ceases. AIR 1928 Lah 64 (65) = 29 Cri LJ 236.

(4) There is a conflict of opinions as to whether when sureties are offered after an order is passed by the Sessions Judge on reference, the Magistrate has power to determine whether they are fit to be accepted.

(a) He cannot do so. (1911) 12 Cri LJ 410 (410, 411) = 5 Sind LR 87 (DB) ** (1903-1904) 2 Low Bur Rul 76 (78) (DB).

(b) He can, and the Sessions Judge has neither duty nor power to test the surety so offered. AIR 1937 Cal 233 (233) = 38 Cri LJ 635 (DB) ** AIR 1934 Cal 482 (487) = 35 Cri LJ 952 (DB) ** AIR 1930 Pat 217 (219) = 31 Cri LJ 802 (DB).

13. Order for imprisonment on reference — Commencement of.— (1) Person ordered by Magistrate to be detained

STATE AMENDMENT

Section 123A

Uttar Pradesh

In its application to the whole State of Uttar Pradesh, the following new section has been added after Section 123:

> **123A.* Imprisonment in default of security.**—(1) If any person ordered to give security for any specified period under any enactment for the time being in force for the due performance or enforcement of any restriction or condition which may lawfully be imposed under such enactment, does not give such security on or before the date on which the security is required to be furnished, he shall, if the failure to perform or enforce the restriction or condition is punishable with imprisonment under such enactment, be committed to prison or

Section 123 — Note 13 (contd.)

in prison pending orders of Sessions Judge on reference later ordering him to imprisonment for failure to give security, period of imprisonment runs from date of Magistrate's order for detention. AIR 1931 Oudh 387 (388) = 32 Cri LJ 1186 ** AIR 1954 Trav-Co 236 (237) = ILR (1953) Trav-Co 820 = 1954 Cri LJ 640 ** AIR 1924 Sind 120 (121) = 26 Cri LJ 179 (DB).

14. "Shall not exceed three years".—(1) When a Magistrate detains a person in prison under sub-section (2) pending the orders of the Sessions Judge, the order of the Sessions Judge for imprisonment for three years should have effect from the date of the order of the Magistrate. (1908) 7 Cri LJ 427 (436) = 30 All 334 (FB) ** AIR 1954 Trav-Co 236 (237) = ILR (1953) Trav-Co 820 = 1954 Cri LJ 640 ** AIR 1931 Oudh 387 (388) = 32 Cri LJ 1186.

15. Appeal and revision.— (1) No appeal lies from an order of imprisonment in default of furnishing security, or from an order passed by the Sessions Judge. But such an order is open to revision by the High Court. AIR 1935 Rang 363 (363) = 36 Cri LJ 1510 ** (1883) 9 Cal 878 (879) (DB) ** (1866) 6 Suth WR (Cr) 18 (18) (DB) ** (1904) 1 Cri LJ 710 (711, 712) = 27 All 92.

(2) A District Magistrate is not competent under Section 438 to refer to the High Court a case in which a Sessions Judge has refused to confirm an order for security. (1896) 23 Cal 249 (250) (DB).

16. Kind of imprisonment.— (1) The Magistrate has to exercise his discretion and decide on the facts of each case whether the imprisonment should be simple or rigorous. AIR 1920 All 205 (205) = 21 Cri LJ 580 ** 1886 Pun Re (Cr) No. 23 p. 56 (56) (DB).

(2) In the case of a person who has never been convicted of any offence, an order for rigorous imprisonment would be unreasonable. AIR 1936 Nag 265 (266) = 38 Cri LJ 388 ** (1878) 1 Cal L Rep 268 (272) (DB).

(3) A Magistrate has no power to order that a portion of the imprisonment be spent in solitary confinement. AIR 1914 All 422 (423) = 15 Cri LJ 616 ** AIR 1933 All 676 (678) = 35 Cri LJ 218.

(4) Imprisonment for failure to give security for good behaviour under Section 108, should be simple. AIR 1941 Oudh 98 (98) = 42 Cri LJ 35 (DB).

(5) Imprisonment for failure to give security for keeping the peace must be simple. AIR 1924 All 695 (696) = 26 Cri LJ 430 ** (1903-1904) 2 Low Bur Rul 53 (54).

(6) In proceedings under Section 109 for keeping good behaviour, the imprisonment should be simple or rigorous as the Magistrate may direct. Madh BLJ 1955 HCR 270 (271).

17. Tender of security to jail officer — Sub-section (4).— (1) When security is offered to the jail officer subsequent to a warrant from the Court has reached him he should refer the matter to the Sessions Court. AIR 1930 Pat 217 (219) = 31 Cri LJ 802 (DB).

(2) When security is offered when the person is in jail such security has to be taken by the Magistrate (or Court); it cannot be given at the jail. (1908) 7 Cri LJ 472 (478) = 4 Low Bur Rul 205 (FB).

18. Detention in Borstal School.— (1) It is legal to pass an order of detention in a Borstal School under Madras Borstal Schools Act instead of ordering the imprisonment of the defaulter under this section. AIR 1934 Mad 457 (458) = 35 Cri LJ 1153.

Also see Note 3.

(2) The period for which detention in a Borstal School can be ordered may exceed the period for which imprisonment may be ordered under this section. AIR 1934 Mad 457 (457, 458) = 35 Cri LJ 1153.

Section 123A (U. P. Amendment) — Note 1

(1) To a case of failure to furnish security Section 123A, Criminal P. C. (U. P. Amendment) would apply and not Section 8 (7) of the U. P. Mainte-

if he is already in prison be detained in prison until such period expires or until within such period he gives security in accordance with the order:

Provided that the imprisonment shall be simple .

(2) If the security is tendered to the officer-in-charge of the jail, he shall forthwith refer the matter to the authority competent to take the security under the order and shall await the orders of such authority.—U. P. Acts XLVI of 1948, S. 2 (27-12-1948) and VIII of 1949, S. 2 (11-6-1949).

[°] This section has been extended to and brought into force with effect from 1-1-1950 in the merged States of Rampur, Banaras and Tehri-Garhwal, see Central Act LIX of 1949, S. 3 (3) and U. P. Act VIII of 1950, S. 3.

124. Power to release person imprisoned for failing to give security.—(1) Whenever the District Magistrate or a Chief Presidency Magistrate° is of opinion that any person imprisoned for failing to give security under this Chapter †[° ° °] may be released without hazard to the community or to any other person, he may order such person to be discharged.

(2) Whenever any person has been imprisoned for failing to give security under this Chapter, the Chief Presidency° or District Magistrate may (unless the order has been made by some Court superior to his own) make an order reducing the amount of the security or the number of sureties or the time for which security has been required.

‡[(3) An order under sub-section (1) may direct the discharge of such person either without conditions or upon any conditions which such person accepts:

Section 123-A (U. P.) — Note 1 (contd.)

nance of Public Order (Temporary) Act, 1947. AIR 1950 All 307 (Pr 2) = ILR (1951) 1 All 626 = 51 Cri LJ 605 (DB).

(2) Section 123A is not a law for preventive detention. Orders under this section cannot be interpreted by reading it with the provisions of the U. P. Maintenance of Public Order (Temporary) Act (4 of 1947). AIR 1950 All 562 (Pr 31) = ILR (1952) 1 All 8 = 52 Cri LJ 1282 (DB).

(3) Even if this section is considered to be a law for preventive detenton. it is ultra vires of the State Legislature. AIR 1950 All 562 (Prs 41, 42) = ILR (1952) 1 All 8 = 52 Cri LJ 1282 (DB).

(4) The section has become void on the midnight of 25th/26th January 1950 when the Constitution has come into force. The Preventive Detention (Extension of Duration) Order, 1950 passed by the President after assumption of his office cannot validate the provisions of the section. AIR 1950 All 562 (Prs 38, 43, 44, 46, 49, 72, 74, 76) = ILR (1952) 1 All 8 = 52 Cri LJ 1282 (DB).

(5) When the order for security passed under Section 3 (3) of the U. P. Maintenance of Public Order (Temporary) Act (4 of 1947) is illegal having been passed against a person outside the jurisdiction, an order under this section ordering detention in Jail for failure to furnish the required security is also illegal, AIR 1950 All 500 (Pr 3) = ILR (1952) 1 All 1 = 51 Cri LJ 1342 (DB).

Section 124 — Note 1

(1) It entirely rests with the District Magistrate or the Chief Presidency Magistrate, to decide without interference from any other authority, when and under what circumstances it would be safe for him to act under this section. 1893 All WN 183 (184).

(2) A subordinate Magistrate who thinks that the term of imprisonment in default of furnishing security should be shortened, should report the matter to the District Magistrate with a view to his taking action under this section. 1893 Rat 668 (668) (DB).

(3) A District Magistrate cannot refuse to act under this section on the mere ground that an appeal lay from the order requiring security. 1893 All WN 183 (184).

(4) The District Magistrate can arrive at the conclusion that the person imprisoned under Section 123 may be released under this section on a consideration of the evidence taken by the subordinate Magistrate. AIR 1914 Mad 613 (620) = 14 Cri LJ 546 (FB).

(5) The High Court has no power in revision to direct the District Magistrate or the Presidency Magistrate to take and enquire into any application which may be made to him under this section. 1893 All WN 183 (184).

*Provided that any condition imposed shall cease to be operative when the period for which such person was ordered to give security has expired.]

§[(4) The °†[State Government] may prescribe the conditions upon which a conditional discharge may be made.]

§[(5) If any condition upon which any such person has been discharged is, in the opinion of the District Magistrate or Chief Presidency Magistrate* by whom the order of discharge was made or of his successor, not fulfilled, he may cancel the same.]

§[(6) When a conditional order of discharge has been cancelled under sub-section (5), such person may be arrested by any police officer without warrant, and shall thereupon be produced before the District Magistrate or Chief Presidency Magistrate.*

Unless such person then gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of discharge and the date on which, except for such conditional discharge, he would have been entitled to release), the District Magistrate or Chief Presidency Magistrate* may remand such person to prison to undergo such unexpired portion.

A person remanded to prison under this sub-section shall, subject to the provisions of Section 122, be released at any time on giving security in accordance with the terms of the original order for the unexpired portion aforesaid to the Court or Magistrate by whom such order was made, or to its or his successor.]

[1882 — S. 124; 1872 — Ss. 500, 511, 512; 1861 — Ss. 291, 302, 303.]

[*] Chief Magistrate in the City of Ahmedabad has the powers and exercises the jurisdiction of a Chief Presidency Magistrate.—See Guj. Act XIX of 1961, Section 14 (3).

[†] The words "whether by the order....subordinate Magistrate" were repealed by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 22.

[‡] Substituted for the original sub-section (3), ibid.

[§] Sub-sections (4), (5) and (6) were inserted, ibid, S. 29.

[°†] Substituted for 'Provincial Government' by A. L. O., 1950.

STATE AMENDMENTS

Punjab: Haryana: Chandigarh

In its application to the States of Punjab and Haryana and the Union Territory of Chandigarh, in Section 124—

(i) for the words "Chief Presidency Magistrate," wherever occurring, substitute the words "Chief Judicial Magistrate"; and

(ii) in sub-section (2), for the words "Chief Presidency," substitute the words "Chief Judicial Magistrate." — Punj. Act XXV of 1964, S. 2 and Sch., Pt. I, item (30) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Union Territories (except Chandigarh)

In its application to the Union territories, in S. 124,—

(i) for the words 'Chief Presidency', wherever they occur, substitute the words "Chief Judicial";

(ii) in sub-section (1), for the words "under this Chapter", substitute the words "under Section 118 or, as the case may be, under Section 106"; and

(iii) in sub-section (2), for the words "under this Chapter", substitute the words "under Section 106 or, as the case may be, under Section 118."—Act 19 of 1969, S. 3 and Sch., item 31 (in Delhi, on 2-10-1969).

125. Power of District Magistrate to cancel any bond for keeping the peace or good behaviour.—The Chief Presidency° or District Magistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this Chapter by order of any Court in his district not superior to his Court.

[1882 — S. 125; 1872 — S. 500; 1861 — S. 291.]

[°] Chief Magistrate in the City of Ahmedabad has the powers and exercises the jurisdiction of a Chief Presidency Magistrate—Guj. Act XIX of 1961, S. 14 (3).

STATE AMENDMENTS

Punjab: Haryana: Chandigarh

In its application to the States of Punjab and Haryana and the Union Territory of Chandigarh, in S. 125 for the words "Chief Presidency," substitute the words "Chief Judicial Magistrate."—Punj. Act XXV of 1964, Sec. 2 and Sch., Pt. I, item (31) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Union Territories (except Chandigarh)

In its application to the Union territories, for Sec. 125 substitute the following, namely—

> "**125. Power of Chief Judicial Magistrate to cancel any bond for keeping the peace and of District Magistrate to cancel any bond for keeping the peace**

SECTION 125 — SYNOPSIS

1. **Scope.**
2. **Sufficient reasons, what are.**
3. **"Cancel any bond."**
4. **Parties, if entitled to be heard in proceeding under this section.**
5. **Power to remand.**
6. **Power to demand fresh security.**
7. **Power to alter terms of bond.**

1. Scope.— (1) This section gives a special and rather an exceptional power to the District Magistrate or the Chief Presidency Magistrate, as the case may be, to cancel for sufficient reasons a bond executed under this chapter. AIR 1914 Mad 613 (619) = 14 Cri L Jour 546 (FB) ** (1908) 10 Suth WR (Cr) 40 (40) (DB).

2. Sufficient reasons, what are.— (1) A bond can be cancelled even on the ground that it should not have been taken at all under the circumstances of the case as it existed on the date of the order for security. (1906) 4 Cri L Jour 399 (401) = 34 Cal 1 (FB). (32 Cal 948, **Overruled.**) ** (1910) 11 Cri L Jour 147 (147) = 37 Cal 72 (DB) ** AIR 1914 Mad 613 (619) = 14 Cri L Jour 546 (552) (FB) ** (1908) 7 Cri L Jour 348 (349) (Lah).

[But see AIR 1922 All 191 (192) = 23 Cri L Jour 398 ** AIR 1923 All 484 (484) = 24 Cri L Jour 204 ** (1913) 14 Cri L Jour 63 (63) = 35 All 103 ** AIR 1922 Pat 334 (336) = 23 Cri L Jour 281 ** AIR 1919 Pat 171 (172) = 20 Cri L Jour 221 ** AIR 1924 Oudh 241 (241) = 24 Cri L Jour 616 ** AIR 1922 Pat 420 (422) = 24 Cri L Jour 627 ** AIR 1914 Oudh 305 (306) = 15 Cri L Jour 721 ** AIR 1919 All 205 (206) = 20 Cri L Jour 489 ** AIR 1917 All 428 (428) = 18 Cri L Jour 630 (DB) ** AIR 1920 Nag 138 (138) = 21 Cri L Jour 591.]

3. "Cancel any bond."— (1) The bond contemplated by this section is the bond which has been given by the person against whom the order has been passed under Section 118, and not the bond executed by the surety. (1911) 12 Cri L Jour 480 (481) = 33 All 624.

4. Parties, if entitled to be heard in proceeding under this section.— (1) It is not incumbent upon the District Magistrate to hear the petitioner or his pleader before disposing of the application. AIR 1918 Pat 183 (184) = 19 Cri L Jour 246.

[But see AIR 1917 All 428 (428) = 18 Cri L Jour 630 (DB) ** AIR 1914 Lah 73 (74) = 15 Cri L Jour 143.]

5. Power to remand.— (1) The District Magistrate cannot, in a proceeding under this section remand the case to the Magistrate for further inquiry. AIR 1919 Pat 171 (172) = 20 Cri L Jour 221.

6. Power to demand fresh security.— (1) This section does not enable the District Magistrate to order fresh security to be given where security had been given and accepted by the subordinate Magistrate. (1905) 2 Cri L Jour 278 (279) = 1905 Pun Re (Cr) No. 16 ** (1902) 29 Cal 455 (456) (DB) ** (1905) 2 Cri L Jour 507 (510) = 8 Oudh Cas 245.

7. Power to alter terms of bond.— (1) The District Magistrate, under this section, cannot alter or modify the bond. In an appeal against an order for security under Section 406, however, the bond may be altered or modified by the Appellate Court. AIR 1922 Nag 180 (180) = 23 Cri L Jour 394.

or for good behaviour.—The Chief Judicial Magistrate may, at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace executed under Section 106 and the District Magistrate may at any time likewise cancel any bond for keeping the peace or for good behaviour executed under Section 118 by order of any Court in his district not superior to his Court."—Act 19 of 1969, S. 3 and Sch., item 32 (in Delhi, on 2-10-1969).

126*. Discharge of sureties.—(1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class to cancel any bond executed under this Chapter within the local limits of his jurisdiction.

(2) On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

[1882 — S. 126 Paras. 1. 2; 1872 — S. 501 Paras. 1, 2; S. 513 — Paras. 1, 2; 1861 — Ss. 292, 304.]

[*] This section shall, so far as may be, apply in the case of bonds and sureties given under the Probation of Offenders Act, 1958 (XX of 1958) — See S. 10 of that Act — See also Bom. Act XIX of 1938, S. 9; Mad. Act III of 1937, S. 8; U. P. Act VI of 1938, S. 8 and W. B. Act XXXVIII of 1954, S. 8, for similar provisions.

STATE AMENDMENTS

Gujarat

In its application to the State of Gujarat, the amendments made in Section 126 are the same as those made in Maharashtra—See Cent. Act XI of 1960, S. 87.

NOTE.—Magistrates in the City of Ahmedabad have the powers and exercise the jurisdiction and perform the functions of a Presidency Magistrate—See Guj. Act XIX of 1961, S. 14 (3).

Maharashtra

(1) In its application to the State of Maharashtra in S. 126—

(i) in sub-section (1), for the words beginning with the words "to a Presidency Magistrate" and ending with the words "first class" substitute the words "to the Court by which an order was made to give security" and

(ii) for sub-section (2) substitute the following, namely,—

"(2) On such application being made, the Court shall issue summons or warrant, as it may think fit, requiring the person for whom such surety is bound to appear or to be brought before it."—Bom. Act XXIII of 1951, S. 2 and Sch. (1-7-1953).

(2) After the reorganisation of the State of Bombay in 1956, the amendments made in S. 126 by the above-mentioned Bombay Act were extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Mysore

In its application to the State of Mysore, the amendments made in Section 126 are the same as those of Maharashtra, with this addition that in sub-section (1), for the word 'his' the word 'its' is substituted.—Mys. Act XIII of 1965, S. 25 (1-10-1965).

Section 126 — Note 1

(1) The object of this section is to protect the surety who finds that he is unable to control the principal for whom he has given surety. (1913) 14 Cri L Jour 430 (432) = 1 Upp Bur Rul 159.

Punjab: Haryana: Chandigarh

In its application to the States of Punjab and Haryana and the Union Territory of Chandigarh, in Section 126—

(i) in sub-section (1), for the words "to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class", substitute the words "to the Court by which an order was made to give security"; and

(ii) for sub-section (2) substitute the following, namely:

"(2) On such an application being made, the Court shall issue summons or warrant, as it may think fit, requiring the person for whom such surety is bound to appear or to be brought before it."—Punj. Act XXV of 1964, S. 2 and Sch., Pt. I item (31) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Rajasthan

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendments made in S. 126 are the same as those made in (1) of Maharashtra.—See Cent. Act XXXVII of 1956, S. 119 (1-11-1956)

Union Territories (except Chandigarh)

In its application to the Union territories, in S. 126,—

(i) in sub-section (1), for the words "to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class," substitute the words and figures "to the Court by which an order to give security was made under Section 106 or Section 118" and for the word "his", substitute the word "its", and

(ii) for sub-section (2), substitute the following sub-section namely:—

"(2) On such application being made, the Court shall issue summons or warrant, as it thinks fit, requiring the person for whom such surety is bound to appear or to be brought before it."—Act 19 of 1969, S. 3 and Sch., item 33 (in Delhi, on 2-10-1969).

West Bengal

For Section 126 substitute the following:—

"126. **Discharge of Sureties.**—(1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to the Court by which an order was made to give security to cancel any bond executed under this Chapter within the local limits of its jurisdiction.

(2) On such application being made, the Court shall issue summons or warrant, as it may think fit, requiring the person, for whom such surety is bound to appear or to be brought before it."—W. B. Act 8 of 1970, Section 2 and Sch., item 45.

*[126A.] **Security for unexpired period of bond.**—†[When a person for whose appearance a warrant or summons has been issued under the proviso to sub-section (3) of Section 122 or under Section 126, sub-section (2), appears or is brought before him, the Magistrate shall cancel the bond‡ executed by such person] and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of Sections 121, 122, 123 and 124, be deemed to be an order made under Section 106 or Section 118, as the case may be.

[1882 — S. 126 Para. 3; 1872 — S. 501 Para. 3; 1861 — Ss. 292, 304.]

[*] Section 126 (3) was renumbered as S. 126A by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 23.

Section 126-A — Note 1

(1) When the effect of an order discharging a surety is to remit the suspect to prison for a term exceeding one year, the Magistrate is bound to refer the case to the Sessions Court as required under Section 123. (1911) 12 Cri L Jour 410 (411) = 5 Sind LR 87 (DB).

[†] Substituted for "when such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond", ibid.

[‡] This section shall, so far as may be, apply in the case of bonds and sureties given under the Probation of Offenders Act, 1958 (XX of 1958)—See S. 10 of that Act; See also Bom. Act XIX of 1938, S. 9; Mad. Act III of 1937, S. 8; U. P. Act VI of 1938, S. 8 and W. B. Act XXXVIII of 1954, S. 8 for similar provisions.

CHAPTER IX[*]

UNLAWFUL ASSEMBLIES

127. Assembly to disperse on command of Magistrate or police-officer.— (1) Any Magistrate or officer in charge of the police station may command any unlawful assembly, or any assembly[†] of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) This section applies also to the police in the towns of Calcutta and Bombay.

[1882 — S. 127; 1872 — S. 480; 1861 — S. 111.]

[*] The whole of this Chapter so far as it applied to the City of Bombay was repealed by the City of Bombay Police Act (Bombay Act IV of 1902) which Act is now repealed by Bombay Police Act (XXII of 1951), S. 167 (1) and Sch. I. By Section 167 (3) read with Sch. III of the Bombay Police Act, 1951 (which applies to the whole State of Bombay from 1-8-1951), S. 1 (2) of the Code of Criminal Procedure, 1898, is so amended as to make the Code applicable to the town of Bombay.

[†] For right to assemble peaceably see Art. 19 (1) (b) of the Constitution of India.

Section 127 — Note 1

(1) Any Magistrate can exercise the power conferred under this section anywhere in the district. See (1912) 13 Cri L Jour 716 (716, 717) = 34 All 597.

(2) A Sub-Inspector of Police or a Deputy Commissioner of Police can command an assembly to disperse under this section. AIR 1933 Nag 277 (278, 279) = 34 Cri L Jour 705 ** ('83) 7 Bom 42 (50) (DB).

(3) A police officer in charge of a patrol boat has no power to disperse an unlawful assembly under this section. AIR 1923 Cal 517 (518) = 25 Cri L Jour 467 (DB).

(4) The legality of the command depends on the conduct of the assembly preceding the command and not on what followed it. AIR 1933 Nag 277 (282) = 34 Cri LJ 705.

(5) Any assembly of five or more persons likely to cause breach of peace can be ordered to disperse, even if it has assembled for a lawful purpose. 1887 Pun Re (Cr) No. 22, p. 45 (DB) ** (1883) 7 Bom 42 (50) (DB).

(6) Three persons carrying flags with the object of drawing a crowd — The whole body of men including the crowd attracted constitute an assembly of five or more persons. (1883) 7 Bom 42 (49) (DB).

(7) This section enables a Magistrate or police-officer, to order the dispersal of an assembly of persons even though not unlawful when he is convinced that it is likely to cause a disturbance of the public peace. AIR 1925 All 165 (170) = 26 Cri L Jour 599 (DB) ** AIR 1922 Lah 135 (137) = 13 Cri L Jour 5.

(8) It is the fact that such an assembly is likely to cause a disturbance of the public peace that gives jurisdiction to the Magistrate or police-officer to act under this section. AIR 1933 Nag 277 (279) = 34 Cri L Jour 705.

(9) Before an assembly can be said to be likely to disturb public peace, it must appear from the behaviour of such assembly that it would actively disturb public peace or provoke others to a breach of the peace. AIR 1933 Nag 277 (281) = 34 Cri L Jour 705.

(10) Whether any such assembly was likely to cause a disturbance of the public peace at the time the order to disperse was made is a question of fact which must be proved by independent evidence. AIR 1933 Nag 277 (279, 281) = 34 Cri L Jour 705 ** AIR 1922 Lah 135 (137) = 13 Cri L Jour 5.

[See also AIR 1923 Pat 1 (4) = 23 Cri L Jour 625 (SB).]

(11) The conduct and behaviour of the assembly should be considered to determine the existence of the possibility of breach of peace. AIR 1928 Pat 98 (99) = 28 Cri LJ 906.

(12) Disobedience of an order under this section is chargeable under Sec. 145 of the Penal Code, in the case of unlawful assemblies and under Section 151 in the case of other assemblies. AIR 1925

STATE AMENDMENTS

Gujarat

Whether the amendment in S. 127 by Bombay Act XXII of 1951, Sec. 96 (3) (a) (1-8-1951) would apply to the City of Ahmedabad, in view of S. 15 read with S. 14 (3) of Guj. Act XIX of 1961 (4-11-1961)?

Maharashtra

In its application to Greater Bombay and any other area for which a Commissioner of Police has been appointed in Section 127 for the words "police-station" substitute the words "section or any police officer not below the rank of a sub-inspector authorised by the State Government in this behalf".—Bom. Acts XXII of 1951, S. 96 (3) (a) (1-8-1951); LVI of 1959, S. 3 and Schedule. Commissioners of Police have been appointed for the cities of Nagpur and Poona now.

Punjab: Haryana: Chandigarh

In its application to the States of Punjab and Haryana and the Union Territory of Chandigarh, in S. 127, for the word "Magistrate" wherever occurring, substitute the words "Executive Magistrate".—Punj. Act XXV of 1964, S. 2 and Sch., Pt. I item (33) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Union Territories (except Chandigarh)

In its application to the Union territories, in S. 127, for the word "Magistrate" substitute the words "Executive Magistrate."—Act 19 of 1969, S. 3 and Sch., item 34 (in Delhi, on 2-10-1969).

West Bengal

In its application to the State of West Bengal, in Section 127 (1), for the words 'Any Magistrate', substitute the words 'Any Executive Magistrate, Presidency Magistrate.'—W. B. Act 8 of 1970, S. 2 and Schedule, item 46.

128. Use of civil force to disperse.—If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a police station, whether within or without the presidency-towns* may proceed to disperse such assembly by force, and may require the assistance

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Section 127 — Note 1 (contd.)

All 165 (171) = 26 Cri L Jour 599 (DB) ** AIR 1933 Nag 277 (279) = 34 Cri L Jour 705 (707).

(13) When a complaint is made to a Criminal Court against any police officer making allegations indicating that the officer had acted or purported to act under Sections 127 and 128 and in so doing committed some offence complained of the Court will not entertain the complaint unless the State Government has sanctioned the prosecution of the officer. **AIR 1964 SC 269 (273) = (1963) 2 SCWR 231 = 1964 (1) Cri LJ 161.**

(14) The unlawful character of the assembly has to be determined with reference to Section 141, I. P. Code alone and the disobedience of a command issued under Section 127, Cr. P. Code is not a relevant consideration for that purpose. AIR 1969 All 130 (136) = 1969 All WR (HC) 98 = 1969 Cri LJ 354.

(15) Gheraos in industrial establishments — Confinement of managerial staff — Administrative circulars based on cabinet decision — Police officers and District officers directed to obtain Labour Minister's direction before discharging their statutory duties — Administrative circulars, held, were violative of Articles 14, 256 and 166 (3) of Constitution and Sections 54, 127, 100, 151, 154, 157, Cri. P. C. **AIR 1968 Cal 407 (429) = 72 Cal WN 441 (SB).**

(16) Section 127 read with Sec. 128, give powers to command any unlawful assembly, likely to cause disturbance of public peace to disperse — If that command is not obeyed, Magistrate or police officer is empowered to arrest the person or persons who had formed part of that assembly. **1969 BLJR 534 (537).**

Section 128 — Note 1

(1) The degree of force which may lawfully be used in the suppression of an assembly depends on the nature of such assembly. (1898) 21 Mad 249 (252) (DB).

(2) Every male person is bound to assist the Magistrate or police-officer. AIR 1931 Bom 57 (65) = 32 Cri L Jour 403 (SB). (Per Madgavkar J.)

of any male person, not being an officer, †[soldier, sailor or airman in ‡[the armed forces],] and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

[1882—S. 128; 1872—S. 481; 1861—Nil.]

[*] For definition of a presidency-town, see General Clauses Act, 1897 (X of 1897), Section 3 (44).

[†] Substituted for the words "or soldier in Her Majesty's Army" by the Amending Act, 1934 (XXXV of 1934), S. 2 and Schedule.

[‡] Substituted for the words "the Indian Army, Navy or Air Force or a person subject to the Territorial Army Act, 1948", by the Code of Criminal Procedure (Second Amendment) Act, 1952 (LXIV of 1952), Section 2 (27-8-1952).

STATE AMENDMENTS

Gujarat:

Whether the amendment in Section 128 by Bom. Act XXII of 1951, S. 96 (3) (a), (1-8-1951) would apply to the City of Ahmedabad, in view of Section 15 read with Section 14 (3) of Guj. Act XIX of 1961, (4-11-1961)?

Maharashtra:

In its application to Greater Bombay and any other area for which a Commissioner of Police has been appointed, in Section 128, for the words "police-station whether within or without the presidency-towns", substitute the words and figures "section or any police officer authorised under Section 127."—Bom. Acts XXII of 1951, S. 96 (3) (b) (1-8-1951); LVI of 1959, S. 3.

NOTE.—Commissioners of Police have now been appointed for the cities of Nagpur and Poona as well.

Punjab: Haryana: Chandigarh:

In its application to the States of Punjab and Haryana and the Union territory of Chandigarh, in Section 128, for the word "Magistrate", wherever occurring, substitute the words "Executive Magistrate".—Punj. Act XXV of 1964, Section 2 and Schedule, Pt. I, Item (38) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Section 128 — Note 1 (contd.)

(3) The unlawful assembly which refuses to disperse may be dealt with as follows—

(a) the assembly may be dispersed by force. (1904) 1 Cri L Jour 920 (923) (Kathiawar).

(b) ring-leaders or as many of the persons forming part of it as may be necessary may be arrested and confined. AIR 1931 Bom 520 (521, 524) (DB). ** 1969 BLJR 534 (537).

(c) the persons disobeying may be prosecuted under Section 145 of the Penal Code. AIR 1931 Mad 484 (485) = 32 Cri L Jour 806 (DB).

(4) If the assembly persists in not dispersing a warning should be given that if they refuse to disperse, force will be used. (1898) 21 Mad 249 (251) (DB).

(5) If the officer is competent to act under this section and acts in good faith, he is entitled under Section 132 to be protected from prosecution for doing such acts. AIR 1921 Cal 697 (697, 698) = 22 Cri L Jour 606 (DB).

(6) This section does not confer a general power of arrest on the Magistrate but only authorizes him to arrest when the assembly on being commanded to disperse does not disperse or without being so commanded shows a determination not to disperse. AIR 1939 Oudh 81 (83) = 40 Cri L Jour 221.

(7) Prosecution of police officer — Sanction of State Government under Section 132 is necessary. **AIR 1964 SC 269 (273) = 1964 (1) Cri LJ 161.**

(8) Unlawful character of assembly has to be determined under Section 141, Penal Code — Disobedience of command under Section 127 is not a relevant consideration. AIR 1969 All 130 (136) = 1969 All WR (HC) 98 = 1969 Cri LJ 63.

(9) Section 128 gives powers to the police to arrest persons "who form part of 'an unlawful assembly' in order to disperse such assembly or that they may be punished according to law." The police are fully justified in arresting all the accused in connection with the riot. AIR 1969 Bom 383 (392) = 1969 Cri LJ 1351

Union territories (except Chandigarh):

In its application to the Union territories, in Section 128, for the word "Magistrate", substitute the words "Executive Magistrate".—Act 19 of 1969, Section 3 and Schedule, item 34 (in Delhi, on 2-10-1969).

West Bengal:

In Section 128, for the words 'any Magistrate', substitute the words 'any Executive Magistrate, Presidency Magistrate' — W. B. Act 8 of 1970, S. 2 and Schedule, Item 47.

129. Use of military force.—If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by [*][the armed forces].

[1882—S. 129; 1872—S. 482; 1861—Nil.]

[*] Substituted for "military force" by the Code of Criminal Procedure (Second Amendment) Act (64 of 1952), S. 3 (27-8-1952).

STATE AMENDMENTS

Gujarat:

Whether the modification of this section in Greater Bombay made by Bom. Act XXII of 1951, S. 96 (1) (i) would apply to the City of Ahmedabad, in view of Section 15 read with S. 14 (3) of the Ahmedabad City Courts Act (XIX of 1961)?

Maharashtra:

In its application to Greater Bombay and other areas for which a Commissioner has been appointed, notwithstanding anything contained in this section, the powers and duties of a Magistrate under this section may be exercised and performed by the Commissioner.—See the Bombay Police Act. 1951 (Bom. Act XXII of 1951), S. 96 (1) (i) (1-8-1951) and LVI of 1959, S. 3 and Schedule.

NOTE.—Commissioners of Police have now been appointed for the cities of Nagpur and Poona as well.

Punjab, Haryana and Chandigarh:

In its application to the States of Punjab and Haryana and the Union territory of Chandigarh, in S. 129, for the word "Magistrate" wherever occurring, substitute the words "Executive Magistrate".—Punj. Act XXV of 1964, Sec. 2 and Schedule, Pt. I, Item (33) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Union territories (except Chandigarh):

In its application to the Union territories, in S. 129, for the word 'Magistrate', substitute the words "Executive Magistrate".—Act 19 of 1969, S. 3 and Schedule, item 34, (in Delhi, on 2-10-1969).

West Bengal:

In Section 129, for the words 'Magistrate of the highest rank', substitute the words 'Executive Magistrate of the highest rank or the Presidency Magistrate'.—W. B. Act 8 of 1970, S. 2 and Schedule, Item 48.

130. Duty of officer commanding troops required by Magistrate to disperse assembly.—(1) When a Magistrate determines to disperse any such assembly [*][by the armed forces, he may require any officer thereof in command of any group of persons belonging to the armed forces to disperse such assembly with the help of the armed forces under his command] and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

Section 130 — Note 1

(1) It is the duty of the officers of the armed forces to aid the civil authorities in quelling disorder. AIR 1931 Bom 57 (59) = 32 Cri L Jour 403 (SB).

(2) Every such officer shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

[1882—S. 130; 1872—S. 484; 1861—Nil.]

[*] Substituted for the words "by military force, he may require any commissioned or non-commissioned officer in command of any soldiers in the Indian Army or of any persons subject to the Territorial Army Act, 1948, to disperse the assembly by military force", by the Code of Criminal Procedure (Second Amendment) Act, 1952 (LXIV of 1952), S. 4 (27-8-1952).

STATE AMENDMENTS

Gujarat:

Whether the modification of this section in Greater Bombay made by Bom. Act XXII of 1951, S. 96 (1) (i) would apply to the City of Ahmedabad, in view of Section 15 read with Section 14 (3) of the Ahmedabad City Courts Act (XIX of 1961)?

Maharashtra:

In its application to Greater Bombay and other areas for which a Commissioner has been appointed, notwithstanding anything contained in this section, the powers and duties of a Magistrate under this section, be exercised and performed by the Commissioner: See Bombay Police Act, 1951 (Bom. Acts XXII of 1951), S. 96 (1) (1-8-1951) and LVI of 1959, S. 3.

NOTE.—Commissioners of Police have now been appointed in the cities of Nagpur and Poona.

Punjab: Haryana: Chandigarh:

In its application to the States of Punjab and Haryana and the Union territory of Chandigarh, in S. 130, for the word "Magistrate", wherever occurring, substitute the words "Executive Magistrates".—Punj. Act XXV of 1964, S. 2 and Schedule, Pt. I, item (33), (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Union territories (except Chandigarh):

In its application to the Union territories, in S. 130, for the words "a Magistrate", substitute the words "an Executive Magistrate".—Act 19 of 1969, S. 3 and Schedule, item 34 (in Delhi, on 2-10-1969).

131. Power of commissioned armed force officers to disperse assembly.—When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, *[any commissioned officer of the armed forces may disperse such assembly with the help of the armed forces under his command], and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; if, while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

[1882—S. 131; 1872—S. 487; 1861—Nil.]

[*] Substituted for the words "any commissioned officer of the Indian Army may disperse such assembly by military force" by the Code of Criminal Procedure (Second Amendment) Act, 1952 (LXIV of 1952), S. 5 (27-8-1952).

STATE AMENDMENTS

Punjab: Haryana: Chandigarh:

In its application to the States of Punjab and Haryana and the Union territory of Chandigarh, in S. 131, for the word "Magistrate", wherever occurring, substitute the words "Executive Magistrate".—Punj. Act XXV of 1964, S. 2 and Schedule, Pt. I, item (33) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Union territories (except Chandigarh):

In its application to the Union territories, in Section 131,—

(i) for the words 'a Magistrate', substitute the words 'an Executive Magistrate'; and

(ii) for the words "no Magistrate", substitute the words "no Executive Magistrate."—Act 19 of 1969, Section 3 and Schedule, item 34 (in Delhi, on 2-10-1969).

West Bengal:

In Section 131, for the words 'no Magistrate', substitute the words 'no Executive Magistrate or Presidency Magistrate" and for the words, "with a Magistrate" substitute the words, "with any such Magistrate."—W. B. Act 8 of 1970, S. 2 and Schedule, item 49.

132. Protection against prosecution for acts done under this Chapter.—No prosecution against any person for any act purporting to be done under this Chapter shall be instituted in any Criminal Court, except with the sanction of the °[State Government]; and—

(a) no Magistrate or police officer acting under this Chapter in good faith,

(b) no officer acting under Section 131 in good faith,

(c) no person doing any act in good faith, in compliance with a requisition under Section 128 or Section 130, and

(d) no inferior officer, or †[soldier, sailor or airman in the armed forces], doing any act in obedience to any order which he was bound to obey,

shall be deemed to have thereby committed an offence:

‡[Provided that no such prosecution shall be instituted in any Criminal Court against any officer or §[soldier, sailor or airman in the armed forces] except with the sanction of the °[Central Government].]

[1882—S. 132; 1872—Ss. 483, 485, 486, 488; 1861—Nil.]

[°] Substituted for 'Provincial Government' by A.L.O., 1950.

[†] Substituted for the words "soldier, or person subject to the Indian Territorial Army Act, 1948," by the Code of Criminal Procedure (Second Amendment) Act, 1952 (LXIV of 1952), S. 6 (27-8-1952).

[‡] The proviso was inserted by the Devolution Act, 1920 (XXXVIII of 1920).

[§] Substituted for the words 'soldier in the Indian Army or any person subject to the Territorial Army Act, 1948" by Act LXIV of 1952, S. 6 (27-8-1952).

SECTION 132 — SYNOPSIS

1. **Scope.**
2. **Distinction between this section and Section 79, Penal Code.**
3. **"Prosecution", meaning of.**
4. **"Purporting to be done."**
5. **"Except with the sanction of the State Government."**
6. **"Police-officer acting under this Chapter."**
7. **"Good faith."**
8. **Clause (d).**
9. **Whether want of sanction is cured by S. 537.**

1. Scope.— (1) The policy of the Legislature is to afford adequate protection to public servants, to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause. The section should, therefore, be construed broadly. AIR 1933 Mad 268 (269) = 34 Cri L Jour 528.

[See 1937 Mad WN 1243 (1245).]

2. Distinction between this section and Section 79, Penal Code.— (1) The protection granted by Section 79, Penal Code is a protection against conviction and applies only when all the facts are known, i.e., when the trial is over. But this section operates even before the trial begins. In other words the protection given by this section is one against the trial itself. AIR 1933 Mad 268 (269) = 34 Cri L Jour 528.

(2) Benefit of Section 132 — What accused is required to prove stated — To show this is not to prove requirements of Section 79, Penal Code. AIR 1964 SC 269 (274, 275) = (1964) 3 SCR 671 = (1964) 1 Cr LJ 161.

3. "Prosecution," meaning of.— (1) An inquiry which merely results in the dismissal of a complaint does not amount to a 'prosecution' within the meaning of this section. AIR 1929 Cal 229 (231) = 30 Cri L Jour 942 (DB). (Per Graham, J.)

4. "Purporting to be done."— (1) It is enough for the application of this section if a person empowered to act under this Chapter purported to act under it. It is not necessary for him, before the question of sanction is raised, to prove that there was in fact

STATE AMENDMENTS

Punjab: Haryana: Chandigarh:

In its application to the States of Punjab and Haryana and the Union territory of Chandigarh, in Section 132, for the word "Magistrate", substitute the words "Executive Magistrate".—Punj. Act XXV of 1964, S. 2 and Schedule, Pt. I, item (33) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966)

Union territories (except Chandigarh):

In its application to the Union territories, in Section 132, for the word 'Magistrate', substitute the words 'Executive Magistrate'.—Act 19 of 1969, Section 3 and Schedule, item 34 (in Delhi, on 2-10-1969).

[*][**132A. Definitions.**—In this Chapter,—

(a) the expression "armed forces" means the military, naval and air forces, operating as land forces[†] and includes any other armed forces of the Union so operating;

(b) "officer", in relation to the armed forces, means a person commissioned, gazetted or in pay as an officer of the armed forces and includes a junior commissioned officer, a warrant officer, a petty officer and a non-commissioned officer.]

[*] Inserted by the Code of Criminal Procedure (Second Amendment) Act (LXIV of 1952), Section 7 (27-8-1952).

[†] See the Border Security Force Act, 1968 (47 of 1968); Central Industrial Security Force Act, 1968 (50 of 1968) and the Central Reserve Police Force Act, 1949 (66 of 1949), constituting similar forces.

STATE AMENDMENT

Maharashtra:

In its application to the State of Maharashtra, in S. 132A, after the words "In this chapter," insert the following clause, namely:—

"(a-1) the expression 'Magistrate' means 'Executive Magistrate;'—Maha. Act XXIX of 1969, S. 2 (9-6-1969).

Section 132 — Note 4 (contd.)

such an assembly as is contemplated by this Chapter. 1937 Mad WN 1243 (1244) ** AIR 1921 Cal 697 (698) = 22 Cri L Jour 606 (DB).

(2) In deciding whether a person purported to act or not, the Court is not confined to the complaint and the sworn statement. AIR 1933 Mad 268 (269) = 34 Cri L Jour 528.

[See 1937 Mad WN 1243 (1244).]

(3) Picketing of State bus — Lathi charge to disperse crowd — Complainant injured — Act in discharge of official duty — Sanction held necessary before prosecuting police officer. AIR 1961 Ker 260 (264) = 1961 Ker LT 208 = 1961 (2) Cri LJ 484 (DB).

(4) Offence committed while acting or purporting to act in discharge of official duty — Offences under Sec. 409 and Section 477-A, I. P. C. — Sanction held necessary — Sanction must precede prosecution. AIR 1961 Ker 260 (263) = 1961 Ker LT 208 = 1961 (2) Cr LJ 484 (DB).

5. "Except with the sanction of the State Government."— (1) The sanction of the State Government is a condition precedent to the prosecution of any person empowered to act under this Chapter for any act done or purported to have been done by such person under this Chapter. 1937 Mad WN 1243 (1245) ** AIR 1933 Mad 268 (269) = 34 Cri L Jour 528.

(2) Whether sanction as a pre-requisite is necessary is not a pure question of law but a mixed question of fact and law and has to be decided after information has been gathered for coming to a conclusion one way or the other. AIR 1955 Mad 534 (535) = 1955 Cri L Jour 1264. ((1953) 2 Mad L Jour 28, Foll.) ** 1963 (1) Cri LJ 694 (696, 697) = 40 Mys LJ 585.

(3) The protection conferred by Section 132, will be rendered nugatory if the onus is to be thrown on the accused to prove in the trial that they acted under Chapter 9. It cannot be said that to find out whether the accused acted under this Chapter or not, only the complaint and the sworn statement should be looked into and not any other circumstances or document. If any police officer has really misbehaved and used force far in excess, it is

CHAPTER X

PUBLIC NUISANCES

*[133. **Conditional order for removal of nuisance.**—(1) Whenever a District Magistrate, a Sub-Divisional Magistrate or a Magistrate of the first class considers, on receiving a police report or other information and on taking such evidence (if any) as he thinks fit,

Section 132 — Note 5 (contd.)
open to the complainant to place the facts before the Government and obtain the sanction. AIR 1957 Mad 555 (Prs. 5, 7, 8, 9) = ILR (1957) Mad 887 = 1957 Cri L Jour 980 (DB) ** AIR 1963 Ker 7 (8, 9) = (1961) 2 Ker LR 226 = 1963 (1) Cr LJ 53.

(4) Complaint against unknown police officer — Cognizance can be taken — Section 132 no bar. (1965) 69 Cal WN 306 (308) (DB).

(5) Sanction for prosecution — Superintendent of Police damaging property with a view to justify use of tear gas and violence in dispersing peaceful demonstration is not acting in purported discharge of duties — Complaint cannot be turned down at initial stage on ground of want of sanction by anticipating possibility of defence by public servant. AIR 1965 Punj 192 (198) = 66 Pun LR 1152 = 1965(1) Cri LJ 585 (DB).

(6) It cannot be said that the mere fact that some of the persons alleged to have formed part of the unlawful assembly were prosecuted by the State Government and have also been committed by the Magistrate to the Sessions Court for trial establishes prima facie that the accused's contention about the necessity for sanction under Section 132 of the Code is correct when the commitment of the other accused in the other case is on the basis of evidence in the cross case. **AIR 1964 SC 269 (274) = (1964) 3 SCR 671 = (1964) 1 Cri LJ 161.**

(7) When a complaint is made to a criminal Court against any police officer and the complainant makes allegations indicating that the police officer had acted or purported to act under Sections 127 and 128 and in so doing committed some offence complained of, the Court will not entertain the complaint unless it appears that the State Government had sanctioned the prosecution of that police officer. **AIR 1964 SC 269 (273, 274) = (1964) 3 SCR 671 = (1964) 1 Cri LJ 161.**

(8) Court coming to conclusion that prosecution could not be instituted without sanction of Government — Procedure — Court not to pass any order of discharge or acquittal but should reject complaint. **AIR 1964 SC 263 (275) = (1964) 3 SCR 671 = (1964) 1 Cri LJ 161.**

6. "Police-officer acting under this Chapter."— (1) The power to disperse an unlawful assembly is not given by the Code to any police officer below the rank of an officer in charge of a police station. Any officer below that rank, e.g., an officer in charge of a patrol boat who purports to act under Section 127, is not protected by the provisions of this section. AIR 1923 Cal 517 (518) = 25 Cri L Jour 467 (DB).

7. "Good faith."— (1) The definition of "good faith" in Section 52 of the Penal Code applies also to this Code by virtue of Section 4, sub-section (2). (1898) 21 Mad 249 (251) (DB).

(2) The term is to be interpreted relatively to the position of the person doing an act or omission with due regard to the surrounding circumstances. (1868) 10 Suth WR (Cr) 20 (20) (DB).

(3) Where a police-officer did not believe it necessary for the public security to disperse an assembly by firing on them, but nevertheless gave orders to shoot with the result that a man was shot dead, it was held that he did not act in good faith. (1898) 21 Mad 249 (251) (DB).

8. Clause (d).— (1) Where, an order is manifestly illegal and the subordinate has the same opportunities of observing and judging the circumstances as the superior, it is no defence for the former to plead that he obeyed the orders of his superior. (1898) 21 Mad 249 (252) (DB) ** AIR 1924 Sind 33 (35) = 26 Cri L Jour 142 (DB).

(2) A subordinate obeying the orders of his superior will, even if the order is illegal, be entitled to protection under Section 76 of the Penal Code, if, by reason of a mistake of fact he believes, in good faith, to be bound by law to obey it. 1883 Pun Re (Cr) No. 17, p. 29 (36, 37) (DB).

9. Whether want of sanction is cured by Section 537.— (1) The absence of a sanction is an illegality which cuts at the very root of the prosecution and is not one curable by Section 537. (1907) 6 Cri L Jour 382 (383) = 31 Mad 380 (DB).

SECTION 133 — SYNOPSIS

1. **Remedies for a public nuisance.**
2. **Scope, object and applicability.**
3. **Preventive action in respect of anticipated nuisance.**
4. **Long-standing nuisances and obstructions.**
5. **Sections 133 and 144.**

that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place, or

that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated, or

that the construction of any building, or the disposal of any substance, as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary, or

that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public, or

that any dangerous animal should be destroyed, confined or otherwise disposed of,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation or keeping any such goods or merchandise, or owning, possessing or controlling such building,

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Section 133 — Synopsis (contd.)

6. Sections 133 and 147.

7. Who may act under the section.

8. "Considers."

9. "On receiving a police-report or other information."

10. "And on taking such evidence."

11. "Unlawful obstruction or nuisance."

12. Nuisance.

13. "Channel."

14. "Which is or may be lawfully used by the public."

15. "Public place," meaning of.

16. Conduct of trade or occupation injurious to the health or physical comfort of the community.

17. Community — Meaning of.

18. Building, tent or structure or tree.

19. Persons living or carrying on business in the neighbourhood or passing by.

20. Form of order.

21. Directions in the order.

22. "To appear before himself or some other Magistrate of the first or second class."

23. Exemption from personal appearance.

24. "And move to have the order set aside or modified."

25. Parties to order.

26. Order, if a judicial proceeding.

27. Effect of death of party on order.

28. Jurisdiction of Civil Courts — Sub-section (2).

29. Costs.

30. Further enquiry.

31. Applicability of Section 350 to proceedings under this section.

32. Revision.

1. Remedies for a public nuisance.— (1) The remedies available in respect of public nuisance under civil law, Penal Code, Criminal P. C. and local laws are concurrent and the pursuit of one does not bar the other. A proceeding under this chapter is therefore not a condition precedent to a prosecution under the Penal Code, or to the maintenance of a civil suit. 1869 Rat 23 (23) (DB) ** (1870) 14 Suth WR (Cr) 63 (65) = 11 Beng LR (App) 6 (DB) ** (1862) 1 Bom HCR (Cr) 1 (2) (DB) ** Marsh 537 = 2 Hay 659. (After application under this section Magistrate declined to act — Still civil suit not barred.)

(2) The existence of an alternative remedy under any special Act does not oust the jurisdiction of a Magistrate to proceed under this chapter. AIR 1920 Cal 550 (550) = 21 Cri L Jour 669 (DB) ** 1964 (2) Cr LJ 94 (95, 96) = 1964 MPLJ 330. (Remedy under the Municipalities Act.)

[See also (1962) 28 Cut LT 244 = (1962) 4 Orissa JD 153, (Ordinarily proceedings under Section 133, Criminal P. C., should not be resorted to unless there is no other remedy available.) ** (1868) 9 Suth WR (Cr) 70 (71) (DB).]

(3) The proceedings under this chapter are summary and are intended to

tent, structure, substance, tank, well **or** excavation, or owning or possessing such animal or tree, within a time to be **fixed** in the order,

to remove such obstruction or nuisance; or

to desist from carrying on, or **to** remove or regulate in such manner as may be directed, such trade or occupation; or

to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

to prevent or stop the erection of, or to remove, repair or support, such building, tent or structure; or

to remove or support such tree; or

to alter the disposal of such substance; or

to fence such tank, well or excavation, as the case may be; or

to destroy, confine or dispose of such dangerous animal in the manner provided in the said order;

or, if he objects so to do,

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside or modified in the manner hereinafter provided.

Section 133 — Note 1 (contd.)

enable Magistrate to summarily deal with cases of urgency or of imminent danger to public interest. They are not intended to enable a complainant to obtain by this process any civil relief. ILR (1951) 1 All 719 (721) (DB) ** AIR 1940 Oudh 75 (77) = 41 Cri L Jour 99 ** ILR (1967) 1 Ker 188 (196) ** 1964 All WR (HC) 417 = 1964 All Cri R 293. (Civil Courts and Criminal Courts must act hand in hand in order to protect rights of citizens and hence when civil Court is in process of deciding rights of parties finally it is duty of criminal Court to stay its hands and not to cause irreparable injury to one party to litigation.)

(4) The very exceptional jurisdiction given in this chapter should be exercised with all possible fairness and reasonable precautions. 1897 Pun Re (Cr) No. 4, p. 7 (9) ** (1892-1896) 1 Upp Bur Rul 176 (177).

[See also 1947 Jaipur LR 186 (188) (DB).]

(5) The jurisdiction should be so worked as not to become itself a nuisance to the community at large. 1888 Pun Re (Cr) No. 17, p. 31 (32) (DB).

(6) It is not open to any member of the public to take the law in his own hands and demolish the building or other structure alleged to be a public nuisance without recourse to the proper authorities and without adopting the proper procedure prescribed by law. AIR 1934 Mad 95 (96) = 35 Cri L Jour 437 (DB).

(7) There is no provision in this chapter for any reference of a public nuisance to arbitration and no provision for the making of a conditional order absolute as a result of the finding of the arbitration. A conditional order can only be made absolute according to Sections 136, 137 and 139. (1950) 54 Cal WN (2 DR) 133 (133) (DB).

(8) Calcutta Municipal Act (33 of 1951), Section 583 — Proceedings under Section 133, Criminal P. C., initiated for removal of nuisance dropped — Dropping of proceedings cannot affect initiation of proceedings under Sec. 583. (1969) 73 Cal WN 32.

(9) Nuisance — Accused's rolling mill creating nuisance — Accused's partners in mill not joined as co-accused — Proceedings being criminal, non-joinder does not vitiate proceedings. AIR 1966 Cal 99 (100) = 1966 Cri LJ 260.

(10) Section 133 does not invest the magistrate with power to pass an order directing the surrender of a building which is the subject-matter of land acquisition proceedings. AIR 1967 Ker 44 (44) = 1966 Ker LT 503.

(11) Proceedings under Section 133 — Denial of public right and request for appointment of jury — Magistrate cannot proceed to make preliminary order absolute without complying with provisions of Section 138. 1964 All WR (HC) 481 = 1964 All Cri R 331.

2. Scope, object and applicability.— (1) The section cannot be made use of to put a stop to and prohibit certain objectionable accompaniments to ceremonies practised by a religious sect to the discomfort and annoyance of their fellow townsmen. 1901 All WN 126 (126).

(2) The section confers extraordinary powers which are meant to be exercised under extraordinary circumstances where recourse to ordinary law is not possible owing to urgency of the matter. AIR 1949 All 650 (Pr. 3) = 50 Cri L Jour

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation.—A 'public place' includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.]

[1882—S. 133; 1872—S. 521; 1861—S. 308.]

[*] This section was substituted for the original section by the Code of Criminal Procedure -(Amendment) Act, 1923 (XVIII of 1923), Section 24.

OBJECTS AND REASONS

1923.—"The principal question in connection with this clause is whether, as provided in the Bill, questions of title in relation to the rights of way and the like should, for the purposes of the chapter be finally decided by the Magistrates, or whether the almost uniform decisions of the High Court, which lay down that the Magistrate must stay proceedings, if he is satisfied that the question has been raised bona fide, should be followed. We prefer to accept the latter view as laid down in Manipur Dey v. Bidhu Bhushan Sarkar, ILR 42 Cal. 158; and as the case will not arise in all proceedings under the section and more especially as we incline to the opinion that the proposed redrafting of Section 135 is not altogether satisfactory; we have provided for it as a special case in a new section 139-A. Our proposals involve the necessity of laying down clearly that the Magistrate only is competent to inquire into the claim relating to the title. In view of Section 142 and of the fact that in any case of importance, either the person against whom the order was originally made or some member of public will bring the matter before a Civil Court, we do not think it necessary to lay down that the Magistrate may resume the proceedings upon the failure by the person against whom the order was made to institute civil proceedings within a reasonable time."—S.C.R. (XVIII of 1923).

STATE AMENDMENTS

Gujarat:

In its application to the State of Gujarat, the amendments made in S. 133 are the same as those made in Maharashtra—See Central Act XI of 1960, S. 87.

NOTE.—(1) Magistrates in the City of Ahmedabad have the jurisdiction and exercise the powers and perform functions of a Presidency Magistrate -See Guj. Act XIX of 1961. Section 14 (3) (4-11-1961): Salaried Magistrates for the City of Ahmedabad have been specially empowered for the purposes of this section—See Guj. Gaz., 6-11-1961, Pt. IV-A, p. 287.

Section 133 — Note 2 (contd.)

991 ** AIR 1958 Pat 210 (Pr. 3) = 1958 Cri L Jour 551 ** AIR 1958 Madh Pra 350 (Pr. 3) = 1958 Cri L Jour 1319.

(3) The idea behind the section is that the danger should be such that if the Magistrate does not take action under this section and directs the public to have recourse to the ordinary Courts of law, irreparable damage would be done. AIR 1949 All 650 (Pr. 3) = 50 Cri L Jour 991 ** AIR 1956 Cal 220 (221) = 1956 Cri L Jour 614.

(4) Proceedings under this section are not intended to settle a private dispute between two members of the public. They are not originated by the filing of a complaint or something of that kind. AIR 1943 All 19 (19) = 44 Cri L Jour 205 ** AIR 1958 Madh Pra 350 (Pr. 3) = 1958 Cri L Jour 1319 ** AIR 1942 All 443 (444) = 44 Cri L Jour 76.

(5) Any person can give a Magistrate information of the existence of any state of affairs but when the Magistrate acts on that information, he is acting suo motu. The person who gives the information has no rights in the matter and is not a person who may be described as a party to the proceedings. AIR 1943 All 19 (19) = 44 Cri L Jour 205.

(6) It is open to the Magistrate at any stage, for good reasons shown, to refuse to take any further action in the matter and the informant has no rights in the matter. AIR 1943 All 19 (20) = 44 Cri L Jour 205.

(7) As the section is intended to provide a speedy remedy in the interests of the public, a Magistrate should be on his guard, against any tendency to use it as a substitute for litigation in Civil Courts for the settlement of a private dispute. 1947 Jaipur LR 186 (187) (DB) ** AIR 1958 Madh Pra 350 (Pr. 3) = 1958 Cri L Jour 1319 ** ILR (1951) 1 Cal 126 (131). (Proceedings under Section 133 are held by a Magistrate in the interests of the public and

(2) For the appointment of an Executive Magistrate in the City of Ahmedabad, see S. 14 (3A) of Guj. Act XIX of 1961 amended by Guj. Act LI of 1963.

Maharashtra

(1) In its application to the State of Maharashtra, in sub-section (1) of S. 133—

(i) for the words "District Magistrate, a Sub-Divisional Magistrate or a Magistrate of the first class", substitute "Presidency Magistrate specially empowered by the State Government in this behalf or a District Magistrate or a Sub-Divisional Magistrate";

(ii) in the last paragraph, for the words "to appear before himself or some other Magistrate of the first or second class", substitute "to appear before himself or some other Executive Magistrate".—Bom. Act XXIII of 1951, S. 2 and Schedule (1-7-1953).

(2) After the reorganization of the State of Bombay in 1956, the amendments made in Section 133 by the above-mentioned Bom. Act are extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Mysore:

In its application to the State of Mysore, in S. 133, —

(i) in sub-section (1), for the words "a Magistrate of the first class", substitute the words "a Magistrate of the first class specially empowered by the State Government in this behalf; and

(ii) Same as in Maharashtra (1) (ii) above.—Mys. Act XIII of 1965, S. 26 (1-10-1965.

Section 133 — Note 2 (contd.)

not in the interests of any particular person. They should not be used for the purpose of establishing the title of a particular individual.) ** AIR 1942 All 443 (444) = 44 Cri L Jour 76 ** AIR 1933 Cal 150 (151) = 34 Cri L Jour 679 (DB) ** (1866) 5 Suth WR (Cr) 66 (66) (DB) ** AIR 1965 All 215 (216, 217) = 1965 (1) Cri LJ 535 = 1964 All LJ 629.

[See also (1870) 13 Suth WR (Cr) 51 (52) (DB) ** (1912) 13 Cri L Jour 594 (595) (Lah).]

(8) The proceedings under this section are ex parte and a Magistrate commencing such proceedings should issue a conditional order in conformity with the section, and not issue a notice instead to show cause why action should not be taken. AIR 1928 Lah 95 (96) = 29 Cri L Jour 530.

(9) As to the effect of the absence of such a conditional order, see the following case. 1885 All WN 266 (266). (**Held,** no liability for disobedience.)

[See also 1963 BLJR 279.]

(10) The proceeding is more of the nature of Civil than of Criminal proceeding and a party to such a proceeding is not an accused person; there is nothing to prevent his being examined on oath, or prosecuted for an offence under Section 193 of the Penal Code. (1905) 2 Cri L Jour 575 (577, 578) (DB) (Cal).

(11) Orders passed under this section are orders in criminal proceedings and no Letters Patent appeal lies therefrom. AIR 1916 Mad 970 (970) = 16 Cri L Jour 349 (DB).

(12) The section does not apply to private nuisances. AIR 1942 443 (444) = 44 Cri L Jour 76 ** AIR 1958 Madh Pra 350 (Pr. 3) = 1958 Cri L Jour 1319 ** AIR 1925 Oudh 130 (130) = 25 Cri L Jour 1118.

(13) A proceeding under this section is not the proper procedure to follow when there is a dispute between the Government and a private individual. (1900) 2 Bom LR 818 (819, 820) (DB).

(14) The section is confined to the matters specifically mentioned therein and cannot be applied to other matters, such as the apprehension of an imminent breach of the peace. AIR 1937 Lah 101 (102) = 39 Cri L Jour 13.

(15) Although ordinarily in disputes relating to possession of land the appropriate proceedings will be proceedings under Section 145, where a dispute relates to land, used by the public and an obstruction alleged affects the rights of the public, the specific provision under which action should be taken is this section. AIR 1950 Pat 502 (Pr. 6).

(16) Two proceedings under the section, side by side, with regard practically to the same subject-matter are not contemplated by the Code. AIR 1936 Pat 577 (579) = 37 Cri L Jour 1159.

(17) A private person has no right to insist that a Magistrate shall pass

Punjab: Haryana: Chandigarh

In its application to the States of Punjab and Haryana and the Union territory of Chandigarh, in Section 133—

(i) in the opening paragraph of sub-section (1) and in sub-section (2), for the words "a Magistrate", substitute the words "an Executive Magistrate"; and

(ii) in the closing paragraph of sub-sec. (1), for the words "Magistrate of the first or second class", substitute the words "Executive Magistrate".—Punj. Act XXV of 1964, Section 2 and Schedule, Pt. I, item (34) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Rajasthan:

Abu Area.—In its application to the Abu Area of the State of Rajasthan, the amendments made in Section 133 are the same as those made in (1) of Maharashtra—See Central Act XXXVII of 1956, Section 119 (1-11-1956).

Union territories (except Chandigarh):

In its application to the Union territories, in Section 133,—

(i) in the opening paragraph of sub-section (1) and in sub-section (2), for the words "a Magistrate", substitute the words "an Executive Magistrate"; and

(ii) in the closing paragraph of sub-section (1), for the words "Magistrate of the first or second class", substitute the words "Executive Magistrate".—Act 19 of 1969, Section 3 and Schedule, item 35 (in Delhi on 2-10-1969).

West Bengal

In its application to the State of West Bengal, in Section 133, sub-section (1),—

(i) in the first paragraph, for the words "a Sub-Divisional Magistrate or a Magistrate of the first class", substitute the words "a Sub-Divisional Executive Magistrate or an Executive Magistrate of the first class";

(ii) in the last para., for the words "some other Magistrate", substitute the words "some other Executive Magistrate".—W. B. Act 8 of 1970, Section 2 and Schedule, Item 50.

Section 133 — Note 2 (contd.)

an order under this section. Whether such order should be passed is a matter of discretion for the Magistrate. AIR 1937 All 785 (786) = 39 Cri L Jour 148.

(18) The order under this section is a conditional order and does not amount to an injunction. AIR 1938 Nag 84 (85) (DB).

(19) There is no period of limitation fixed for initiating proceedings under this section. AIR 1954 Cal 560 (560) = 1954 Cri L Jour 1712 ** 1964 (2) Cr LJ 94 (96) = 1964 MPLJ 330 ** 1962 (2) Cr LJ 413 (413, 414) = 1964 All WR (HC) 639.

(20) Magistrate passing preliminary order cannot amend it. AIR 1964 Mys 52 (53) = 1964 (1) Cri LJ 413.

3. Preventive action in respect of anticipated nuisance.— (1) Except in the case of the construction of a building or the disposal of a substance which is likely to occasion a conflagration or explosion, this section only applies where the unlawful obstruction or nuisance is actually in existence and does not justify any action being taken in regard to an anticipated but non-existent obstruction or nuisance. AIR 1939 Bom 92 (95) = 40 Cri L Jour 444 (DB) ** AIR 1958 Madh Pra 350 (Pr. 5) = 1958 Cri L Jour 1319 ** AIR 1936 Pat 577 (579) = 37 Cri L Jour 1159 ** AIR 1935 All 926 (927) = 37 Cri L Jour 347 ** AIR 1934 Nag 230 (231) = 35 Cri L Jour 1414.

4. Long-standing nuisances and obstructions.— (1) The section is not intended to be employed to avoid the necessity of filing civil suits in regard to long-standing obstructions but only for unlawful obstructions lately caused in public places and rendering their immediate summary removal necessary. AIR 1926 All 157 (157) = 27 Cri L Jour 27 ** AIR 1958 Pat 210 (Pr. 3) = 1958 Cri L Jour 551. (Alleged nuisance in existence for seven years — Section 133 does not apply.) ** 1956 BLJR 737 (739) ** AIR 1939 Lah 276 (277) = 40 Cri L Jour 758 ** AIR 1938 Lah 523 (524) = 39 Cri L Jour 775 (DB) ** AIR 1930 Lah 361 (361) = 31 Cri LJ 167 ** AIR 1940 Oudh 75 (77) = 41 Cri L Jour 99 ** AIR 1965 All 215 (216, 217) = 1965 (1) Cri LJ 535 ** 1969 Cri LJ 1010 (1011) (Punj).

[See also (1949) 51 Pun LR 176 (180, 181).]

[But see (1883) 2 Weir 59 (59) ** AIR 1943 Pat 32 (32, 33) = 43 Cri L Jour 903 ** AIR 1939 Pat 183 (186) = 40 Cri

Section 133 — Note 4 (contd.)
L Jour 516 (DB). (7 Beng LR 499, Followed.)]

(2) There is no period of limitation fixed for initiating proceedings under this section. AIR 1954 Cal 560 (560) = 1954 Cri L Jour 1712 ** 1964 (2) Cri LJ 94 (96) = 1964 MPLJ 330.

5. Sections 133 and 144.— (1) Where a case falls both under this section and Section 144, the order should, under this section, be a conditional one giving the party an opportunity to show cause against the order. (1868) 10 Suth WR (Cr) 53 (53, 54) = 1 Beng LR (App) Cr 20 (DB) ** (1869) 1 NWPHCR 197 (197, 198) (DB) ** (1874) 21 Suth WR (Cr) 24 (25) (DB).

(2) Where the case does not fall under this section, as where an order has to be passed prohibiting burial in certain places on sanitary grounds, it should be made under the more general provision, Section 144. (1881) 2 Weir 64 (64).

6. Sections 133 and 147.— (1) This section is not a bar to a proceeding under Section 147 where a case falls under both the sections. Thus, the fact that this section provides for an order directing the removal of an obstruction to a pathway does not imply that an order cannot be passed under Section 147 when there is a likelihood of a breach of the peace in respect thereto. AIR 1914 Mad 712 (713) = 15 Cri L Jour 362 (DB).

(2) Even though a petition is presented under Section 147, it is perfectly competent for the Magistrate to proceed under this section. AIR 1953 Mad 674 (Pr. 8) = 1953 Cri L Jour 1201 ** AIR 1954 Cal 560 (560) = 1954 Cri L Jour 1712. (Obstruction of a public thoroughfare being a public nuisance, action should be taken under Sec. 133 and not Section 147. There is no period of limitation fixed as far as Section 133 is concerned.)

(3) When proceedings are taken under this section, no order can be passed under Section 147 without following the procedure laid down in that section. That section clearly states that the procedure shall be as under Section 145 which is entirely different from this section and is entirely for a different purpose. AIR 1953 Mad 674 (Pr. 8) = 1953 Cri L Jour 1201 ** AIR 1922 Cal 59 (65) = 23 Cri L Jour 353 (FB).

(4) Where in a proceeding initiated under this section the Magistrate after hearing the parties and perusing the cause shown is satisfied that the real dispute between the parties is as to the right of user of certain public pathway in respect of which there is an apprehension of the breach of peace and the Magistrate orders the drawing up of proceedings under Section 147 and directs the parties to file their written statements, the order is perfectly within his jurisdiction. AIR 1950 Pat 315 (Pr. 2) = 51 Cri L Jour 1188.

7. Who may act under the section.— (1) It is only the officers specified in the section that can make an order thereunder. A kurnam cannot, issue an order for the removal of an obstruction from a public way nor can a third class Magistrate make any enquiry under this section. (1885) 1 Weir 132 (133). (Kurnam.) ** AIR 1929 Cal 813 (813) = 31 Cri L Jour 673 (DB). (Third Class Magistrate.)

(2) A Magistrate of the second class is not competent to make a conditional order under this section, though he may pass the final order under Section 137 if the case is transferred to him by the Magistrate making the conditional order. AIR 1945 Pat 334 (336) = 24 Pat 16 = 47 Cri L Jour 29 (DB).

(3) The fact that a Government notification under Section 37/39 confers powers on Sub-Divisional Magistrate to take cognizance under Chapters 8 to 12, does not take away the jurisdiction conferred by the Code on First Class Magistrate to take action under Section 133. AIR 1958 Raj 305 (Prs. 6, 7, 8) = ILR (1957) 7 Raj 734 = 1958 Cri L Jour 1428 (DB). (Criminal Ref. No. 46 of 1954, D/- 19-8-1954 (Raj), **Overruled.**)

(4) Under Section 133, proceedings cannot be initiated before a Taluka Magistrate. The Taluka Magistrate can function only if a conditional order is passed by the Sub-Divisional Magistrate. Where the District Magistrate acting under the provisions of Sec. 438 (2), Cr. P. Code vacated the order passed by the Taluka Magistrate, he cannot order that till the time the Sub-Divisional Magistrate decides the case the Municipality shall not utilise the structure in dispute as latrines or for any other purpose. Such an order cannot be passed even under Section 133. 1964 (1) Cr LJ 373 (374) (Guj).

(5) Proceedings sent to Executive Magistrate after conditional order by Sub-Divisional Magistrate — Sub-Divisional Magistrate is functus officio — Executive Magistrate must pass requisite order — Submission of order to Sub-Divisional Magistrate not proper — Second conditional order by Sub-Divisional Magistrate ultra vires. (1960) 38 Mys LJ 488.

8. "Considers."— (1) It is enough if the Magistrate has before him sufficient materials upon which prima facie he can act. (1900) 5 Cal WN 173 (174).

(2) Where the acts complained of amount to a nuisance, it prima facie gives the Magistrate jurisdiction to pass

Section 133 — Note 8 (contd.)

an order under this section. (1904) 1 Cri L Jour 70 (72) (DB) (Cal).

(3) Where the Magistrate has not found anything more than that the obstruction was causing inconvenience to the traffic, this finding is not enough for the purpose of passing an order under Section 133. AIR 1959 Cal 599 (Pr. 12) = 1959 Cri L Jour 1160.

(4) In a proceeding under Section 133, if the person proceeded against appears and shows cause against the conditional order, the Magistrate is required to take evidence in the matter as in a summons case. There is no scope for gratuitous hearing before proceedings under Section 133 are drawn up. 1961 All WR (Sup) 84 = 65 Cal WN 1244.

(5) After the Magistrate has found on enquiry that there is no reliable evidence in support of the party's denial of the public right claimed, he must proceed under Section 137 or 138 and thereafter the Magistrate must proceed under Section 139. The order under Section 133 is not made absolute under Section 140, but after the order has been made absolute, notice in terms of Section 140 (1) is to be issued to the person concerned. AIR 1960 Cal 157 (158) = 1960 Cr LJ 334.

9. "On receiving a police-report or other information."— (1) A proceeding under this section is in the first instance ex parte, and the report or other information on which it is based is no evidence against the opposite party. AIR 1917 Cal 207 (207, 208) = 17 Cri LJ 409 (410) (DB).

(2) The words 'or other information' are wide enough to permit a Magistrate to take action under this section on information derived from any source including his own personal information which he gets in another capacity. AIR 1952 All 215 (Prs 6, 22) = ILR (1951) 2 All 609 = 1952 Cri LJ 407. (Per Wanchoo J., Wali Ullah J., contra.)

(3) It would be improper for the Magistrate to continue to hear the case after the passing of preliminary order. AIR 1952 All 215 (Prs 6, 22) = ILR (1951) 2 All 609 = 1952 Cri LJ 407. (Per Wanchoo J.)

10. "And on taking such evidence."— (1) The expression "on taking such evidence (if any) as he thinks fit" does not make it incumbent on the Magistrate to hold an inquiry before he makes an order under this section. AIR 1931 All 257 (257) = 32 Cri LJ 565 ** 1964 (1) Cr LJ 248 (249) = 29 Cut LT 523. (Public nuisance — Obstruction to public right — Denial of existence of public right — Magistrate making a joint inquiry both under Sections 137 and 139-A and passing a composite order — Proceedings are irregular and final order passed is not legal — Provisions of Section 139-A are mandatory.)

[See also (1959) 1 Orissa JD 275. (Final order under Section 133 — Unlawful obstruction to channel — Denial of public right — Enquiry under Section 139-A essential before enquiry under Sec. 137 — Non-compliance — Order under Section 133 invalid.)

[See however AIR 1939 Lah 276 (277) = 40 Cri LJ 758.]

(2) In disposing of the objection under Section 133, the Magistrate has to consider the evidence led by the objector only and is not to take into account the evidence adduced on behalf of the complainant. 1966 All WR (HC) 843 = 1966 All Cr R 532.

(3) When an application under Section 133 is filed on the ground that a certain person has put up an obstruction on a path, which is alleged to be a public path, the action of the Magistrate in straightway proceeding to record the evidence of both the parties, without applying his mind whether there is reliable evidence in support of the denial of public path by the respondent or not vitiates the order passed by him. 1968 Cri LJ 1518 (1519) = 1968 Mad LJ (Cri) 239.

(4) Complaint under Section 133 — Complainant not leading any evidence in support of allegations — Nor making his own statement — Magistrate instead of stopping proceedings, examining respondents and their witnesses — Course adopted held was in clear violation of Sections 244 and 137 and as such the entire proceedings stood vitiated. AIR 1969 Goa 74 (75) = 1969 Cri LJ 744.

(5) Demolition of dilapidated building — Notice under Section 134 to person in possession of building — When cause is shown Magistrate must act under Section 137 and take evidence — He cannot, without doing so pass orders under Section 142 (1). 1967 BLJR 493 = ILR 46 Pat 794 (DB).

(6) The party against whom a conditional order is made under Section 133 cannot both show cause against the order and ask for the appointment of a jury, Section 135 gives such party the right to adopt either of these alternatives. If he adopts the former alternative, the Magistrate is bound to take action under Section 137 and, if he adopts the second alternative the Magistrate is bound to take action under Section 138. AIR 1960 Pat 539 (540) = 1960 BLJR 349 = 1960 Cr LJ 1489.

(7) Magistrate has to determine whether denial of existence of public right by person who is proceeded under Section 133 is genuine or not —

Section 133 — Note 10 (contd.)
By expression "Reliable evidence" in Section 139-A (2), it is not meant that Magistrate should weigh evidence produced by both sides and then come to conclusion which he prefers. 1967 Cur LJ 717 (Punj) ** AIR 1966 Tripura 14 (15, 16) = 1966 Cri LJ 303. (Denial of existence of public right — Magistrate taking evidence but recording no finding whether there was reliable evidence in support of denial — Order under Section 133 held illegal.)

(8) Denial of public right only with respect to part of way in question — Such denial enough for Section 139A — Magistrate, after such denial being made, not recording finding under Section 139A but examining witnesses and deciding case — Order of Magistrate without jurisdiction. 1969 Cri LJ 1461 (1463) = 1969 Raj LW 332.

(9) Proceedings under Section 133 — Denial of public right — Enquiry — "Reliable evidence" in Section 139-A — Record of rights in support of private right is reliable evidence. AIR 1966 Cal 215 (217) = 1966 Cri LJ 528.

11. "Unlawful obstruction or nuisance."— (1) The words "Public nuisance" are defined by Section 268 of the Penal Code and by virtue of Section 4, sub-section (2) that definition applies to this Code also. (1870) 5 Mad HCR 345 (357) (DB) ** AIR 1958 Madh-Pra 350 (Pr 3) = 1958 Cri LJ 1319 ** (1912) 13 Cri LJ 183 (184) = 34 All 345.

(2) Any act or illegal omission which must necessarily cause obstruction to persons who may have occasion to use any public right is a public nuisance. (1870) 5 Mad HCR 345 (357) (DB).

(3) The present section deals with unlawful obstructions of a particular kind, namely those relating to any way, river or channel which is or may be lawfully used by the public, or any public place. (1907) 5 Cri LJ 97 (99) (Bom) (DB) ** AIR 1955 Cal 554 (555) = 1955 Cri LJ 1355. (Khatais built on private land close to public road — Accumulated filth resulting in causing inconvenience and affecting health — No order can be made under Section 133.) ** AIR 1922 Cal 59 (70) = 23 Cri LJ 353 (FB).

[See also AIR 1926 All 193 (193) = 27 Cri LJ 276.]

(4) Section applies to removal of obstruction on public land as well though not specifically mentioned. AIR 1965 All 215 (216) = 1965 (1) Cri LJ 535 = 1964 All LJ 629.

(5) Obstruction to persons who may have occasion to use other public rights though a public nuisance, cannot be dealt with under this section. Nor does the section apply to obstruction of private rights. (1898) 22 Bom 988 (994) (DB) ** AIR 1958 Madh Pra 350 (Pr. 3) = 1958 Cri LJ 1319 ** AIR 1928 All 627 (628) = 29 Cri LJ 661 ** AIR 1964 Ker 252 (253) = 1963 Ker LT 934 = (1964) 2 Cri LJ 417 (1).

(6) The obstruction must be on the public way, etc. AIR 1945 Nag 226 (228) = ILR (1945) Nag 461 = 47 Cri LJ 217.

(7) The obstruction or nuisance must be proved to exist on some way, river or channel which may lawfully be used by the public or on some public place. AIR 1967 Goa 1 = 1967 Cri LJ 49 (FB).

(8) Where the obstruction is on a public road, the section will apply though the obstruction is caused by something done on a private property. AIR 1945 Nag 226 (228) = ILR (1945) Nag 461 = 47 Cri LJ 217 ** AIR 1958 Madh Pra 350 (Pr 3) = 1958 Cri LJ 1319.

[See also ILR (1966) Cut 478 (479) = (1966) 32 Cut LT 991. (Trees leaning towards his neighbour's courtyard — "Public nuisance" — Action under Section 133 is justified even if the place is within municipal area.)]

(9) The question whether there has been an obstruction is a question of fact which must be decided having regard to the facts and circumstances of each case. (1893) 20 Cal 665 (670) (DB). (Public nuisance — Sections 233 and 290 of I. P. C.) ** AIR 1934 Nag 230 (231) = 35 Cri LJ 1414. (Covered cess pool under construction is not an obstruction.)

(10) The spreading of a branch of a tree at a height of fifteen feet over a country road, or the mere placing of a charpoy temporarily on a public road, may not, having regard to the nature of the traffic, amount to an obstruction. AIR 1924 All 667 (667) = 26 Cri LJ 104. (Overhanging branch on public road.) ** (1912) 13 Cri LJ 830 (830) (All). (Placing of charpoy on public road.)

(11) The unlawful cutting up of a public road, or the filling up of a portion of a ditch or drain forming part of such road, or the placing of erections thereon, or the holding of a cattle-market resulting in the driving of cattle to and from such market through narrow and congested public lanes may amount to an obstruction. (1867) 7 Suth WR (Cr) 59 (59) (DB). (Cutting of public road.) ** (1872) 18 Suth WR (Cr) 38 (38) (DB). (Filling of ditch on public road.) ** AIR 1930 All 751 (751) = 32 Cri LJ 160. (Chabutra unlawfully erected over a public way.) ** (1897) 20 Mad 433 (434) (DB). (Building over the road) ** AIR 1927 Pat 265 (266) = 28 Cri LJ 910. (Encroachment upon a public way.) ** (1921) 62 Ind Cas 822 (822, 823) = 22 Cri LJ 582 (DB) (Cal). (Cattle market.)

Section 133 — Note 11 (contd.)

(12) An obstruction in the channel of a public and navigable canal, or an erection of a bund or dam obstructing the right of the public to cross the bed of the river easily and on foot may amount to an unlawful obstruction and a nuisance. (1887) 14 Cal 656 (658) (DB). (Placing a bamboo stockade across a tidal navigable river.) ** AIR 1927 Oudh 122 (124) = 28 Cri LJ 203 ** (1905) 2 Cri LJ 762 (163. 164) = 32 Cal 930 (DB). (Erection of bund.)

(13) The erection of a wall in front of shops abutting on a public place will constitute an obstruction and public nuisance. AIR 1953 Mad 674 (Pr 8) = 1953 Cri LJ 1201.

(14) Any encroachment., however small, on a public road must inevitably result in obstruction to persons who may have occasion to use such road, and is, therefore, a public nuisance. AIR 1927 Pat 265 (266) = 28 Cri LJ 910 ** AIR 1925 Lah 454 (455) = 26 Cri LJ 942 (DB). (Following 14 Cal 656 and dissenting from 20 Cal 665.) ** (1897) 20 Mad 433 (434) (DB).

(15) Where the trade of auctioning vegetables carried on in a private house in a city caused some amount of inconvenience to the people passing by the public road outside the building because of the vegetable carts which were necessarily parked on the public road, and also produced some discomfort to the people living in the locality because of the noise caused when the auction was going on, the conduct of the business cannot be prohibited under the first or second clause of Section 133 (1). **AIR 1962 SC 1794 (1795) = 1963 (1) Cri LJ 14 = (1963) 3 SCR 9.**

(16) Mere encroachment is not enough. It must cause unlawful obstruction. Where there is a slight encroachment and the dispute is really a boundary dispute, the aggrieved party must approach a civil Court. 1957 All WR (Supp) 54 (55).

[See however 1956 BLJR 737 (738). (Section does not become inapplicable because the encroachment does not cause inconvenience to the public.)]

(17) In order to constitute an act an unlawful obstruction, it is essential, not only that the obstruction should be to persons who may have occasion to use any public right, but also that the obstruction should be existing and not merely future. (1874) 21 Suth WR (Cr) 10 (10) (DB) ** AIR 1934 Nag 230 (231) = 35 Cri LJ 1414 ** 1962 (2) Cri LJ 666 (667) = 1961 Ker LT 199 ** (1960) 1 Ker LR 66 = 1960 Ker LJ 160.

[See AIR 1936 Pat 577 (579) = 37 Cri LJ 1159.]

(18) Under this section all that a Magistrate has to see is whether the person proceeded against caused the obstruction. It is immaterial as to how he caused it or how genuine his belief in his rights may be. AIR 1945 Nag 226 (228, 229) = ILR (1945) Nag 461 = 47 Cri LJ 217.

(19) Where an owner of a field adjoining a public road erected an embankment on his field at a point where water flowing from a field on the other side of the road entered it, which had the effect of banking the water up in the road until it formed a little lake, and the road was thus rendered quite impassable, it was held that he could be proceeded against under this section. AIR 1945 Nag 226 (228) = ILR (1945) Nag 461 = 47 Cri LJ 217.

(20) The section is not inapplicable merely because the motive for causing the obstruction is good. (1901) 23 All 159 (162) (DB) (All).

(21) Obstruction of public path — Party providing another way — Still obstruction not justified. 1961 Raj LW 397 = ILR (1960) 10 Raj 349.

(22) The section applies even when the obstruction does not cause practical inconvenience to persons using such way. 1950 All WR (Supp) 82 (84) ** AIR 1943 Pat 32 (32) = 43 Cri LJ 903 ** AIR 1930 All 751 (751) = 32 Cri LJ 160 ** AIR 1916 Mad 847 (847) = 16 Cri LJ 560 ** (1901) 23 All 159 (162) (DB) ** AIR 1965 All 215 (217) = 1964 All LJ 629 = 1965 (1) Cri LJ 535.

[See however AIR 1945 Nag 226 (229) = ILR (1945) Nag 461 = 47 Cri LJ 217.]

(23) The fact that the obstruction affords some convenience to the person causing it does not make the section inapplicable. (1912) 13 Cri LJ 183 (184) = 34 All 345.

(24) A public road will comprise all the ground forming part of the road, whether metalled or not, over which the public have a right of way. AIR 1914 All 341 (342) = 37 All 9 (DB) ** (1881) 7 Cal L Rep 272 (273) (DB) ** 1901 All WN 25 (25).

12. Nuisance.— (1) The section does not apply to a nuisance in a private place. AIR 1935 All 926 (927) = 37 Cri LJ 347 ** AIR 1958 Madh Pra 350 (Pr. 3) = 1958 Cri LJ 1319 ** AIR 1955 Cal 554 (555) = 1955 Cri LJ 1355. (In absence of evidence that the person has been carrying on a trade in milk by maintaining the Khatals and which trade or occupation has been adversely affecting the health of the locality, an order cannot be made under S 133.) ** AIR 1928 All 128 (128) = 29 Cri LJ 233.

[See AIR 1949 Mad 75 (76) = 49 Cri LJ 666.]

Section 133 — Note 12 (contd.)

[See also AIR 1949 Dacca 11 (Pr 12) = 50 Cri LJ 782.]

(2) A nuisance in a public place may orginate in a private place and the act or omission which constitutes the nuisance may be an exercise of a right in respect of one's own property. (1898) 25 Cal 425 (430) (DB) (Cal) ** (1905) 2 Cri LJ 762 (763) = 32 Cal 930 (DB).

[See also AIR 1949 Mad 75 (76) = 49 Cri LJ 666.]

(3) The construction of latrine on one's own land is not a nuisance in a public place and so the removal of the latrine cannot be ordered under this section. AIR 1935 All 926 (927) = 37 Cri LJ 347.

(4) The principle that the user of one's own property may be a public nuisance is in accordance with the maxim sic utere tuo ut alienum non laedas (so use your own property as not to injure the right of another). A private proprietor may be guilty of act done on his private property, which may give rise to a public nuisance to those living in the neighbourhood. (1897) 25 Cal 425 (430) (DB).

(5) Mere statement of the accused that the rice mill did not produce much noise as it was run by an electric motor is not conclusive of the fact of its not being a nuisance. 1964 (2) Cri LJ 94 (95) = 1964 MPLJ 330.

(6) The following are illustrations of cases where acts of private user may amount to a public nuisance :

(a) Where a latrine is used in such a way as to amount to a nuisance to the neighbours, or where it is constructed near a public well and its continuance there will render the water of the well insanitary and unfit for use. AIR 1935 All 926 (927) = 37 Cri LJ 347 ** AIR 1928 All 128 (128) = 29 Cri LJ 233 ** AIR 1936 Pat 409 (409, (410). (Latrine near public well.)

(b) Where a burning ghat or ground is kept in such an offensive state or the cremation is carried on in such an offensive manner as to be a source of danger, injury, or annoyance to persons living in the vicinity. (1898) 25 Cal 425 (430) (DB) ** (1896) 19 Mad 464 (468, 469) (DB) (Mad).

(c) Where a high wall is built with the result that there is no space to clear the drainage between it and the neighbour's house and there is consequent accumulation of filth. (1910) 11 Cri LJ 665 (667) (DB) (Cal).

(d) Where a cooking shop is conducted in such a manner or beef is cooked there under such circumstances as may cause annoyance to the public or the neighbours. 1868 Pun Re (Cr) No. 15, p. 36 (38) (DB).

(e) Where a person allows prickly pear from his land to spread on a road used by the public. AIR 1928 Mad 1235 (1235, 1236) = 30 Cri LJ 432.

(f) Where a toy shop owner exhibits certain clock work toys, or a person sells "satta" tickets in a shop with the result that a large crowd is collected, and there is a dangerous rush. (1911) 12 Cri LJ 258 (258, 259) = 35 Bom 368 (DB). (Toy shop.) ** AIR 1924 All 568 (568) = 26 Cri LJ 135. (Selling satta tickets in shop.)

(7) In order, to constitute an act or illegal omission a public nuisance, it must, having regard to Section 268 of the Penal Code (1) cause common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or (2) be one which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right. (1906) 4 Cri LJ 492 (493) (All).

(8) It is not enough to show that the sentiments of certain persons or of a class of persons are offended by the Act. The reason is lex non favet votis delicatorum (the law favours not the wishes of the dainty). In other words, the law makes no allowance for the susceptibilities of the hypersensitive. (1908) 7 Cri LJ 381 (385, 386) = 30 All 181 (DB).

(9) Where certain Mahomedans for a religious purpose kill cows in a private compound, only partly visible, it will not amount to a public nuisance. (1887) 10 All 44 (46, 47) ** (1908) 7 Cri LJ 381 (385, 386, 387) = 30 All 181 (DB) ** AIR 1929 Lah 252 (253) = 30 Cri LJ 660.

(10) A person wilfully slaughtering cattle in a public street so that the slaughter could be heard and seen by the passers-by, would be committing a public nuisance. (1887) 10 All 44 (46).

(11) Where a person cut up meat on his verandah and exposed it to the sight of persons passing along the road, it was held that it would not amount to a public nuisance merely because the sight would offend some Jains whose temple was close-by. (1887) 12 Bom 437 (439) (DB).

(12) A cremation held on a particular spot dedicated for that purpose, or the playing of music before a mosque, or the making of noise by a chowkidar for keeping thieves away is not a public nuisance simply because it may annoy some people near-by. (1896) 19

Section 133 — Note 12 (contd.)
Mad 464 (468, 469) (DB). (Holding cremation.) ** AIR 1931 All 674 (686, 687) (DB). (Playing music before mosque.) ** AIR 1926 Oudh 414 (414, 415) = 27 Cri LJ 1020. (Chowkidar making noise to scare away thieves.)

(13) A hadwara (a place for skinning dead animals) which is already in existence for a long time at a distance from a village will not constitute a public nuisance merely because it causes nuisance to some persons who have set up their houses nearby subsequently. (1949) 51 Pun LR 176 (180, 181).

(14) In order to establish a charge of committing a public nuisance in a public place to the annoyance of residents or passengers in the locality, it is necessary to show that somebody was actually annoyed, though annoyance even to a single person is sufficient. AIR 1924 All 194 (195) = 25 Cri LJ 332. (In view of latter part of Section 268, Penal Code, it is submitted that this decision cannot be accepted as correct.—Ed.)

(15) The question whether an act or omission causes or must necessarily cause injury, danger, or annoyance is one of fact which depends upon the circumstances of each case. See 1932 Mad WN 111 (113).

(16) The following acts and omissions were held not to amount to public nuisance in the particular circumstances of the case:

- **(a)** The bare solicitation of chastity. 1895 Rat 765 (765) (DB) ** (1900) 22 All 113 (115) (DB).
- **(b)** The visiting of a prostitute to a dak bungalow at the request of a person staying there. (1870) 2 NWPHCR 349 (352) (DB).
- (c) The letting of water on a public road. 1932 Mad WN 111 (113).
- **(d)** Gambling in a private place or in front of a zamindary cutchery. (1903) 7 Cal WN 710 (711) (DB) ** 1867 Pun Re (Cr) No. 16, p. 35 (35) (DB) ** (1880) 1 Weir 240 (241) (DB) ** (1891) 14 Mad 364 (364) (DB).
- (e) Mere angling in a tank. (1881) 1 Weir 231 (231) (DB).
- **(f)** Skinning an animal which dies a natural death. AIR 1914 All 363 (363) = 15 Cri LJ 600.
- **(g)** The construction of a latrine on one's own land. AIR 1935 All 926 (927) = 37 Cri LJ 347.
- **(h)** **The disposal of a corpse on a cremation ground or burning ghat set apart for the purpose. (1902) 25 Mad 118 (130, 131) (DB) ** AIR 1916 Bom 122 (123) = 18 Cri LJ 137 (DB) ** (1898) 25 Cal 425 (430) (DB).**
- (i) Allowing one's cattle or pigs to stray into other people's premises. (1868) 9 Suth WR (Cr) 70 (71) (DB) ** (1894) 1 Weir 244 (244) ** (1866) 6 Suth WR (Cr) 71 (72) (DB).
- (j) The building of a wall on one's own property. (1910) 11 Cri LJ 665 (667) (DB) (Cal). (Case under Calcutta Municipal Act.)
- (k) The keeping of a cooking shop and cooking beef there. 1868 Pun Re (Cr) No. 15, p. 36 (38) (DB).
- (l) Using night soil as manure. (1886) 8 All 99 (101).
- (m) Selling of "satta" tickets in a shop along the roadside. AIR 1929 Lah 801 (801).
- (n) Non-supply or short supply of water does not amount to nuisance — Magistrate directing Commissioner of municipality to take action without impleading him — Order is bad. (1965) 69 Cal WN 674.

(17) In the particular circumstances of the case the following were held to amount to public nuisance:

- (a) The solicitation by prostitutes in an open public place, some of them carrying charpoys with them. 1900 Pun Re (Cr) No. 2, p. 3 (8, 9) (DB).
- (b) Gambling in the market place, or on a thoroughfare. (1881) 1 Weir 242 (242) (DB) ** AIR 1916 Mad 617 (618) = 16 Cri LJ 254 (254). (Gambling on a thoroughfare.)
- (c) Cultivating paddy in the bed of a tank used for drinking purposes by the public. (1881) 1 Weir 229 (229) (DB).
- (d) Angling in a tank with a bait which is of a foul kind. (1881) 1 Weir 231 (231) (DB).

13. "Channel".— (1) The word "channel" is not defined in the Code but is quite wide enough to include a catchment area in the centre of which there is a watercourse. AIR 1926 Mad 165 (166) = 27 Cri LJ 105.

(2) It is doubtful if a field across which surplus water of the neighbouring lands used to flow into the tank is a "channel" within the meaning of this section. AIR 1914 All 213 (213) = 15 Cri LJ 229 (DB).

(3) The word 'channel' in Section 133 covers such a flow of water as can be used for positive users such as navigation or irrigation and not rain-water across roads, streets or lanes in cities or towns which is incapable of any positive use by the public. A prevention of loss to the property of persons by avoiding collection of water and an insistence on a free flow of water and removal or obstruction cannot imply a

Section 133 — Note 13 (contd.)
use of channel in terms of Section 133 (1). 1961 (2) Cr LJ 403 (404) = 1960 Raj LW 674.

(4) A channel which can lawfully be used by the public for six months in a year when there is water in it will attract the application of this section. AIR 1950 Assam 138 (Pr 9) = 51 Cri LJ 1177.

(5) Channel in private property of a Housing Society — Allegations that as the Society diverted flow of channel. some water accumulates in land of Society which is dangerous to cabins erected by petitioner Colony and that it also affects some septic tanks by forcing mud into them — No allegation of public rights on the channel or of discharging water in it — **Held,** first para of Section 133 did not apply—Further nalla not being the property of Government, it could not be a public place by reason of Section 37, Bom. Land Revenue Code. (1968) 70 Bom LR 588 = 1968 Mah LJ 909 (DB).

14. "Which is or may be lawfully used by the public."— (1) For the applicability of the section the way, river or channel from which a nuisance is sought to be removed must be one which is or may be lawfully used by the public. AIR 1951 Pat 311 (Pr 2) ** AIR 1923 Pat 540 (541) = 24 Cri LJ 855 ** (1876) 25 Suth WR (Cr) 4 (5) (DB) ** (1880) 5 Cal 875 (876) (DB).

(2) Where the allegation of one party is that the opposite party had obstructed the free flow of water from the nullah and had thereby caused inundation of its fields, a proceeding under Section 147, would be misconceived. So far as inundation is concerned, they have got a remedy in the Civil Court by way of damages. So far as obstruction to the free flow of water is concerned the proper proceeding would be one under Section 133, if the nullah in question can be said to be lawfully used by the public. (1958) 24 Cut LT 394 (395).

(3) An obstruction, etc., in respect of a private place is not within the section. (1864) 1 Suth WR 324 (324) (DB) ** (1865) 2 Suth WR (Cr) 36 (36) (DB) ** AIR 1925 Oudh 130 (130) = 25 Cri LJ 1118 ** AIR 1928 All 627 (628) = 29 Cri LJ 661 ** 1890 Rat 516 (517, 518) (DB) ** 1903 Pun Re (Cr) No. 2 p. 4 (7) ** AIR 1921 Oudh 204 (204) = 23 Cri LJ 57.

(4) The fact that the Magistrate has taken action under Section 133 is sufficient prima facie to show that he considered that the locus inquo is a public place. (1881) 8 Cal L Rep 399 (400) (DB).

(5) It is not necessary to give jurisdiction under this section that the way should be one which is generally used by the public. All that is required is that the way etc. should be one which is or may be lawfully used by the public. (1909) 10 Cri LJ 210 (211) (DB) (Cal).

(6) A channel which can lawfully be used by the public for six months in a year when there is water in it will attract the application of this section if there is obstruction created in it preventing persons from plying their boats. AIR 1950 Assam 138 (Pr 9) = 51 Cri LJ 1177.

(7) Private property cannot be treated as public, merely because a section of the public have enjoyed permissible user over it. AIR 1924 All 1 (7) = 24 Cri LJ 817.

(8) The fact that the residents of a particular village have a right to take their cattle across a field does not constitute the field a public way which is or may be lawfully used by the public. AIR 1930 Cal 286 (288) = 31 Cri LJ 859 ** AIR 1916 Lah 214 (215) = 1916 Pun Re No. 109 (DB) ** AIR 1914 All 213 (213) = 15 Cri LJ 229 (DB) ** AIR 1920 PC 43 (45).

(9) A way or a road may be established to be a public one where acts of user by the public are shown to have been acquiesced in by the owner of the land over which the way passes and those acts are of such a character as to warrant the inference that the owner intended to make over to the public, the right to use the land as a public highway. (1880) 6 Cal L Rep 282 (284) (DB).

15. "Public place," meaning of.— (1) A public place "is a place where the public go, no matter whether they have a right to go or not." (1884) 14 QBD 63 (66) = 54 LJ MC 14 = 51 LT 604. (Per Grove J.) ** AIR 1945 Pat 309 (310) = 24 Pat 104 (DB) ** AIR 1916 Mad 474 (475) = 16 Cri LJ 704 (704) (DB) ** AIR 1916 Nag 15 (15) = 18 Cri LJ 650 ** (1904) 1 Cri LJ 349 (352) = 31 Cal 542 (DB) ** (1968) 70 Bom LR 588 = 1968 Mah LJ 909 (DB).

(2) A place in order to be public, must be open to the public, i.e., a place to which the public have access by right, permission, usage or otherwise. AIR 1925 Nag 123 (123) = 25 Cri LJ 1073 ** (1895) 17 All 166 (166, 167) (DB).

[See (1906) 3 Cri LJ 216 (220) = 30 Bom 348 (DB).]

(3) It must be established that the land in question is either a public way or a public place. 1957 All LJ 592 (592) ** AIR 1967 Kerala 44 (44). (Classification of land by State under Land Acquisition Act does not make the land a 'public place' — Magistrate

Section 133 — Note 15 (contd.)
not empowered to issue notice under Section 133.)

(4) Where a place is dedicated to the use of the public, it is of course, a public place. But it is not necessary that the title to the place should be in the public. A place may be a "public place" though it is the private property of an individual. It will depend upon the character of the place itself and the use actually made of it at a particular time. (1904) 31 Cal 542 (546) = 1 Cri LJ 349 (DB) ** AIR 1924 All 768 (769) = 25 Cri LJ 1308.

(5) Whether a place is a public place is a question of fact which depends on the evidence in the particular case. AIR 1925 Nag 123 (124) = 25 Cri LJ 1073.

(6) A well belonging to a private individual who allows the public to use the water for drinking purposes will be a "public place". AIR 1916 Nag 15 (15) = 18 Cri LJ 650.

(7) A railway platform at a time when passenger trains arrive, or the goods-yard of a railway station will be a public place. (1857) 26 LJ Exch 393 ** (1902) 26 Bom 609 (613) (DB). (Goods yard of railway station.)

(8) Railway land, not being a platform or yard to which the public have access is not a public place. AIR 1923 Pat 540 (541) = 24 Cri LJ 855.

(9) The verandah of a private house is not a public place merely by reason of the fact that it is accessible from a public street. AIR 1931 Lah 576 (576) = 33 Cri LJ 345 ** 1881 All WN 17 (17).

(10) See also the following cases. AIR 1936 Pat 409 (410). (Public well is a public place.) ** AIR 1921 Oudh 204 (204) = 23 Cri LJ 57. (Vacant space between two houses is not public place.)

(11) And the property of the State, designedly left unoccupied for sanitary or recreative purposes is a public place. See (1870) 5 Mad HCR 345 (358) (DB).

(12) A State property is a "public place" even though the public may not be entitled to use it. Hence, encroachment upon the land owned by a State railway comes within section 133. AIR 1945 Pat 309 (310) = 24 Pat 104 (DB).

(13) It was held that encroachment on Government land is not enough. It must be shown that the public is interested in the land. 1957 All LJ 592 (592).

(14) Mere encroachment is not enough. It must cause unlawful obstruction. Where there is a slight encroachment and the dispute is really a boundary dispute the civil Court is the proper forum for taking the dispute to. 1957 All WR (Supp) 54 (55).

[See however 1956 BLJR 737 (738). (Encroachment not causing inconvenience to public — Section is not inapplicable.)]

16. Conduct of trade or occupation injurious to the health or physical comfort of the community.— (1) The addition of the words "conduct of" before the words "trade or occupation" by the amendment of 1923 makes it clear that the section applies not only to cases where the trade or occupation is in itself injurious to the community, but also to cases where the conduct of the trade is injurious to the community. AIR 1930 Cal 757 (758) = 32 Cri LJ 235 (DB). (Per S. K. Ghose J., Graham J., contra.)

(2) Where there is a finding that the trade is causing nuisance only to the applicant and there is no evidence that other neighbours also are troubled. Section 133 has no application. AIR 1958 Madh Pra 350 (Pr 5) = 1958 Cri LJ 1319.

(3) Where the manager of a bone mill permitted a large stock of bones to remain uncovered in the open for a long time with the result that it became rotten and emitted noxious smell, it was held that it was a nuisance as it materially interfered with the ordinary physical comfort of human existence. (1907) 5 Cri LJ 45 (48) = 34 Cal 73 (DB).

(4) Where the conduct of the petitioners who are engaged in a trade of selling meat in the locality is such that it causes nuisance to the persons who reside in the locality as well as to the passers-by and also works injury to the residents there, the Magistrate, in taking action under Section 133, is justified in holding that the continuance of these shops at the locality, where they are situated, constituted a nuisance and they should be stopped altogether. 1957 MPC 399 (400). (Matter cannot be considered from the point of view of meat-eaters alone.)

(5) A noise made by the working of an engine in a factory or a mill is a serious nuisance if it is sufficient to prevent the neighbours from sleeping at night and from concentrating on their work during the day. AIR 1931 All 433 (433) = 33 Cri LJ 331 ** AIR 1920 Cal 550 (550) = 21 Cri LJ 669 (DB) ** AIR 1934 Nag 193 (193) = 36 Cri LJ 591.

(6) If a trade like auctioning has to be carried on as necessary for the well-being of the community, some amount of noise has to be borne in at least that part of the town where such trade is ordinarily carried on. **AIR 1962 SC 1794 (1795) = 1963 (1) Cri LJ 14 = (1963) 3 SCR 9.**

(7) Rice mill working at night — fact that it works at night only during

Section 133 — Note 16 (contd.)
season will not disentitle the inhabitants of the locality to relief under Section 133 if it is established that the working of the mill at night during the season is a nuisance. 1964 (2) Cr LJ 94 (95) = 1964 MPLJ 330.

(7-a) Where a flour mill causes inconvenience to two neighbours who alone report of a nuisance and there is no evidence to suggest that any similar nuisance or inconvenience is caused to anybody else, it will amount to a private nuisance only, and this section will not apply. AIR 1939 Bom 92 (94) = 40 Cri L Jour 444 (DB).

[See also 1951 All WR (HC) 630 (633). (Printing press held not public nuisance.) ** AIR 1950 Cal 349 (Prs. 5, 6) = 51 Cri L Jour 1315. (Icecream machine held not public nuisance.)]

(8) The dwelling of a prostitute in a quarter inhabited by respectable persons cannot by itself be considered to be "injurious to the comfort" of the community and therefore a nuisance. (1875) 24 Suth WR (Cr) 68 (69) (DB) ** (1901) 5 Cal WN 566 (567).

(9) Solicitation for immoral purposes by prostitutes with charpoys with them, on a public road and their remaining in open space in close proximity to the habitations for respectable citizens and the conduct of their occupation there will be injurious both to the health and physical comfort of the community and the public using the road. 1900 Pun Re (Cr) No. 2, p. 3 (8, 9) (DB).

(10) The driving of cattle to and from a cattle market through very narrow and congested lanes, if it causes obstruction to the public and is a source of danger to human life, is a trade or occupation injurious to the physical comfort of the community. (1921) 62 Ind Cas 822 (822, 823) = 22 Cri L Jour 582 (DB) (Cal).

(11) An order under this section can be made to prevent a discharge from a factory into a river of a noxious effluent which might be injurious to the health of the community which has right to the use of water in such river. AIR 1926 Pat 506 (507) = 28 Cri L Jour 317 (DB).

(12) Inoculation for small-pox is not by itself an offence, but where it is necessary to prohibit it in the interests of the public, proceedings may be taken under this section against the inoculator. 1893-1900 Low Bur Rul 545 (546).

(13) Where certain persons got their children inoculated for small-pox, it was held that they could not be said to be carrying on any trade or occupation and that the section had no application. AIR 1914 Upp Bur 3 (3) = 15 Cri L Jour 253.

(14) The proprietor of a cremation ground cannot be said to be carrying on any trade or occupation within the meaning of this section. (1898) 25 Cal 425 (431) (DB).

(15) The following are not trades or occupations injurious to the health or physical comfort of the community—

(a) The opening of a new market close to an old one, even if sometimes people are dragged from one market to the other. (1904) 14 Mad L Jour 207 (208) (DB).

(b) Plying of rival steam launches even though in their rivalry people are taken on board from places other than jetties and from boats, much to the annoyance and danger to the public travelling in the launches. AIR 1930 Cal 757 (758) = 32 Cri L Jour 235 (DB).

(c) Keeping a house of public entertainment. 1888 Pun Re (Cr) No. 47, p. 118 (119) (DB).

(d) Cultivation of maize, jowar or bajra within a short distance from the town. 1889 Pun Re (Cr) No. 39, p. 142 (143) (DB).

(16) Where there is no effect on public health, the conduct of an occupation like a tannery, or a lime-kiln, or a brick-kiln cannot be ordered to be stopped. (1911) 12 Cri L Jour 146 (147, 148) (Lah). (Tannery.) ** AIR 1932 All 159 (161) = 33 Cri L Jour 524. (Lime-kiln.) ** AIR 1920 Lah 258 (260) = 21 Cri L Jour 462. (Brick-kiln.)

(17) The working of flour mills as regulated by the order of the Magistrate in previous proceedings under this section cannot be described in law as a nuisance for purposes of fresh proceedings under this section. The law does not contemplate continued interference with the carrying on of a trade. AIR 1940 Oudh 75 (76) = 41 Cri L Jour 99.

(18) Though the Legislature has under local or special Acts, left certain trades or occupations to the control of local and municipal boards and provided remedies thereunder, the existence of such an alternative remedy does not deprive the Magistrate of jurisdiction to pass an order under this section. The Magistrate has jurisdiction to regulate the manner in which a trade is to be conducted in such a way as not to be a nuisance to the community. AIR 1943 Mad 357 (359) = 44 Cri L Jour 533 ** AIR 1958 Madh Pra 350 (Pr. 4) = 1958 Cri L Jour 1319 ** AIR 1932 All 159 (161) = 33 Cri L Jour 524 ** AIR 1920 Cal 550 (550) = 21 Cri L Jour 669 (DB).

(19) It is generally inexpedient for a Magistrate to take action in cases where certain trades and occupations

Section 133 — Note 16 (contd.)

are left to the control of Local and Municipal Boards and provided remedies under Local Acts and he will act wisely if he refers the party to set in motion the machinery provided in those local Acts. AIR 1932 All 159 (161) = 33 Cri L Jour 524 ** AIR 1958 Madh Pra 350 (Pr. 4) = 1958 Cri L Jour 1319 ** AIR 1920 Cal 550 (550) = 21 Cri L Jour 669 (DB).

(20) This section relates only to existing state of things and not to the possibility of future results. AIR 1958 Madh Pra 350 (Pr. 5) = 1958 Cri L Jour 1319 ** AIR 1961 Bom 263 (265) = 62 Bom LR 849 = 1961 (1) Cr LJ 641. (Finding of danger to public health in praesenti is necessary.)

(21) No order can be passed under this section on the possibility that the digging of the pits for the purpose of brick-making may in the future, be injurious to the health of the community. AIR 1920 Lah 258 (261) = 21 Cri L Jour 462.

(22) Accumulation of water on private land is not trade or occupation of goods or merchandise — Paragraph 2 does not apply even though it is injurious to health. (1968) 70 Bom LR 588 = 1968 Mah LJ 909 (DB).

17. Community — Meaning of.— (1) An act found to be injurious to the physical comfort of the neighbours must be held to be so to the physical comfort of the community and comes under this section even though there may be some part of the community, which is not affected. AIR 1931 All 433 (433) = 33 Cri L Jour 331 ** (1904) 1 Cri L Jour 512 (513) = 1904 Pun Re (Cr) No. 9 ** 1964 (2) Cr LJ 94 (96) = 1964 MPLJ 330.

(2) The section has no application where the nuisance is caused to the applicant only, unless there is evidence that other neighbours are also troubled. AIR 1958 Madh Pra 350 (Pr. 5) = 1958 Cri L Jour 1319.

(3) The interference with public comfort of the community must be considerable and must be caused to a considerable section of the public. (1911) 12 Cri L Jour 146 (147) (Lah) ** AIR 1926 Oudh 414 (414, 415) = 27 Cri L Jour 1020.

(4) The terms 'public' 'community' or 'persons living in the neighbourhood' must be deemed to have been used in this section in different senses, with reference to the particular kind of nuisance complained of. The term public will include both 'community' and 'neighbours' and the word 'community' has been used to include a particular section of the public including neighbours. 1951 All WR (HC) 630 (633) ** 1965 Cur LJ 647 = 67 Pun LR 1115.

(5) The word 'community' does not mean the residents of a particular house but it means the public at large or the residents of a particular locality. AIR 1950 Cal 349 (Pr. 5) = 51 Cri L Jour 1315 (DB).

18. Building, tent or structure or tree.— (1) An order can be passed under this section requiring a person owning, possessing or controlling a building tent, structure, or tree to prevent or stop the erection of, or to remove, repair, or support, such building, tent or structure or to remove or support any tree that is likely to fall and cause injury to persons living or carrying on business in the neighbourhood or passing by. (1868) 4 Mad HCR (App) xxxiv (xxxv) ** AIR 1969 Goa 74 (75) = 1969 Cri LJ 744. (Conditional order to cut tree — No direction need to be given for supporting the tree with a prop.) ** (1964) MLJ (Cr) 129 = 1963 (1) Mys LJ 273.

[See also AIR 1949 Dacca 11 (Pr 12) = 50 Cri L Jour 782 (DB).]

(2) The expression "building" indicates some structure whether roofed or not intended to afford protection to the persons dwelling inside it or the property placed therein for custody. AIR 1926 Lah 28 (29) = 27 Cri L Jour 38 ** AIR 1927 Mad 343 (344) = 28 Cri L Jour 248 ** 1879 Pun Re (Cr) No. 10, p. 29 (29) (SB) ** AIR 1925 Lah 117 (118) = 26 Cri L Jour 753 ** AIR 1929 Sind 17 (18, 19) = 29 Cri L Jour 875 (DB) ** AIR 1930 Lah 414 (415) = 31 Cri L Jour 268 ** AIR 1916 Oudh 109 (110) = 17 Cri L Jour 536 (537).

(3) "Building' does not include any other enclosure or structure. AIR 1928 All 607 (607) = 29 Cri L Jour 766. (Open space adjoining a house, surrounded by thorns, with no door.) ** 1887 Pun Re (Cr) No. 57, p. 151 (152) (DB). (Cattle enclosure having a thorn hedge around.) ** AIR 1919 Lah 333 (333) = 20 Cri L Jour 240 ** AIR 1925 Lah 279 (279) = 26 Cri L Jour 383. (A courtyard bounded by walls on three sides only.) ** AIR 1927 Mad 343 (344) = 28 Cri L Jour 248. (A fencing which is a means of merely preventing ingress or egress.)

(4) A "railway carriage" or "a brake van" is not a "building." (1880)) 1 Weir 436 (1) (436).

(5) The ground for taking action under this clause is that the building, etc., is likely to fall and thereby cause injury. The likelihood of a tree enabling thieves to get into a house is no ground for ordering the tree to be removed under this section. 1883 All WN 222 (223).

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(6) The section does not apply unless the danger or injury is an existing one. 1890 Pun Re (Cr) No. 5, p. 11 (11).

(7) In order to justify the taking of an action under this section, the state of the building should be dangerous in praesenti and not in futuro. AIR 1924 All 667 (668) = 26 Cri L Jour 104.

(8) It is desirable to state in the application itself all the particulars necessary for drawing up proceedings under Section 133. But where the parties know what building it was of which a wall was in danger of falling down, the fact that these particulars are not set out in the application will not justify the Court in setting aside the conditional order under the section. AIR 1959 Cal 574 (Pr. 10) = 1959 Cri L Jour 1066.

19. Persons living or carrying on business in the neighbourhood or passing by.— (1) As soon as danger appears to a neighbour the conditions of Section 133 are fulfilled and such a dangerous structure can even be called a public nuisance. AIR 1959 Raj 44 (Pr. 5) = ILR (1958) 8 Raj 1150 = 1959 Cri L Jour 235 ** 1962 (2) Cri LJ 666 (667) = 1961 Ker LT 190.

(2) A Magistrate cannot issue an order under this section to repair a house standing away from a public road in its own compound. (1898) 20 All 501 (505) (DB).

[See also AIR 1949 Dacca 11 (Pr. 12) = 50 Cri L Jour 782 (DB).]

(3) The injury apprehended must be to the persons. Danger to property is not contemplated. AIR 1949 Dacca 11 (Pr. 12) = 50 Cri L Jour 782 (DB).

20. Form of order.— (1) The forms in Schedule V (Form No. XVI) should be strictly followed without adding to or subtracting from them on the Magistrate's own initiative. AIR 1949 Dacca 11 (Pr. 5) = 50 Cri L Jour 782 (DB).

(2) An order under this section is only conditional and not absolute. (1868) 10 Suth WR (Cr) 53 (54) = 1 Beng LR 20 (DB) ** (1883) 9 Cal 637 (639) (DB) ** (1964) Mad LJ (Cri) 129 = (1963) 1 Mys LJ 273.

(3) An order under this section should be in writing. AIR 1915 Cal 741 (742) = 16 Cri L Jour 24 (DB).

(4) The order should state the time within which the Magistrate before whom and the place at which the person proceeded against may appear and move to have the order set aside. (1883) 9 Cal 637 (639) (DB) ** 1867 Pun Re (Cr) No. 26, p. 46 (46) (DB).

(5) The order should not be a general order, but should be directed to particular individuals. (1886) 8 All 99 (101) ** AIR 1916 Bom 122 (123) = 18 Cri L Jour 137 (DB) ** AIR 1928 All 300 (301) = 29 Cri L Jour 445.

(6) The order must not be vague, but must be definite. Where the person against whom it is directed cannot learn from its terms what it is that he is to do for the purpose of complying with it, the order will be set aside as being vague and indefinite. AIR 1917 Cal 207 (208) = 17 Cri L Jour 409 (DB) ** 1969 All WR 301.

(7) An order directing the demolition of a portion of a structure must definitely point out and mark off how much of the structure should be removed. 1947 Jaipur LR 186 (187) ** AIR 1925 All 310 (310) = 26 Cri L Jour 731 ** AIR 1915 Cal 402 (402) = 16 Cri L Jour 160 (DB).

(8) In a proceeding instituted against a number of persons it is essential that the order should state accurately with regard to each person the specific obstruction made by him and which he is required to remove, unless it is alleged that all the persons are jointly responsible for all the obstructions. AIR 1917 Cal 207 (208) = 17 Cri L Jour 409 (DB) ** AIR 1928 Lah 187 (188) = 28 Cri L Jour 1036.

(9) The time specified in the order runs from the date of the order and not of the service on the person, and if it is served after the expiry of such time, the order is a nullity and all the consequent proceedings thereon are void. (1872) 1 Bom PJ 282 (283).

(10) The form in which the conditional order under this section is expressed is such as not to amount to an injunction. AIR 1938 Nag 84 (85) (DB).

(11) Where, on receipt of an application about removal of a tree which is a source of danger, the Magistrate only intimates to the owner of the tree to remove it within a particular period and further intimates to him that if he does not obey the order, he would be subjected to proceedings under Sec. 188, I. P. C., such order, in the form in which it is made, cannot be supported. (1963) 1 Mys LJ 273 = 1964 Mad LJ (Cri) 129.

(12) It is not within the powers of the Magistrate exercising jurisdiction under Section 133 to ask a party to vacate a house in his possession or to remove his goods therefrom. All that he is empowered under the law is to pass an order to remove or repair the building. (1965) 31 Cut LT 1033.

21. Directions in the order.— (1) The section gives an exhaustive list of the matters in respect of which the Magistrate is empowered to pass orders. 1893 All WN 145 (145).

(2) The section does not confer general powers on the Magistrate to pass orders on any matter he may consider

Section 133 — Note 21 (contd.)
necessary. (1874) 22 Suth WR (Cr) 19 (19) (DB).

[See (1837-41) 2 Moo Ind App 428 (435) (PC).]

(3) No order can be passed under this section directing a person to refrain from drinking the water of a certain well and to prevent others from drinking that water, or not to cultivate certain lands beyond a particular spot, or to construct a new drain in place of an old one, or a new bund, or to build pig sties at a certain distance from the road, or not to use a place as a cremation ground, or to allow a place to be used as a cremation ground, or to deliver custody of children. 1893 All WN 145 (145). (Restraining person from drinking water from particular well.) ** 1904 All WN 233 (234) = 1 Cri L Jour 916. (Prohibiting cultivation.) ** 1900 All WN 138 (138). (Construction of new drain.) ** AIR 1925 Cal 399 (400) = 26 Cri L Jour 517 (DB). (Building new bund.) ** (1883) Oudh SC No. 60, p. 68 (69). (Building pig sties.) ** (1907) 6 Cri L Jour 370 (371) (DB) (Cal). (Using place as cremation ground.) ** (1875) 24 Suth WR (Cr) 6 (7) (DB). (Allowing use of place as cremation ground.) ** (1880) 2 Weir 66 (67). (Delivery of custody of children.)

(4) An order under this section should direct the removal of an obstruction or nuisance or the doing of anything thereunder, only in the way specified therein and not otherwise.—

Illustrations

(a) Where the obstruction to a road was by a fence the order should be for removal of the fence and not of the house itself for which the fence was constructed. (1904) 1 Cri L Jour 669 (671) = 10 Bur LR 130.

(b) Where a latrine is allowed to remain in such a condition as to be a nuisance to persons using a public place, the order should be to abate the nuisance and not to remove the latrine. AIR 1935 All 926 (927) = 37 Cri L Jour 347 ** (1902) 4 Bom LR 882 (882) (DB) ** AIR 1928 All 128 (128) = 29 Cri L Jour 233.

[See AIR 1936 Pat 409 (410).]

(c) Where the nuisance is caused by the accumulation of filth and want of space to clear the drainage between a wall and the neighbour's house, the order should be to abate the nuisance and not to pull down the wall. (1910) 11 Cri L Jour 665 (667) (DB) (Cal).

(d) Where the nuisance is caused by a burning ghat, the order should be to remove the nuisance; that is, take such steps as would result in the cremation of corpses ceasing to be a nuisance and not to remove the ghat itself. (1898) 25 Cal 425 (431) (DB) (Cal).

(e) Where the cooking of beef in a cooking shop under certain circumstances or the manner in which the shop is conducted, is a nuisance, the order should be to abate the nuisance and not to order the shop to be closed. 1868 Pun Re (Cr) No. 15, p. 36 (38) (DB).

(f) While stopping a brick-kiln as being a trade or occupation injurious to the public, the order cannot direct the filling up of pits made for the purpose of making bricks. AIR 1929 All 114 (115) = 30 Cri L Jour 561 (DB).

(g) Where the sparks from a forge might set fire to cotton stored in an adjoining factory, the order should be to so construct the forge as not to allow sparks to issue out of it; the order should not be to have the forge removed. 1896 Rat 872 (872) (DB).

(h) Even where a branch of a tree is likely to endanger human life, the order should not be to cut it down but to secure the safety of the public by directing a proper support to be given so as to prevent the branch from falling. AIR 1924 All 667 (668) = 26 Cri L Jour 104.

(i) In the case of a tank, well, or excavation, the order should be to fence the same and not to order them to be filled up or repaired. But where the tank becomes dry and people throw rubbish in it and it ceases to be any longer a tank, and becomes a public nuisance, it can be ordered to be filled up, in such a case the method of removing the nuisance should be left to the person proceeded against: to order it to be done in a particular way, for example, by excavating it, is improper. (1868) 10 Suth WR (Cr) 27 (27) (DB). (Tank.) ** AIR 1929 All 114 (115) = 30 Cri L Jour 561 (DB). (Excavations.) ** (1898) 22 Bom 714 (715) (DB). (Do.) ** 1871 Rat 50 (50) (DB). (Well.) ** (1868) 10 Suth WR (Cr) 51 (52) (DB). (Dry tank ceasing to be of use.)

(j) Flour mill causing vibrations to neighbouring buildings — It was held to be a case for regulating the working of the mill and not for closing it down altogether. AIR 1939 Bom 92 (95) = 40 Cri L Jour 444 (DB).

Section 133 — Note 21 (contd.)

(k) Magistrate has jurisdiction to prohibit the carrying on of a business — In this case, certain butchers were ordered to desist from carrying on their business. AIR 1939 Pat 183 (185) = 40 Cri L Jour 516 (DB).

(l) An order that the Municipality should be asked to make necessary arrangements for the construction of a pakka drain for free flow of rain-water passing through the houses of the non-applicant is not contemplated by the section. 1961 (2) Cr LJ 403 (404) = 1960 Raj LW 674.

(m) Party asked to replace Thakara patni at eaves of his building so as to prevent flow of rain water on to neighbour's building. 1959 Ker LJ 1073 = 1959 Ker LT 929.

(5) Where a Municipality has granted a licence to a person to carry on a particular trade the Magistrate has jurisdiction to direct the person to take precautions so as to prevent his trade becoming a public nuisance. AIR 1958 Madh Pra 350 (Pr. 4) = 1958 Cri L Jour 1319.

22. "To appear before himself or some other Magistrate of the first or second class."— (1) The order may direct the person against whom the order is issued to appear before the Magistrate who issues the order, or any other Magistrate of the first or second class except where the party demands a jury under Section 135, in which case the matter can be disposed of only by the Magistrate who issued the conditional order and not by any other Magistrate. AIR 1943 Pat 115 (116) = 44 Cri L Jour 364 (DB) ** AIR 1927 Pat 265 (266) = 28 Cri L Jour 910 ** (1886) 9 Mad 201 (202) (DB).

(2) Where a Magistrate orders a person to remove an alleged nuisance or to appear before him and move for the cancellation of the order and the person appears before the Magistrate, it is incumbent on him to proceed with the case himself and he has no power at that stage to send the case for disposal to another Magistrate. AIR 1950 All 475 (Pr. 9) = 51 Cri L Jour 1248 (2) ** AIR 1958 Raj 248 (Prs. 4, 5) = ILR (1957) 7 Raj 737 = 1958 Cri L Jour 1243 (DB) ** 1966 All WR (HC) 656 = 1966 All Cr R 378. (Sub-Divisional Magistrate passing conditional order under Section 133 cannot transfer the case to another Magistrate at a subsequent stage — The transferee Magistrate will not get jurisdiction to deal with the case since such transfer is illegal — The District Magistrate does not enjoy powers of transfer under Section 526 but only under Section 528 (2), Cr. P. Code.) ** 1966 All WR (HC) 655 = 1966 All Cr R 378.

[But see AIR 1956 Cal 24 (24, 25) = 1956 Cri L Jour 212 (DB). (AIR 1929 Cal 813, **Dissented from;** AIR 1949 Cal 637, **Overruled.)** ** AIR 1970 Cal 169 (170) (DB). (AIR 1956 Cal 220, **Overruled;** AIR 1960 All 244 and AIR 1958 Raj 248, **Diss.)]**

(3) Where the case is transferred at the stage when the person appears before the Magistrate initiating the proceedings, the subsequent proceedings before the Magistrate to whom the case is transferred are incompetent. AIR 1950 All 475 (Prs. 9, 12) = 51 Cri L Jour 1248 (2) ** AIR 1958 Raj 248 (Prs. 4, 5) = ILR (1957) 7 Raj 737 = 1958 Cri L Jour 1243 (DB). (AIR 1948 Lah 49; AIR 1950 All 475 and AIR 1938 Lah 323, Rel on.) ** 1963 (2) Cri LJ 542 (543) (All).

[But see AIR 1956 Cal 24 (24, 25) = 1956 Cri L Jour 212 (DB). (AIR 1929 Cal 813, **Dissented from;** AIR 1949 Cal 637, **Overruled.)** ** (1954) 58 Cal WN 383 (385) ** AIR 1945 Pat 334 (335) = 24 Pat 16 (DB) ** AIR 1945 Pat 316 (317) = 24 Pat 23 (DB) ** AIR 1970 Cal 169. (AIR 1956 Cal 220, **Overruled;** AIR 1960 All 244 and AIR 1958 Raj 248, **Diss.)** ** (1964) 30 Cut LT 71 = ILR (1963) Cut 695. (AIR 1956 All 475 and AIR 1956 Cal 220, **Diss.)]**

(4) A Magistrate before whom proceedings have been initiated under Section 133, Cr. P. Code and who has made a conditional order can direct the parties to appear before some other Magistrate of the first or second class but he cannot direct the parties to appear before Magistrate for the limited purpose of enquiry under Section 139-A. AIR 1963 All 27 (28) = 1963 (1) Cri LJ 33 = 1963 All WR (HC) 134.

(5) The Magistrate before whom the person being proceeded with was directed in the conditional order under Section 133 (1) to appear and show cause, can pass final orders except for the appointment of Jury for which an application shall have to be made before the Magistrate who passed the conditional order. But if the Magistrate who made the conditional order did not incorporate in the order that the person was to appear and show cause before some other Magistrate of the first or second class, and proceedings were later on transferred to another Magistrate, such Magistrate would not be competent to pass final orders in the proceeding. AIR 1960 All 244 (247) = 1960 Cr LJ 450.

(6) The Magistrate can in his discretion grant such adjournment as might be necessary. This power exists in a Court irrespective of any provision in

Section 133 — Note 22 (contd.)
the procedural law. AIR 1958 Tripura 17 (Prs. 3, 11) = 1958 Cri L Jour 695.

23. Exemption from personal appearance.— (1) The Court has inherent power to dispense with personal attendance and to permit parties to appear by lawyer in quasi-criminal proceedings like the proceedings under Section 133. ILR (1951) 1 Cal 126 (129) ** AIR 1958 Tripura 17 (Prs. 11, 13) = 1958 Cri L Jour 695. (Written application for exemption is not necessary — Magistrate allowing party to appear by pleader — No interference in revision.)

24. "And move to have the order set aside or modified."— (1) An order has to direct the person proceeded against "to move to have the order set aside or modified." The section contemplates that in suitable cases the order initially made may not only be set aside, but may be modified and the modified order be allowed to stand. AIR 1925 All 310 (311) = 26 Cri L Jour 731.

(2) The modification can only be made when the case goes before a jury under Section 139 and not when the matter is disposed of under Section 137 by the Magistrate sitting alone. AIR 1958 All 174 (Pr. 4) = 1958 Cri L Jour 314.

25. Parties to order.— (1) An order under this section binds the person against whom it is passed, and nobody else. AIR 1935 All 79 (80) = 36 Cri L Jour 144.

[See (1874) 22 Suth WR (Civ) 461 (462).]

(2) The order has to be directed to a particular individual and cannot be addressed to the public in general. (1883) 12 Cal L Rep 231 (232) (DB).

26. Order, if a judicial proceeding.— (1) Under the present Code, any proceeding in the course of which evidence is or may be legally taken on oath is a judicial proceeding, and will include an order under this section. See Section 4 (1) (m) ** AIR 1952 All 215 (Pr .6) = ILR (1951) 2 All 609 = 1952 Cri L Jour 407.

27. Effect of death of party on order.— (1) Where the individual proceeded against under this section dies, the order must be considered spent and ceases to have further effect. If it is necessary to issue an order against the successor in interest, separate proceedings must be taken against him. AIR 1928 All 300 (301) = 29 Cri L Jour 445.

28. Jurisdiction of Civil Courts — Sub-section (2).— (1) The object of the provision of sub-section (2) is to enable Magistrates to make speedy orders and deal speedily with cases where a public nuisance has been committed. AIR 1921 Bom 29 (30) = 22 Cri L Jour 605 (DB) ** AIR 1929 All 883 (833) = 31 Cri L Jour 302.

(2) As an order under this section cannot be questioned in any Civil Court, it ought to be passed sparingly and with great caution. AIR 1915 Cal 168 (169) = 15 Cri L Jour 698 (DB).

(3) The bar under this sub-section applies only to an order under Sec. 133 and not to an order absolute under Section 137. (1949) 51 Pun LR 176 (188).

(4) Magistrate rejecting application under Section 133, Cr. P. C. and Sessions Judge upholding his order with direction that the applicant could seek his remedy in Civil Court — Subsequent application under Section 133, Cri. P. C. in respect of same matter — Magistrate has no other option but to abide by that decision and to direct the applicant to seek his remedy in Civil Court — Section 49 of U. P. Consolidation of Holdings Act does not bar jurisdiction of Civil Court in such matters. 1965 All WR (HC) 142 = 1965 All LJ 117.

29. Costs.— (1) There is no provision for payment of costs by one party to the proceedings to the other and an order for costs is therefore improper. AIR 1925 Cal 399 (401) = 26 Cri L Jour 517 (DB).

(2) Where a building near a railway line was in danger of falling down and causing danger to the railway track, the Magistrate directed the owner by a conditional order to remove the same and after the parties had shown cause the Magistrate without proceeding under Section 137, made a local inspection but made no memorandum and passed final orders for demolition, ordering the railway to bear the cost of the demolition, it was held that the provisions of Sections 137 and 139-B were contravened and that the whole order, including the order of costs was illegal. AIR 1959 Cal 574 (Prs. 11, 12, 14, 15) = 1959 Cri L Jour 1066.

30. Further enquiry.— (1) As an application under this section is not a complaint of an offence as defined in Section 4 (1) (h), Section 436 under which further enquiry could be ordered will not apply to such an application and therefore any order for further enquiry into a matter coming under this section is ultra vires. (1897) 24 Cal 395 (397, 398) (DB) ** AIR 1925 Oudh 736 (736) = 26 Cri LJ 1251 ** AIR 1965 Pat 368 (368) = 1965 BLJR 16 = 1965 (2) Cri LJ 397.

[See (1898) 25 Cal 425 (428) (DB).]
Also see S. 436.

(2) There is nothing in law to prevent the Magistrate himself reviving a proceeding or drawing up fresh proceedings under this section. (1900-01)

134. Service or notification of order.—(1) The order shall, if practicable, be served on the person against whom it is made, in manner herein provided for service of a summons.

(2) If such order cannot be so served, it shall be notified by proclamation, published in such manner as the °[State Government] may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

[1882 — S. 134; 1872 — S. 522; 1861 — S. 309.]

[°] Substituted for 'Provincial Government' by A. L. O., 1950.

Section 133 — Note 30 (contd.)
5 Cal WN 173 (174) ** AIR 1931 Cal 2 (3) = 32 Cri L Jour 189 (DB). (Drawing of fresh proceeding.) ** (1885) 11 Cal 271 (273, 274) (DB).

[See AIR 1945 Pat 15 (16) .= 48 Cri L Jour 360.]

(3) Proceedings under Section 133 — Sections 436, 437 do not apply to proceedings — District Magistrate has no authority to order further inquiry — Action under Section 133 irregular — Proper course is to make report to High Court under Section 438. 1963 Raj LW 165 = ILR (1963) 13 Raj 477.

31. Applicability of Section 350 to proceedings under this section.— (1) A proceeding under this section is an enquiry within the meaning of that term in Section 4 (1) (k) and therefore the provisions of Section 350 of the Code are applicable to it. 1951 Raj LW 92 (92).

32. Revision.— (1) A High Court has undoubtedly jurisdiction to entertain a revision on grounds of fact, but this power will be sparingly used and the rule on which it will so act is that it will interfere where either there is no evidence to support the finding or where the finding arrived at is perverse or such as no reasonable man could have arrived at on the evidence produced. AIR 1942 All 443 (444) = 44 Cri L Jour 76 ** 1957 MPC 399 (401). (Magistrate exercising discretion in totally stopping meat-shops in legal manner — No interference.) ** (1954) 58 Cal WN 383 (385) (DB). (Order of Magistrate in a case under Section 133 — Conclusion of Magistrate based on consideration of evidence — High Court will not interfere in revision.) ** AIR 1924 All 1 (3, 4) = 24 Cri L Jour 817 ** (1871) 7 Beng LR 516 (533) (DB).

[See also AIR 1939 Pat 183 (185) = 40 Cri L Jour 516 (DB) ** AIR 1937 All 785 (786) = 39 Cri L Jour 148.]

(2) A person invoking the revisional jurisdiction of the High Court is bound, according to the practice of the High Court, to apply first to the Sessions Judge or to the District Magistrate. AIR 1924 All 1 (4) = 24 Cri L Jour 817 ** AIR 1921 Cal 76 (76) = 22 Cri L Jour 650 (DB) ** AIR 1967 Guj 225 (227) = 1967 Cr LJ 1325. (Order under the section by Sub-Divisional Magistrate — Revision against does not lie to High Court.)

(3) Magistrate's order under Sec. 133 read with Section 140 — Revision — High Court has jurisdiction — Classification of executive and judicial Magistrates — Enquiry under Secs. 133 to 140 is judicial even though it is before Executive Magistrate and is subject to revisional powers of High Court. (1968) 70 Bom LR 588 = 1968 Mad LJ 909 (DB).

(4) Tree ordered to be removed — Proceedings under Section 188 Penal Code threatened in case of disobedience — Form of order not proper — High Court can treat it as conditional order. (1963) 1 Mys LJ 273 = 1964 Mad LJ (Cri) 129.

(5) Where in a complaint case under Section 133, complainant chose not to lead any evidence and preferred instead to rely on the defence evidence, the High Court, while quashing the order of the Magistrate for non-compliance with Sections 244 and 137, Cr. P. Code need not show any further indulgence to the complainant by remanding the case to rectify the irregularity. AIR 1969 Goa 74 (75) = 1969 Cri LJ 744.

Section 134 — Note 1

(1) The word "person" can include all the male adult residents in a certain mohalla. AIR 1923 Lah 525 (527) = 24 Cri L Jour 457 (DB).

(2) An order under Section 133 cannot be affixed as provided by Section 71 unless it is found that it cannot be served as provided by Sections 69 and 70. AIR 1926 Cal 1208 (1209) = 27 Cri L Jour 715 (DB).

(3) Where the person to be served cannot be found, an attempt must be made to serve the order on some adult male member of his family (Section 70) or to fix it on some conspicuous part of his house. It is only when either of these courses is not possible that a proclamation must be issued. AIR 1935 Cal 251 (252) = 36 Cri L Jour 736.

(4) The question whether personal service on opposite party is or is not possible in a given case is not one which can be agitated in the trial Court after the disposal of the case and the order is made absolute under Section 136. AIR 1951 All 435 (Pr. 5). (Application to

135. Person to whom order is addressed to obey or show cause or claim jury.—The person against whom such order is made shall—

(a) perform, within the time *[and in the manner] specified in the order, the act directed thereby; or

(b) appear in accordance with such order and either show cause against the same, or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper.

[1882 — S. 135; 1872 — S. 523 Para. 1; 1861 — S. 310.]

[*] Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 25.

Section 134 — Note 1 (contd.)

set aside order absolute on ground that service was not according to law — Order cannot be re-opened.)

(5) The discretion exercised by one Magistrate under this section cannot be made the subject-matter of objections before his successor in office. AIR 1951 All 435 (Pr. 5).

(6) Where the parties affected have information of the order issued under Section 133, it is immaterial that the mode in which it is brought to their notice is not in strict accordance with law. AIR 1929 Bom 433 (436) = 31 Cri L Jour 495 (DB) ** AIR 1923 Lah 525 (527) = 24 Cri L Jour 457 (DB).

(7) This section is only directory and an omission to follow the direction given therein is an irregularity curable by Section 537. 16 Cal 9 (12) (DB).

(8) Application under Section 133 alleging encroachment on public road by opposite party — Proper procedure is to pass conditional order — Magistrate not following procedure in Chapter X but appointing pleader Commissioner to measure spot — Procedure is not warranted by law. 1963 BLJR 279 (281) (DB).

Section 135 — Note 1

(1) As the proceedings under Sec. 133 are ex parte in the first instance an opportunity is given under this section to the party against whom the conditional order is made to contest the validity of the order. AIR 1917 Cal 207 (207, 208) = 17 Cri L Jour 409 (DB).

(2) If a party shows that the order ought not to be made absolute the Magistrate should proceed under Section 137. (1899) 1 Bom LR 783 (784) (DB) ** 1967 BLJR 498 = ILR 46 Pat 794 (DB).

(3) The person against whom the conditional order has been passed has only to show cause in respect of the matters complained of. AIR 1939 Bom 92 (95) = 40 Cri L Jour 444 (DB).

(4) Where the person against whom the conditional order has been passed does not deny the public right under Section 139-A, it is not open to him to apply to show cause against the order and at the same time apply for the appointment of a jury. AIR 1940 Sind 24 (25) = 41 Cri L Jour 364 (DB).

[But see AIR 1954 All 14 (15) = 1953 Cri L Jour 1876.]

(5) If a jury is demanded by party, application can be made only to the Magistrate who made the conditional order. The Magistrate to whom the case is sent under Section 133 has no jurisdiction to entertain such an application. AIR 1948 Pat 115 (116) = 44 Cri L Jour 364 (DB) ** AIR 1927 Pat 265 (266) = 28 Cri L Jour 910 ** 1968 BLJR 492 ** AIR 1960 All 244 (247) = 1960 Cri LJ 450.

(6) The only purpose for which a jury is appointed is to try the question whether the order of the Magistrate is reasonable and proper. (1899) 26 Cal 869 (870) (DB) ** AIR 1915 Cal 113 (114) = 15 Cri L Jour 515 (DB).

(7) The jury is not to decide on questions of bona fide claim of right, as for example, whether the place is a public or private one. (1910) 11 Cri L Jour 305 (305) (DB) (Cal) ** (1904) 31 Cal 979 = 9 Cal WN 72 (74) (DB).

(8) If the party who is served with a conditional order under Section 133 applies for the appointment of a jury under this section and the jury submits its finding, it is not thereafter open to the party to set up a bona fide claim of private right in him. AIR 1931 All 257 (258) = 32 Cri L Jour 565 ** AIR 1914 Low Bur 31 (32) = 15 Cri L Jour 259.

(9) An order made under this section can be revised by the High Court under Section 439 read with Sections 435 and 423 (1) (c). 1885 Pun Re (Cr) No. 42, p. 89 (89) (DB) ** (1904) 1 Cri L Jour 514 (517) = 1904 Pun Re (Cr) No. 8 ** AIR 1928 All 627 (628, 629) = 29 Cri L Jour 661.

(10) A Sessions Judge has no jurisdiction under Section 436 to order further enquiry where a Magistrate abstains from further proceeding on the ground that the order under Section 133 is not reasonable and proper. (1897) 24 Cal 395 (398) (DB).

(11) A matter can be tried by jury even after the matter has been inquired into under Section 139-A. AIR 1958 Pat 260 (270) = 1958 Cri L Jour 664.

(12) The party against whom a conditional order is made under Sec. 133 cannot both show cause against the

136. Consequence of his failing to do so.—If such person does not perform such act or appear and show cause or apply for the appointment of a jury as required by Section 135, he shall be liable to the penalty prescribed in that behalf in Section 188 of the Indian Penal Code, and the order shall be made absolute.

[1882 — S. 136; 1872 — S. 525; 1861 — S. 311.]

137. Procedure where he appears to show cause.—(1) If he appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons-case.

(2) If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

(3) If the Magistrate is not so satisfied, the order shall be made absolute.

[1882 — S. 137 — Same; 1872 — S. 527; 1861 — S. 313.]

Section 135 — Note 1 (contd.)

order and ask for the appointment of a jury. Section 135 gives such party the right to adopt either of these alternatives. If he adopts the former, the magistrate is bound to take action under Section 137 and if he adopts the second the magistrate is bound to take action under Section.138. AIR 1960 Pat 539 (540) = 1960 Cri LJ 1489 = 1960 BLJR 349.

Section 136 — Note 1

(1) The provisions of this section are, consequently, stringent, the intention of the law being to create facilities for conditional orders becoming final without needless delay and thereby promptly to ensure public safety. (1889) 12 Mad 475 (478) (DB).

(2) This section has no application where the person against whom an order under Section 133 has been made appears and shows cause under Sec. 135. AIR 1922 All 335 (336) = 25 Cri L Jour 266 ** (1876) 26 Suth WR (Cr) 7 (7) (DB).

(3) No notice is necessary to be given to the person not complying with Section 135, before he is prosecuted therefor. (1908) 8 Cri L Jour 151 (152) = 31 Mad 280.

(4) Where the order under Sec. 133 is made absolute it is necessary that under Section 140, a notice should be given to the person that in case of disobedience of the order within a time fixed by the Court, he will be liable to the penalty under Section 188 of the Penal Code. (1908) 8 Cri L Jour 151 (151) = 31 Mad 280.

(5) Disobedience of the Magistrate's order cannot be held to take place till after the expiry of the term fixed in the order for carrying it out. 1882 All WN 232 (233).

(6) A conditional order should, if the person against whom it was made, does not act in compliance with Sec. 135, be made absolute as early as possible after the date fixed for his appearance. AIR 1921 Bom 29 (30) = 22 Cri L Jour 605 (DB).

(7) Where a Magistrate is lawfully empowered to make an order under Section 133 and makes such order and the person against whom it was made does not act in one of the ways specified in Section 135, it will be conclusively presumed under this section that the order was correctly made. AIR 1951 All 435 (Pr. 5) ** (1891) 13 All 577 (579).

(8) Where a Magistrate is not empowered to pass the order at all, a failure to act in the manner prescribed under Section 135 will not, where a prosecution is instituted against such person under this section, disentitle him from questioning the validity of the order. (1898) 20 All 501 (506) (DB).

(9) There is no express provision in the Code for setting aside orders absolute made ex parte, but on general principles Courts are entitled to set aside such orders, if they are satisfied with the reasons given for the absence of the party. AIR 1917 Pat 124 (125) = 19 Cri L Jour 214.

(10) When an ex parte order absolute is set aside and cause is shown against the conditional order, the Magistrate should proceed to record evidence as provided by Section 137 and that it is only thereafter that the Magistrate should make the order absolute or drop the proceedings. AIR 1917 Pat 124 (125) = 19 Cri L Jour 214.

[But see AIR 1951 All 435 (Prs. 5, 8).]

SECTION 137 — SYNOPSIS

1. **Scope.**
2. **"The Magistrate."**
3. **"Shall take evidence in the matter."**
4. **"As in a summons-case."**
5. **Burden of proof.**
6. **Summons to witnesses.**
7. **Sub-section (2).**
8. **"If the Magistrate is not so satisfied."**
9. **"The order shall be made absolute."**
10. **Abatement of nuisance pending proceeding.**

Section 137 — Synopsis (contd.)

11. **Effect of the order being made absolute.**
12. **Jurisdiction of Civil Court to question order under this section.**
13. **High Court's powers of revision.**

1. Scope.— (1) Where there is no reliable evidence in inquiry about public right in support of denial of the right the procedure in this section is to be adopted. AIR 1951 Trav-Co 228 (Pr. 2) = ILR (1951) Trav-Co 123 = 52 Cri L Jour 1250 ** AIR 1949 Cal 583 (Pr. 6) = 51 Cri L Jour 125 (DB) ** AIR 1938 All 653 (654) = 40 Cri L Jour 143 ** AIR 1936 Pat 639 (640) = 38 Cri L Jour 29 ** 1968 Raj LW 244 (246) ** AIR 1960 Pat 539 (540) = 1960 BLJR 349 = 1960 Cri LJ 1489 ** AIR 1970 Pat 207 (207).

(2) Where the way alleged to have been encroached upon was a P. W. D. road and this fact was not in controversy between the parties, it was held that the procedure of the Magistrate in taking up forthwith the enquiry under this section was only an irregularity not affecting the merits. AIR 1943 Pat 3 (4) = 43 Cri L Jour 923.

(3) Where there is reliable evidence in support of the denial of public right the proceedings under this chapter should be stayed until the matter of the existence of such right is decided by a competent Civil Court. AIR 1953 Mad 674 (Pr. 7) = 1953 Cri L Jour 1201 ** AIR 1939 Mad 465 (466) = 40 Cri L Jour 813 ** 1968 Cri LJ 825 (827-828) (Goa) ** (1963) 1 Mad LJ 418.

(4) The provisions of this chapter are not intended to apply to cases where the party has a bona fide claim of title. AIR 1953 Mad 674 (Pr. 7) = 1953 Cri L Jour 1201 ** AIR 1923 Oudh 152 (153) = 24 Cri L Jour 635 ** AIR 1933 Cal 790 (791) = 35 Cri L Jour 89 (DB) ** (1960) 1 Ker LR 66 = 1960 Ker LJ 160. (Existence of public right — Absence of evidence in support of denial — Enquiry under Section 137 not permissible.)

2. "The Magistrate."— (1) The word "Magistrate" in the section will include both the Magistrate who made the order and the Magistrate before whom the party is required to appear under Section 133. (1899) 2 Weir 61 (61) ** (1904) 1 Cri L Jour 669 (671) = 10 Bur LR 130 ** (1886) 9 Mad 201 (202) (DB) ** (1898) 25 Cal 278 (280) (DB). (9 Mad 201, Followed.) ** AIR 1924 Pat 418 (419) = 24 Cri L Jour 690.

(2) Though a Magistrate of the second class is not competent to make a conditional order under Section 133, he can pass the final order under this section, if the case is transferred to him by the Magistrate making the conditional order. AIR 1945 Pat 334 (336) = 24 Pat 16 (DB).

(3) Proceedings under Section 133 have to start before a Magistrate named in the conditional order and have to be continued before that Magistrate. If after conclusion of inquiry under Section 139-A the Magistrate is unable to continue them the proceedings thereafter become incompetent. AIR 1956 Cal 220 (221) = 1956 Cri L Jour 614.

3. "Shall take evidence in the matter."— (1) The provisions of this section are mandatory. AIR 1917 Cal 800 (800) = 18 Cri L Jour 738 (DB) ** AIR 1949 Cal 57 (57) = 49 Cri L Jour 608 ** AIR 1948 Oudh 19 (20) = 48 Cri L Jour 666 ** AIR 1936 Pat 577 (578) = 37 Cri L Jour 1159 ** AIR 1939 Bom 92 (93) = 40 Cri L Jour 444 (DB) ** AIR 1926 All 193 (193) = 27 Cri L Jour 276 ** 1966 Cur LJ 653 (Punj).

(2) The Magistrate cannot make a conditional order absolute merely—

(a) on the result of his local inspection. AIR 1939 Bom 92 (93) = 40 Cri L Jour 444 (DB) ** AIR 1959 Cal 574 (576) = 1959 Cri L Jour 1066 ** AIR 1926 All 193 (193) = 27 Cri L Jour 276 ** AIR 1919 Pat 172 (173) = 20 Cri L Jour 217 ** 1962 (2) Cri LJ 426 (427) = 1961 Ker LT 617.

(b) on his personal opinion. AIR 1916 Mad 304 (304) = 16 Cri L Jour 207 (207) ** AIR 1927 All 825 (826) = 28 Cri L Jour 510.

(c) on the report of a tahsildar or panchayatdar. AIR 1926 All 193 (193) = 27 Cri L Jour 276 ** AIR 1927 Oudh 26 (27) = 27 Cri L Jour 1254.

(d) on arbitration, even if the parties consent thereto. AIR 1927 All 267 (268) = 28 Cri L Jour 159 ** AIR 1917 Cal 800 (800) = 18 Cri L Jour 738 (DB) ** AIR 1917 Cal 207 (208) = 17 Cri L Jour 409 (DB).

(e) on the evidence recorded or information or report received at the time of the conditional order. AIR 1939 Bom 92 (93) = 40 Cri L Jour 444 (DB) ** AIR 1917 Cal 207 (208) = 17 Cri L Jour 409 (DB).

(3) The Magistrate cannot refuse to take evidence on the ground that the objections were filed beyond the time allowed, provided they are filed before the case is taken up. (1868) 10 Suth WR (Cr) 27 (27) (DB) ** (1877) 26 Suth WR (Cr) 7 (7) (DB).

(4) The fixing of an arbitrary time limit for the cross-examination of witnesses is improper. AIR 1921 Cal 118 (118) = 22 Cri L Jour 524 (DB).

Section 137 — Note 3 (contd.)

(5) Denial of public right only with respect to part of way in question — Such denial enough for Section 139-A — Magistrate, after such denial being made, not recording finding under Section 139-A but examining witnesses and deciding case — Order of Magistrate without jurisdiction. 1969 Cri LJ 1461 (1463) = 1969 Raj LW 332.

(6) Complaint under Section 133 — Complainant not leading any evidence in support of allegations — Nor making his own statement — Magistrate instead of stopping proceedings, examining respondents and their witnesses — Course adopted held was in clear violation of Sections 244 and 137 and as such the entire proceedings stood vitiated. AIR 1969 Goa 74 (75, 76) = 1969 Cri LJ 744.

(7) The words 'evidence in the matter' in Section 137 (1) mean evidence of the complainant. 1968 Ker LT 889 (892) = ILR (1969) 1 Ker 128 (DB).

4. "As in a summons-case."— (1) The opposite party may cross-examine the complainant's witnesses and then produce his evidence if so advised. (1909) 10 Cri L Jour 297 (298) = 31 All 453 (DB) ** AIR 1918 Mad 984 (984) = 18 Cri L Jour 848 ** AIR 1925 All 614 (614) = 26 Cri L Jour 905.

(2) The magistrate has to take evidence in the manner as in summons case. He cannot without any reference to the evidence pass order hearing only arguments of counsel. (1965) 1 Law Rep 870 (871) (Mys).

5. Burden of proof.— (1) The burden of proof in an inquiry under this section is on the prosecution. AIR 1939 Bom 92 (95) = 40 Cri L Jour 444 (DB) ** AIR 1936 Pat 639 (640) = 38 Cri L Jour 29.

(2) Section 137 contemplates proof not of reasonableness and propriety of the conditional order passed but of its unreasonableness and impropriety. The direction in Clause (1) of Section 137, Cr. P. Code that the Magistrate shall take evidence in the matter as in a summons-case, in the light of the provisions in Clauses (2) and (3) means only that the mode of taking evidence in an enquiry under the section shall be as provided in Chapter XXV of the Code for a summons case. It gives no clue as to the onus of proof. 1966 Ker LT 1100 = 1967 MLJ (Cri) 163.

6. Summons to witnesses.— (1) The person proceeded against under the section is entitled to apply to the Court to compel the attendance of his witnesses by issuing summons and the Court should issue summons to witnesses, if necessary. (1902) 6 Cal WN 548 (550) (DB) ** ('03) 13 Cal WN cclxxxiii.

7. Sub-section (2).— (1) The dropping of proceedings initiated by an order under Section 133 can be done only after the evidence is recorded under sub-section (1) and the Court is satisfied on such evidence that the preliminary order was not reasonable and proper. AIR 1920 Cal 834 (834, 835) = 22 Cri L Jour 239 (DB).

(2) The existence of a genuine dispute as to title suitable for decision by a Civil Court may be sufficient to show that the order was not reasonable and proper within the meaning of this section. AIR 1923 Oudh 152 (153) = 24 Cri L Jour 635 ** AIR 1923 Oudh 22 (23) = 24 Cri L Jour 694 ** AIR 1921 Cal 118 (118) = 22 Cri L Jour 524 (DB).

(3) Order passed by Magistrate under Section 137 (2) — Failure of Magistrate to hold enquiry under Section 139-A (1) — Complainant cannot take advantage of such omission for setting aside order. 1964 (1) Cri LJ 125 (126) = 65 Pun LR 723.

8. "If the Magistrate is not so satisfied."— (1) Where the party appears to show cause against the preliminary order and the enquiry is started under this section, the Magistrate cannot, even if the party failed to appear at a subsequent hearing, make the order absolute without any evidence. (1900) 2 Bom LR 818 (819) (DB).

(2) Where the party proceeded against is required to appear before the Magistrate who made the conditional order, the latter must himself take the evidence and cannot forward the proceedings to another Magistrate for taking evidence, and then act upon the evidence so taken. AIR 1949 Cal 637 (Prs. 13, 14) = ILR (1950) 2 Cal 365 = 51 Cri L Jour 205 ** AIR 1922 Bom 384 (384) = 23 Cri L Jour 587 (DB).

9. "The order shall be made absolute."— (1) If no preliminary order exists or if the preliminary order was itself illegal as being made without jurisdiction, or too vague and indefinite, it cannot be made absolute under this section. AIR 1921 Bom 29 (30) = 22 Cri L Jour 605 (DB) ** 1890 Rat 516 (518) (DB) ** AIR 1952 Cal 127 (Pr. 5) ** (1910) 11 Cri L Jour 213 (214) (DB) (Cal).

(2) The Magistrate cannot, under this section, modify the provisional order issued under Section 133. AIR 1952 Cal 127 (Pr. 3). (AIR 1943 Mad 335 = 44 Cri L Jour 545, Foll.; AIR 1925 All 310 = 26 Cri L Jour 731 (2), Not Foll.) ** AIR 1958 All 174 (175, 176) = 1958 Cri L Jour 314 ** AIR 1943 Mad 335 (336) = 44 Cri L Jour 545 ** 1968 Pat LJR 228 (229) ** 1965 Mad LJ (Cri) 86 (Mys). (Magistrate can either drop further pro-

Section 137 — Note 9 (contd.)
ceedings or make the preliminary order absolute.) ** AIR 1964 Mys 52 (53) = 1964 (2) Cri LJ 413 = (1963) 2 Mys LJ 39.

(3) An order cannot be made absolute except on clear proof that the act complained of is a nuisance and a removal thereof is quite necessary. 1888 Pun Re (Cr) No. 17, p. 31 (32) (DB).

(4) Where the Magistrate confirms an order under this section, he should lay down fully the grounds on which he acted, and in deciding on the objections of the parties, he ought to record in each case the grounds of his rejection of such objection. (1869) 12 Suth WR (Cr) 24 (25) = 7 Beng LR 482n (DB) ** AIR 1921 Cal 118 (118) = 22 Cri L Jour 524 (DB) ** AIR 1966 Tripura 14 (15, 16) = 1966 Cri LJ 303.

(5) A verbal order issued under Section 133 cannot amount to or have the force of an order made absolute under this section. AIR 1915 Cal 741 (742) = 16 Cri L Jour 24 (DB).

(6) The Magistrate cannot make an order absolute under this section on grounds different from those on which the preliminary order under Section 133 was issued. AIR 1952 Cal 127 (Pr 4) ** AIR 1920 Lah 258 (259) = 21 Cri LJ 462.

(7) Where the person against whom a conditional order is passed under Section 133 in respect of an alleged obstruction appears and states that he has no objection to the removal of the obstruction, it is not enough simply to record such willingness. A substantive order for the removal of the obstruction must be made. AIR 1936 Pat 360 (361) = 37 Cri L Jour 846.

(8) The fact that a Magistrate has made an order under Section 142 which has been complied with does not preclude him from proceeding with the case and making a final order under this section. AIR 1936 Cal 692 (693) = 38 Cri L Jour 173 (DB).

(9) Where a Magistrate instead of transferring a case for disposal to another Magistrate by the conditional order under Section 133 itself, transfers it subsequently after the person appears and shows cause before him, the final order passed under this section by the Magistrate to whom the case is transferred is not without jurisdiction. AIR 1945 Pat 334 (335) = 24 Pat 16 = 47 Cri L Jour 29 (DB) ** ILR (1963) Cut 695. (Order cannot be quashed by Magistrate in the absence of prejudice.)
[See also 1966 All Cr R 378 = 1966 All WR (HC) 656.]

(10) Magistrate making conditional order under Section 133 absolute without enquiry under Section 139-A though opposite party raised objection in written statement that land in dispute was private property — Order is ultra vires. 1957 Cri L Jour 293 (293) (Raj) ** 1967 BLJR 498 (503) = ILR 46 Pat 794 (DB) ** 1964 All WR (HC) 569 ** (1963) 2 Cri LJ 542 (543) (All) ** 1962 (2) Cri LJ 716 (717) = 1961 Raj LW 631 ** AIR 1960 Tripura 3 (4) = 1960 Cri LJ 119 ** (1959) 1 Orissa JD 275.

[See also AIR 1965 Pat 368 (368) = 1965 BLJR 16 = 1965 (2) Cri LJ 397. (Action under Section 133 — Conditional order passed — Magistrate need not make further inquiry in order to be satisfied.)]

(11) Final order under Section 140 (1) passed forthwith after inquiry under Section 139-A is bad. 1960 Cri LJ 334 = AIR 1960 Cal 157 (158).

(12) Obstruction to public right — Denial of existence of public right — Magistrate making a joint inquiry both under Sections 137 and 139-A and passing a composite order — Proceedings are irregular and final order passed is not legal. 1964 (1) Cri LJ 248 (249) = 29 Cut LT 523.

(13) An order finally deciding a case must be self-contained and should be what is called a speaking order. It must briefly give the facts of the case and embody the reasons for the decision arrived at, lest it should be open to the charge that the judicial officer making the order did not apply his mind to the facts of the case or that his order is capricious and arbitrary. AIR 1963 Punj 124 (125) = 1963 (1) Cri LJ 314 = 1962 Cur LJ 524.

(14) A magistrate who makes the conditional order absolute under Section 137 (3) cannot do so without taking the evidence of the party at whose instance he passed the conditional order. 1968 Ker LT 889 (892) = ILR (1969) 1 Ker 128 (DB).

10. Abatement of nuisance pending proceeding.— (1) Where, since the conditional order under Section 133 was passed, the nuisance has ceased to exist, the order should not be made absolute. AIR 1936 Pat 577 (578) = 37 Cri L Jour 1159.

11. Effect of the order being made absolute.— (1) Once a Magistrate confirms a conditional order under this section, his successor in office cannot go behind it and question its legality. AIR 1940 Oudh 75 (77) = 41 Cri L Jour 99 ** AIR 1923 Cal 589 (589) =24 Cri L Jour 317 (DB).

12. Jurisdiction of Civil Court to question order under this section.— (1) There is no bar to an order absolute under this section being questioned in a Civil Court. (1949) 51 Pun LR 176 (180).

138. Procedure where he claims jury.—(1) On receiving an application under Section 135 to appoint a jury, the Magistrate shall—

(a) forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one-half of the remaining

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Section 137 — Note 12 (contd.)

(2) Order passed under Section 133 or Section 137 — Suit by person affected by order for declaration of his rights — Injunction cannot be issued to prevent operation of order. 1958 All WR (HC) 3.

13. High Court's powers of revision.— (1) An order absolute under this section can be varied or confirmed by the High Court in revision. AIR 1929 All 220 (222) = 30 Cri L Jour 670.

(2) An order passed in contravention of the provisions of this section is not merely an irregularity within the meaning of Section 537 of the Code but is an illegal order made without jurisdiction. AIR 1927 All 350 (351) = 28 Cri L Jour 291 ** AIR 1948 Oudh 19 (20) = 22 Luck 294 = 48 Cri L Jour 666 ** 1968 Cri LJ 825 (827, 828) (Goa) ** 1966 Cur LJ 653 (Punj) ** AIR 1960 Tripura 3 (4) = 1960 Cri LJ 119.

[But see AIR 1960 All 244 (245, 246) = 1960 Cri LJ 450. (AIR 1948 Oudh 19, **Diss.**)]

(3) The High Court will interfere in revision in the following cases—

(a) Where the Magistrate fails to take evidence under this section but confirms an order on information which is not legal evidence. AIR 1930 Lah 662 (664) = 31 Cri L Jour 880 ** AIR 1916 Mad 304 (304) = 16 Cri L Jour 207 ** AIR 1922 Oudh 29 (29) = 23 Cri L Jour 250 ** AIR 1927 All 350 (351) = 28 Cri L Jour 291.

(b) Where the Magistrate calls upon the person served with notice to produce his evidence as if the onus is on him and then considering that that evidence is of no weight makes the order absolute. (1909) 10 Cri L Jour 297 (299) = 31 All 453 (DB) ** AIR 1928 Cal 96 (97) = 28 Cri L Jour 859 (DB) ** (1913) 15 Cri L Jour 23 (23) (All).

(c) Where he confirms the preliminary order on the evidence recorded by another Magistrate. AIR 1922 Bom 384 (384, 385) = 23 Cri L Jour 587 (DB).

(d) Where he drops the proceedings under this section without recording evidence as required by sub-section (1). AIR 1920 Cal 834 (834, 835) = 22 Cri L Jour 239 (DB) ** AIR 1929 Cal 21 (21) = 30 Cri L Jour 973 (DB).

(e) Where he does not allow sufficient opportunity to the party to show cause by arbitrarily fixing the time limit for the examination of his witnesses or otherwise. (1907) 5 Cri L Jour 1 (2) (Lah) ** AIR 1947 Mad 243 (244) = 48 Cri L Jour 4 ** AIR 1928 Cal 879 (879) = 30 Cri L Jour 622 (DB).

(f) Where an order absolute is made without reasonable and sufficient grounds. AIR 1923 Oudh 22 (23) = 24 Cri L Jour 494 ** (1911) 12 Cri L Jour 146 (148) (Lah).

(g) Where the order contains no finding on the question of bona fides of the objection of the party showing cause. AIR 1923 Pat 540 (541) = 24 Cri L Jour 855 ** (1898) 2 Cal WN 554 (556).

(h) Where he decides on the merits the question of title without leaving the same to the decision of a Civil Court. AIR 1930 Cal 486 (486) = 32 Cri L Jour 33 (DB) ** (1905) 2 Cri L Jour 517 (518) = 28 All 98.

(i) Where, when the opposite party denies the existence of a public right in respect of the place in question, the Magistrate instead of proceeding under Sec. 139-A, passes an order under this section after taking evidence on both sides. AIR 1939 Mad 465 (466) = 40 Cri L Jour 813 ** AIR 1936 Pat 360 (361) = 37 Cri L Jour 846.

(j) Where the preliminary order which is vague and indefinite is made absolute. AIR 1952 Cal 127 (Pr. 5).

(4) Where the Magistrate has dropped proceeding under sub-section (2), the High Court will not interfere and consider the value of evidence on which the Magistrate decided so to act. (1882) 8 Cal 883 (884) (DB).

SECTION 138 — SYNOPSIS

1. **Scope and object.**
2. **"Forthwith appoint."**
3. **"The Magistrate."**
4. **"Uneven number of persons not less than five."**
5. **Nomination of members of jury, how made.**
6. **Duty of jurors.**
7. **Summons to jurors.**
8. **Fresh jury.**
9. **Pendency of civil suits.**
10. **Appeal and revision.**

1. Scope and object.— (1) The provisions for the appointment of a jury are intended to operate as a check to members shall be nominated by such Magistrate, and the other members by the applicant;

(b) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

(c) fix a time within which they are to return their verdict.

(2) The time so fixed may, for good cause shown, be extended by the Magistrate.

[1882 — S. 138; 1872 — S. 523, Paras. 2 and 5 and S. 524; 1861 — S. 310.]

Section 138 — Note 1 (contd.)
the exercise of summary and arbitrary dealing with the rights of property. (1864-1866) 2 Bom HCR (Cr) 384 (386) (DB).

(2) It is obligatory on the magistrate to first of all conduct an inquiry under Section 139-A in cases where the existence of any public right in respect of any way or place is denied before holding the enquiry under Section 137 or Section 138. But the irregularity could be cured by invoking the aid of Section 537. AIR 1960 All 244 (246) = 1960 Cri LJ 450 ** 1965 All WR (HC) 800.

[See also 1966 Cur LJ 653 (Punj).]

2. "Forthwith appoint."— (1) When a person applies for the appointment of a jury, the Magistrate has no discretion to refuse to do so. (1909) 10 Cri L Jour 494 (495) (DB) (Cal) ** (1883) 2 Weir 63 (63) ** 1887 Pun Re (Cr) No. 19, p. 39 (39) (DB).

(2) Magistrate cannot decide the matter by making a local inquiry himself. (1878) 2 Cal L Rep 509 (509, 510) (DB).

(3) Even where the Magistrate finds that the person has no reliable evidence in support of the denial of the public right, the Magistrate is bound to appoint a jury where the party applies for it. AIR 1941 Pat 370 (370) = 42 Cri L Jour 784 ** AIR 1958 Pat 269 (270) = 1958 Cri L Jour 664 ** AIR 1933 Cal 318 (319) = 34 Cri L Jour 532 (DB).

[But see AIR 1954 All 14 (15) = 1953 Cri L Jour 1876.]

(4) "Forthwith" merely means as soon as it is reasonable. AIR 1923 Lah 525 (527) = 24 Cri L Jour 457 (DB).

(5) Proceedings under Section 133 — Party showing cause under Section 135 — Magistrate must follow procedure as required by either Section 137 or Section 138. 1967 BLJR 498 (503) = ILR 46 Pat 794 (DB) ** AIR 1970 Pat 207 (207) ** 1964 All WR (HC) 481 = 1964 All (Cri) R 331.

(6) Party appearing before magistrate — Person not questioned whether he denied existence of public right in dispute — Order appointing jury is bad in law. AIR 1960 Pat 539 (540) = 1960 BLJR 349 = 1960 Cr LJ 1489.

(7) Final order under Section 140 (1) passed forthwith after inquiry under Section 139-A is bad — After magistrate has found on enquiry that there is no reliable evidence in support of party's denial of the public right claimed he must proceed under Section 137 or Section 138 and thereafter the magistrate must proceed under Sec. 139. AIR 1960 Cal 157 (158) = 1960 Cri LJ 334.

[See AIR 1965 Pat 368 (368) = 1965 BLJR 16 = 1965 (2) Cri LJ 397.]

3. "The Magistrate."— (1) The Magistrate who passed the conditional order under Section 133 cannot refer the matter for disposal to another Magistrate, if a jury is demanded. (1898) 25 Cal 278 (280) (DB) ** AIR 1927 Pat 265 (266) = 28 Cri L Jour 910 ** AIR 1920 Mad 378 (378, 379) = 20 Cri L Jour 761 ** 1966 All Cr R 378 = 1966 All WR (HC) 656.

(2) An application for appointment of jury can be made before magistrate who passed the conditional order. The magistrate to whom the proceeding is transferred cannot entertain such application. 1968 BLJR 492.

4. "Uneven number of persons not less than five."— (1) A jury of only three persons will not be a properly constituted one and an order based on the verdict of such a jury will be invalid. (1921) 22 Cri L Jour 511 (512) (DB) (Cal).

(2) If one out of the five jurors dies, or is ill or refuses to act or for some other cause remains absent, the decision of the jury will be wholly void and the Magistrate cannot act upon that finding. (1910) 11 Cri L Jour 402 (402) (DB) (Cal) ** 1901 All WN 30 (31) = 23 All 159 (DB) ** (1885) 11 Cal 84 (85) (DB) ** (1886) 13 Cal 275 (279) (DB).

5. Nomination of members of jury, how made.— (1) In making nominations of the jurors and of the foreman, the following should be noted by the Magistrate:

(a) The Magistrate cannot delegate the function to anyone else. 1889 Rat 460 (460) (DB).

(b) He can nominate neither less than half the number of jurors nor the entire jury himself. (1881) 10 Cal L Rep 193 (196).

(c) He cannot nominate entire jury himself. AIR 1928 Lah 187 (188) = 28 Cri L Jour 1036.

139. Procedure where jury finds Magistrate's order to be reasonable.—(1) If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modifiction (if any).

(2) In other cases no further proceedings shall be taken under this Chapter. [1882 — S. 139; 1872 — S. 523, Paras. 3, 5 and S. 526; 1861 — S. 312.]

Section 138 — Note 5 (contd.)

(d) He should exercise his own discretion and should not merely accept the persons put forward by the complainant. AIR 1929 Bom 79 (80, 81) = 30 Cri L Jour 785 (DB) ** (1896) 23 Cal 499 (501) (DB).

(e) He should not select persons who will be interested in upholding his conditional order. (1899) 26 Cal 869 (870) (DB) ** AIR 1931 All 257 (258) = 32 Cri L Jour 565.

(f) He should not select friends and supporters of the complainant. AIR 1914 All 491 (492) = 16 Cri L Jour 40 ** AIR 1954 All 247 (249) = 1954 Cri L Jour 498.

(g) The complainant and his witnesses must not be appointed. (1874) 22 Suth WR (Cr) 47 (47, 48) (DB).

(2) Any irregularity with regard to a nomination of the jury invalidates the proceedings and cannot be cured under Section 537. AIR 1930 Pat 199 (200) = 31 Cri L Jour 53. (The point was raised but not decided.) ** AIR 1929 Bom 79 (80) = 30 Cri L Jour 785 (DB).

[But see AIR 1933 Pat 676 (677) = 35 Cri L Jour 54.]

(3) The Magistrate has no jurisdiction to veto the nomination by the applicant of any person as a juror. 1897 Pun Re (Cr) No. 4, p. 7 (8) ** (1874) 21 Suth WR (Cr) 43 (43, 44) (DB).

(4) The appointment of the jury cannot be made by ballot from the ordinary list of jurors. (1871) 7 Beng LR 516 (533) (DB).

(5) Every appointment or cancellation of appointment of the jury should be made in the presence of parties. (1880) 5 Cal 875 (876) (DB).

6. Duty of jurors.— (1) The jurors should act together and should give their verdict of deliberation; they should not act like partisans. (1896) 18 All 158 (159) ** (1875) 25 Suth WR (Cr) 4 (5) (DB).

7. Summons to jurors.— (1) The time when and the place where the juror is to attend should be specifically mentioned in the summons. (1882) 5 All 7 (8).

8. Fresh jury.— (1) Magistrate may appoint a fresh jury for the following reasons :

(a) Jury perversely refusing to return verdict. AIR 1922 All 297 (297) = 23 Cri L Jour 276 ** (1885) 11 Cal 84 (85) (DB).

(b) Jury failing to send verdict within the time allowed. (1908) 8 Cri L Jour 233 (234, 235) (DB) (Cal).

(c) Where the report of the jury is defective and illegal because of the non-participation of any of the jurors. AIR 1920 Cal 161 (161) = 21 Cri L Jour 448 (DB).

9. Pendency of civil suits.— (1) Pendency of civil suit in respect of the right will not preclude a Magistrate from continuing the proceedings under this section. AIR 1933 Cal 318 (319) = 34 Cri L Jour 532 (DB).

(2) When there is no proof of urgency or imminent danger to the public interests, it is improper for a Magistrate to act under this section pending a civil suit in respect of the right. 1897 Pun Re (Cr) No. 4, p. 7 (9).

10. Appeal and revision.— (1) The High Court can call for records and revise the orders passed under this section. (1874) 21 Suth WR (Cr) 43 (43) (DB).

SECTION 139 — SYNOPSIS

1. **Scope.**
2. **"Majority of the jurors."**
3. **Procedure to be adopted by the jury.**
4. **Objection to the finding of the jury.**
5. **"Magistrate shall make the order absolute."**
6. **"In other cases."**
7. **Appeal and revision.**

1. Scope.— (1) It is only when a Magistrate is sitting with a jury that he has power to modify an order under Section 133 before making it absolute. He has no such power when he acts singly under Section 137. AIR 1943 Mad 335 (336) = 44 Cri L Jour 545.

2. "Majority of the jurors."— (1) Where five persons are nominated as jurors and one or more of them do not take part in the inquiry and report the verdict of those who take part is not a finding of a "majority". AIR 1942 Pat 468 (469) = 43 Cri L Jour 423 **

*[139A. **Procedure where existence of public right is denied.**—(1) Where an order is made under Section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magis-

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Section 139 — Note 2 (contd.)
1967 All WR (HC) 856 = 1967 All Cri R 558 ** AIR 1960 Pat 539 (540) = 1960 Cri LJ 1489 = 1960 BLJR 349.

(2) Where a person who has already expressed his opinion on the matter in question is included in the jury, the verdict of the jury or of a majority of the jurors is illegal and cannot be acted upon. AIR 1940 Pat 717 (717) = 42 Cri L Jour 202.

(3) Disobedience of an order made absolute on the verdict of an irregularly constituted jury cannot be punished under Sec. 188, Penal Code. (1881) 10 Cal L Rep 193 (196).

(4) Three of seven jurors appointed found that the order was reasonable and the other three found that it was unreasonable. The remaining juror found that the order was not necessary. **Held** that the majority of the jury must be deemed to be against the order. (1876) 25 Suth WR (Cr) 31 (32) (DB).

(5) Section 139 envisages only some modification of the conditional order by the Magistrate in compliance with the opinion of the jury and not a wholesale change. AIR 1967 Goa 1 = 1967 Cri LJ 49 (FB).

3. Procedure to be adopted by the jury.— (1) The jury is not bound to take evidence in arriving at a finding. (1908) 8 Cri L Jour 1 (3) = 30 All 364.

[But see (1899) 26 Cal 869 (870) (DB) ** (1902) 6 Cal WN 886 (887) (DB).]

(2) Where the jurors do not consult together but deliver separate and independent opinions or where some of the jurors blindly follow the opinion of their fellow jurors the finding of the jury is illegal. (1896) 18 All 158 (159) ** (1876) 25 Suth WR (Cr) 4 (5) (DB).

(3) The recommendations of the jury can only be enforced under Sec. 140, sub-section (2) and they do not by themselves constitute a contract between the parties. AIR 1916 Pat 264 (266) = 18 Cri L Jour 305.

4. Objection to the finding of jury.— (1) Objections to the finding of the jury should be specific and such as to justify the conclusion that the jury did not in fact apply a judicial discretion to the case, or that the verdict was such as the jury could not have arrived at by a proper exercise of discretion upon the materials before them. (1875) 23 Suth WR (Cr) 15 (15) (DB).

5. "Magistrate shall make the order absolute.— (1) The Magistrate cannot transfer the case to any other Magistrate after appointing the jury. AIR 1920 Mad 378 (379) = 20 Cri L Jour 761.

(2) If the jury or the majority of the jurors find that the order is reasonable and proper, the Magistrate is bound to make the order absolute. (1874) 22 Suth WR (Cr) 86 (86) (DB) ** (1877) 1 Shome LR 11 (12) ** (1882) 2 Weir 59 (59) ** (1909) 10 Cri L Jour 210 (211) (DB) (Cal). (He cannot refuse for any reason.)

(3) If the jury or the majority of jurors do not find the order to be reasonable and proper, the order cannot be made absolute. (1906) 10 Cal WN lxxxvii (DB) ** AIR 1955 Cal 579 (580) = 1955 Cri L Jour 1479 ** (1901) 5 Cal WN 566 (567).

(4) If modifications are suggested by the jury and the Magistrate accepts such modifications, the original order can be made absolute only with those modifications. AIR 1925 Cal 399 (400) = 26 Cri L Jour 517 (DB).

(5) If a person against whom a preliminary order under Section 133 has been passed wants it to be modified, he should apply under Section 135 for the appointment of a jury and then the Magistrate sitting with the jury can pass an order under Section 139 modifying the preliminary order if the majority of the jurors are in favour of it. AIR 1958 All 174 (176) = 1958 Cri L Jour 314.

6. "In other cases."— (1) The Magistrate should not take further proceedings where the jury finds the order unreasonable or recommends some modifications which he does not accept. AIR 1942 Mad 113 (114) = 43 Cri L Jour 314 ** (1874) 21 Suth WR (Cr) 10 (10) (DB) ** (1874) 1887 Rat 336 (336) (DB).

(2) Where the jury defectively constituted or where the jury in giving the verdict exceeds its functions in material respects, the verdict is illegal and the Magistrate should appoint a fresh jury. AIR 1940 Pat 717 (718) = 42 Cri L Jour 202.

7. Appeal and revision.— (1) No appeal lies from the decision of a jury appointed to consider whether the order of the Magistrate is reasonable and proper. (1871) 16 Suth WR (Cr) 56 (57) (DB).

(2) The District Magistrate has no jurisdiction to call for the records of the jury and examine the same under Section 435. 1887 Rat 336 (336) (DB).

SECTION 139-A — SYNOPSIS

1. **Scope and object.**
2. **The Magistrate shall question as to existence of public right.**
3. **"Shall enquire into the matter."**

trate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and if he does so, the Magistrate shall, before proceeding under Section 137 or Section 138, inquire into the matter.

(2) If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Civil Court; and if he finds that there is no such evidence, he shall proceed as laid down in Section 137 or Section 138, as the case may require.

(3) A person who has, on being questioned by the Magistrate under sub-section (1), failed to deny the existence of a public right of the nature therein referred to, or who, having made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial, nor shall any question in respect of the existence of any such public right be inquired into by any jury appointed under Section 138.]

[*] This section was newly inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), Section 26.

Section 139-A — Synopsis (contd.)

4. **Delegation of enquiry.**
5. **Reliable evidence — Sub-sec. (2).**
6. **"Shall stay proceedings."**
7. **Until decided by a competent Civil Court.**
8. **Procedure where there is no reliable evidence.**
9. **Consequences of failure to deny the public right.**
10. **Revision.**

1. Scope and object.— (1) Under the present section it is not necessary that the claim set up by the party proceeded against should be bona fide. AIR 1952 All 215 (Pr. 8) = ILR (1951) 2 All 609 = 1952 Cri L Jour 407 (DB).

[But see AIR 1945 Nag 226 (229) = ILR (1945) Nag 461 = 47 Cri L Jour 217. (The denial of public right must be made in good faith. If it is only made as a pretext to oust the jurisdiction of the Magistrate, Section 139-A will not apply. AIR 1933 Nag 267 = 35 Cri L Jour 145, Referred.)]

(2) Where the existence of the public right is denied, the Magistrate is to inquire into the matter and if in such enquiry, there is reliable evidence in support of such denial, the proceedings should be stayed. AIR 1951 Pat 311 (Pr. 2) ** 1965 All LJ 241 = 1965 All WR (HC) 262 ** AIR 1965 Pat 368 (368) = 1965 BLJR 16.

(3) The object of this section is to prevent the Magistrate from instituting an elaborate enquiry with regard to the rights of the parties. AIR 1952 All 215 (Pr. 30) = ILR (1951) 2 All 609 = 1952 Cri L Jour 407 (DB) ** AIR 1941 Pat 38 (39) = 42 Cri L Jour 34 ** (1941) 42 Cri L Jour 413 (413) ** AIR 1931 Cal 2 (3) = 32 Cri L Jour 189 (DB) ** 1965 All WR (HC) 800 = 1965 All Cri R 535 ** AIR 1960 Ker 211 (212) = 1959 Ker LT 1300 = 1960 Cri LJ 904.

(4) If instead of staying the proceedings, the Magistrate were to try and weigh the evidence in order to determine the truth of the denial, his subsequent proceedings would be a nullity. AIR 1945 Nag 226 (227) = ILR (1945) Nag 461 = 47 Cri L Jour 217.

(5) This section does not apply to the cases where the party admits the public right but denies only the fact of obstruction. AIR 1945 Nag 226 (227) = ILR (1945) Nag 461 = 47 Cri L Jour 217 ** 1954 Raj LW 752 (752) ** AIR 1936 Pat 409 (409) ** AIR 1926 All 157 (157) = 27 Cri L Jour 27 ** AIR 1929 Cal 507 (508) = 31 Cri L Jour 973 (DB).

[See also AIR 1943 Pat 32 (33) = 43 Cri L Jour 903.]

(6) The right denied must clearly be the right which is said to have been obstructed. AIR 1945 Nag 226 (227) = ILR (1945) Nag 461 = 47 Cri L Jour 217.

(7) It is not necessary that the denial should be a denial of the existence of the entire public right. The denial of the public right in the piece of land said to have been encroached upon, is denial of the existence of the public right qua that piece of land and is sufficient to attract the application of this section. AIR 1952 All 215 (Pr. 16) = ILR (1951) 2 All 609 = 1952 Cri L Jour 407 (DB).

(8) Order under Section 133 passed and appearance by party — Procedure under this section should be followed before proceeding under Section 137 and 138. AIR 1951 Trav-Co 228 (Pr. 2) = ILR (1951) Trav-Co 123 = 52 Cri L Jour 1250 ** 1968 Cri LJ 825 (827, 828) (Goa) ** 1964 All Cri R 405 = 1964 All

Section 139A — Note 1 (contd.)
WR (HC) 569 ** 1962 (2) Cr LJ 716 (717) = 1961 Raj LJ 631 ** AIR 1960 Cal 157 (158) = 1960 Cri LJ 334 ** AIR 1960 Tripura 3 (4) = 1960 Cri LJ 119 ** (1959) 1 Orissa JD 275.

[See AIR 1965 Tripura 38 (39) = 1965 (2) Cri LJ 420 ** 1964 (1) Cri LJ 248 (249) = 29 Cut LT 523.]

(9) The fact that the Magistrate found under Section 139-A that there was no reliable evidence in support of the denial of the public right does not disentitle the party from claiming the enquiry under Section 137 or Sec. 138. AIR 1941 Pat 370 (370) = 42 Cri L Jour 784 ** AIR 1958 Pat 269 (270) = 1958 Cri L Jour 664 ** AIR 1933 Cal 318 (319) = 34 Cri L Jour 532 (DB).

(10) The section does not enable the complainant to compel the Magistrate to hold an inquiry into the rights of the parties concerned. AIR 1937 All 785 (786) = 39 Cri L Jour 148.

2. The Magistrate shall question as to existence of public right.— (1) The provisions of this section are mandatory and on the appearance of the party the Magistrate should question him without waiting for the objection being raised by the party as to whether he denies the existence of the public right. AIR 1941 Pat 38 (39) = 42 Cri L Jour 34 ** AIR 1954 Orissa 210 (210) = 1954 Cri L Jour 1422 (DB) ** 1968 Cri LJ 1518 (1519) = 1968 Mad LJ (Cri) 239 ** (1961) 65 Cal WN 1244 ** AIR 1960 Punj 377 (378, 379) = 62 Pun LR 89 = 1960 Cr LJ 993.

(2) The provision regarding questioning in Section 139-A (1) is not mandatory but merely directory. AIR 1960 All 436 (437) = 1960 All LJ 64 = 1960 Cri LJ 879 ** ILR (1962) 1 Ker 609 ** AIR 1960 All 244 (245) = 1960 Cri LJ 450. (AIR 1948 Oudh 19 and AIR 1947 Oudh 65, **Diss.**)

(3) If instead of ascertaining whether the party denies the existence of any public right the Magistrate hears the evidence of both parties and passes a final order under Section 137, the order cannot be supported. AIR 1954 Orissa 210 (210) = 1954 Cri LJ our 1422 (DB).

(4) Where the party admits the public right but denies only the obstruction, omission to question him is only an irregularity within the meaning of Section 537. AIR 1943 Pat 3 (4) = 43 Cri L Jour 923 ** (1958) 24 Cut LT 473 (474) ** AIR 1929 Cal 507 (507, 508) = 31 Cri L Jour 973 (DB).

(5) When a party, on appearance, puts in a statement denying the existence of any public right, it is not necessary for the Magistrate to put any question in that respect. AIR 1945 Pat 309 (311) = 24 Pat 104 (DB) ** 1963 (1) Cri LJ 819 (820) = 1962-2 Ker LT 420.

(6) The section does not say that the opposite party must be examined personally and if exemption is granted to the opposite party then it would be enough to examine the counsel appearing for the party. AIR 1958 Tripura 17 (18) = 1958 Cri L Jour 695.

(7) Where the opposite party in his written statement expressly denied the existence of a public way and his personal appearance had been dispensed with, it was held that it was quite unnecessary for the Magistrate formally to question the lawyer of the opposite party regarding whether his client denied the existence of the public way. ILR (1951) 1 Cal 126 (129).

(8) Where the written statement was ambiguous on the question of denial of public right and the Magistrate put the question on the next hearing, it was held that though the Magistrate was technically wrong, it was a curable irregularily. AIR 1945 Nag 226 (228) = ILR (1945) Nag 461 = 47 Cri L Jour 217.

(9) Whether a right is public right has to be decided on the facts of each case. The best criterion is to see whether the right is vested in such a large number of persons as to make them unascertainable and to make them a community or class. AIR 1939 Pat 460 (461) = 40 Cri L Jour 837 (DB).

3. "Shall enquire into the matter."— (1) The Magistrate should enquire into the matter to find out if there is reliable evidence in support of the denial of public right and not whether the claim is bona fide. AIR 1963 Cal 790 (790, 791) = 35 Cri L Jour 89 (DB) ** AIR 1959 Pat 81 (82) = 1959 Cri L Jour 230 ** AIR 1970 Pat 207 (207, 208) ** 1965 All LJ 241 = 1965 All WR (HC) 262 ** AIR 1963 All 27 (29) = 1963 (1) Cri LJ 33.

(2) This enquiry is to be kept quite distinct from the enquiry which may be held later under Section 137 if the Magistrate finds that there is no prima facie reliable evidence in support of the denial of the public right. AIR 1928 Cal 879 (879) = 30 Cri L Jour 622 (DB).

[See also AIR 1958 Oudh 19 (20) = 22 Luck 294 = 48 Cri L Jour 666.]

(3) The Magistrate is left with an absolute discretion as to how far he will go or upon what materials he will act in considering the case in support of the denial. AIR 1950 Orissa 203 (Pr. 6) = 51 Cri L Jour 1498 ** AIR 1929 All 220 (221) = 30 Cri L Jour 670 ** AIR 1948 All 115 (116) = 49 Cri L Jour 23 = ILR (1947) All 735 ** 1968 All Cr R 26 = 1968 All WR (HC) 21 ** 1968 Raj LW 244 (246, 247) = ILR (1968) 18 Raj 220 ** 1966 Cur LJ 653 (Punj).

(4) The section only requires that the Magistrate should see whether there

Section 139A — Note 3 (contd.)
is reliable evidence in support of the denial and not that the non-existence of the public right should be proved. AIR 1936 All 356 (357) = 37 Cri L Jour 343 ** AIR 1959 Pat 81 (83) = 1959 Cri L Jour 230 ** ILR (1951) 1 Cal 126 (130) ** 1968 All Cr R 26 = 1968 All WR (HC) 21 ** 1966 Cur LJ 653 (Punj).

(5) The party denying the public right must be called upon to produce evidence in support of such denial and such evidence must be legal evidence. AIR 1931 Cal 527 (527) = 32 Cri L Jour 1187 (DB) ** AIR 1959 Pat 81 (82) = 1959 Cri L Jour 230.

(6) The Magistrate may allow the cross-examination of witnesses adduced in support of the denial. AIR 1938 All 653 (654) = 40 Cri L Jour 143 ** AIR 1948 All 115 (116) = 49 Cri L Jour 23 = ILR (1947) All 735 ** AIR 1931 Cal 527 (527) = 32 Cri L Jour 1187 (DB).

(7) The enquiry being of a summary character it is not intended that the party complaining of obstruction should be required to adduce evidence to counteract the evidence in support of the denial. AIR 1938 All 653 (654) = 49 Cri L Jour 143 ** AIR 1959 Pat 81 (83) = 1959 Cri L Jour 230 ** AIR 1948 All 115 (116) = ILR (1947) All 735 = 49 Cri L Jour 23 ** AIR 1931 Cal 527 (527) = 32 Cri L Jour 1187 (DB).

(8) Where the Magistrate misdirects himself in allowing both the parties to adduce evidence and then reaches his conclusion, the order of the Magistrate is wholly wrong, being contrary to the provisions of Section 139-A and cannot be maintained. AIR 1959 Pat 81 (83) = 1959 Cri L Jour 230.

(9) The provisions of this section are mandatory and cannot be waived by the party. The Magistrate must hold the enquiry. AIR 1930 Lah 1046 (1047) = 32 Cri L Jour 250 ** AIR 1959 Pat 81 (82) = 1959 Cri 230 ** AIR 1954 All 203 (204) = 1954 Cri L Jour 432.

(10) If the Magistrate fails to hold the inquiry and proceeds to make the order absolute, he acts without jurisdiction. AIR 1953 All 466 (Pr. 4) = 1953 Cri L Jour 1068 ** 1956 BLJR 737 (739) ** AIR 1960 All 244 (245) = 1960 Cri LJ 450. (AIR 1948 Oudh 19 and AIR 1967 Oudh 65, **Diss.**)

[See also 1964 All WR (HC) 481 = 1964 All Cri R 331 ** AIR 1948 Oudh 19 (20) = 22 Luck 294 = 48 Cri L Jour 666.]

(11) The words "shall inquire into the matter" simply mean that he is to hear any evidence that the petitioner wants him to hear, before proceeding. AIR 1942 Pat 468 (469) = 43 Cri L Jour 423.

[But see AIR 1941 Oudh 271 (272) = 42 Cri L Jour 241.]

(12) It is generally desirable that the Magistrate should record a definite finding in terms of Section 139-A, sub-section (2), though if the record otherwise indicates that he did find that the denial was well founded, the requirements of Section 139-A, sub-section (2) would be satisfied. AIR 1936 All 150 (151) = 37 Cri L Jour 422.

[See also AIR 1950 Orissa 203 (Pr 6) = 51 Cri L Jour 1498.]

(13) Where the order concerned does not indicate what the actual evidence in support of the opposite party's denial was, nor does it show why the evidence in support of the opposite party's case was considered unreliable the order complained of does not indicate compliance with this section. AIR 1956 Cal 24 (25) = 1956 Cri L Jour 212.

(14) A conditional order cannot be made absolute without taking evidence of complainant. A penalty for his default is not provided for in Sec. 139-A (3). 1968 Ker LT 889 (893) = ILR (1969) 1 Ker 128 (DB).

4. Delegation of enquiry.— (1) The enquiry should be held only by the Magistrate before whom the party appears in pursuance of an order under Section 133 and cannot be delegated to a Magistrate subordinate to him. AIR 1949 Cal 637 (Pr. 14) = ILR (1950) 2 Cal 365 ** 51 Cri L Jour 205 ** AIR 1929 Cal 813 (813) = 31 Cri L Jour 673 (DB).

[See however AIR 1945 Pat 316 (316, 317) = 24 Pat 23 = 47 Cri L Jour 179 (DB).]

(2) The enquiry under this section need not necessarily be held by the Magistrate who passed the conditional order under Section 133 as such order may require the party to appear before the Magistrate who passed the order or before some other Magistrate. AIR 1937 Lah 676 (677) = 38 Cri L Jour 1056.

(3) The proceedings started before the Magistrate named in the conditional order have to be continued before that Magistrate. If after the conclusion of an inquiry under Sec. 139-A the Magistrate is unable to continue the proceedings for some reason or other or if the proceedings are transferred to some other Magistrate, the proceedings thereafter become incompetent. AIR 1956 Cal 220 (221) = 1956 Cri L Jour 614 ** 1966 All Cr R 377 (378) = 1966 All WR (HC) 655.

(4) Magistrate making conditional order — Party cannot be directed to another Magistrate for limited purpose of enquiry under Section 139-A. AIR 1963 All 27 (28) = 1963 All WR (HC) 134 = 1963 (1) Cri LJ 33.

Section 139A (contd.)

5. Reliable evidence — Sub-section (2).— (1) The Magistrate should only take the evidence in support of the denial and see whether as it stands he could come to the conclusion that the evidence was reliable. AIR 1951 Pat 311 (Pr. 2) ** AIR 1954 Orissa 210 (210) = 1954 Cri L Jour 1422 (DB) ** AIR 1946 Cal 302 (302, 303) = 47 Cri L Jour 320 (DB).

[See also AIR 1948 All 115 (116) = 49 Cri L Jour 23 = ILR (1947) All 735.]

(2) "Reliable evidence" as used in this section only means evidence on which it is possible for a competent Court to place reliance and does not mean evidence which definitely establishes the title to the land. AIR 1937 All 12 (13) = 38 Cri L Jour 200 ** 1967 Cur LJ 717 (Punj) ** 1964 All Cri R 405 = 1964 All WR (HC) 569 ** AIR 1963 All 27 (28, 29) = 1963 (1) Cri LJ 33 = 1963 All WR (HC) 134 ** AIR 1960 Punj 377 (379) = 62 Punj LR 89 = 1960 Cri LJ 993 ** 1958 All WR (HC) 866 (867) = 1958 All Cri R 104.

(3) Test of reliability will be whether the evidence is such that if unrebutted it will prove the non-existence of the public right. AIR 1939 Pat 460 (462) = 40 Cri L Jour 837 (DB) ** ILR (1958) 8 Raj 650.

(4) Public records which support the person denying the existence of public right, are "reliable evidence." AIR 1953 All 523 (Pr. 1) = 1953 Cri L Jour 1255 (DB) ** AIR 1927 Lah 745 (746) = 28 Cri L Jour 247 ** AIR 1931 Cal 2 (2) = 32 Cri L Jour 189 (DB) ** AIR 1935 Pat 218 (219) = 36 Cri L Jour 1051.

(5) A long user of the property by the person denying the public right may be held to be reliable evidence. AIR 1945 Pat 309 (310, 311) = 24 Pat 104 (DB) ** 42 Cri L Jour 401 (401) (Pat).

(6) The evidence as to denial of the public right must be taken as a whole and if it contains also a refutation of the claim made, then the suggested inference does not follow and the jurisdiction is not ousted. AIR 1945 Pat 309 (310) = 24 Pat 104 (DB).

(7) The Magistrate has to give a clear and definite finding whether there is reliable evidence in support of the denial. A finding that there is no inconvenience to the public by reason of the encroachment will not satisfy the requirements of the section. 1950 All WR (Sup) 82 (84) ** AIR 1966 Tripura 14 (15, 16) = 1966 Cri LJ 303.

(8) Proceedings under Section 133 — Second party producing recently published settlement record of rights in support of private right over disputed property — Court should consider the record of rights as reliable and pass an order for stay of proceedings till disposal of matter by Civil Court. AIR 1966 Cal 215 (217) = 1966 Cri LJ 528.

6. "Shall stay proceedings."— (1) The section is imperative and the Magistrate is bound to stay the proceedings if there is reliable evidence in support of the denial. AIR 1954 All 38 (38) = 1954 Cri L Jour 24 ** AIR 1954 Orissa 210 (210) = 1954 Cri L Jour 1422 ** 1969 Cri LJ 1461 (1463) = 1969 Raj LW 232 ** 1968 Cri LJ 1518 (1519) = (1968) Mad LJ (Cri) 239 (Mys) ** 1965 All WR (HC) 262 = 1965 All LJ 241 ** AIR 1965 Punj 340 (341) = 66 Pun LR 466 = 1965 (2) Cri LJ 240 ** 1963 Mad WN 325 = 1963-1 Mad LJ 418 ** (1961) 65 Cal WN 1244.

(2) The Court is not, however, directed to quash the proceedings altogether but only to stay the same until the adjudication by a Civil Court. AIR 1929 All 220 (222) = 30 Cri L Jour 670 ** ILR (1951) 1 Cal 126 (131) ** AIR 1935 All 79 (80) = 36 Cri L Jour 144.

(3) The proceedings need not be stayed indefinitely and the Magistrate can fix time for establishing the right in the Civil Court. AIR 1929 All 709 (709) = 31 Cri LJ 1004 ** AIR 1922 Cal 59 (64, 67) = 23 Cri L Jour 353 (FB) ** AIR 1929 Oudh 85 (86) = 30 Cri L Jour 360.

(4) If the party does not, within a reasonable time have recourse to the Civil Court, the Magistrate can proceed to make the order absolute. AIR 1915 Cal 168 (169) = 15 Cri L Jour 698 (699) (DB).

(5) Where the proceedings are stayed under sub-section (2), the Magistrate has no jurisdiction to draw up fresh proceedings under Section 133 in respect of the same matter. AIR 1948 Pat 15 (15) = 48 Cri L Jour 360.

7. Until decided by a competent Civil Court.— (1) There is nothing in the section which entitles the Magistrate to say which party should file the suit. AIR 1938 Nag 512 (512) = 39 Cri L Jour 791 ** AIR 1930 All 658 (658) = 31 Cri L Jour 839 **AIR 1927 Lah 227 (228) = 28 Cri L Jour 363 ** AIR 1935 All 79 (79, 80) = 36 Cri L Jour 144.

[See also AIR 1934 Cal 545 (546) = 35 Cri L Jour 1374 (DB).]

[But see AIR 1929 All 709 (709) = 31 Cri L Jour 1004. (In the circumstances of this case complainant was directed to file the suit.)]

(2) By the stay the Magistrate ousts his own jurisdiction to decide anything including the question of onus of proof. AIR 1927 Lah 227 (228) = 28 Cri L Jour 363.

8. Procedure where there is no reliable evidence.— (1) Where the Magistrate finds on enquiry that there

140. Procedure on order being made absolute.—(1) When an order has been made absolute under Section 136, Section 137 or Section 139, the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by Section 188 of the Indian Penal Code.

Section 139A — Note 8 (contd.)

is no reliable evidence in support of the denial of the existence of a public right, he should record his reason for his decision and proceed to decide the case under Section 137 or Section 138, as the case may be, without further reference to the claim. 1950 All WR (Sup) 82 (84) ** AIR 1959 Cal 599 (601) = 1959 Cri L Jour 1160 ** 1968 Mad LJ (Cr) 706 = ILR (1968) 2 Ker 252 (255).

[See also AIR 1948 All 115 (116, 117) = ILR (1947) All 735 = 49 Cri L Jour 23 ** AIR 1946 Oudh 108 (109, 110)) = 47 Cri L Jour 306.)]

(2) In a case where Magistrate proceeds under Section 137 or Sec. 138, the mere fact that the party has filed a civil suit to establish his right is no ground for staying the proceedings. AIR 1934 All 131 (132) = 35 Cri L Jour 1445.

(3) The case after the inquiry under Section 139-A may be transferred to another Magistrate for disposal under Section 137 or Section 138. AIR 1943 Pat 115 (116) = 44 Cri L Jour 364 (DB).

9. Consequences of failure to deny the public right.— (1) Failure to deny public right at proper time — Question cannot be raised at stage of revision. AIR 1943 Pat 32 (33) = 43 Cri L Jour 903.

(2) The existence of public right cannot be enquired into by any jury appointed under Section 138 after the failure of party to deny the right. AIR 1940 Pat 717 (718) = 42 Cri L Jour 202.

10. Revision.— (1) The High Court will revise the order of the lower Court in the following cases—

(a) Where the Magistrate comes to a conclusion on the merits instead of staying proceedings where there is reliable evidence in support of denial. AIR 1926 Pat 170 (171) * 27 Cri L Jour 9 (DB) ** AIR 1927 Lah 745 (746) = 28 Cri L Jour 247 ** AIR 1932 Oudh 118 (120) = 33 Cri L Jour 809 ** 1963 Mad WN 325 = (1963) 1 Mad LJ 418.

(b) Where he proceeds under Sec. 137 or Section 138, without holding the enquiry referred to in this section and passes final orders under those sections. AIR 1939 Lah 452 (453) = 40 Cri L Jour 933 ** AIR 1930 Pat 199 (200) = 31 Cri L Jour 53 ** AIR 1933 All 615 (616) = 35 Cri L Jour 4 ** AIR 1933 Cal 790 (791) = 35 Cri L Jour 89 (DB) ** 1957 Cri LJ 293 (294) (Raj).

(c) Where he passes orders on the test of bona fides of the claim and not on the existence or non-existence of reliable evidence. AIR 1930 Cal 144 (144) = 31 Cri L Jour 767 (DB) ** AIR 1932 All 366 (367) = 33 Cri L Jour 618.

(d) Delegation of enquiry to a subordinate Magistrate. AIR 1929 Cal 813 (813) = 31 Cri L Jour 673 (DB).

(e) Where the order negatives the rights given under Section 138. AIR 1933 Cal 318 (319) = 34 Cri L Jour 532 (DB).

(f) Where the Magistrate fails to question the party proceeded against if he denies the existence of the public right or fails to ask him to produce evidence in support of denial. AIR 1931 Oudh 397 (397) = 32 Cri L Jour 1165 ** AIR 1931 Lah 62 (63) = 32 Cri L Jour 621.

[See however AIR 1943 Pat 3 (4) = 43 Cri L Jour 923.]

(2) It is for the Magistrate to find if there is any reliable evidence in support of the denial of public right and the High Court will not interfere with his finding arrived at after inquiry under this section. AIR 1950 Orissa 203 (Pr. 6) = 51 Cri L Jour 1498 ** AIR 1946 Cal 302 (303) = 47 Cri L Jour 320 (DB) ** AIR 1946 Oudh 108 (110) = 47 Cri L Jour 306.

[But see AIR 1952 All 215 (Pr. 31) = ILR (1951) All 609 = 1952 Cri L Jour 407 (DB). (Wrong appreciation of evidence.)]

(3) Where there is other evidence as previous decisions of a Civil Court respecting the same right, failure to discuss the oral evidence in detail would not vitiate the order by the Magistrate. 1964 (1) Cri LJ 111 (111, 112) (Mys).

SECTION 140 — SYNOPSIS

1. **Scope.**
2. **Notice.**
3. **Notice of order absolute under Section 137, by whom to be given.**
4. **Non-compliance with notice.**
5. **"Is not performed within the time fixed."**
6. **Death of person against whom conditional order is made.**
7. **Costs.**

(2) **Consequences of disobedience to order.**—If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other movable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

(3) No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

[1882 — S. 140; 1872 — Ss. 525, 526; 1861 — S. 311.]

Section 140 — Synopsis (contd.)

8. Title to property removed.

9. "Moveable property," meaning of.

10. Suit in respect of acts done under the section.

11. Revision.

1. Scope.— (1) Where an order under Section 133 has not been made absolute under Section 139 (1) and further proceedings have been dropped under sub-section (2) of that section, this section can have no application and the Magistrate cannot pass any further orders for the removal of the obstruction. AIR 1942 Mad 113 (114) = 43 Cri L Jour 314.

(2) The order under Section 133 is not made absolute under Section 140 but after the order has been made absolute, notice in terms of Section 140 (1) is to be issued to the person concerned. AIR 1960 Cal 157 (158) = 1960 Cri LJ 334.

2. Notice.— (1) The provisions of the section as to the issue of notice are mandatory and the Magistrate has no discretion to refuse to issue such notice. AIR 1931 Cal 787 (787) = 32 Cri L Jour 1240 (DB).

(2) The notice must direct only the removal of the nuisance. The Magistrate cannot direct the manner in which the nuisance is to be removed. (1897) 25 Cal 425 (431) (DB).

3. Notice of order absolute under Section 137, by whom to be given.— (1) Where a conditional order directs a person to appear before a Magistrate other than the Magistrate issuing the order, and the former after enquiry under Section 137 makes the order absolute, it is he who is entitled to issue the notice under this section and not the Magistrate who originally issued the conditional order. (1886) 9 Mad 201 (202) (DB) ** (1899) 2 Weir 61 (61).

4. Non-compliance with notice.— (1) The question, whether and what action should be taken on the failure to comply with the notice is a matter of judicial discretion to be exercised by the Court, after taking into consideration the whole of the circumstances of the case. AIR 1931 Cal 787 (787) = 32 Cri L Jour 1240 (DB).

(2) Where after a notice was issued under this section to a party a temporary injunction was issued in a civil suit restraining him from performing the acts ordered to be done by the notice, the Court can, under such circumstances, desist from taking any further proceedings against him under this section until the conclusion of the Civil suit. AIR 1931 Cal 787 (787) = 32 Cri L Jour 1240 (DB).

(3) A Magistrate has no power to refuse to enforce the orders of his predecessor merely on the ground that they were not legal or valid. AIR 1923 Cal 589 (589) = 24 Cri L Jour 317 (DB).

(4) A refusal to enforce an order of the predecessor on the ground that such enforcement has become unnecessary is not ultra vires. AIR 1916 Pat 264 (266) = 18 Cri L Jour 305.

(5) The question as to the validity of an order passed under Section 133 cannot be raised in a trial for an offence under Section 188, Penal Code, for disobedience of the order. AIR 1934 Cal 242 (242) = 35 Cri L Jour 778 (DB).

[But see (1881) 10 Cal L Rep 193 (196) ** (1883) 12 Cal L Rep 231 (232) (DB).]

5. "Is not performed within the time fixed."— (1) The time to be allowed for removing the nuisance is entirely within the discretion of the Magistrate who should exercise such discretion after taking into consideration the danger and inconvenience to the public. (1882) 2 Weir 59 (59).

(2) Where the Court fixes a time for the removal of the nuisance, no action can be taken by the Magistrate for non-compliance with the notice before the expiry of period so fixed. 1882 All WN 232 (233).

6. Death of person against whom conditional order is made.— (1) Where the person against whom an order for removal of nuisance is made dies, the order ceases to have any force, and no further steps as provided by this section can be taken against his legal represen-

141. Procedure on failure to appoint jury or omission to return verdict.— If the applicant, by neglect or otherwise, prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the time fixed or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by Section 140.

[1882 — S. 141; 1872 — S. 523, Para. 4; 1861 — S. 310.]

Section 140 — Note 6 (contd.)

tatives. AIR 1928 All 300 (301) = 29 Cri L Jour 445.

[Also see S. 133.]

7. Costs.— (1) Where the Court itself proceeds to carry out the order under the provisions of this section, only the actual costs incurred for that purpose can be charged to the party. (1868) 10 Suth WR (Cr) 51 (52) (DB).

(2) Where more persons than one are proceeded against under S. 133, it would obviously be unjust for the Magistrate to make an order for recovery of the costs from a party who was not actually served with notice of the proceedings. AIR 1927 Cal 70 (71) = 28 Cri L Jour 30 (DB).

8. Title to property removed.— (1) The party against whom the order is enforced is entitled to the property gathered as a consequences of the removal. The Court has no right to dispose of it as it thinks most beneficial to the general public and if any of it is so utilised by the Court the party is entitled to claim a deduction of its value from the costs. (1868) 10 Suth WR (Cr) 51 (52) (DB).

9. "Moveable property," meaning of.— (1) The words "by the distress and sale of any other moveable property" show that the words "moveable property" in this section mean tangible moveable property. AIR 1917 Mad 748 (749) = 18 Cri L Jour 1 (DB).

10. Suit in respect of acts done under the section.— (1) The effect of sub-section (3) is that if the order of the Magistrate is in derogation of private rights and has caused, injury or loss to the owner, no person acting under the Magistrate's order will be liable to compensate the injury or loss. ILR (1951) 1 All 719 (726, 727) (DB).

(2) A suit for damages will not lie in respect of anything so done. (1888) 15 Cal 460 (469) (FB) ** (1873) 19 Suth WR (Civ) 345 (346) = 11 Beng LR 9 (DB).

(3) A suit to set aside the order of the Magistrate or to prevent him from carrying his order into effect, is also barred. (1870) 12 Suth WR 18 (19, 20) (FB). (7 Suth WR 95, **Overruled.**) ** (1881) 6 Cal 291 (299, 300) (DB) ** AIR 1916 Pat 264 (266) = 18 Cri L Jour 305 ** AIR 1940 Oudh 75 (76) = 41 Cri L Jour 99.

[See however AIR 1929 All 833 (833) = 31 Cri L Jour 302. (Order absolute can be questioned in Civil Court.) ** (1949) 51 Pun LR 176 (180). (Do.)]

(4) No suit could lie in respect of anything done in good faith under Section 140. 1958 All WR (HC) 3 (4).

(5) This section does not bar a suit for a declaration that the property treated as a public thoroughfare is the private property of the plaintiff. ILR (1951) 1 All 719 (727) (DB) ** (1893) 17 Bom 293 (299) (DB) ** (1888) 15 Cal 460 (467, 468, 470) (FB). (**Overruling** 14 Cal 60.) ** (1882) 6 Bom 672 (673) (DB).

[See also (1864) 1 Suth WR (Civ) 277 (277) (DB).]

(6) A failure to resort to the remedies provided for in this chapter for the removal of a public nuisance does not debar a person from instituting a civil suit to abate such nuisance where he suffers special damage thereby. See (1877) 3 Cal 20 (23) (FB) ** (1895) 22 Cal 551 (556) (DB).

(6) A person who is not a party to the proceedings under this chapter and who is dispossessed under colour of an order passed in such proceedings can bring an ejectment suit in a Civil Court on the basis of such dispossession. (1874) 22 Suth WR Civ 461 (462).

(7) Independent of this section a Magistrate acting judicially is, by virtue of Section 1 of the Judicial Offcers' Protection Act (18 of 1850), not liable to be sued in a Civil Court for any act done or ordered to be done by him in good faith in the discharge of his judicial duty. (1871) 16 Suth WR (Civ) 63 (64, 74) = 7 Beng LR 449 (DB). (Reviewing and overruling 13 Suth WR 13.) ** (1869-1870) 5 Mad HCR 345 (353, 354) (DB).

11. Revision.— (1) Enquiry under Sections 133 to 140 is judicial even though it is before Executive Magistrate and is subject to revisional powers of High Court. (1968) 70 Bom LR 588 (593) = 1968 Mah LJ 909 (DB).

SECTION 141 — SYNOPSIS

1. **Failure of jury to return verdict.**
2. **"Within such further time as the Magistrate may in his discretion allow."**
3. **"The Magistrate may pass such order as he thinks fit."**

1. Failure of jury to return verdict.— (1) Where only four out of five jurors returned the verdict, there is no verdict of the jury and therefore the Magistrate is entitled to pass such order as

142. Injunction pending inquiry.—(1) If a Magistrate making an order under Section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction[*] to the person against whom the order was made, as is required to obviate or prevent such danger or injury pending the determination of the matter.

(2) In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

(3) No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

[1882 — S. 142; 1872 — S. 528; 1861 — S. 314.]

[*] For the form of injunction, see Sch. V, Form XIX.

Section 141 — Note 1 (contd.)

he thinks fit, as provided by Sec. 141. AIR 1942 Pat 468 (469) = 43 Cri L Jour 423 ** AIR 1960 Pat 539 (540) = 1960 BLJR 349 = 1960 Cri LJ 1489.

(2) Where one of the jurors had expressed his opinion before the appointment of jury became complete, it was held that the constitution of jury was essentially defective, that the report of the majority of the jury itself became illegal and that the constitution of the jury being defective this section had no application. AIR 1940 Pat 717 (717, 718) = 42 Cri L Jour 202.

2. "Within such further time as the Magistrate may in his discretion allow."— (1) Where a reasonable application is made for extension of time the Court should grant it. (1901) 23 All 159 (161) (DB).

(2) If the Court grants further time, it should fix the date by which the verdict is to be returned. (1870) 14 Suth WR (Cr) 69 (69) (DB).

(3) Where an application is made for extension of time for return of the verdict, it should be disposed of before any further proceedings are taken. No proceedings taken before it is disposed of will be valid. (1901) 23 All 159 (161) (DB).

3. "The Magistrate may pass such order as he thinks fit."— (1) The words "may pass such order as he thinks fit" show that the Court has discretion as to what order should be passed in the matter. AIR 1940 Sind 24 (27) = 41 Cri L Jour 364 (DB).

(2) The discretion is a judicial one to be exercised on considerations of justice and equity. AIR 1940 Sind 24 (27) = 41 Cri L Jour 364 (DB) ** 1889 Rat 460 (460) (DB).

(3) Where owing to no fault of the person proceeded against, the jury perversely refuses to act or fails to return its verdict within the time fixed therefor, the Court may, on a proper application by the party concerned, appoint a fresh jury, or allow him to show cause by evidence against the conditional order as he could have done originally under Section 135. AIR 1942 Pat 468 (469) = 43 Cri L Jour 423 ** AIR 1922 All 297 (297) = 23 Cri L Jour 276 (DB) ** (1864-66) 2 Bom HCR 384 (388) (DB) ** (1908) 8 Cri L Jour 233 (234, 235) (DB) (Cal).

(4) Even if there is no application the Magistrate cannot straightway make the order absolute without any attempt to investigate the rights and circumstances which surround the affair and that the words "pass such order as he thinks fit" must mean that if the jury, for any reason, does not return its verdict, the Magistrate must inquire into the matter before he passes an order. AIR 1923 Pat 131 (132, 133) = 24 Cri L Jour 583.

[See however AIR 1940 Sind 24 (26, 27) = 41 Cri L Jour 364 (DB). (Magistrate is not bound to conduct some inquiry — In proper case he can pass order on basis of material already before him.) ** AIR 1936 All 65 (66) = 36 Cri L Jour 1472.]

(5) Where a jury failed to return a verdict within the time allowed, whereupon the Court gave the parties an opportunity to adduce evidence and on their failure to do so, inspected the locality and made the order absolute, it was held that the procedure adopted was quite proper. AIR 1926 All 658 (660) = 27 Cri L Jour 981.

(6) Where the jury sent in their verdict after the expiry of the time allowed therefor but before the Magistrate actually passed orders under this section, it was held that the Magistrate should duly consider the verdict given and not appoint a fresh jury discarding such verdict. (1864-66) 2 Bom HCR 384 (386, 387, 388) (DB) ** (1874) 21 Suth WR (Cr) 54 (54) (DB).

SECTION 142 — SYNOPSIS

1. This section and Section 133.

2. Injunction — When can be issued and executed.

3. Order under this section, whether bars final order under Sec. 137.

4. Direct action to obviate danger or prevent injury (Sub-sec. 2.)

143. Magistrate may prohibit repetition or continuance of public nuisance.—A District Magistrate or Sub-divisional Magistrate, or any other Magistrate empowered by the *[State Government] or the District Magistrate in this behalf, may order† any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code or any special or local law.

[1882 — S. 143; 1872 — S. 519; 1861 — S. 63.]

[*] Substituted for the words 'Provincial Government' by **A. L. O.**, 1950.

[†] For form of the order, see Sch. V, Form XX.

STATE AMENDMENTS

Gujarat

In its application to the State of Gujarat, the amendment made in S. 143 is the same as that made in Maharashtra.—See Cent. Act XI of 1960, S. 87.

NOTE.—Magistrates appointed for the City of Ahmedabad have the jurisdiction and exercise the powers of a Presidency Magistrate—See Guj. Act XIX of 1961, S. 14

Section 142 (contd.)

1. This section and Section 133.— (1) The order under Section 133 is a conditional order and that under this section is an injunction. The forms are entirely different and the form in which the conditional order is expressed is such as not to amount to an injunction. AIR 1938 Nag 84 (85) (DB).

(2) If the conditional order relates to the checking of discharge of lead dust from the factory, the Magistrate would be going beyond his jurisdiction if he passes an order under this section stopping the factory altogether. (1949) 58 Cal WN 907 (908).

2. Injunction — When can be issued and executed.— (1) Under this section immediate measures may be taken only to prevent imminent danger or injury of a serious kind to the public. If the measures were taken after the danger had passed away the procedure is irregular. **(1864) 1 Suth WR (Cr) 8 (9)** (DB) ** (1874) **21 Suth WR (Cr)** 86 (88).

(2) Where on a petition to the District Magistrate against order of injunction the Magistrate made over the matter for inquiry to the joint Magistrate, the Magistrate must be held to have abandoned the proceedings under this section. (1874) **21 Suth WR (Cr)** 86 (88).

(3) The serious injury or imminent danger contemplated by Section 142 refers to the injury or danger emanating from those things themselves which are specified in Section 133. An order under this section can, therefore, be passed only if an injury or danger specified in Section 133 is apprehended and not otherwise. AIR 1937 Lah 101 (102) = 39 Cri L Jour 13 ** 1967 BLJR 498 (504) = ILR 46 Pat 794 (DB).

(4) An apprehension of breach of peace owing to an alleged obstruction of a public way is no ground for issuing an injunction under this section. AIR 1937 Lah 101 (102) = 39 Cri L Jour 13.

3. Order under this section, whether bars final order under Section 137.— (1) A Magistrate making an order under this section not only is not precluded from making a final order under S. 137, but Sections 133, 137 and 142 taken together clearly mean that the Magistrate in spite of making an order under Section 142 is intended to proceed with the case and make a final order under Section 137. 1936 Cal 692 (693) = 38 Cri L Jour 173 (DB).

4. Direct action to obviate danger or prevent injury (Sub-section 2).— (1) No action can be taken under sub-section (2) of this section unless an injunction of the kind required by sub-section (1) has been issued and the person against whom it has been ordered, has failed to obey that injunction. (1948) 52 Cal WN 757 (758) (DB) ** 1965 (1) Cri LJ 520 (521, 522) (Tripura).

SECTION 143

1. Scope.— (1) This section contemplates that where a nuisance has been ascertained to be a "public nuisance" after a trial under the foregoing provisions the Magistrate empowered in that behalf may prohibit its repetition. AIR 1940 Sind 124 (125) = 41 Cri L Jour 727 (DB) ** AIR 1934 Pat 305 (306) = 36 Cri L Jour 187 (DB) ** AIR 1935 Cal 108 (108) (DB) ** AIR 1935 All 79 (80) = 36 Cri L Jour 144.

(2) A summary order under this section should not be passed without giving the party affected an opportunity to defend himself. AIR 1934 Pat 305 (306) = 36 Cri L Jour 187 (DB) ** AIR 1935 Cal 108 (108) (DB).

(3) The Magistrate cannot prohibit what was lawful before his order and thereby make such a legal act punishable under the Penal Code. (1896) 19 Mad 464 (469) (DB).

[See also AIR 1949 Mad 75 (Pr. 1) = 49 Cri L Jour 666.]

2. "May order any person."— (1) The order under this section must be addressed to a particular person in the form prescribed in Schedule V Form No. XX. Unless such an order is served on an individual he would not render himself liable under Section 291 of the Penal Code. (1886) 8 All 99 (100, 101).

(3) (4-11-1961). Salaried Magistrates for the City of Ahmedabad have been empowered for the purposes of this section.—See Guj. Gaz. 9-11-61, Pt. IV-A, page 287.

Maharashtra

(1) In its application to the State of Maharashtra, in Section 143 for the words "A District Magistrate or Sub-divisional Magistrate, or any other Magistrate empowered by the State Government or the District Magistrate in this behalf" substitute the words "A Presidency Magistrate specially empowered by the State Government in this behalf or a District Magistrate or a Sub-divisional Magistrate or any Executive Magistrate empowered either by the State Government or the District Magistrate in this behalf."—Bom. Act (XXIII of 1951), S. 2 and Schedule (1-7-1953).

(2) After the reorganization of the State of Bombay in 1956, the amendment made in S. 143 by the above-mentioned Bombay Act is extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Mysore

In its application to the State of Mysore, in Section 143 for the words beginning with "a District Magistrate" and ending with "in this behalf", substitute the words "a Magistrate of the first class specially empowered by the State Government in this behalf or a District Magistrate or Sub-divisional Magistrate, or any other Executive Magistrate empowered in this behalf."—Mys. Act XIII of 1965, S. 27 (1-10-1965).

Punjab: Haryana: Chandigarh

In its application to the States of Punjab and Haryana and the Union Territory of Chandigarh, in Section 143, for the words "any other Magistrate," substitute the words "any other Executive Magistrate."—Punj. Act XXV of 1964, S. 2 and Sch., Pt. I, item (35) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Rajasthan

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendment made in Section 143 is the same as that made in (1) of Maharashtra.—See Cent. Act XXXVII of 1956, S. 119 (1-11-1956).

Union Territories (except Chandigarh)

In its application to the Union territories, in S. 143, for the words "any other Magistrate", substitute the words "any other Executive Magistrate."—Act 19 of 1969, Sec. 3 and Schedule, item 36 (in Delhi, on 2-10-1969).

West Bengal

In its application to the State of West Bengal, in Section 143, for the words "Sub-divisional Magistrate or any other Magistrate," substitute the words "Sub-divisional Executive Magistrate or any other Executive Magistrate."—W. B. Act 8 of 1970, S. 2 and Sch., item 51.

CHAPTER XI

TEMPORARY ORDERS IN URGENT CASES OF NUISANCE OR APPREHENDED DANGER

144. Power to issue order absolute at once in urgent cases of nuisance or apprehended danger.—(1) In cases where, in the opinion of a District Magistrate, a Chief Presidency Magistrate, Sub-divisional Magistrate, or of any other Magis-

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SECTION 144 — SYNOPSIS

1. Scope.
2. Power of Magistrate under the section to override private rights.
3. "Written order stating the material facts."
4. Who can pass order under the section.
5. Nature of orders that can be passed under the section.
6. Order to abstain from certain acts.
7. Direction to take certain order with property.
8. Effect of order under the section.
9. Ex parte order — Sub-section (2).

trate, °[(not being a Magistrate of the third class)] specially empowered by the °[State Government] or the Chief Presidency Magistrate or the District Magistrate to act under this section, *[there is sufficient ground for proceeding under this section and] immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in manner provided by Section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed, ex parte.

(3) An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

(4) Any Magistrate may, *[either on his own motion or on the application of any person aggrieved], rescind or alter any order made under this section by himself or any Magistrate subordinate to him, or by his predecessor in office.

†[(5) Where such an application is received, the Magistrate shall afford to the applicant an early opportunity of appearing before him either in person or by pleader and showing cause against the order; and, if the Magistrate rejects the application wholly or in part, he shall record in writing his reasons for so doing.

Section 144 — Synopsis (contd.)

10. Order against the general public — Sub-section (3).

11. Rescission or alteration of order — Sub-section (4).

12. Enquiry into application to rescind or alter the order — Sub-section (5).

13. Proceedings are judicial.

14. Duration of the order — Sub-section (6).

15. Revision.

16. Disobedience of order under the section.

17. Suit to establish civil rights infringed by an order under this section.

18. Sections 144, 145 and 107 compared — See Note 2 on Section 145.

19. Conversion of proceedings — See Note 47 on Section 145.

1. Scope.— (1) Before acting under this section the Magistrate must be satisfied that immediate prevention or speedy remedy is necessary. AIR 1951 Mys 17 (Pr 7) ** AIR 1958 Tripura 47 (Pr. 4) = 1958 Cri L Jour 1554 ** AIR 1931 Bom 513 (513) = 33 Cri L Jour 75 (DB) ** AIR 1924 Pat 145 (146) = 24 Cri L Jour 947 ** AIR 1960 Ker 78 (78) = 1960 Cri LJ 229 = 1959 Ker LT 766.

[See also AIR 1948 Cal 192 (193) = 49 Cri L Jour 289 (DB).]

(2) It is, in fact, the urgency of the case that vests the Magistrate with jurisdiction to exercise the powers conferred by this section. AIR 1942 Lah 171 (172) = 43 Cri L Jour 747 (FB) ** AIR 1922 Pat 435 (438) = 23 Cri L Jour 549 (FB).

(3) A mere statement that he considers the case to be urgent is not sufficient if the facts show that, in reality, there is no urgent necessity for action. AIR 1919 Cal 584 (585) = 19 Cri L Jour 951 (DB).

(4) The 'emergency' contemplated by the section is not necessarily the emergency contemplated by Article 352 of the Constitution. AIR 1956 All 481 (483) = 1956 Cri L Jour 1026 (DB).

(5) The Magistrate must be satisfied that the direction to abstain from a certain act or to take certain order with property is likely to prevent or tends to prevent obstruction, etc., as specified in the section. AIR 1929 Pat 714 (716) = 31 Cri L Jour 466 ** (1874) 6 NWPHCR 104 (108, 109) (DB) ** (1875) 23 Suth WR (Cr) 34 (34) (DB) ** 1876 Bom PJ 181 (181).

[See AIR 1937 Mad 494 (494) = 38 Cri L Jour 892.]

(6) Injury to property, as distinguished from injury to person or danger to human life, is not one of the objects for the prevention of which an order can be passed under this section. AIR 1934 Cal 513 (514) = 35 Cri L Jour 1252 (DB).

(7) It cannot be said that the section contemplates only acts which when allowed to be completed, will constitute an offence. Even if the acts are such as when completed would furnish grounds for a civil action only, the protection of the section will extend to the person. AIR 1943 Cal 35 (38) = 44 Cri L Jour 288 (DB).

†[(6)] No order under this section shall remain in force for more than two months from the making thereof, unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the *[State Government], by notification in the Official Gazette, otherwise directs.

[1882 — S 144; 1872 — S. 518; 1861 — S. 62.]

[*] These words were inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 27.

[†] Sub-section (5) was inserted and original sub-section (5) was renumbered as sub-section (6), ibid.

OBJECTS AND REASONS

1923 — "We accept the amendment made in Section 144 by this clause (i. e clause 26). It was suggested to us that Section 144 should be elaborated so as to enable a person aggrieved by an order made under the section to require the Magistrate to make a judicial inquiry regarding the truth of the information on which he had acted, and thereby to bring in the revisional powers of the High Court. With the exception of Syed Raza Ali we think that this proposal goes too far, and that it is necessary to maintain the executive character of proceedings under Section 144. We are, however, prepared, and we have proposed an amendment to this effect, to lay down that a person aggrieved shall be entitled to apply to the Magistrate and show cause against the order, and that the Magistrate shall give him an opportunity of being heard in person or by pleader and shall record an order in writing on the application giving his reasons where he rejects it."—S. C. R. (18—1923).

STATE AMENDMENTS

Gujarat

In its application to the State of Gujarat, the amendments made in Section 144 are the same as those made in Maharashtra.—See Cent. Act XI of 1960, S. 87.

Section 144 — Note 1 (contd.)

[See also AIR 1950 Mad 593 (Pr. 1) = 51 Cri L Jour 1508.]

(8) The section is not limited in its operation to cases of possible breach of general peace but contemplates also cases of interference with individual rights. AIR 1943 Cal 35 (38) = 44 Cri L Jour 288 (DB) ** AIR 1961 Manipur 12 (18) = 1961 (1) Cri LJ 676.

(9) The power conferred by this section is a discretionary one and being large and extraordinary, it should be used sparingly and only where all the conditions prescribed are strictly fulfilled. AIR 1942 Lah 171 (172) = 43 Cri L Jour 747 (FB) ** AIR 1957 Punj 1 (Pr. 14) = ILR (1957) Punj 218 = 1957 Cri L Jour 88 (DB).

(10) Where the Magistrate has satisfied himself as to the existence of the conditions necessary for taking action under the section, he should pass a written order stating the material facts therein. AIR 1940 Bom 42 (43) = 41 Cri L Jour 319 (DB) ** AIR 1928 All 14 (15) = 28 Cri L Jour 991 ** (1905) 32 Cal 935 (940) = 2 Cri L Jour 215 (DB).

(11) The section does not empower a Magistrate to decide disputes of a civil nature between private individuals and thereby usurp the functions of a Civil Court, which alone has jurisdiction to decide such disputes. AIR 1951 Punj 109 (Pr. 2) = 52 Cri L Jour 1304 ** AIR 1942 Pat 414 (416) = 43 Cri L Jour 722 ** AIR 1928 All 14 (15) = 28 Cri L Jour 991 ** AIR 1932 Mad 294 (296) = 33 Cri L Jour 605 ** AIR 1960 Assam 111 (114) (SB) ** (1966) 32 Cut LT 1072.

[See AIR 1924 Cal 996 (997, 998) = 26 Cri L Jour 279 (DB).]

(12) It is not within the province of a Magistrate acting under this section, to adjudicate upon questions of title or possession. AIR 1952 Cal 200 (Prs. 8, 9) = 1952 Cri L Jour 566 (DB) ** AIR 1953 Raj 202 (204) = 1953 Cri L Jour 1843 (DB) ** AIR 1952 Pat 316 (Prs. 5, 6, 14) = 1952 Cri L Jour 1124 (DB).

(13) Where there is a dispute with respect to right to collect toll in a Bazar for some time past and the parties had resorted to proceedings under Section 144 previously, proper course is to have recourse to Section 145 or Section 147 and not Section 144. AIR 1958 Tripura 47 (Pr. 9) = 1958 Cri L Jour 1554.

(14) Where the real dispute between the parties was about the actual pos-

NOTE.—The Chief Magistrate in the City of Ahmedabad has the powers and exercises the jurisdiction of the Chief Presidency Magistrate.—See Guj. Act XIX of 1961, S. 14 (3) (4-11-1961).

Maharashtra

(1) In its application to the State of Maharashtra, in S. 144—

(1) in sub-section (1),—

(a) after the words "a Chief Presidency Magistrate" insert the words "the Commissioner of Police" — Bombay Act XXXIV of 1953, S. 5 (1-7-1953).

(b) for the words and brackets "or of any other Magistrate (not being a Magistrate of the third class)" substitute the words "or of any other Executive Magistrate."—Bombay Act XXIII of 1951, S. 2 and Schedule (1-7-1953).

(c) after the words "such Magistrate", wherever they occur insert the words "or the Commissioner of Police."

(2) In sub-section (4), after the word "office", insert the following:

"If the order under this section is made by the Commissioner of Police,* the Commissioner of Police may either of his own motion, or on the application of any person aggrieved, rescind or alter such order."

[*] Besides Greater Bombay, cities of Nagpur and Poona have Commissioners of Police now.

Section 144 — Note 1 (contd.)

session of the trees and not about right to cut and remove them, the proper section under which proceedings should be initiated is Section 145 and not Section 144. ILR (1957) Ker 646 (661).

(15) For the purposes of passing a proper and reasonable order, he can take into consideration the nature of the claims set up by the parties in order to see whether or not it is possible to afford protection to those who seek only the lawful exercise of any legal and natural rights. AIR 1932 Mad 294 (296) = 33 Cri L Jour 605.

(16) The Magistrate cannot question the legality or propriety of a Civil Court's decree, nor interfere with the execution of a Civil Courts decree (1895) 17 All 485 (489) (FB) ** (1902) 6 Cal WN 466 (467, 468) (DB).

(17) The Magistrate is bound to respect the findings and directions given by a Civil Court. AIR 1953 Mad 594 (Pr. 2) = 1953 Cri L Jour 1119 ** AIR 1951 Pat 266 (Pr. 9) (DB) ** AIR 1968 Orissa 239 (240) = 1968 Cr LJ 1629 ** 1967 Cr LJ 1119 (1120) = 1966 BLJR 477 (DB) ** (1966) 32 Cut LT 887 = ILR (1966) Cut 566.

(18) Where the party applying has a proper and appropriate remedy in a Civil Court, the Criminal Court should not assume jurisdiction under this section. AIR 1925 All 678 (679) = 26 Cri L Jour 560.

(19) Where there was a bona fide dispute as regards the possession and management of a temple between two persons, one claiming to be a hereditary trustee and the other claiming to be a trustee appointed by the Hindu Religious Endowments Board, it was held that it was not a case for interference under this section and that the proper remedy was to apply to the Civil Court. AIR 1929 Mad 845 (846) = 30 Cri L Jour 1010.

(20) It is not also permissible for a Magistrate, under cover of an order under this section, to dispossess a particular individual from certain property or to direct delivery of possession of the property, where the object of the order is not to prevent obstruction, annoyance, or injury to any person lawfully employed. AIR 1951 Punj 109 (Pr. 2) = 52 Cri L Jour 1304 ** AIR 1928 All 14 (15, 16) = 28 Cri L Jour 991 ** (1872) 17 Suth WR (Cr) 37 (37, 38) (DB).

(21) Where the matter is likely to be decided by the Civil Court shortly and there is no apprehension of any imminent breach of the peace, there is no necessity for action under this section. AIR 1914 Mad 239 (240) = 15 Cri L Jour 291 (DB).

(22) Where in an attempt to curb unjust attacks on officers, all attacks on officers and even comments on the

(3) In sub-section (5), after the word "Magistrate", wherever it occurs, insert the words "or the Commissioner of Police." — Bombay Act XXXIV of 1953, S. 5 (1-7-1953).

(4) [Sub-section (5A) inserted in the Code by Bombay Act, XXXIV of 1953 is omitted by Bom. Act LXXI of 1954, S. 4 (29-11-1954).]

(2) After the reorganization of the State of Bombay in 1956, the amendments made in Section 144 by the above-mentioned Bombay Acts are extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Mysore

In its application to the State of Mysore, the amendments made in Section 144 are the same as those made in 1 (1) (b) of Maharashtra. Mys. Act XIII of 1965, S. 28 (1-10-1965).

Punjab: Haryana: Chandigarh

In its application to the States of Punjab and Haryana and Union Territory of Chandigarh, in S. 144, for the words and brackets, "any other Magistrate (not being a Magistrate of the third class)", substitute the words "any other Executive Magistrate."— Punj. Act XXV of 1964, S. 2 and Schedule, Pt. I, Item (36) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Rajasthan

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendments made in Section 144 are the same as those made in (1) of Maharashtra.—See Cent. Act XXXVII of 1956, S. 119 (1-11-1956).

Union Territories (except Chandigarh)

In its application to the Union territories, in Section 144 for the words "any other Magistrate (not being a Magistrate of the third class"), substitute the words "any other Executive Magistrate".—Act 19 of 1969, S. 3 and Sch., item 37 (in Delhi, on 2-10-1969).

West Bengal

In its application to the State of West Bengal, in Section 144, for the words "Sub-divisional Magistrate or any other Magistrate", substitute the words "Sub-divisional Executive Magistrate, or of any Presidency Magistrate or Executive Magistrate." — W. B. Act 8 of 1970, S. 2 and Sch., item 52.

Section 144 — Note 1 (contd.)

public acts of all officers of all departments were prohibited in the order under this section, it was a clear abuse of the powers given under this section. AIR 1952 Mad 61 (Prs. 2, 3) = 1952 Cri L Jour 161.

(23) The provisions of this section do not offend Article 19 (1) of the Constitution of India. AIR 1956 All 481 (Prs. 7, 12) = 1956 Cri L Jour 1026 (DB) ** AIR 1954 All 738 (739) = 1954 Cri L Jour 1474 ** AIR 1954 Ajmer 40 (41) = 1954 Cri L Jour 1014 ** **AIR 1961 SC 884 = 1961 (2) Cri LJ 16 = (1961) 3 SCR 423.**

(24) Provisions of the section empowering imposition of precensorship are not inconsistent with Article 19 (1) (a) of the Constitution. AIR 1957 Punj 1 (Pr. 9) = ILR (1957) Punj 218 = 1957 Cri L Jour 88 (DB).

(25) The section falls within the ambit of Article 19 (2) of the Constitution. AIR 1957 Punj 1 (Prs. 10, 11, 12) = ILR (1957) Punj 218 = 1957 Cri L Jour 88 (DB) ** **AIR 1961 SC 884 = 1961 (2) Cri LJ 16 = (1961) 3 SCR 423.**

(26) It was held that the provision empowering a Magistrate to pass order under the section to prevent annoyance is unconstitutional but not the one empowering an order for the purpose of preventing disturbance of the tranquillity. AIR 1956 All 481 (Prs. 10, 11) = 1956 Cri L Jour 1026 (DB) ** AIR 1968 All 100 (105) = 1968 Cri LJ 281 = 1967 All LJ 573 (DB).

(27) Mysore Police Act (5 of 1908), Section 40 is not invalid on ground of repugnancy with Section 144. 1962 Mys LJ (Supp) 411.

(28) Section 144 is not an exhaustive topic itself — Inferior Criminal Courts can invoke inherent powers to grant relief. 1969 Cri LJ 575 (577) = 34 Cut LT 460.

(29) Sub-section (6) of Section 144 is unconstitutional being violative of Article 19 (1) (b) of Constitution. AIR 1962 Pat 292 = 1962 BLJR 236 = 1962 (2) Cri LJ 203 (DB).

2. Power of Magistrate under the section to override private rights.— (1)

Section 144 — Note 2 (contd.)

Courts Civil as well as Criminal, exist for the protection of the rights of private individuals, and therefore the authority of a Magistrate under this section should ordinarily be exercised in defence of such rights rather than in their suppression. AIR 1939 All 182 (183, 184) = 40 Cri L Jour 383 ** AIR 1939 Sind 167 (169) = 40 Cri L Jour 703 (DB) ** AIR 1937 Mad 311 (312) = 38 Cri L Jour 582 ** (1883) 6 Mad 203 (220) (FB) ** AIR 1934 Pat 104 (105) = 35 Cri L Jour 1057 ** AIR 1968 Punj 303 (306) = 70 Pun LR 102.

[See also AIR 1954 Tripura 4 (4) = 1954 Cri L Jour 1343.]

(2) The powers under this section are not confined to the protection of private rights: they are intended to be exercised also for the protection of the public including private individuals and for the preservation of the public tranquillity. (1895) 17 All 485 (489, 490) (FB).

(3) Where there is a conflict between public interest and private interest, the former must prevail and a Magistrate can under this section override, temporarily, private rights. AIR 1942 Pat 414 (416) = 43 Cri L Jour 722 ** AIR 1955 Manipur 41 (44) = 1955 Cri L Jour 1603 ** AIR 1938 Mad 714 (715) = 39 Cri L Jour 886 ** AIR 1938 Mad 1049 (1050) = 30 Cri L Jour 31 (FB) ** (1883) 6 Mad 203 (220) (FB) ** (1902) 30 Cal 155 (184) (FB).

(4) Although a person has an absolute right to use his property as he pleases, yet if the mode of enjoyment of the property, innocent and lawful as it may be, results or tends to result in a breach of the public peace, the Magistrate has power to restrain him temporarily from so using the property. AIR 1928 Cal 446 (447) = 29 Cri L Jour 423 (DB) ** AIR 1939 Sind 167 (169) = 40 Cri L Jour 703 (DB) ** (1880) 2 Mad 140 (142) (DB).

(5) The rule that private rights can be overridden in the interests of the public rights is equally applicable to cases where rival parties claim to exercise a right at the identical place and at the same time, such as the performance of a festival in the public good before a temple. AIR 1949 Mad 212 (214) = 50 Cri L Jour 235 ** **AIR 1961 SC 884 = 1961 (2) Cri LJ 16 = (1961) 3 SCR 423** ** (1966) 32 Cut LT 1036 = ILR (1966) Cut 882.

(6) An order in suppression of legal rights ought not, however, to be made unless the Magistrate considers that such action is absolutely necessary and that the powers vested in him under the other provisions of the Code to avert a breach of the peace, are not likely to prove adequate or sufficient. AIR 1953 Mys 107 (Pr 5d) = 1953 Cri LJ 1271 ** AIR 1951 Cal 472 (Pr 12) = 52 Cri LJ 856 (DB) ** AIR 1940 Bom 42 (43) = 41 Cri LJ 319 (DB) ** AIR 1938 Mad 714 (715) = 39 Cri LJ 886.

(7) Care should be taken to see that use of this section is not invoked by one party to a dispute in order to obtain material advantage over the other. AIR 1940 Sind 158 (159) = 41 Cri LJ 952 (DB).

(8) The Magistrate should try as far as possible to uphold the rights declared by Civil Courts. AIR 1934 Pat 565 (569) = 36 Cri LJ 146 (DB) ** AIR 1958 Tripura 47 (Pr 5) = 1958 Cri LJ 1554.

[See also AIR 1949 Mad 212 (213) = 50 Cri LJ 235.]

(9) The Magistrate should resort to the provisions of this section only when there is no time or opportunity for any other course. AIR 1927 Mad 368 (368) = 28 Cri LJ 325 ** AIR 1934 Cal 513 (515) = 35 Cri LJ 1252 (DB).

(10) An order under this section, if made, should never be disproportionate but should always be commensurate to the emergencies of any particular situation. AIR 1942 Pat 414 (416) = 43 Cri LJ 722 ** AIR 1940 Bom 42 (43) = 41 Cri LJ 319 (DB) ** AIR 1933 Cal 348 (351) = 34 Cri LJ 334 (DB).

(11) It is incumbent on the Magistrate to hold a full and sufficient enquiry as to the circumstances which make it likely that a breach of the peace will occur. (1880) 5 Cal 132 (134) (DB) ** (1946) 50 Cal WN 615 (615) ** AIR 1924 Pat 767 (768, 769) = 25 Cri LJ 1178 ** AIR 1961 Manipur 12 (20) = 1961 (1) Cri LJ 676.

(12) The authority of the Magistrate to override temporarily, private rights in cases of emergency is co-extensive with the emergency and when it ceases, he should secure to every person the enjoyment of his legal rights, and by means of proper precautions, deter those who seek to invade the rights of others. (1881) 2 Weir 74 (76) (DB) ** AIR 1955 Manipur 41 (44) = 1955 Cri LJ 1603.

(13) Where, there is no apprehension of a breach of the public peace, a Magistrate should not restrain the liberty of a private individual by means of an order under this section. AIR 1939 Rang 181 (182) = 40 Cri L J 645.

[See AIR 1937 Mad 311 (312) = 38 Cri LJ 582.]

(14) Where it is found that a person is doing a thing which he is legally entitled to do and his neighbour chooses to take offence and threatens to create a disturbance in consequence it is clearly the duty of the Magistrate not to deprive the former of the exercise of his legal rights but restrain the latter

Section 144 — Note 2 (contd.)
from illegally interfering with the exercise of such legal rights. AIR 1953 Mys 107 (Prs 5a, 5d) = 1953 Cri LJ 1271 ** AIR 1952 Trav-Co 251 (Pr 3) = 1952 Cri LJ 1121 ** AIR 1924 Pat 767 (769) = 25 Cri LJ 1178 ** (1880) 5 Cal 132 (134, 135) (DB).

(15) The proper course for the Magistrate is to ascertain which party is in the wrong and is interfering unnecessarily with the legal exercise of the rights of the other party and to restrain that party from committing any act which may lead to a breach of the peace. AIR 1922 Cal 483 (484) = 24 Cri LJ 154 (DB).

(16) As a general rule, when a breach of the peace is anticipated, action is to be taken against the potential law-breakers and not against the peaceful citizens, whom it is expected that law-breakers will molest. AIR 1952 Trav-Co 251 (Pr 3) = 1952 Cri LJ 1121 ** AIR 1955 Manipur 41 (44, 45) = 1955 Cri LJ 1603 ** AIR 1951 Cal 472 (Pr. 12) = 52 Cri LJ 856 (DB) ** AIR 1927 Lah 430 (430) = 28 Cri LJ 345 ** AIR 1923 Mad 15 (16) = 23 Cri LJ 689.

(17) Where on an application for restoration of possession by a party under this section the Magistrate orders restoration of possession to him and in compliance with the order possession is delivered to such party but finally the Magistrate dismisses his application, the High Court, under the powers conferred by Section 561A, will order restoration of possession to the party from whom it was taken. AIR 1951 Madh B 91 (Pr 3) = 52 Cri LJ 560.

3. "Written order stating the material facts."— (1) Where the Magistrate is satisfied that there are sufficient grounds for proceeding under this section, and that immediate prevention or speedy remedy is desirable he should pass an order stating the material facts of the case; such order should be a written order. AIR 1942 Lah 171 (172) = 43 Cri LJ 747 (FB) ** AIR 1939 Rang 181 (182) = 40 Cri LJ 645 ** AIR 1924 Pat 767 (768) = 25 Cri LJ 1178 ** AIR 1961 Manipur 12 (19) = 1961 (1) Cri LJ 676.

(2) Before proceeding under this section, the Magistrate must satisfy himself that there is sufficient ground for doing so. AIR 1939 Rang 181 (182) = 40 Cri LJ 645 ** AIR 1968 Punj 303 (305) = 70 Punj LR 102 ** 1967 Cri LJ 1716 (1717) (Cal).

(3) There ought to be evidence or information before the Magistrate that the act prohibited is likely to cause a riot or affray or danger to human life, etc. AIR 1942 Lah 171 (172) = 43 Cri LJ 747 (FB) ** (1875) 24 Suth WR (Cr) 30 (31) (DB) ** (1906) 10 Cal WN cliv (cliv) (DB).

(4) The information may be oral, or may be in a police report. (1881) 3 Mad 354 (357) (DB) ** AIR 1939 Mad 783 (785) = 41 Cri LJ 677 ** AIR 1924 Oudh 338 (340) = 25 Cri LJ 433.

(5) A Magistrate cannot act solely on the report of an interested person, as for instance, the manager of the factory in which the accused persons are employed. AIR 1915 Cal 733 (734) = 16 Cri LJ 320 (DB).

(6) The Magistrate must not base his order merely on his local inspection. AIR 1951 Pat 285 (Pr 4) = 52 Cri LJ 10.

(7) As sub-section (2) implies, ordinarily an order under this section should not be made without an opportunity being afforded to the person against whom it is proposed to make it, to show cause why it should not be passed. AIR 1953 Orissa 96 (Pr 1) = 1953 Cri LJ 731 (DB) ** AIR 1936 Cal 259 (259) = 37 Cri LJ 696 ** (1896) 19 Mad 18 (20) (DB) ** AIR 1924 Pat 703 (704) = 26 Cri LJ 260 ** (1883) 6 Mad 203 (223) (FB).

(8) An ex parte order can only be passed in cases of emergency or when there is no time to serve notice. See Note 9.

(9) The order should be served upon the persons proceeded against in the manner provided for by Section 134 of the Code. AIR 1951 Cal 472 (Pr 5) = 52 Cri LJ 856 (DB) ** AIR 1935 Cal 251 (252) = 36 Cri LJ 736.

(10) In the absence of evidence to show that personal service or service on an adult member of the order under this section, could not be effected, service by affixing a copy of the order on a bamboo pole near the scene of dispute has been held to be no service at all. AIR 1951 Cal 207 (Pr 13) = 51 Cri LJ 1575 (DB).

(11) It is merely an irregularity if a copy of the order is not stuck up as required by Section 134, and an irregularity of this nature will be immaterial if the person concerned had knowledge of the contents of the order. AIR 1940 Cal 358 (362) = 41 Cri LJ 864 ** AIR 1955 Manipur 41 (49) = 1955 Cri LJ 1603 ** (1889) 16 Cal 9 (12) (DB) ** AIR 1940 Pat 446 (47) = 41 Cri LJ 414.

(12) The notice issued to the party must follow the terms of the order in pursuance of which it is issued. AIR 1934 Cal 393 (396) = 35 Cri LJ 881 (DB).

(13) The sub-section does not authorise a Magistrate to address an order to the head of the police in the district. AIR 1951 Cal 472 (Pr 5) = 52 Cri LJ 856 (DB).

Section 144 — Note 3 (contd.)

(14) It is desirable that the order should show in clear and unmistakable terms the authority under which the Magistrate takes action under this section, and professes to act. AIR 1923 Rang 146 (146) = 24 Cri LJ 737 (DB) ** AIR 1960 Cal 715 (716) = 1960 Cri LJ 1445.

(15) An order under this section should be clear and definite. AIR 1940 All 465 (466) = 42 Cri LJ 120 ** AIR 1936 Cal 259 (259) = 37 Cri LJ 696 ** AIR 1935 Bom 33 (33, 34) = 36 Cri LJ 547 (DB).

[See also AIR 1941 All 70 (73) = 42 Cri LJ 298 (FB).]

(16) It has been held that a mere omission to set out in the order the material facts where there are, as a matter of fact, grounds justifying the order will not justify interference with the order. AIR 1917 Cal 6 (7) = 18 Cri LJ 892 (DB).

[See however 1948 Bur LR 365 (369).]
[But see AIR 1939 Rang 181 (182) = 40 Cri LJ 645.]

(17) Where there are no such materials or the materials are not sufficient to justify the order, and the order does not show any emergency, the order must be set aside. AIR 1929 Pat 714 (716) = 31 Cri LJ 466 ** AIR 1933 Cal 348 (353) = 34 Cri LJ 334 (DB).

4. Who can pass order under the section.— (1) Where a Sub-divisional Magistrate, to whom an application had been made for an order under this section, fixed a certain day for enquiring into the necessity for the order but did not attend Court on that day, it was held that another Magistrate who was in charge of the current file of his Court, and who was not otherwise disqualified to pass an order under the section, could dispose of the matter and pass orders thereon. AIR 1934 Cal 393 (394) = 35 Cri LJ 881 (DB).

(2) A Magistrate not specially empowered by the Government or by the District Magistrate, cannot pass any order under this section though he is in charge of current duties of the Sub-divisional Magistrate on the particular date. AIR 1952 Orissa 215 (Pr 4) = 1952 Cri LJ 1106 (DB).

(3) On a petition to a Sub-Magistrate he refused to pass an order under this section as on enquiry he did not find sufficient grounds. The matter was taken up to the Sub-divisional Magistrate. It was held that the Sub-divisional Magistrate could pass the order on the material gathered by the Sub-Magistrate. AIR 1942 Mad 20 (21) = 43 Cri LJ 372.

(4) Where a dispute exists between the Collector and District Magistrate on the one hand and a private person on the other as regards the title to lease right to take sand from a river, a Magistrate in the district is hardly an appropriate tribunal to decide whether the Collector and District Magistrate who is the immediate superior of all Magistrates in the district has or has not the right to lease the property to others. AIR 1951 Cal 207 (Pr 8) = 51 Cri LJ 1575 (DB).

5. Nature of orders that can be passed under the section.— (1) This section contemplates an absolute and definite order and not the passing of a conditional order to be made absolute later on. An order either to abstain from a certain act or to show cause against the order is not one within the section. AIR 1936 Cal 259 (259) = 37 Cri LJ 696.

(2) The orders under the section vary very widely in their scope and effect. They may have the most drastic effect in curtailing the liberties of individuals or communities or they may have only the effect of controlling a route of procession by causing minimum interference with private rights. AIR 1939 Mad 783 (785) = 41 Cri LJ 677.

6. Order to abstain from certain acts. — (i) The order should be a definite order to abstain from a certain act.— (1). An order either to abstain from a certain act or to show cause against the order is not a definite order and does not come within the purview of this section. AIR 1936 Cal 259 (259) = 37 Cri LJ 696.

(ii) The order should be addressed to a definite person.— (2) An order addressed to the crews, lessees, proprietors or any other persons having control over the movements of boats regulating the boat traffic at a certain landing was held to be indefinite and not authorised. (1898) 25 Cal 852 (853, 856) (DB).

(3) An order forbidding the "owners of cattle" from allowing their animals to stray is indefinite. (1872) 18 Suth WR (Cr) 21 (21) = 9 Bang LR (AC) 36 (DB).

(4) An order directing a person not to go to a certain village or allow "any of his servants, relations, or friends" to go there has been held to be indefinite and not authorized by the section. (1898) 2 Cal WN 422 (423).

(5) An order addressed to "A. B. and all other persons, who may be concerned in the project," is vague and bad in law. AIR 1931 Bom 135 (138) = 32 Cri LJ 507 (DB) ** 1961 (1) Cri LJ 659 (660) = 1960 Ker LT 724.

(6) Order under Section 144, prohibiting shouting of "provocative slogans"

Section 144 — Note 6 (contd.)

— The expression "provocative slogans" has necessarily to be understood in the context in which it has been used in the order and therefore, it cannot be regarded as vague — Order cannot be held to place unreasonable restrictions on the rights of free speech of citizens. **AIR 1961 SC 884 = 1961 (2) Cri LJ 16 = (1961) 3 SCR 423.**

(iii) The order should be addressed to a party to the proceedings and not to a third person.— (7) The order under Section 144 should be addressed to a definite person and it should be addressed to a party to the proceeding and not to a third party. 1960 Ker LT 724 = 1961 (1) Cri LJ 659 (660).

(8) An order directing a village munsif to take possession of the property in dispute is ultra vires. AIR 1917 Mad 629 (629) = 17 Cri LJ 190.

(9) An order directing the police to see that a person is allowed to go to a particular land and cut the crops is bad. AIR 1921 Pat 415 (420) = 22 Cri LJ 442.

(10) Where A is doing some work which may cause annoyance, a direction to B not to do that work cannot have the effect of preventing A, who is not under the control of B to stop the work. In such a case the direction to B is improper. (1949) 53 Cal WN 344 (346) (DB).

(iv) The act prohibited should be a certain and definite act.— (11) The order must state in clear and precise terms what it is that the person ordered is prohibited from doing. AIR 1940 Bom 42 (44) = 41 Cri LJ 319 (DB) ** AIR 1939 Rang 181 (183) = 40 Cri LJ 645.

(12) The following orders have been held to be not valid:

(a) an order directing a person not to do any illegal act that is likely to cause a breach of the peace.. (1906) 10 Cal WN clxxvi (clxxvi) (DB).

(b) an order directing a person not to collect rents from the ryots generally without mentioning any particular ryot. (1889) 16 Cal 80 (84, 85) (DB) ** (1892) 19 Cal 127 (130) (DB).

(c) an order in general terms, forbidding two persons to use any musical instrument in the neighbourhood of each other's house. (1866) 6 Suth WR (Cr) 40 (40) (DB).

(d) an order directing certain persons not to commit any act that may be likely to induce a breach of the peace and to take forcible possession of certain property. (1906) 4 Cri LJ 456 (460) (DB) (Cal).

(e) an order directing the public not to discuss matters which may be a subject of controversy between different sections or different classes or which may excite public feeling: AIR 1939 Rang 181 (182, 183) = 40 Cri LJ 645 (DB).

(f) an order directing the editor of a newspaper to abstain from publishing any news articles or comments relating to certain specified matters, except such news, articles and comments as have been previously approved of by a certain officer. AIR 1940 Bom 42 (44) = 41 Cri LJ 319 (DB).

(g) an order prohibiting the editor of a newspaper from making any attack on an officer and even comments on the public acts of any officer of any department. AIR 1952 Mad 61 (Prs 2, 3) = 1952 Cri LJ 161.

(13) While pronouncing an order under this section against a newspaper, the Court should enquire whether the words used are used in such circumstances and are of such nature that a reasonable man would anticipate the evil result. The principles to be not lost sight of indicated. AIR 1957 Punj 1 (Pr 14) = ILR (1957) Punj 218 = 1957 Cri LJ 88 (DB).

(14) An order under this section should direct a person to abstain from a certain act and not a series of acts, done at certain intervals and spreading over a period of time. (1967) 2 Weir 67 (67, 68).

(v) The order should be to abstain from a certain act and not to do a certain act.— (15) The section permits only a restrictive order and does not authorize a Magistrate to make a mandatory or positive order directing a person to do a particular act. AIR 1942 Pat 414 (416) = 43 Cri LJ 722 ** AIR 1933 Cal 724 (725) = 34 Cri LJ 1192 (DB).

[See also AIR 1951 Pat 494 (Pr 2) = 52 Cri LJ 638 (DB).]

(16) An order directing a person to do positive act may be passed only in so far as such order may be covered by the words "or to take certain order with certain property in his possession or under his management." AIR 1937 Cal 406 (407) = 38 Cri LJ 915 (DB) ** AIR 1953 Tripura 6 (2) (7) = 1953 Cri LJ 1469.

[See also AIR 1940 Pat 57 (58) = 41 Cri LJ 98.]

[See however AIR 1938 Pat 610 (611) = 40 Cri LJ 144. (Submitted not correct — Ed.)]

Section 144 — Note 6 (contd.)

(17) It has been held that the Magistrate has no power to pass orders:

(a) directing the removal of a bund already put up. But where the land on which the bund has been erected is in the possession or under the management of the person against whom the order is passed, an order directing him to remove the bund will be within the jurisdiction of the Magistrate under this section as being an order to such person "to take certain order with certain property in his possession or under his management." AIR 1929 Pat 523 (525) = 31 Cri LJ 967 (DB) ** AIR 1940 Pat 57 (58) = 41 Cri LJ 98 ** AIR 1937 Cal 406 (407) = 38 Cri LJ 915 (DB).

[See however (1907) 11 Cal WN cvii (cvii) (DB).]

(b) directing an owner to rebuild a building which has fallen down, or to fill up certain excavations already made. (1895) 17 All 485 (487, 489) (FB) ** AIR 1933 Cal 724 (725) = 34 Cri LJ 1192 (DB).

(c) directing a party to open a channel in his land. AIR 1914 Mad 239 (240) = 15 Cri LJ 291 (DB).

(d) directing the removal of an embankment. (1870) 5 Mad HCR (App) xix (xix).

(e) directing the removal of a fence. AIR 1938 Pat 610 (611) = 40 Cri LJ 144.

(f) directing the removal of a jetty which had already been constructed. (1936) 164 Ind Cas 434 (435) = 37 Cri LJ 936 (DB) (Cal).

(g) directing the demolition of a sluice. (1867) 2 Weir 65 (65).

(h) directing the removal of a granary on the ground that it has been improperly built. (1869) 4 Mad HCR (App) xxxiv (xxxv).

(i) directing the removal of an obstruction. (1874) 21 Suth WR (Cr) 24 (25) (DB).

(j) directing certain trees to be cut down. (1870) 13 Suth WR (Cr) 72 (73) (DB).

(k) directing the owner of a tank in a dry bed of the river to destroy the banks of the tank on the ground that they are an obstruction to the public in the lawful enjoyment of the river. (1968) 10 Suth WR (Cr) 36 (37) (DB).

(l) directing a party to vacate his house and take his quarters in a different place. (1898) 2 Cal WN 70 (70, 71).

(m) directing a person to remove an obstruction to a culvert through which the drainage of certain railway quarters flows into a tank on the ground that rainfall in an hour would flood the quarters and compel evacuation. AIR 1919 Cal 584 (584, 585) = 19 Cri LJ 951 (DB).

(n) directing the restoration of a child to the custody of its parents. (1872) 2 Weir 66 (66, 67).

(o) directing a person to remove himself from the district and to do so by the next available train. AIR 1931 Cal 263 (263) = 32 Cri LJ 592 (DB).

(p) directing the division of crops between the tenants and a rival zamindar. (1905) 2 Cri LJ 168 (169) = 32 Cal 154 (DB).

(q) directing a person to abstain from residing in any place, where he is at the time: such an order is virtually a mandatory order directing him to remove himself from such place and hence is not warranted by the section. AIR 1934 Rang 124 (125) = 35 Cri LJ 1300.

(r) directing that a person shall hold his hat on certain particular days. (1904) 31 Cal 990 (992) = 1 Cri LJ 778 (DB).

(vi) The object of the order should be one of those specified in sub-s. (1).— (18) An order under this section ought not to be passed on the mere ground that pecuniary loss would be caused to one party. (1909) 13 Cal WN 188 (190, 191) = 11 Cri LJ 11.

(19) An order preventing the ryots from reaping the crops they have sown owing to an apprehension that if they are allowed to reap them, the Government or other landlord might lose rent, is not justified. (1904) 1 Cri LJ 248 (250) (DB) (Cal).

(20) The loss arising from the establishment of a rival hat is not an injury within the meaning of the section. (1874) 21 Suth WR (Cr) 26 (26, 27) (DB) ** (1905) 2 Cal LJ 64n (64n) (DB).

(21) An order cannot also be passed for the mere protection of one's own property. Thus, an order, directing the removal of a certain dam obstructing flood is not competent. (1883) 9 Cal 103 (104, 105) (DB).

(22) An order prohibiting the public from wearing Gandhi caps, in the absence of any evidence to show that it is necessary to pass such an order in the interests of the public peace, must be set aside. AIR 1931 Mad 236 (239, 240) = 32 Cri LJ 744.

(23) The word "annoyance" in the section has been held to include mental as well as physical annoyance. AIR 1952 Mad 61 (Pr 2) = 1952 Cri LJ

Section 144 — Note 6 (contd.)

161 ** AIR 1931 Bom 135 (138) = 32 Cri LJ 507 (DB).

(24) Mere annoyance caused to Government Officials when not actually employed in their task by reckless or defamatory attacks on them not involving a breach of the peace or danger to life or health will not be sufficient for invoking the powers under this section. AIR 1952 Mad 61 (Prs 2, 3) = 1952 Cri LJ 161.

(vii) The discretion is to be exercised by the Magistrate himself.— (25) The Magistrate has no jurisdiction to pass an order against the editor of a newspaper directing him to abstain from publishing any news, articles or comments which have not been previously approved of by a certain officer. AIR 1940 Bom 42 (44) = 41 Cri LJ 319 (DB).

(26) The following orders have been held to be competent and valid under this section as being orders to abstain from certain acts:

(a) an order directing a person to abstain from interfering with a certain mutt and the property appertaining to it. (1881) 3 Mad 354 (355, 357) (DB).

(b) an order directing a person not to interfere with the management of a certain temple. (1901) 24 Mad 45 (46) (DB).

(c) an order directing a trustee to abstain from interfering in any way with the conduct of the adyapakam service in a temple. AIR 1918 Mad 18 (19) = 19 Cri LJ 933.

(d) an order directing certain persons not to interfere with the Badves in the performance of the daily pooja of God Vithoba at Pandharpur. (1902) 4 Bom LR 582 (584) (DB).

(e) an order directing particular time to be observed by the Hanafi and Shafi sects for daily worship in a mosque and directing either sect to abstain from worshipping during the time fixed for the other. (1901) 24 Mad 262 (263, 265) (DB).

[See however 1876 Pun Re (Cr) No. 10, p. 16 (16, 17) (DB).]

(f) an order prohibiting the slaughter of votive animals, except in the slaughter house in order to prevent a breach of the peace between Hindus and Mahomedans. 1885 All WN 258 (258).

(g) an order directing a person to refrain from interfering with the crops on the land. AIR 1917 Pat 217 (219) = 18 Cri LJ 652.

(h) an order directing the melvaramdar to abstain from exercising his rights as melvaramdar. AIR 1914 Mad 150 (150, 151) = 15 Cri LJ 145.

(27) Order partly valid and partly **invalid**.— Where in an order under this section a prohibition is directed against A and B and the prohibiton is bad against B, it may nevertheless be valid against A. The fact that part of the order is bad as being too vague will not render the whole order bad, if that part can be severed from the rest of the order. AIR 1931 Bom 135 (138) = 32 Cri LJ 507 (DB) ** AIR 1961 Manipur 12 (19, 20) = 1961 (1) Cri LJ 676.

[See also AIR 1944 Pat 213 (214) = 46 Cri LJ 18.]

7. Direction to take certain order with property.— (1) It was held that the word "property" refers only to, and is restricted to immovable property, and the Magistrate cannot make an order with regard to the custody of movable property, such as money, on the ground that there is a likelihood of a breach of the peace with regard to the same. (1869) 12 Suth WR (Cr) 38 (38) (DB).

(2) An order of this description should relate to an interference of some kind with the property itself. (1892) 19 Cal 127 (130) (DB).

(3) The property, in respect of which the order is made, should be in the possession or management of the person against whom the order is passed. The section does not apply to a subletting owner, not in actual possession or management of the property. (1878) 1 Shome LR 30.

(4) The Magistrate cannot, under this section, put the Sub-Inspector of Police in possession of certain land and direct him to harvest the crop. AIR 1944 Pat 213 (214) = 46 Cri LJ 18.

(5) The section does not authorize the attachment of properties. AIR 1953 Vindh-Pra 25 (Pr 9) = 1953 Cri LJ 1198 ** (1908) 13 Cal WN cxix (cxix). ** 1961 (1) Cri LJ 659 (660, 661) = 1960 Ker LT 724.

(6) The Magistrate cannot direct that a list be prepared of articles, concerning which the parties are in dispute, and that the same should be removed to the Court and should remain there for two months or until the decision of a pending suit. (1908) 8 Cri LJ 230 (231, 232) (DB) (Cal).

(7) The section authorizes interference even with the exercise of lawful rights in cases of emergency, temporarily. Hence, a Magistrate has jurisdiction under this section to prohibit the holding of a hat on particular days of the week if he considers that such an order is necessary to prevent a breach of the peace and that the case is an emergent

Section 144 — Note 7 (contd.)
one. AIR 1933 Cal 348 (351) = 34 Cri LJ 354 (DB) ** AIR 1940 Pat 185 (186) = 41 Cri LJ 463 ** (1872) 18 Suth WR (Cr) 47 (53) = 10 Beng LR 434 (FB).

(8) The Magistrate has jurisdiction to pass an order prohibiting the holding of a hat altogether under this section, although he can regulate the holding of the hat by prohibiting its being held on some particular days of the week and so on. AIR 1922 Cal 569 (570) = 24 Cri LJ 164 (DB) ** (1912) 13 Cri LJ 511 (512) (DB) (Cal) ** (1879) 4 Cal L Rep 410 (412) (DB).

(9) The holding of a hat on one's own land being a perfectly lawful act, the Magistrate must rather exercise his powers to prevent interference with such act than to restrain the act itself. See the observations in the following cases: AIR 1922 Cal 569 (570) = 24 Cri LJ 164 (DB) ** AIR 1933 Cal 348 (351) = 34 Cri LJ 334 (DB) ** AIR 1940 Pat 185 (186) = 41 Cri LJ 463.

8. Effect of order under the section.— (1) An order under this section has not the effect of disturbing either title or possession, though it may prevent and does prevent the exercise of the rights, which a person in possession would otherwise be entitled to exercise, during the continuance of the said order. AIR 1939 Pat 512 (514) = 40 Cr L Jour 895 ** AIR 1938 Pat 369 (371) = 39 Cri L Jour 778 (DB) ** (1921) 64 Ind Cas 572 (573) (DB) (Cal) ** AIR 1970 Pat 102 (103) = 1970 Cri LJ 484.

[See also AIR 1953 Raj 202 (204) = 1953 Cri L Jour 1843 (DB). (Magistrate cannot adjudicate a question of possession on title.)]

(2) The order cannot be treated as substantive evidence of possession in subsequent proceedings. AIR 1951 Pat 473 (Pr. 9) = 52 Cri L Jour 626 (DB).

(3) Where the Magistrate, while passing an order under this section, makes an incidental observation as to possession of a certain property, the observation cannot have the force or effect of an order under Section 145. AIR 1940 Pat 364 (365) = 41 Cri L Jour 384 ** AIR 1925 Pat 514 (516) = 26 Cri L Jour 1229 (DB).

[See also (1903) 7 Cal WN 142 (143) (DB).]

(4) Although orders in proceedings under this section cannot be taken as decisive of the rights of either of the parties yet, the nature of the proceeding and its conclusion may be referred to when the history of the property is in question. AIR 1938 Pat 455 (455) = 39 Cri L Jour 721.

(5) Although an order under this section is not evidence of the possession of the disputed property by any person, yet the fact of the order may be admitted in evidence under Section 13 of the Evidence Act. 1938 Pat WN 390 (391).

[See also AIR 1938 Pat 131 (133) = 39 Cri L Jour 361.]

(6) The fact of the order is a circumstance supporting an inference that the person in whose favour the proceeding terminated would not be likely to allow his possession to be disturbed from any part of the property. AIR 1951 Pat 473 (Pr. 9) = 52 Cri L Jour 626 (DB) ** AIR 1950 Pat 79 (Pr. 5) = 28 Pat 576 = 51 Cri L Jour 551 (DB).

(7) An order under this section does not bind a person who was not a party to the proceedings under it. AIR 1921 Pat 415 (420) = 22 Cri L Jour 442.

9. Ex parte order — Sub-section (2).— (1) Although ordinarily an order under this section should not be made without an opportunity being afforded to the person against whom it is proposed to make it, to show cause why it should not be passed, sub-section (2), makes it permissible for a Magistrate to pass an ex parte order under this section but that can be done only in cases of emergency. AIR 1951 Cal 207 (Pr. 9) = 51 Cri L Jour 1575 (DB) ** 1948 Bur LR 365 (369) ** (1916) 14 All LJ 39n (39n) ** AIR 1967 Ker 157 (158) = 1967 Mad LJ (Cri) 240 (DB).

(2) Where the circumstances of the case are such that they do not admit of the serving in due time of a notice upon the person against whom the order is passed an ex parte order can be made. 1948 Bur LR 365 (369) ** AIR 1958 Tripura 47 (Pr. 4) = 1958 Cri L Jour 1554 ** (1898) 2 Cal WN 747 (748, 749) ** (1910) 11 Cri L Jour 449 (449) (DB) (Mad).

(3) The Magistrate can pass an ex parte order immediately on the receipt of a police report, where he is satisfied therefrom that immediate action is necessary. AIR 1924 Oudh 338 (340) = 25 Cri L Jour 433.

(4) While passing an ex parte order the Magistrate should record his reasons for considering the occasion to be one of emergency and the materials on which he considered immediate action necessary; where the record does not show that either of the two conditions justifying an ex parte order exists, the order is liable to be set aside. AIR 1919 Mad 1004 (1007) = 20 Cri L Jour 309 (FB). (Per Sadasiva Iyer J.) ** AIR 1958 Tripura 47 (Pr. 4) = 1958 Cri L Jour 1554 ** (1898) 2 Cal WN 747 (748, 749) ** (1910) 11 Cri L Jour 449 (449) (DB) (Mad).

(5) After passing an ex parte order the Magistrate should give the parties an opportunity of being heard and then either confirm, modify or vacate the

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order. AIR 1958 Tripura 47 (Pr. 4) = 1958 Cri L Jour 1554.

(6) It is open to a person, aggrieved by an ex parte order under this sub-section, to apply under sub-section (4) to rescind or alter the order. AIR 1934 Cal 139 (140) = 35 Cri L Jour 541 (DB).

(7) Where the legality and propriety of an ex parte order are challenged, it is not proper to postpone the hearing until about the termination of the order; such matters ought to be disposed of quickly in order to avoid unnecessarily encroaching on the civil rights and liberties of the subject. AIR 1922 Cal 569 (571) = 24 Cri L Jour 164 (DB).

(8) Where a party offers evidence against the continuance of an ex parte order passed against him, the Magistrate cannot, without holding an enquiry, anticipate what the nature of the evidence would be and confirm the ex parte order. AIR 1948 Mad 117 (117) = 49 Cri L Jour 93. (Application under sub-section (4).)

(9) Sufficient materials must be furnished to enable Magistrate to take action under Sections 144 (2) and 117 (3). AIR 1968 Cal 364 = 71 Cal WN 851 = 1968 Cri LJ 1058.

10. Order against the general public — Sub-section (3).— (1) The words "when frequenting or visiting a particular place" in this sub-section qualify the expression "public generally" and hence a Magistrate has no power under this section to pass an order against the general public simpliciter. AIR 1940 Cal 358 (361) = 41 Cri L Jour 864 ** AIR 1931 Bom 513 (514) = 33 Cri L Jour 75 (DB).

(2) The order can only be directed to the general public when frequenting or visiting a particular place. AIR 1940 Cal 358 (361) = 41 Cri L Jour 864 ** AIR 1955 Manipur 41 (48, 49) = 1955 Cri L Jour 1603 ** AIR 1939 All 746 (747) = 41 Cri L Jour 121 ** AIR 1931 Bom 513 (513) = 33 Cri L Jour 75 (DB) ** AIR 1931 Bom 325 (326) = 32 Cri L Jour 1144 (DB) ** AIR 1920 Mad 847 (848) = 20 Cri L Jour 755 ** **AIR 1961 SC 884 = 1961 (2) Cri LJ 16 = (1961) 3 SCR 423.**

[See also AIR 1953 Orissa 96 (Pr. 8) = 1953 Cri LJ 731 (DB).]

[But see AIR 1961 Manipur 12 (20) = 1961 (1) Cri LJ 676.]

(2-A) Magistrate concerned with maintenance of peace in village and not with individuals — No bona fide dispute concerning disputed land in question found — Order under Section 144 (3) in such circumstances is not improper. 1969 BLJR 534 (536, 537).

(3) The expression "particular place" implies that the place to which the restriction applies should be a well-defined area regarding the boundaries of which the public can be in no doubt. AIR 1953 Orissa 96 (Pr. 3) = 1953 Cri L Jour 731 (DB) ** AIR 1954 Ajmer 40 (41) = 1954 Cri L Jour 1014 ** AIR 1940 All 465 (467) = 42 Cri L Jour 120 ** AIR 1934 Bom 375 (378) = 36 Cri L Jour 130 (DB) ** AIR 1940 Cal 358 (361) = 41 Cri L Jour 864.

(4) The boundaries of the area to which the order is intended to relate should be clearly defined therein so that the general public may be reasonably expected to know what they are. AIR 1941 All 70 (72) = 42 Cri L Jour 298 (FB) ** AIR 1955 Manipur 41 (48, 49) = 1955 Cri L Jour 1603 ** AIR 1934 Bom 375 (377, 378) = 36 Cri L Jour 130 (DB) ** AIR 1935 Lah 679 (680) = 36 Cri L Jour 951.

(5) A Magistrate can validly issue a general order that no person should sacrifice or cause to be sacrificed any cow or bullock within a specified boundary. AIR 1915 Oudh 188 (189) = 16 Cri L Jour 190 (191, 192) (DB).

(6) An order directed against all the sundry persons attending the Audinath Swami temple on the occasion of the Vaikasi Festival, is valid. AIR 1920 Mad 847 (847, 848) = 20 Cri L Jour 755 (DB).

(7) An order directing the public to refrain from taking "Prabhat Pheris" (morning processions) in the city and cantonment of Belgaum, or prohibiting the taking part in any processions within the municipal limits of Erendol city and all public places within such limits, was held to be too wide and did not conform to the requirements of the section. AIR 1931 Bom 325 (325, 326) = 32 Cri L Jour 1144 (DB) ** AIR 1931 Bom 513 (513, 514) = 33 Cri L Jour 75 (DB).

(8) The expression "particular place" has been held to include the whole district over which the Magistrate may have jurisdiction, or a particular sub-division of a district, or the limits of a particular union committee, or the public and private streets in a particular city. AIR 1953 Orissa 96 (Pr. 3) = 1953 Cri L Jour 731 (DB) ** AIR 1954 Ajmer 40 (41) = 1954 Cri L Jour 1014 ** AIR 1937 Lah 80 (81) = 38 Cri L Jour 354. (District of Lahore is a particular place.) ** AIR 1940 Cal 358 (361) = 41 Cri L Jour 864. (Whole District.) ** AIR 1939 Cal 703 (704) = 41 Cri L Jour 105 (DB). (Sub-division of district.) ** AIR 1940 Pat 446 (448) = 41 Cri L Jour 414 (417). (Limits of union committee.) ** AIR 1935 Bom 33 (34) = 36 Cri L Jour 547 (DB). (Public or Private streets.)

(9) An order prohibiting meetings to be held in any 'place of public resort"

Section 144 — Note 10 (contd.)

in a city is much too vague to come within the terms of the section. AIR 1935 Bom 33 (33) = 36 Cri L Jour 547 (DB) ** AIR 1961 Manipur 12 (20) = 1961 (1) Cri LJ 676.

(10) The "particular place" should be one which is frequented or visited by the public; in other words, it must be open to the public as such. AIR 1931 Mad 242 (245) = 32 Cri L Jour 763 ** AIR 1940 Oudh 241 (243) = 41 Cri L Jour 228.

(11) The public cannot be prohibited from putting up national flags in a private house not frequented by the public. AIR 1931 Mad 242 (245) = 32 Cri L Jour 763.

(12) Where an order under this section forbade the public in general to give caste dinners in the city owing to the prevalence of cholera, and a dinner was given in a private house to about four hundred persons, it was held that a conviction for disobedience of the order was illegal. (1890) 14 Bom 165 (167) (DB).

(13) The expression "public generally when frequenting or visiting a particular place" includes also the residents of the place. AIR 1941 All 70 (71) = 42 Cri L Jour 298 (FB) ** AIR 1942 Oudh 39 (44) = 42 Cri L Jour 884 (DB). (AIR 1940 Oudh 241 = 41 Cri L Jour 228, **Dissented from.**) ** AIR 1940 Cal 358 (361) = 41 Cri L Jour 864.

(14) Where because of the number of persons to be directed it is impracticable for the Magistrate to issue notice to each individual, he can issue an order to the public generally, including, besides residents persons who may frequent or visit a particular place, and such order will be effective against each individual to whose knowledge it comes. AIR 1941 All 70 (73) = 42 Cri L Jour 298 (FB) ** AIR 1937 Lah 80 (81) = 38 Cri L Jour 354 ** AIR 1915 Oudh 188 (189) = 16 Cri L Jour 190 (DB).

(15) The view that an order under this section cannot be made until it is shown that the public whom it is sought to restrain from doing certain acts are actually frequenting or visiting a particular place is, incorrect. AIR 1940 Cal 358 (362) = 41 Cri L Jour 864. (AIR 1925 Cal 625 = 26 Cri L Jour 874 and AIR 1934 Cal 393 = 35 Cri L Jour 881, **Dissented from.**)

(16) The law does not contemplate the prohibition of the frequenting or visiting of the "particular place" to which reference is made in sub-section (3) but the prohibition of some act on an occasion on which such place is frequented or visited. AIR 1941 All 70 (72) = 42 Cri L Jour 298 (FB) ** AIR 1940 Cal 358 (361) = 41 Cri L Jour 864.

(17) As this section empowers a Magistrate to interfere materially with the liberty of the subject, it is necessary that he should promulgate his order in terms sufficiently clear to enable the public or persons affected by it, to know exactly what it is which they are prohibited from doing. AIR 1935 Bom 33 (33) = 36 Cri L Jour 547 (DB) ** AIR 1940 Cal 358 (361) = 41 Cri L Jour 864.

(18) Where an order was addressed to a portion of the community and had no concern with the public generally frequenting or visiting a particular place and there was also nothing to show that the Magistrate considered that immediate action was necessary, it was held that the order was not competent under this section. (1886) 8 All 99 (100, 101).

(19) Where an order under this section is directed neither to a particular individual nor to the public generally when frequenting or visiting a particular place, the order is one made without jurisdiction. AIR 1914 Bom 198 (198) = 16 Cri L Jour 98 (DB).

(20) Section 144 (3) has nothing to do with nature of an order under Section 144 but is merely one of the four sub-sections which refer to the manner of promulgation and duration of an order under Section 144 (1). 1969 BLJR 534 (536, 537). (AIR 1940 All 465, **Dissented.**)

11. Rescission or alteration of order — Sub-section (4).— (1) An order under this section is liable, under sub-section (4), to be rescinded or altered on cause being shown. The jurisdiction conferred by this sub-section is, however, not appellate or revisional, but is a special one, whereunder the Magistrate is empowered to rescind or alter the original order. AIR 1937 Mad 487 (488) = 38 Cri L Jour 864 ** AIR 1921 Pat 468 (468) ** 1969 Cri LJ 575 (576) 34 Cut LT 460 ** AIR 1967 Ker 157 (158) = 1967 Ker LT 157 = 1967 Cri LJ 893 (DB). (Even after such order had been extended by the State Government under Section 144 (6).) ** AIR 1967 Orissa 72 (73, 74) = 33 Cut LT 58 ** AIR 1960 Cal 715 (716) = 1960 Cri LJ 1445.

(2) The Magistrate cannot substitute an entirely new order of his own. 1938-2 Mad L Jour 509 (511) ** AIR 1937 Mad 487 (489) = 38 Cri L Jour 864 ** 1961 (1) Cr LJ 659 (660) = 1960 Ker LT 724.

(3) Where the Deputy Magistrate prohibits the second party from doing a certain act, the District Magistrate cannot substitue a new order forbidding the first party from doing the act. (1938) 19 Pat L Tim 796 (797) ** AIR 1918 Pat 672 (672, 673) = 19 Cri L Jour 880 (DB).

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(4) A District Magistrate cannot, under this sub-section, prohibit the counter-petitioners from doing a certain act, which they were permitted to do, by the order passed by the subordinate Magistrate. The word "alter," cannot mean the substitution of the names of one party for the other. The sub-section contemplates only a change in the nature of the order and not a change in the party against whom it has been made. AIR 1951 Pat 253 (Pr. 3) = 52 Cri L Jour 809 ** AIR 1937 Mad 487 (489) = 38 Cri L Jour 864 ** AIR 1918 Pat 672 (673) = 19 Cri L Jour 880 (DB) ** 1967 BLJR 783 (784).

(5) An order by the District Magistrate while setting aside an order under this section, directing that proceedings under Section 145 should be drawn up, has been held to be bad, although there is nothing improper in his merely suggesting such a course for the guidance of the subordinate Magistrate. AIR 1929 Cal 751 (752) = 31 Cri L Jour 544 (DB) ** AIR 1921 Pat 445 (446) = 23 Cri L Jour 27. (Following 24 Cal 391.) ** AIR 1921 Pat 468 (469).

(6) The power of a superior Magistrate to rescind or alter an order passed by a subordinate Magistrate is not lost by reason of the fact that the subordinate Magistrate has himself already dealt with an application made to him to rescind or alter the same order. AIR 1937 Mad 167 (168) = 38 Cri L Jour 125 ** AIR 1937 Mad 311 (312) = 38 Cri L Jour 582.

(7) A rescission or alteration under the sub-section is justified where the reasons for the order no longer exist, or have varied in such a manner as to make an alteration a necessary corollary, or where the order is one that ought not to have been made. AIR 1952 Trav-Co 251 (Pr. 3) = 1952 Cri L Jour 1121 ** AIR 1922 Pat 435 (436, 437) = 23 Cri L Jour 549 (FB) ** AIR 1934 Pat 313 (315) (DB).

(8) The mere fact that a Magistrate is interested in the matter, to which the order under the section relates, does not disqualify him from exercising his powers under this sub-section. AIR 1934 Pat 313 (315) (DB).

[See AIR 1951 Cal 207 (Pr. 8) = 51 Cri L Jour 1575 (DB).]

(9) The section contemplates the passing of only one order rescinding or altering the original order and not intermediate or interlocutory orders pending final orders. (1906) 4 Cri L Jour 433 (435, 436) (DB) (Cal).

(10) A Magistrate can alter or rescind an order made under this section only when it is made by himself or by any Magistrate subordinate to him or by his predecessor in office. Where a superior Magistrate has ceased to have territorial jurisdiction, and thus ceased to be superior, he cannot rescind or alter an order passed by a Magistrate who was subordinate to him when he had the territorial jurisdiction. AIR 1937 Mad 487 (489) = 38 Cri L Jour 864.

(11) Where a Magistrate passes an order under this section directing A not to trespass on the land of B and not to cause obstruction or annoyance to B in construction of a house on that land, and subsequently A files an application under Section 147 before the same Magistrate, the Magistrate cannot go into the question whether or not there is a likelihood of a breach of the peace, so long as his previous order remains in force. AIR 1951 Assam 77 (Pr. 6) = ILR (1950) 2 Assam 386 (DB).

(12) Mere omission of the District Magistrate to make the exemption clause of the order more comprehensive would not vitiate the order on the ground that it places unreasonable restrictions on certain fundamental rights of citizens. **AIR 1961 SC 884 = 1961 (2) Cri LJ 16 = (1961) 3 SCR 423.**

(13) **"Or by his predecessor in office."**— An order passed by the acting District Magistrate, who has subsequently reverted, can be altered or rescinded only by the permanent District Magistrate and the latter cannot transfer an application under this sub-section for disposal by the former. AIR 1916 Mad 533 (533) = 16 Cri L Jour 74.

(14) **Power to transfer application. —** An application under this sub-section not being covered by either Sec. 192 or Section 528 of the Code which deal with the subject of transfer of case, it would appear that the Magistrate to whom it is made, cannot transfer it for disposal to another Magistrate. AIR 1937 Mad 167 (169) = 38 Cri L Jour 125.

12. Enquiry into application to rescind or alter the order — Sub-section (5).— (1) Where a Magistrate acts under this section, it is his duty to give an early opportunity to any person or persons aggrieved by his order, and applying to have it rescinded or altered to show cause against it and to hold an enquiry into the circumstances of the case to see if that order has to be rescinded or altered. AIR 1939 Rang 181 (183) = 40 Cri L Jour 645 ** AIR 1937 Mad 167 (169) = 38 Cri L Jour 125 ** AIR 1932 Mad 294 (296, 297) = 33 Cri L Jour 605 ** AIR 1934 Cal 393 (395) = 35 Cri L Jour 881 (DB).

[See also AIR 1924 Pat 767 (769) = 25 Cri L Jour 1178.]

(2) The Magistrate should consider whether the claims advanced by one

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or other of the parties are within, or in excess of their legal and natural rights, and should see that protection is given to the persons who act within the bounds of their legal and natural rights without being molested by the breakers of law, having at the same time due regard to the paramount necessity of preserving public tranquillity. See 1898 Rat 967 (968) (DB).

(3) The provisions of this sub-section are mandatory. An application under sub-section (4) should not be dismissed summarily without giving an opportunity to the applicant to support his application. AIR 1939 Rang 181 (183) = 40 Cri L Jour 645 ** AIR 1948 Mad 117 (117) = 49 Cri L Jour 93.

(4) Sub-section (5) is to be read in the context of sub-section (4). The word applicant used in sub-section (5) means the aggrieved party against whom the order has been passed and not the first party who moved in the matter. Sub-section (5) does not lay down anything about adducing of evidence and cannot be relied on by the first party as a provision enabling him to appear and adduce evidence before the Magistrate. AIR 1954 Tripura 4 (4) = 1954 Cri L Jour 1343.

(5) An enquiry under this section is a judicial enquiry. AIR 1931 Bom 325 (326) = 32 Cri L Jour 1144 (DB) ** AIR 1953 Mad 956 (958) = 1953 Cri L Jour 1780.

[See also AIR 1942 Lah 171 (172) = 43 Cri L Jour 747 (FB) ** AIR 1940 Oudh 416 (416) = 41 Cri L Jour 781.]

[But see (1929) 30 Cri L Jour 629 (630) (Mad) ** AIR 1928 Mad 1108 (1109) = 30 Cri L Jour 119 ** AIR 1923 Mad 473 (474) = 24 Cri L Jour 424 (DB).]

(6) An enquiry under the section being a judicial enquiry, the Magistrate is bound to take evidence in the usual way by examination and cross-examination of witnesses. AIR 1931 Mad 236 (238) = 32 Cri L Jour 744 ** AIR 1931 Bom 325 (326) = 32 Cri L Jour 1144 (DB).

(7) The Magistrate is bound to consider the evidence and arguments submitted to him and cannot act solely on the evidence recorded by him ex parte and behind the back of the parties. AIR 1929 Pat 46 (47) = 30 Cri L Jour 302 ** AIR 1924 Pat 717 (718) = 25 Cri L Jour 455.

[See also (1872) 17 Suth WR (Cr) 37 (38) (DB).]

(8) A Magistrate can depute another Magistrate subordinate to him to hold an enquiry but he must come to his own independent conclusion on the materials as to the necessity for action under this section. AIR 1933 Cal 348 (351, 352) = 34 Cri L Jour 334 (DB).

(9) The duty to hold an enquiry should not, however, be delegated to subordinate Magistrate who has already dealt with an application relating to the same matter under sub-section (4). AIR 1937 Mad 167 (169) = 38 Cri L Jour 125.

(10) A District Magistrate ordering an enquiry to be made by a subordinate Magistrate has been held to have no power to suspend temporarily the order sought to be cancelled or rescinded, pending the result of such enquiry. AIR 1937 Mad 167 (169) = 38 Cri L Jour 125. (There is no inherent power to stay.)

(11) This section does not enable a party to adduce evidence. AIR 1954 Tripura 4 (4) = 1954 Cri L Jour 1343.

(12) The Magistrate initiating the proceeding under the section can pass an order under Section 517 after the completion of the enquiry for the restoration of property which had been the subject matter of the proceeding. AIR 1958 Pat 92 (Pr. 11) = 36 Pat 1302 = 1958 Cri L Jour 207. (Cri. Rev. No. 709 of 1953 (Pat) and Cri. Rev. No. 83 of 1954 (Pat), **Overruled.)**

13. Proceedings are judicial.— (1) A person, who applies to a Magistrate for an order under this section against another person, institutes criminal proceedings against that person within the meaning of Section 211 of the Penal Code. 1933 Mad WN 1263 (1265).

(2) The Magistrate proceeding under the section may make a local inspection for the purpose of appreciating the materials produced by the parties but the inquiry being a judicial inquiry he would be acting illegally if he bases his decision merely on his local inspection. AIR 1951 Pat 285 (Pr. 4) = 52 Cri L Jour 10.

14. Duration of the order — Sub-section (6).— (1) An order under this section can remain in force only for two months from the date of such order. It should not be in its nature irrevocable and must be such that it can be recalled at the expiry of two months. AIR 1942 Pat 331 (333) = 43 Cri L Jour 637 ** AIR 1928 All 14 (16) = 28 Cri L Jour 991.

[See also AIR 1941 Mad 498 (499) = 43 Cri L Jour 433 (DB).]

(2) Sub-section (6) is unconstitutional as violative of Article 19 (1) (b) of Constitution. AIR 1962 Pat 292 = 1962 BLJR 236 = 1962 (2) Cr LJ 203 (DB).

(3) The section does not authorize a Magistrate to pass an order, the effect of which would be the granting of a perpetual injunction. AIR 1951 Mys 17 (Pr. 7) ** 1897 All WN 59 (60) (DB) ** AIR 1932 Cal 288 (288) = 33 Cri L Jour 518 (DB) ** (1880) 5 Cal 7 (19, 20) (FB)

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** AIR 1932 Mad 294 (296) = 33 Cri L Jour 605.

(4) An order prohibiting the rival disputants from collecting rent, until such time as the rights of both the parties are established by a competent Court, is illegal. (1905) 2 Cri L Jour 166 (167, 168) (DB) (Cal) ** (1881) 8 Cal L Rep 231 (232) (DB).

(5) An order directing a person to abstain from taking any part in the management of a temple until another person should be evicted from the management in due course of law, is illegal and without jurisdiction. (1901) 24 Mad 45 (46) (DB).

(6) The section does not also authorize a Magistrate to enlarge the duration of the order beyond the period of two months by passing successive orders or renewing the order at the end of every two months. Such a procedure is illegal and amounts to an evasion of the law. AIR 1953 Orissa 96 (Pr. 8) = 1953 Cri L Jour 731 (DB) ** AIR 1942 Pat 414 (417) = 43 Cri L Jour 722 ** AIR 1925 Cal 625 (625) = 26 Cri L Jour 1469 ** AIR 1940 Bom 42 (42) (16) = 23 Cri L Jour 689 ** AIR 1960 All 397 (398, 399) = 1960 All LJ 104 = 1960 Cr LJ 865 (2).

(7) Where an order does not prove sufficient for the purpose, the proper course is to take action under Sec. 107, or move the State Government to extend the duration of the order. AIR 1916 Cal 472 (473) = 17 Cri L Jour 200 (DB). (Action under Section 107.) ** AIR 1917 Pat 154 (155) = 19 Cri L Jour 365 (DB). (Do.) ** AIR 1916 Mad 1106 (1106) = 16 Cri L Jour 592. (Moving Government to extend time.)

(8) Where, a proceeding initiated under this section is cancelled as being defective, that will not prevent the Magistrate from initiating subsequently a valid proceeding and passing therein an effective order to ensure its operation for the statutory period of two months. AIR 1947 Pat 290 (291) = 48 Cri L Jour 93.

(9) The State Government, unlike a Magistrate, is empowered under the section to extend the duration of the order even for an indefinite period, as for instance, that it should remain in force until cancelled by a notification in the Official Gazette. It is not necessary that the State Government should state the reasons for extending the duration of the order. AIR 1923 All 606 (607) = 24 Cri L Jour 689.

(10) The State Government has power only to extend an order which is in force. The section does not permit the State Government to resuscitate an order which is no longer in force. AIR 1940 Lah 459 (460) = 42 Cri L Jour 90.

(11) The order of the Magistrate remains in force for two months from the date of the making of the order and not from the date of the confirmation of the order on a subsequent date. AIR 1942 Pat 414 (415) = 43 Cri L Jour 722. (AIR 1935 Pat 224 = 36 Cri L Jour 655, Relied on.) ** (1910) 11 Cri L Jour 12 (13) (DB) ** AIR 1962 Pat 352 (354) = 1962 BLJR 241 = 1962 (2) Cr LJ 396.

[See AIR 1937 Mad 311 (312) = 38 Cri L Jour 582.]

(12) It is not necessary that an order under this section should state expressly that its operation is confined to two months or some shorter period. (1907) 7 Cri L Jour 194 (195, 197) = 34 Cal 897 (FB) ** AIR 1920 Mad 847 (848) = 20 Cri L Jour 755 (DB).

15. Revision.— (1) Ordinarily a person aggrieved by an order under this section should seek his remedy under sub-section (4) in the first instance before going to the High Court in revision. AIR 1940 Bom 42 (42) = 41 Cri L Jour 319 (DB) ** AIR 1956 Pat 112 (112) = 1956 Cri L Jour 411 (DB) ** AIR 1934 Cal 139 (140) = 35 Cri L Jour 541 (DB) ** AIR 1924 Pat 145 (147) = 24 Cri L Jour 947 ** AIR 1919 Mad 1004 (1008, 1009) = 19 Cri L Jour 56 (DB) ** AIR 1967 Ker 157 (158) = 1967 Ker LT 157 = 1967 Cr LJ 893 (DB) ** AIR 1967 Punj 482 (486) = 1967 Cr LJ 1690 (DB) ** AIR 1961 Manipur 12 (17) = 1961 (1) Cri LJ 676.

(2) Where the order of the Magistrate is one passed without jurisdiction or there are circumstances justifying an application in revision direct, the fact that he has not availed himself of the remedy provided by sub-section (4) has been held to be no ground for refusing to interfere in revision. AIR 1924 Pat 145 (147) = 24 Cri L Jour 947 ** AIR 1953 Tripura 6 (2) (6) = 1953 Cri L Jour 1469 ** AIR 1940 Bom 42 (42) = 41 Cri L Jour 319 (DB) ** AIR 1934 Cal 139 (140) = 35 Cri LJ 541 (DB) ** AIR 1960 Cal 715 (716) = 1960 Cri LJ 1445.

[See AIR 1932 Mad 720 (722) = 33 Cri L Jour 826. (Revision petition already admitted.)]

(3) It is prima facie for the Magistrate, who knows the local conditions, to say whether an emergency exists or not, and the High Court will not ordinarily interfere with his findings, unless there be clear evidence that no reasonable man could have held that there was an emergency. AIR 1939 Sind 230 (231) = 40 Cri L Jour 823 (DB) ** AIR 1958 Assam 114 (Pr. 4) = 1958 Cri L Jour 1132 ** AIR 1937 Mad 311 (312) = 38 Cri L Jour 582 ** AIR

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1931 Bom 135 (137) = 32 Cri L Jour 507 (DB) ** AIR 1934 Pat 313 (315) (DB).

(4) Where the elements, necessary for action under the section, are shown to exist upon materials legally before the Court, the High Court will, in exercising its powers, respect the opinion of the local authorities as to the gravity of the danger and as to the steps necessary for the maintenance of the peace. AIR 1942 Lah 171 (172) = 43 Cri L Jour 747 (FB) ** AIR 1953 All 577 (578) = 1953 Cri L Jour 1358 (DB). (Unless the order passed by a Magistrate under Section 144, Criminal P. C., is on the face of it absurd or is mala fide there is no reason for the High Court to interfere.) ** AIR 1931 Mad 242 (244) = 32 Cri L Jour 763 ** AIR 1934 Pat 463 (465) = 36 Cri L Jour 257.

(5) Although the High Court will not as a rule interfere, it may, in view of the wording of the order and the facts placed before it, call for the record to satisfy itself that the order is legal and that the Magistrate has not acted in an arbitrary manner. AIR 1943 Cal 35 (38) = 44 Cri L Jour 288 (DB) ** AIR 1942 Lah 171 (172) = 43 Cri L Jour 747 (FB).

(6) The High Court will interfere in revision in the following cases—

(a) Where there are no materials justifying the issue of order. AIR 1929 Pat 714 (716) = 31 Cri L Jour 466 ** AIR 1919 Mad 1004 (1007) = 19 Cri L Jour 56 (DB).

[See however AIR 1937 Mad 494 (494) = 38 Cri L Jour 892.]

(b) Where the grounds of action, as stated in the order, are either unfounded in fact or insufficient in law, or where it is shown that the order violates the conditions laid down by the section. AIR 1931 Mad 242 (245) = 32 Cri L Jour 763. (Order unfounded in fact.) ** (1898) 2 Cal WN 747 (748, 749). (Violation of conditions in section.) ** AIR 1914 Mad 697 (697) = 14 Cri L Jour 658 (DB). (Do.) ** AIR 1924 Pat 145 (146, 147) = 24 Cri L Jour 947. (Do.)

(c) Where the order is beyond the scope of the section, as for instance, when it purports to decide the rights of parties, which is not necessary for the order. AIR 1953 Orissa 96 (Pr. 8) = 1953 Cri L Jour 731 (DB). (Order beyond scope of section.) ** (1898) 25 Cal 852 (856) (DB). (Do.) ** AIR 1920 Pat 155 (155) = 21 Cri L Jour 657. (Do.) ** AIR 1933 Pat 185 (186, 187) = 34 Cri L Jour 717. (Decision of right of parties.)

(d) Where the final order is passed without preliminary notice to the persons proceeded against and without hearing them. AIR 1924 Pat 703 (704) = 26 Cri L Jour 260.

(e) Where the order is passed upon no legal evidence. AIR 1929 Pat 46 (47) = 30 Cri L Jour 302.

(7) If it is found that the use of Section 144 instead of Section 107 or Section 145 was a mere abuse of the process of the Court or that owing to the exercise of that jurisdiction the order has resulted in something akin to the denial of the right of fair trial, then the High Court, it has been held, would feel bound to interfere in the exercise of its powers of superintendence. AIR 1940 Pat 382 (383) = 41 Cri L Jour 907 ** AIR 1922 Pat 435 (438) = 23 Cri L Jour 549 (FB).

(8) Where the order of the Magistrate has spent itself, or in other words, the two months' period has elapsed at the time of revision, the High Court will not generally interfere in revision save in exceptional cases involving questions of jurisdiction, or where the party against whom the order was passed has been seriously prejudiced. AIR 1951 Pat 253 (Pr. 4) = 52 Cri L Jour 809 ** AIR 1958 Tripura 47 (Pr 8) = 1958 Cri L Jour 1554 ** AIR 1957 Punj 1 (Pr. 15) = ILR (1957) Punj 218 = 1957 Cri L Jour 88 (DB) ** AIR 1953 Orissa 96 (Pr. 8) = 1953 Cri L Jour 731 (DB) ** AIR 1951 Mys 17 (Pr 10) ** AIR 1940 Bom 42 (42) = 41 Cri L Jour 319 (DB) ** AIR 1930 Cal 131 (132) = 31 Cri L Jour 804 (DB) ** AIR 1967 Orissa 72 (73, 74) = 1967 Cri LJ 798 ** (1966) 32 Cut LT 1036 = ILR (1966) Cut 882 ** 1961 (1) Cri LJ 659 (661) = 1960 Ker LT 724.

[See also AIR 1943 Cal 35 (39) = 44 Cri L Jour 288 (DB).]

(9) The High Court has power to interfere in revision even after the order has been cancelled by the Magistrate. AIR 1940 Bom 42 (42) = 41 Cri L Jour 319 (DB).

(10) The High Court can interfere in revision with an order of the Magistrate dropping proceeding under this section on untenable grounds. AIR 1941 Pat 281 (282) = 42 Cri L Jour 620.

(11) Order under Section 144 — Suspension of operation of order — Period of two months from the date of order already lapsed — Title suit filed by party and injunction order issued by Civil Court — **Held** in the circumstances the revision filed against order of suspension of operation of order under Sec-

Section 144 — Note 15 (contd.)

tion 144 was infructuous. 1969 Cri LJ 575 (575) = 34 Cut LT 460.

(12) **Order under Section 144 against public generally — Violation — Revision by person arrested for contravention of the order —** High Court in revision will go into those restrictions only, which are said to have been violated by such person and will not go into the details of all the restrictions imposed by the order. AIR 1961 Manipur 12 (18) = 1961 (1) Cri LJ 676.

16. Disobedience of order under the section.— (1) A person, disobeying an order under this section, is liable to be punished under Section 188 of the Penal Code. The prosecution, in such a case, has to be launched under the provisions of Section 195 or Section 476 of the Code. AIR 1939 Mad 496 (496) = 40 Cri L Jour 752 ** (1936) 164 Ind Cas 434 (435) = 37 Cri L Jour 936 (DB) (Cal) ** AIR 1922 Pat 84 (86) = 23 Cri L Jour 381 ** AIR 1919 Cal 108 (109) = 20 Cri L Jour 113 (DB) ** AIR 1970 Pat 102 (103) = 1970 Cri LJ 484 ** 1969 Cri LJ 550 (2) (551) (DB) (Cal) ** AIR 1967 All 579 (580) = 1967 Cri LJ 1586 ** AIR 1967 Mad 400 (402) = 1967 Cri LJ 1528 ** AIR 1964 Pat 526 (529) = 1964 (2) Cri LJ 704 (DB).

[See also AIR 1953 Vind Pra 25 (Pr. 9) = 1953 Cri L Jour 1198 ** AIR 1919 Cal 336 (337) = 20 Cri L Jour 557 (DB).]

(2) The Court trying an accused person for disobedience of an order under this section has to take the order as a good and valid order unless it is shown that the order was a nullity. It is not to superimpose its views on the propriety of the order. AIR 1949 Cal 677 (Pr. 7) = 51 Cri L Jour 59.

In order to punish a person under Section 188 of the Penal Code, the following conditions should be fulfilled—

(A) (3) The order under this section should be a valid order. Where the order is one not warranted by the section, or the requirements of the section are not duly complied with, a prosecution cannot stand. AIR 1944 Pat 213 (214) = 46 Cri L Jour 18 ** AIR 1940 Cal 358 (362) = 41 Cri L Jour 864 ** AIR 1937 Cal 406 (407) = 38 Cri L Jour 915 (DB) ** AIR 1960 All 397 (398, 399) = 1960 Cri LJ 865 (2).

[See (1889) 16 Cal 9 (12) (DB).]

(4) A mere irregularity in the method of promulgation of the order will not in itself make it ultra vires, so as to prevent the conviction of any person disobeying it, if he had knowledge of its contents. AIR 1949 Cal 677 (Pr. 6) = 51 Cri L Jour 59 ** (1889) 16 Cal 9 (12) (DB) ** AIR 1940 Pat 446 (447) = 41 Cri L Jour 414.

(5) The legality of the order is liable to be questioned in proceedings under Section 188, Penal Code. AIR 1921 Cal 258 (259) = 23 Cri L Jour 376 (DB) ** AIR 1961 Manipur 12 (16) = 1961 (1) Cri LJ 676.

[See AIR 1956 All 481 (Pr. 4) = 1956 Cri L Jour 1026 (DB).]

(B)-(6) The accused should be proved to have had actual knowledge of the order. The knowledge cannot be presumed. AIR 1940 Pat 446 (447) = 41 Cri L Jour 414 ** AIR 1939 Cal 703 (704) = 41 Cri L Jour 105 (DB) ** AIR 1927 Cal 28 (28) = 28 Cri L Jour 4 (DB) ** (1899) 1 Bom LR 524 (524) (DB) ** AIR 1935 All 552 (553) = 36 Cri L Jour 639.

[See also AIR 1951 Cal 207 (Pr. 13) = 51 Cri L Jour 1575 (DB).]

[See however AIR 1941 All 70 (73) = 42 Cri L Jour 298 (FB) ** AIR 1942 Oudh 39 (41) = 42 Cri L Jour 884 (DB).]

(C)-(7) The accused should be proved to have disobeyed the order, and that too, at the time of the continuance of the order. AIR 1944 Pat 213 (214) = 46 Cri L Jour 18 ** AIR 1955 Cal 439 (442) = 1955 Cri L Jour 1171. (The order under Section 144 remains in full force in spite of the Civil Court's injunction.) ** 1932 Mad WN 1073 (1073) ** (1889) 16 Cal 9 (13) (DB) ** AIR 1920 All 223 (224) = 22 Cri L Jour 2 ** (1888) 10 All 115 (118).

(8) Where a person is prosecuted for disobedience of an order under this section during its continuance, the fact that the order had ceased to be in operation at the time of his trial is no ground for his acquittal. AIR 1940 Bom 195 (196) = 41 Cri L Jour 675 (DB).

(D)-(9) The disobedience should have caused or tended to cause obstruction, annoyance or injury, or the risk of obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health, safety, or riot or an affray. AIR 1930 Cal 131 (132) = 31 Cri L Jour 804 (DB) ** AIR 1956 All 481 (Pr. 4) = 1956 Cri L Jour 1026 (DB) ** AIR 1920 Cal 520 (521) = 21 Cri L Jour 675 (DB) ** AIR 1922 Pat 84 (86, 87) = 23 Cri L Jour 381 ** (1868) 4 Mad HCR (App) v (vi) ** 1886 All WN 251 (251) ** (1908) 8 Cri L Jour 431 (434) (DB) (Bom) ** 1964 BLJR 799 ** AIR 1960 Assam 20 (22) = 1960 Cri LJ 215.

CHAPTER XII

DISPUTES AS TO IMMOVABLE PROPERTY

145. Procedure where dispute concerning land, etc., is likely to cause breach of peace.—(1) Whenever a District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader,

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Section 144 Note 16 (contd.)

(10) It has been held that for the purpose of deciding as to what part of the penal provision in Section 188 applies, the Court can look only to the order under Section 144. AIR 1942 Oudh 39 (41) = 42 Cri L Jour 884 (DB).

(11) Parties are entitled to resist the execution of an order, which is ultra vires, and no offence would be committed by such resistance provided the limits of the right of private defence are not exceeded. AIR 1921 Pat 415 (420) = 22 Cri L Jour 442.

(12) It is not necessary for a person arrested for violation of the order under Section 144 to wait for his conviction under Section 188, Penal Code, by the Magistrate before filing a revision to the High Court or to the Sessions Judge under Section 435 for quashing the order. AIR 1961 Manipur 12 (17) = 1961 (1) Cri LJ 676.

(13) Punjab Criminal Law (Amendment) Act (30 of 1960), Section 6 (1) and (2) — Sub-section (1) applies only to nstigation or incitement or disobedience of order under Section 144. AIR 1962 Punj 487 (489) = 64 Pun LR 396 = 1962 (2) Cri LJ 633.

17. Suit to establish civil rights infringed by an order under this section.— (1) An order of a Magistrate under this section, which interferes with the legal rights of a person, furnishes that person with a cause of action to file a suit in a Civil Court for the establishment of such rights. The existence of the order is no bar to the maintainability of such a suit. AIR 1919 Mad 674 (675) (FB). (AIR 1918 Mad 448, **Overruled.**) ** AIR 1922 Mad 123 (124, 125) (DB) ** (1877) 3 Cal 20 (23) (FB) ** (1880) 5 Cal 7 (9, 20) (FB).

(2) Where an order under this section forbids a person or a body of persons from using a highway for the purpose of procession, it furnishes that person or body of persons with a cause of action for bringing a declaratory suit for the establishment of that right where it is alleged to be an infringement of a legal right, although such order is intra vires. No proof of special damage is necessary to succeed in such an action. AIR 1919 Mad 674 (675, 676) (FB) ** (1910) 5 Ind Cas 902 (902) (DB) (Mad).

[But see (1878) 2 Bom 457 (468, 469) (DB).]

(3) Where the order of the Magistrate was that all music should cease when any procession is passing a place of worship (a mosque), it was held that a suit lay to declare the right to take procession with music. (1880) 2 Mad 140 (142) (DB).

(4) The Civil Court has no power to cancel or set aside such an order in a suit to which the Government is not a party; the proper way to question or set aside such an order is by a revision petition to the High Court. However, where the Civil Court declares the rights, it is open to the parties to approach the Government to modify or cancel the order in the light of the Civil Court's declaration. AIR 1922 Mad 123 (124) (DB).

[See however (1874) 6 NWPHCR 104 (109) (DB).]

(5) Where at the instance of the complainant a Magistrate issues an order against the opposite party under S. 144 and thereupon the latter obtains an ad interim injunction from a Civil Court against the former, in spite of the Civil Court's injunction the Section 144 order remains in full force. AIR 1955 Cal 439 (442) = 1955 Cri LJ 1171.

18. Sections 144, 145 and 407 compared — See Note 2 on S. 145.

19. Conversion of proceedings — See Note 47 on Section 145.

SECTION 145 — SYNOPSIS

1. Scope and applicability.

2. Sections 145, 144 and 107 compared.

2A. Sections 145 and 147.

3. Nature of proceedings under this section.

4. Who can take action under this section.

5. "Is satisfied."

6. Police report.

7. "Or other information."

8. "Dispute," meaning of.

9. Likely to cause a breach of the peace.

10. The subject of dispute.

11. "Within the local limits of his jurisdistion."

12. Effect of non-compliance with the provisions of the section.

within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute *[and further requiring them to put in such documents, or to adduce, by putting in affidavits, the evidence of such persons, as they rely upon in support of such claims.]

(2) For the purposes of this section the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

†[(4) **Inquiry as to possession.**—The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements, documents and affidavits, if any, so put in, hear the parties and conclude the inquiry, as far as may be practicable, within a period of two months from the date of the appearance of the parties before him and, if possible, decide the question whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject:

Provided that the Magistrate may, if he so thinks fit, summon and examine any person whose affidavit has been put in as to the facts contained therein:

Section 145 — Synopsis (contd.)

13. **Preliminary order.**
14. **Statement of grounds in the preliminary order.**
15. **"Parties concerned in such dispute."**
16. **Addition of parties.**
17. **Continuation of proceedings by or against legal representatives** — Sub-section (7).
18. **"Attend his Court."**
19. **Written statements, documents and affidavits.**
20. **"Fact of actual possession."**
21. **"Land or water or the boundaries thereof."**
22. **Service and publication of the preliminary order** — Sub-section (3).
23. **Omission to serve or publish the order.**
24. **Attachment in case of emergency.**
25. **"Crops or other produce subject to speedy and natural decay"** — Sub-section (8).
26. **Procedure at the inquiry.**
27. **Issue of summons to witnesses** — Sub-section (9).
28. **Power to adjourn inquiry.**
29. **Perusal of statements, documents and affidavits.**
30. **"Hear the parties."**
31. **Possession at the date of the preliminary order.**
32. **Reference to arbitration and compromise.**
33. **Question of title.**
34. **Effect of prior proceedings on the proceedings under this section** — See also Note 8.
35. **Joint possession.**
36. **Forcible and wrongful dispossession "within two months next before date of order."**
37. **"Forcibly and wrongfully" — Meaning of.**
38. **Cancellation of the preliminary order — Sub-section (5).**
39. **Finality of the preliminary order.**
40. **"Any other person interested."**
41. **Order under this section.**
42. **"Declare that such person is entitled to possession" — Sub-section (6).**
43. **Evicted in due course of law.**
44. **Restoration of possession.**

44A. **Power to award costs** — See Section 148.

45. **Effect of order under this section.**

45A. **Effect of an order under this section on limitation** — See notes on Arts. 64 and 65 of Limitation Act (1963).

46. **Persons bound by the order.**
47. **Conversion of proceedings.**
48. **Revision.**

1. Scope and applicability. — (1) Where a Magistrate is satisfied that a dispute as mentioned in the section exists he must pass a preliminary order under sub-section (1) and afterwards make an inquiry under sub-section (4). (1949) 1 Madh BLR 478 (480, 481) ** AIR 1944 All 210 (210) = 45 Cri LJ 769 ** AIR 1939 Oudh 15 (16) = 40 Cri LJ 33.

(2) Sub-sections (1), (4), (5) and (6) of Section 145 are complementary. Once an order has been passed under sub-section (1), it is obligatory for the Magistrate to make the enquiry provided for in sub-section (4) subject, however, only to the obligation under sub-section (5)

Provided further that, if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date:

Provided also that, if the Magistrate considers the case of one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.]

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) **Party in possession to retain possession until legally evicted.**—If the Magistrate decides that one of the parties was ‡[or should under the §[second proviso] to sub-section (4) be treated as being] in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction ‡[and when he proceeds under the §[second proviso] to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.]

°†[(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.]

Section 145 — Note 1 (contd.)

to terminate the proceedings in the circumstances contemplated therein. The holding of the said inquiry under sub-section (4) is a condition precedent to the making of an order under sub-section (6) of Section 145. 1962 BLJR 279.

(3) The inquiry under sub-section (4) is, limited to the question as to who was in possession in fact on the date of the order, irrespective of the question as to the rights of the parties. AIR 1949 Pat 146 (162) = 27 Pat 1027 = 50 Cri LJ 299 (SB) ** AIR 1936 All 531 (531) = 37 Cri LJ 886.

(4) Where the party invoking the aid of the Court alleges or admits in his complaint or where there is otherwise material before the Court showing that the dispossession complained of took place more than two months before the complaint the Court will have no jurisdiction to interfere on behalf of the complainant. AIR 1947 Oudh 159 (160).

(5) If the Magistrate finds in the inquiry that there is no dispute at all or that the dispute is not such as to be likely to cause a breach of the peace he should cancel his preliminary order. AIR 1944 All 210 (211) = 45 Cri LJ 769 ** (1901) 25 Bom 179 (184, 185) (DB) ** AIR 1920 Cal 104 (105) = 21 Cri LJ 134 (DB).

(6) The primary object of the provision is the prevention of the breach of the public peace arising in respect of a dispute relating to immovable property. The section enables the Magistrate to settle the matter temporarily so far as the Criminal Courts are concerned and to maintain the status quo until the rights of the parties are decided by a competent Court. AIR 1957 Mad 405 (408) = ILR (1958) Mad 72 = 1957 Cri LJ 761 ** AIR 1957 Punj 303 (304) = ILR (1957) Punj 1902 = 1957 Cri LJ 1450 ** AIR 1969 Pat 317 (320) = 1969 Cri LJ 1197 (Pat) ** 1968 Jab LJ 389 = 1968 Cri LJ 1002 (1003) ** 1968 Jab LJ 373 (375, 376) = 1968 MPLJ 241 ** AIR 1967 Orissa 39 (41) = ILR (1966) Cut 329 = 1967 Cr LJ 395 ** 1963 Cur LJ 82 = 65 Pun LR 217 ** (1959) 25 Cut LT 557 (557).

(7) The result of the proceedings may be to deprive the rightful owner of the possession of his property temporarily and to subject him to other inconveniences, but this and other considerations are necessarily subordinate to the imperative necessity of preserving the peace. (1903) 30 Cal 155 (195) (FB) ** AIR 1954 Hyd 91 (92) = ILR (1954) Hyd 243 = 1954 Cri LJ 656 ** AIR 1929 Cal 328 (329) = 31 Cri LJ 409 (DB).

(8) The pendency of a civil suit in respect of the right in question, or the fact that a winding up order has been made under the Indian Companies Act is no bar to action being taken under this section. AIR 1933 Cal 433 (434) = 34 Cri LJ 640 (DB) ** AIR 1967 Orissa 39 (41) = ILR (1966) Cut 329 = 1967 Cri LJ

*‡[(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under Section 107.]

[1882—S. 145; 1872—S. 530; 1861—S. 318.]

[*] Added by the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), S. 18, (1-1-1956). This amendment is not retrospective, see ibid, S. 116(a).

[†] Substituted for old sub-section (4), ibid.

[‡] Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 28.

[§] Substituted for the words "first proviso" by Act (XXVI of 1955), Section 18.

[*†] Substituted for the original sub-section (7) by Act (XVIII of 1923), Section 28.

[*‡] Sub-sections (8), (9) and (10) were added, ibid.

Section 145 — Note 1 (contd.)

395 ** 1961 Raj LW 484 (485) = ILR (1961) 11 Raj 1180 (1182) ** 1970 Ker LT 102.

[See however AIR 1952 Trav-Co 207 (207) (Pr 1) = ILR (1951) Trav-Co 269 = 1952 Cri LJ 939 ** AIR 1959 Mys 122 (123) = 1959 Cri LJ 621. (The provisions of Section 145 should not be invoked when civil litigation about the identical subject-matter is actually pending.) ** (1959) 25 Cut LT 557 (557). (Once the parties have moved the Civil Court for adjudication of their rights there is no point in starting a proceeding under Section 145, Cr. P. C.)]

(9) Claim of parties making the dispute a case for establishment of right in Civil Court — Powers of criminal Court under section should not be invoked. AIR 1963 Assam 31 (37) = ILR (1962) 14 Assam 244 = 1963 (1) Cri LJ 417.

(10) Dispute referred to Civil Court — Part of the property not covered by the suit — Magistrate can take action under Section 145 in regard to the portion not in dispute in the suit. 1964 All WR (HC) 46 = 1964 All Cri R 72.

(11) The proceeding under this section should be taken with promptitude and finished as quickly as possible. AIR 1951 Ajmer 86 (Pr 3) = 52 Cri LJ 1472 ** (1907) 5 Cri LJ 91 (93) = 29 Mad 561 ** 1965 BLJR 8 ** AIR 1960 Tripura 1 (2, 3) = 1960 Cr LJ 117.

(12) The section is meant for deciding disputes as to possession relating to immovable property between private parties. AIR 1963 Raj 42 (43) = 1962 Raj LW 644 = 1963 (1) Cri LJ 226.

(13) This section is not meant for deciding the question of territorial jurisdiction between two different local bodies. AIR 1963 Raj 42 (43) = 1963 (1) Cri LJ 226 = 1962 Raj LW 644.

(14) The provisions of the section should be strictly followed when action is taken under it. AIR 1927 Lah 805 (807) = 28 Cri LJ 973 ** AIR 1933 All 96 (97) = 34 Cri LJ 449.

(15) Section 145 cannot apply to properties which have been declared to be evacuee properties. AIR 1957 Pat 549 (550) = 36 Pat 108 = 1957 Cri LJ 1161 (DB).

(16) There is no conflict between Section 145 (6), Criminal P. C., and Ss. 8 (1) and (4) of the Evacuee Property Act — Possession of evacuee property delivered under Section 145 is on behalf of custodian until evicted in due course of law. 1963 (2) Cri LJ 239 (240) = 1962 Raj LW 648. (AIR 1957 Pat 549, Diss. from.)

[See also 1960 Raj LW 311 = ILR (1960) 10 Raj 403. (A dispute between two displaced persons relating to possession of property settled and partitioned amongst them on the basis of their claims can fall within the ambit of the section and the provisions of Administration of Evacuee Property Act do not apply to such a case.)]

(17) Provisions of Section 145 of the Criminal P. C., are applicable to property allotted under Displaced Persons (Compensation and Rehabilitation) Act. The temporary measures taken under Section 145, Criminal P. C., do not in any way destroy the sanctity of Section 15 or as a matter of fact any other provisions of the Act. The basis of action under Section 145 is the likelihood of breach of peace. AIR 1966 Punj 246 (247, 248) = 1966 Cri LJ 688 = 1955 Punj LR (Supp) 111. (DB).

(18) The proceedings under the Rajasthan (Protection of Tenants) Ordinance are quite distinct from the proceedings

OBJECTS AND REASONS

1923.—"Clause 145.—As the law stands at present, the date of the order under sub-section (1) of this clause is taken as the critical date for the purpose of determining actual possession. This appears to give an unfair advantage to a person who has forcibly dispossessed another. But difficulties arise when the test of actual possession at the time of the institution of the proceedings is departed from. We think the proviso we have added to sub-section (4) goes as far as is possible to meet the evil in question without involving the Magistrate in an inquiry as to title or right to possession, which is the function of a Civil Court."—S.C.R., 1898.

Amendment made in 1923.—"In view of the objections of the Bengal Government, we do not think that Sections 145, 147 and 148 should apply to presidency-towns. We have, therefore, omitted the first amendment made by clause 27, and references to "Presidency Magistrate" and "Chief Presidency Magistrate", respectively, in clauses 29 and 30.

In order to meet certain difficulties, which have arisen in connection with the words "receive the evidence produced by them" in Section 145 (4), we have made an amendment adopting the phraseology of Section 244 (1), and have also added a new sub-section (8A) (now sub-section (9)) on the lines of Section 244 (2). We have made an

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Section 145 — Note 1 (contd.)
under Section 145, Cr. P. Code, where during the pendency of proceedings under Section 145, Cr. P. Code, a party obtained an order of the Anti Ejectment Officer for his reinstatement, and on production of the copy of that order, the Magistrate shelved the proceedings, it was held, that the order of the Anti Ejectment Officer could not meet the purpose of proceedings under Section 145. 1957 Cri LJ 292 (293) (Raj).

(19) Proceedings under Orissa Tenants' Relief Act between same parties in respect of same property already taken — Jurisdiction of Magistrate to proceed under Section 145 not affected. (1960) 2 OJD 209 = 26 Cut LT 298.

(20) Section 145, as amended in 1956, does not govern the proceedings initiated prior to the amendment as the amendment has no retrospective operation. Therefore, all proceedings under Sec. 145 instituted prior to its amendment must be decided in accordance with the procedure then in force and not according to the amended procedure. AIR 1959 Pat 284 (285) = 1959 Cri L Jour 761 ** AIR 1961 Pat 425 (428) = 1961 (2) Cr LJ 662. **(Overruled** on another point in **AIR 1966 SC 359.)**

(21) Where proceedings under the section were started subsequent to the amendment of the section in 1955 the Magistrate has to proceed in accordance with the amended procedure. 1959 Jab LJ 246 (247) ** 1959 Jab LJ 246 (247) = 1959 MPLJ 725.

2. Sections 145, 144 and 107 compared. — (1) The exercise of the powers under Section 107 and Section 144 is discretionary, while Section 145 is mandatory. AIR 1922 Pat 435 (441) = 23 Cri L Jour 549 (FB) ** (1907) 6 Cri L Jour 398 (399) = 35 Cal 117 (DB).

(2) The Magistrate can exercise his powers of preventing apprehension of breach of peace under Sections 107, 144 and 145, Criminal P. C. In what circumstances which section should be resorted to is a matter of judicial discretion varying with facts and circumstances of each case. (1966) 32 Cut LT 1036 (1339) = ILR (1966) Cut 882 ** ILR (1960) 2 Cal 908.

(3) Whether action has been taken under Section 107 or Section 144 or not the Magistrate must, if the conditions as to its applicability exist, take action under Section 145 either in supersession or in continuation of the orders, if any, passed under Section 107 or Section 144. AIR 1929 Pat 46 (48) = 30 Cri L Jour 302 ** AIR 1947 Pat 235 (236) = 48 Cri L Jour 703 ** AIR 1922 Pat 435 (440) = 23 Cri L Jour 549 (FB).

[But see AIR 1934 Pat 463 (465) = 36 Cri L Jour 257 ** AIR 1920 Cal 841 (841) = 22 Cri L Jour 224 (DB).]

(4) Prohibitory orders under Sections 144 and 145 — Not much distinction in the language of provisions — Party should be taken to be out of possession in either case. AIR 1970 Pat 102 (103) = 70 Cri LJ 484.

(5) Under Section 144, a Magistrate merely directs a person "to abstain from a certain act or to take certain order with certain property in his possession or under his management". He does not by that order disturb the possession of the party, who is in possession. An order of attachment under Section 145 (4) on the other hand, has the effect of putting the property in the custody and possession of the Court. 1963 BLJR 211 (213).

(6) Ordinarily, when a dispute relating to the possession of land or water, etc., is likely to cause a breach of the peace and there is no emergency, the provisions of Section 144 will not apply and action should be taken under Section 145. AIR 1940 Pat 471 (472) = 41 Cri L

addition to first amendment made in sub-section (6), Section 145, to make the intention clearer. We have introduced a new clause which, by an amendment of Section 146, will enable a District Magistrate to withdraw the attachment of property at any time when he is satisfied that there is no longer any likelihood of a breach of the peace.

Doubts have been expressed as to the procedure to be followed in cases under Section 147 and we have introduced amendments here to make it clear that the procedure is to be that laid down by Section 145."—S.C.R. (18 of 1923).

1955.—With respect to the amendments made by Act 26 of 1955 in Sections 145 and 146, the Joint Committee observe: "In cases of disputes relating to immovable property, the existing provisions require a Magistrate to make an inquiry and to come to a decision on the question of possession. Such inquiries by Magistrates are often dilatory and unsatisfactory. In order to obviate this state of affairs, a new Section 145 was substituted in the Bill for the existing Sections 145 and 146. Under this substituted section, the Magistrate would not concern himself with the question of possession at all and he could inquire only into the question whether the property should be attached. If on hearing the parties, the Magistrate is satisfied that the property should be attached, he would do so and leave the parties to go to the Civil Court for the adjudication of their rights. The Committee consider that Section 145 as substituted may lead to undesirable consequences in some cases.

Section 145 — Note 2 (contd.)

Jour 451 ** AIR 1940 Pat 382 (383) = 41 Cri L Jour 907 ** AIR 1942 Cal 66 (66) = 43 Cri L Jour 396 ** AIR 1940 Pat 492 (494) = 41 Cri L Jour 417.

(7) Where, there is in reality no dispute as to possession of land or water, the Magistrate is entitled to resort to the special and summary procedure under Section 144, provided, the conditions prescribed by that section are fulfilled. AIR 1922 Pat 435 (438) = 23 Cri L Jour 549 (FB) ** AIR 1940 Pat 492 (494) = 41 Cri L Jour 417.

(8) Where the Magistrate finds that there is a bona fide dispute relating to the possession of land or water, he should take action under Section 145 and not under Section 144, and even where he takes action under Section 144, he should convert the proceeding into one under Section 145. AIR 1952 Tripura 26 (27) = 1953 Cri L Jour 73 ** AIR 1938 Pat 610 (611) = 40 Cri L Jour 144 ** AIR 1933 Pat 584 (585) = 35 Cri L Jour 88.

[See also ILR (1957) Ker 646 (663).]

(9) Dispute likely to cause breach of peace concerning any land or water or boundaries thereof — Magistrate has no option but to proceed under Section 145, pendency of civil dispute notwithstanding — He cannot proceed under Section 107. 1968 All LJ 1018 = 1969 All WR (HC) 199 ** AIR 1964 Manipur 62 (64) = 1964 (2) Cri LJ 684.

(10) Decree passed by Civil Court in respect of certain land in dispute — Magistrate not to exercise his power under Section 145 but to take action under Section 107. AIR 1969 Mys 297 (298) = (1969) 1 Mys LJ 420 = 1969 Cri LJ 1250 ** 1964 (1) Cri LJ 244 (246) (Manipur).

(11) In cases of emergency where immediate prevention or speedy remedy is desirable and there are sufficient grounds for proceeding under Section 144, a Magistrate can take action under that section, even though there is a dispute or even a bona fide dispute relating to possession. AIR 1942 Pat 331 (333) = 43 Cri L Jour 637 ** AIR 1922 Pat 435 (438) = 23 Cri L Jour 549 (FB).

(12) Where the Magistrate finds one of the rival parties in actual possession of the land and there is likelihood of the breach of the peace, he has a discretion to proceed either under Section 144 or Section 145 or Section 107. 1941 Mad WN 960 (960) ** (1908) 8 Cri L Jour 170 (175, 176) = 1 Sind LR 50 (SB).

(13) Where, the question of possession is disputed and the case is one of emergency, the proper course is to pass a temporary order under Section 144 and then to institute an enquiry into possession, or straightway take the proceedings under Section 145 by attaching the property in dispute. AIR 1942 Pat 331 (334) = 43 Cri L Jour 637 ** AIR 1944 Pat 213 (214) = 46 Cri L Jour 18.

(14) It is not open to Magistrate by passing repeated orders under Section 144 to avoid the decision of a dispute which may be appropriately dealt with under Section 145 or Section 107. AIR 1940 Pat 559 (560) = 41 Cr LJ 578 ** AIR 1940 Pat 382 (383) = 41 Cri L Jour 907 ** AIR 1940 Sind 158 (159) = 41 Cri L Jour 952 (DB).

(15) The difference between Section 107 and Section 145 is that under Sec. 107 there need be no dispute relating to land and that the proceedings are started against a person who is likely to commit a breach of the peace, whereas under Section 145 as a result of land dispute,

"The Committee are of the view that, in a proceeding of this nature, the Magistrate should hold a summary inquiry into the question of possession. He should ask the parties not only to put in written statements of their respective claims but also to produce simultaneously all documentary evidence in support of such claims. If the parties propose to rely on the evidence of any witnesses, they should also file the affidavits of such witnesses. It should not ordinarily be necessary for a Magistrate to take oral evidence but he may, if he thinks fit, examine any person whose affidavit has been put in. After taking into consideration the written statements, documents and affidavits put in and after hearing the parties, the Magistrate should, if possible, come to a decision as to who is in possession of the property. To avoid undue delay, the Committee consider that a time limit of two months should be fixed within which the Magistrate must dispose of the case."—J.C.R., Gaz. of Ind., 1954, Ext., Part II, S. 2, p. 417.

STATE AMENDMENTS

Gujarat:

In its application to the State of Gujarat the amendments made in S. 145 are the ame as those made in Maharashtra—See Central Act XI of 1960, Section 87.

NOTE.—For the power and jurisdiction to be exercised by a Chief Magistrate appointed for the City of Ahmedabad, see Section 14 (3) of Guj. Act XIX of 1961.

Maharashtra:

(1) In its application to the State of Maharashtra in sub-section (1) of S. 145:—

(i) after the words "Whenever a", insert the words "Chief Presidency Magistrate":—Bom. Act XXXIV of 1953, S. 6 (1-7-1953).

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ection 145 — Note 2 (contd.)

breach of the peace is likely to be aused. 1963 (1) Cri LJ 823 (825) Manipur).

(16) Under Section 107 commission of he breach of the peace is alleged to rise from the side of the person against whom an application is made while under Section 145 the breach of the peace may be occasioned by any party to the dispute. AIR 1953 All 259 (Pr 4) = 1953 Cri L Jour 628.

(17) In cases of disputes likely to cause a breach of the peace but not coming strictly within the purview of Section 145, the proper course for the Magistrate is to take security from both the parties to the dispute under Sec. 107. AIR 1922 All 430 (430) = 23 Cri L Jour 612.

(18) Conversion of proceedings under Section 107 into one under Section 145 — Magistrate can do so in a proper case — Likelihood of decrease in food production is not valid ground. 1963 (1) Cri LJ 823 (825) (Manipur).

(19) Even in cases of land disputes it has been held that proper procedure is to institute proceedings under Sec. 145 but if circumstances necessitate drawing up of proceeding under Section 107 it should be between both the parties so that no one is placed at a disadvantage. AIR 1953 Pat 99 (100) = 1953 Cri L Jour 816 (DB) ** AIR 1954 Pat 124 (125) = 1954 Cri L Jour 190.

(20) Party in possession and other party trying to take forcible possession — Proper action is not under Section 145 but under Section 107 binding down the other party. 1962 (1) Cri LJ 821 (823) (Manipur).

(21) Where it is difficult to say which of the parties to a dispute is creating a disturbance, and speedy remedy is necessary, an order under Section 144 may be passed. In such a case it is, however, desirable that the order under Sec. 144 is followed up by proceedings under Section 107 binding over the party in fault. AIR 1935 Pat 461 (463) = 36 Cri LJ 1268.

(22) Where the circumstances of a particular case satisfy the conditions necessary for the applicability of Section 107, Section 144 as well as Section 145, the Magistrate is not limited to the exercise of the powers under Section 145 only, but he may act under Section 107 or Section 144, although the proper course would be to proceed under Section 145. AIR 1953 Pat 277 (279) = 1953 Cri L Jour 1456 ** AIR 1928 Cal 610 (613, 614) = 30 Cri L Jour 69 (FB) ** AIR 1922 Pat 435 (438) = 23 Cri L Jour 549 (FB).

[But see (1921) 62 Ind Cas 590 (591) = 22 Cri L Jour 572 (Pat) ** AIR 1918 Pat 300 (301) = 19 Cri L Jour 1002.]

(23) Where the Magistrate finds that after an order under Section 107 or Section 144 has been passed, the likelihood of a breach of the peace no longer exists, action under Section 145 becomes unnecessary. AIR 1928 Cal 610 (613, 614) = 30 Cri L Jour 69 (FB).

(24) If pending proceedings under Section 145 the emergency referred to in Section 144 arises an order under Section 144 will not be without jurisdiction. AIR 1928 Cal 610 (614) = 30 Cri L Jour 69 (FB).

(25) Pending proceedings under Chapter VIII, it is open to the Magistrate to

(ii) for the words "or Magistrate of the first class", substitute the words "or any other Executive Magistrate specially empowered by the State Government in this behalf".—Bom, Act XXIII of 1951, S. 2 and Schedule (1-7-1953).

(2) After the reorganization of the State of Bombay in 1956, the amendments made in Section 145 by the above-mentioned Bombay Acts are extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Punjab: Haryana: Chandigarh:

In its application to the States of Punjab and Haryana and the Union territory of Chandigarh, in Section 145, in sub-sec. (1), for the words "Magistrate of the first class", substitute the words "Executive Magistrate of the first class".—Punj. Act XXV of 1964, S. 2 and Schedule, Pt. I, Item (37) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Rajasthan:

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendments made in S. 145 are the same as those made in S. 1 (ii) of Maharashtra.—Central Act XXXVII of 1956, Section 119 (1-11-1956).

Union Territories (except Chandigarh):

In its application to the Union territories, in Section 145, in sub-section (1), for the words "Magistrate of the first class", substitute the words "Executive Magistrate of the first class".—Act 19 of 1969. S. 3 and Sch., Item 38 (in Delhi, on 2-10-1969).

West Bengal

In its application to the State of West Bengal, for the words "Sub-divisional Magistrate or Magistrate of the first class", substitute the words "Sub-divisional Executive Magistrate or Executive Magistrate of the first class". — W. B. Act 8 of 1970, S. 2 and Sch., Item 53.

Section 145 — Note 2 (contd.)

institute proceedings under Chapter XII if he considers them more appropriate to the circumstance as they exist at the time of making the order. AIR 1936 Sind 147 (148) = 37 Cri L Jour 1036 (DB).

(26) When a Magistrate has several courses open to him to meet the emergency and he adopts any of these courses, the propriety of his action is not to be judged in the light of the fact that at a later stage another course might have been followed more properly. AIR 1934 Pat 308 (309) = 35 Cri L Jour 1009.

(27) Proceedings under Section 107, Section 144 and Section 145 should not be allowed to go on at the same time. 1951 Raj LW 176 (177) ** AIR 1919 Cal 465 (465) = 19 Cri L Jour 367 (DB) ** AIR 1961 J and K 4 (4) = 1961 (1) Cri LJ 62.

[See also AIR 1961 Madh Pra 302 (304) = 1961 (2) Cri LJ 642 = 1961 Jab LJ 443.]

(28) A Magistrate should state distinctly in his order under what section he is proceeding. AIR 1937 Mad 494 (494) = 38 Cri L Jour 892 ** AIR 1918 Mad 503 (503) = 18 Cri L Jour 295.

(29) Dispute with respect to right to collect toll in a Bazar — Dispute raising for some time past and parties resorting to Section 144 previously — **Held,** proper course is to have recourse to Sec. 145 or Section 147 and not to Section 144. AIR 1958 Tripura 47 (48) = 1958 Cri L Jour 1554.

(30) When there is a choice between Section 145 and Section 107 by reason of the pendency of Civil litigation the Magistrate must choose Section 107 and not Section 145. AIR 1959 Mys 122 (123) = 1959 Cri L Jour 621.

(31) Possession of successful party in a Civil Suit confirmed in subsequent proceedings under Section 145 — Unsuccessful party interfering with possession — Action under Section 107 against him is the proper course. ILR (1963) Cut 771.

(32) Application under Section 107 by party claiming to be in possession of land — Dispute about possession pending in Civil Court — Strong evidence that breach of peace is imminent is necessary for starting proceedings. AIR 1964 Manipur 19 (20) = 1964 (1) Cri L Jour 406.

(33) Dispute of land, water or way — Magistrate first to proceed under Sections 145 and 147 — Magistrate denying to proceed under Section 107 should proceed against both parties. AIR 1966 J and K 29 (30) = 1966 Kash LJ 1 = 1966 Cri LJ 145.

(34) Magistrate cannot drop proceedings without making enquiry under Section 117 (1) on ground that case should be dealt with under Section 145, — He can convert proceedings into one under Section 145 and draw up fresh proceed-

Section 145 — Note 2 (contd.)

ing under Section 145. AIR 1965 Tripura 20 (21, 22) = 1965 (1) Cri LJ 602.

(35) Orders under Section 145 passed without notice to respondent — Proceedings under Section 107 relating to same land pending before the Magistrate — Magistrate not justified in passing order under Section 145. AIR 1969 Mys 181 (183) = 1969 Cri LJ 752 = (1969) 1 Mys LJ 1.

(36) Both parties claiming to be in possession of disputed land—Both not having a document of title over entire plot — Question of possession can be effectively decided by criminal Court only in a proceeding under Section 145 and not under Section 107. 1966 BLJR 383.

(37) Lease executed by a member of a joint family — Application by the Karta for protection from interference with his possession of the property by tenants — Court is not bound to proceed under Section 107, but can proceed under Section 145. AIR 1964 Tripura 71 (72) = 1965 (1) Cri LJ 88.

(38) Complainant requesting action under Section 145, against petitioners — Magistrate sending complaint to Police for enquiry — Police delaying enquiry for more than month during which there was no apprehension of breach of peace — Police arresting petitioners and mala fide reporting that action under Sec. 107, should be taken — Proceedings taken by Magistrate under Section 107, on the police report are invalid. 1965 (1) Cr LJ 512 (513, 514, 515) (Manipur).

2-A. Sections 145 and 147. — (1) Section 145, deals with cases where there is a dispute with regard to the land itself likely to result in breach of peace, whereas Section 147 deals with cases where there is a dispute with regard to a right in or over the land. If the right to use the land is claimed as an incident of ownership a dispute as regards such user will really be a dispute relating to the land itself, and not in respect of a right in the land. AIR 1960 Assam 90 (92, 94) = 1960 Cri LJ 794 ** (1970) Mad LJ (Cr) 64 (65) (Mys). (Duties of Magistrate under these two sections, stated.) ** 1969 Pat LJR 470 (472).

(2) There seem to be material differences between Section 145 and Sec. 147 in that while the duty to pass an order under Section 147 is only a discretionary one. Section 145 (1) indicates that the Magistrate shall make an order in writing stating the grounds of his being satisfied. Further unlike Section 145 (4), the date of the order under Section 147 (1) is not crucial or determinative of the rights of the parties. (1967) 1 Mad LJ 143.

(3) Where a dispute is really as regards the possession of a temple or a mosque Section 145 would be applicable but where the dispute is not so much about the right to possession of the mosque as the right to perform a festival at mosque, Section 147 is the proper section to be used by the Magistrate. 1961 (2) Cri LJ 234 (235, 236) (Ker). (AIR 1941 Nag 171, **Dissented from.**)

(4) A dispute as to the right of worship in a temple or over the places of worship necessarily involves a dispute as to the right of user of the land within the meaning of Section 147. Therefore, the order of the Magistrate drawing up proceeding under Section 145 is misconceived. 1961 (2) Cri LJ 466 (467) (Cal).

(5) Dispute relating to right of user of land — Right claimed as incident of ownership — Claim of ownership by both parties — Magistrate to proceed under Section 145 and not under Section 147. 1968 Cri LJ 1386 (1389) = 1968 Raj LW 300.

(6) The scope of Sections 145 and 147 markedly differs as does the subject-matter of the inquiry under the two sections. The second proviso to sub-section (4) of Section 145 relating to interim attachment cannot be made applicable in the case of an inquiry under Section 147. AIR 1960 J and K 66 (67) = 1960 Cri LJ 582.

[See also 1967 Ker LT 391 = (1967) Mad LJ (Cr), 524.]

3. Nature of proceedings under this section. — (1) A proceeding under this section constitutes an "inquiry" within the meaning of Sec. 4 (1) (k). ('01) 25 Bom 179 (184) (DB) ** (1909) 9 Cri L Jour 278 (279) (DB) (Cal) ** (1908) 7 Cri L Jour 423 (425) = 11 Oudh Cas 61.

(2) A proceeding under this section is of a quasi-executive character. (1901) 25 Bom 179 (184) (DB) ** AIR 1934 Nag 194 (195) = 35 Cri L Jour 1460 ** AIR 1925 All 316 (317) = 26 Cri L Jour 683.

(3) The proceedings under Section 145 are only preventive and are quasi-judicial and quasi-administrative in nature, their object being to prevent breach of peace and maintain tranquillity. AIR 1967 All 164 (166) = 1967 Cri LJ 417.

(4) The action is of a purely preventive and provisional nature in a civil dispute pending formal adjudication of the rights of the parties. AIR 1952 Vindh Pra 67 (67) = 1952 Cri L Jour 1514 ** AIR 1959 Manipur 30 (31) = 1959 Cri L Jour 742 ** AIR 1956 All 81 (82) = 1955 Cri L Jour 102. (The orders that a Magistrate passes under Section 145 are merely Police orders.)

(5) The nature of the inquiry is quasi-civil. It is an incursion by the Criminal Court in the jurisdiction of the Civil Court. AIR 1969 Mys 160 (161) = (1968) 2 Mys LJ 532 = 1969 Cri LJ 62 ** 1966 Cr LJ 1080 (1086) = 1965 Mad LJ (Cr) 659 = (1965) 2 Andh WR 231.

(6) A proceeding under Section 145, Criminal P. C., by its very nature is a quasi-criminal proceeding and cannot be classified as civil proceeding as contem-

Section 145 — Note 3 (contd.)
plated by Section 14 (2), Limitation Act, (1908). AIR 1970 Bom 138 (143) = 1969 Mah LJ 689.

(7) The action under this section is not a matter relating to an offence to attract the application of Sections 182 and 185. AIR 1914 All 473 (473, 474) = 15 Cri L Jour 520 ** ('99) 3 Cal WN 148 (150) (DB).

(8) The proceedings under Sections 145, 146 are of a summary nature and it is essential that they should be disposed of as expeditiously as possible and it is always open to a party to proceed through the Civil Court and get any matter finally settled. 1954 All L Jour 269 (270) ** 1965 All WR (HC) 31 ** ILR (1960) 1 Andh Pra 327 ** AIR 1960 Pat 254 (255) = 1960 Cri LJ 970 = 1959 BLJR 813 ** 1970 Ker LT 102.

(9) An enquiry made by the police on a petition made to them under Section 145 is not an investigation under Chapter XIV, or in respect of any offence, within the meaning of Section 162. AIR 1954 Mad 1019 (1020) = 1954 Cri L Jour 1565.

(10) A proceeding under this section is a case within the meaning of Sections 192, 526 and 528. AIR 1945 Nag 56 (56) = ILR (1944) Nag 836 = 46 Cri L Jour 654 ** AIR 1927 Pat 351 (351) = 6 Pat 553 = 28 Cri L Jour 1035 (DB) ** (1912) 13 Cri L Jour 452 (453) = 34 All 533 (DB).

[But see ('01) 4 Cal WN 821 (822) ** AIR 1919 All 311 (313) = 20 Cri L Jour 410.]

(10-A) An application to a Magistrate to take action under this section is not a complaint. AIR 1926 Sind 85 (85) = 26 Cri L Jour 1333 (DB).

(11) The initiation of a proceeding under this section on the application of a person may, in proper cases, constitute malicious prosecution of the opposite party. AIR 1951 Mad 659 (Pr 1) = ILR (1951) Mad 838 (DB).

(12) Sections 8 to 11 of the Oaths Act (1873) apply to proceedings under Section 145. AIR 1952 All 678 (679, 680) = 1952 Cri L Jour 1183 ** 1969 Cri LJ 70 (72) = 1968 All LJ 457.

4. Who can take action under this section. — (1) The mere fact that a Sub-Divisional Magistrate or a First Class Magistrate declined to take action in a particular case is no bar to the District Magistrate instituting proceedings if on the same materials he is satisfied as to the likelihood of a breach of the peace, even though no application has been made to him. AIR 1954 Trav-Co 102 (103) = 1954 Cri L Jour 194 (DB) ** (1902) 29 Cal 242 (244) (DB) ** AIR 1926 Cal 1049 (1050, 1051) = 27 Cri L Jour 1083 (DB).

(2) The State Government cannot under any provision of the Code deprive a Magistrate of the first class of his powers under Section 145. AIR 1957 Andh Pra 247 (248) = 1957 Cri L Jour 819.

(3) Fresh proceedings may be taken by the Additional District Magistrate under Section 145 when the application is made within 2 months of the obstruction resulting in dispossession of a party even when his previous application is dismissed by another Magistrate of the first class. AIR 1959 Raj 63 (72) = ILR (1959) 9 Raj 193 = 1959 Cri L Jour 379.

(4) Additional Sub-Divisional Magistrate invested with powers of First Class Magistrate is empowered to take action under the section. 1965 All Cri R 22 = 1964 All WR (HC) 750.

[See however AIR 1962 All 165 (165) = 1961 All LJ 875 = (1962) 1 Cri LJ 389 (DB).]

(5) The Assistant to the Deputy Commissioner has power to take action similar to the one contemplated under Section 145, in view of Rule 22 of the United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953. AIR 1963 Assam 38 (40) = ILR (1963) 15 Assam 66 = 1963 (1) Cri LJ 565.

5. "Is satisfied". — (1) It is essential for the assumption of jurisdiction to initiate proceedings under this section that the Magistrate should be satisfied from a police-report or other information that a dispute likely to cause a breach of the peace exists. Such a finding should be clear and unambiguous. AIR 1958 Punj 47 (49, 50) = 1958 Cri L Jour 215 = ILR (1957) Punj 1968 ** 1959 Jab LJ 246 (247) ** AIR 1955 Assam 1 (2) = ILR (1954) 6 Assam 511 = 1955 Cri L Jour 54 (DB) ** (1970) 72 Pun LR 118 (120) ** AIR 1968 Orissa 36 (40) = 33 Cut LT 974 = 1968 Cr LJ 336 ** (1967) Cri LJ 1716 (1717) (Cal) ** 1967 Cri LJ 1243 (1244) = 1965 BLJR 427. ** AIR 1967 Punj 482 (486) = 1967 Cr LJ 1690 = 1966 Cur LJ 866 ** (1964) 66 Punj LR 245 ** AIR 1961 Tripura 36 (38) = 1961 (2) Cri LJ 292.

(1a) The satisfaction which arose at the time of passing the preliminary order must, therefore, continue till the Magistrate passes the final order. Otherwise it is open to drop the proceedings and cancel the preliminary order. (1970) 72 Punj LR 118 (120) = 1970 Cur LJ 208.

(2) The fact that the Magistrate gave his finding that there was an apprehension of a dispute likely to cause a breach of the peace not as soon as the police report was received but gave it subsequently but before the evidence began would not vitiate the proceedings provided the opposite party was not prejudiced by it. AIR 1953 All 471 (472) = 1953 Cri L Jour 1056.

(3) It is the Magistrate's satisfaction that is required and not the satisfaction of his informant or any police-officer.

Section 145 — Note 5 (contd.)
1951 All WR (HC) 483 (484) ** AIR 1956 Bhopal 2 (4) = 1956 Cri L Jour 42.

(4) If a Magistrate is very cautious and chooses to call the parties in order to be satisfied as to whether there was or was not an apprehension of a breach of the peace, and passes an order only after hearing them, or in their presence, the order cannot be said to be invalid. AIR 1954 All 579 (Pr 3) = 1954 Cri L Jour 1257.

(5) The Magistrate cannot direct the police to report if there is an apprehension of breach of peace and to attach the property if they are of opinion that there is such apprehension. AIR 1953 All 455 (Pr 4) = 1953 Cri L Jour 1009 ** 1951 All WR (HC) 58 (58) ** AIR 1952 All 186 (Prs 6, 9) = 1952 Cri L Jour 379.

(6) A person making an application to the Magistrate to initiate proceedings under the section does not institute a 'case' but only informs the Magistrate. 1951 All WR (HC) 483 (484).

(7) A Magistrate is not bound to take action on a police-report or upon an expression of opinion by the police, but he should have a statement of facts before him so that he may exercise his own judgment in arriving at a conclusion as to the necessity of taking action under this section. (1906) 33 Cal 33 (43) = 2 Cri L Jour 670 (FB) ** ILR (1952) 2 Raj 170 = 1952 Raj LW 289 (289) ** AIR 1969 Manipur 27 (28) = 1969 Cr LJ 419 ** 1961 Jab LJ 315 (316) = ILR (1961) Madh Pra 647.

(8) Even if the police had stated positively that there was no apprehension of breach of the peace, the Magistrate is not bound by the same. The section requires satisfaction of the Magistrate. (1967) 33 Cut LT 766.

(9) The Magistrate should proceed with great caution where there is no police-report and the only materials before him are statements of interested persons. AIR 1924 Cal 444 (445) = 24 Cri L Jour 304 (DB).

(10) It is for the Magistrate to be satisfied whether or not an apprehension of breach of the peace exists. His jurisdiction is not affected merely because he has not recorded a formal order stating that an apprehension of a breach of peace exists, provided there are materials on record to show that such an apprehension was justified. 1961 Raj LW 484 = ILR (1961) 11 Raj 1180 (1181).

(11) Where there are no materials at all before the Magistrate on which he could come to any finding the mere fact that he states he is satisfied is not sufficient to give him jurisdiction under this section. AIR 1953 Orissa 255 (255) (Pr 2) = ILR (1953) Cut 333 = 1953 Cri LJ 1499 ** AIR 1921 Pat 176 (177) = 22 Cri LJ 481.

[See however AIR 1953 Ajmer 74 (75) = 1953 Cri LJ 1788.]

(12) The evidence subsequently recorded by the Magistrate after issuing a notice under sub-section (1) will not justify the preliminary order. AIR 1945 Oudh 62 (63).

(13) Any action taken by the Magistrate before starting proceedings under Section 145 cannot be construed to be something which it was necessary for the Magistrate to do under Section 145. ILR (1952) 2 Raj 170 = 1952 Raj LW 286 (289).

(14) The question whether, upon the materials placed before him, proceedings should be instituted under this section is one entirely within the Magistrate's discretion. AIR 1953 All 471 (471) (Pr 2) = 1953 Cri LJ 1056 ** AIR 1943 Pat 44 (47) = 44 Cri LJ 25 (DB) ** AIR 1969 Mys 160 (162) = (1968) 2 Mys LJ 532 = 1969 Cri LJ 622.

(15) The High Court will not go into the sufficiency of the information which has satisfied the Magistrate when the case comes before it in revision. AIR 1953 All 471 (471) (Pr 2) = 1953 Cri LJ 1056 ** AIR 1957 Punj 303 (304) = ILR (1957) Punj 1902 = 1957 Cri LJ 1450 ** **AIR 1968 SC 1444 (1448) = 1968 Cur LJ 980 = 1969 Cr LJ 13.**

(16) The Magistrate is entitled to form his opinion on any information received. 1951 All WR (HC) 483 (484) ** AIR 1940 Sind 33 (37) = 41 Cri LJ 486 (DB) ** AIR 1935 Oudh 316 (324) = 36 Cri LJ 656 (DB) ** **AIR 1968 SC 1444 (1449) = (1969) 1 SCJ 510 = 1969 Cri LJ 13.** (1964) 2 Cri LJ 100 (Mys) and AIR 1925 Nag 142, **Overruled;** Criminal Revn. Appln. No. 668 of 1967, D/- 17-8-1967 (Bom), **Reversed.)**

[But see AIR 1917 Lah 179 (179, 180) = 18 Cri LJ 565.]

(17) Where both the parties admit that there is a likelihood of breach of peace the further enquiry should be only with regard to possession under sub-section (6). AIR 1953 Hyd 185 (Prs 3, 4) = ILR (1952) Hyd 346 = 1953 Cri LJ 1114.

(18) Once the Magistrate decides that there is going to be breach of the peace, he will have to proceed judicially under the law. AIR 1958 Madh Pra 346 (347) = 1958 Cri LJ 1318.

(19) In order that a Magistrate be relieved of all doubts or uncertainty and for his mind to be reasonably certain or free from doubt it is necessary that he should permit parties concerned to place before him sufficient material justifying initiation of the proceedings. AIR 1957 Punj 303 (305) = ILR (1957) Punj 1902 = 1957 Cri LJ 1450.

6. "Police-report." — (1) The Magistrate is entitled to peruse a police-report for the limited purpose of satisfying himself as to the likelihood of a breach of

Section 145 — Note 6 (contd.)

the peace and as to the identity of the subject-matter and of the contending parties. It is inadmissible as evidence in the inquiry relating to the possession of the parties. AIR 1927 Cal 327 (329) = 28 Cri LJ 329 (DB) ** AIR 1920 Pat 483 (485) = 21 Cri LJ 735 ** (1967) 33 Cut LT 766.

(2) On receiving an application for action under this section, the Magistrate may call for a police-report and on his being satisfied on such report that there is no likelihood of a breach of the peace, may dismiss the application. 1951 All WR (HC) 483 (484).

(3) In proceedings under this section a police report is a relevant document in order to come to a conclusion whether there is any likelihood of breach of peace, but it cannot be taken at its face value. 1961 Jab LJ 315 (316) = ILR (1961) Madh Pra 647.

(4) Where an application is made under the section the Magistrate should not forward the application itself to the police for inquiry and report but should keep it pending on his file and direct the police to make an enquiry and report. 1951 Raj LW 14 (16).

(5) The police-report to a Magistrate suggesting initiation of proceedings under this section, should not be confined to written reports which the police themselves might have received. AIR 1935 Nag 78 (79).

(6) The primary duty of the police official in proceedings under this section is to report whether there is any apprehension of breach of the peace. He cannot assume the functions of the Magistrate and report that after investigation he found that the petitioner's allegations were baseless. AIR 1961 All 38 (41) = 1960 All LJ 782 = 1961 (1) Cr LJ 15 (DB).

(7) Complaint stating that complainant is forcibly dispossessed — Police report stating that there was every danger of complainant being dispossessed — Magistrate is justified in not accepting police report and acting thereon. 1953 All Cr R 430 = 1963 All WR (HC) 733.

7. "Or other information." — (1) The Magistrate has the widest possible latitude in interpreting the words "other information." AIR 1934 Nag 194 (195) = 35 Cri LJ 1460= AIR 1925 Pat 553 (555) = 26 Cri LJ 965 ** AIR 1920 Pat 219 (220) = 21 Cri LJ 625 ** (1965) 3 Law Rep 795 (798). (The information may be furnished by another criminal proceeding on the file of the Magistrate himself.)

(2) The words 'other information' are wide enough to include an application by a private party. The jurisdiction under Section 145 being of an emergency nature, the Magistrate must act with caution but that does not mean that where on an application by one of the parties to the dispute he is satisfied that the requirements of the section are existent, he cannot initiate proceedings without a police report. **AIR 1968 SC 1444 (1449) = 1968 Cur LJ 980= 1969 Cr LJ 13.** (Criminal Revn. Appln. No. 668 of 1967, dated 17-8-1967 (Bom), **Reversed.** (1964) 2 Cr LJ 100 (Mys) and AIR 1925 Nag 142, **Overruled.)**

(3) The Magistrate can base his action on complaint filed by one of the parties, or on the statement on oath of the person who presented the complaint, or on a perusal of the petitions filed by the parties in another proceeding. AIR 1934 Nag 194 (195) = 35 Cri LJ 1460 ** (1906) 3 Cri LJ 48 (49) (All) ** AIR 1920 Pat 219 (220) = 21 Cri LJ 625.

(4) In a dispute between a tenant and his sub-tenants, the superior landlord, though not a party to the dispute can present a petition under this section. AIR 1942 Mad 534 (534) = 43 Cri LJ 741.

8. "Dispute," meaning of. — (1) The word "dispute" has its ordinary meaning of disagreement, struggle, scramble or quarrel. AIR 1928 Cal 610 (620) = 30 Cri LJ 69 (FB) ** AIR 1934 Pat 471 (472) = 36 Cri. LJ 624 ** 1965 Ker LT 1135.

(2) Dispute concerning land, etc., Magistrate to act under this section, independent of question whether such dispute is reasonable or bona fide. AIR 1941 Nag 171 (173) = 42 Cri LJ 675 ** AIR 1942 Pat 331 (333) = 43 Cri LJ 637 ** AIR 1928 Cal 610 (614, 619) = 30 Cri LJ 69 (FB) ** 1965 Ker LT 1135.

(3) The fact that a dispute can be easily resolved cannot make it any the less existent. 1951 Ker LT 243 (251).

(4) It is only where the lands in question are admittedly or indisputably in the possession of one of the parties and the party out of possession attempts to trespass into the property that Section 145 cannot be applied. 1951 Ker LT 243 (251).

(5) It has been held that the dispute must be a reasonable or bona fide one, AIR 1940 Pat 492 (494) = 41 Cri LJ 417 ** 1968 BLJR 461 (463) ** (1966) 32 Cut LT 887 = ILR (1966) Cut 566.

(6) The dispute need not be by a person as owner. Even the possession of a trustee or guardian will be protected under the provisions. (1959) 2 MLJ 538 (539) = 72 Mad LW 575.

(7) It has been held that where the rights of the parties have been "within a time not too remote" adjudicated upon between the parties by a decree of a civil Court, there can be no bona fide dispute between the parties. AIR 1943 Oudh 410 (412) = 44 Cri LJ 789 ** AIR 1922 Pat 435 (439) = 23 Cri LJ 549 (FB) ** (1968) 34 Cut LT 655.

Section 145 — Note 8 ;contd.)

(8) It has been held that:

(a) The dispute means a dispute as to possession in the eye of law. AIR 1920 Pat 633 (634) = 21 Cri LJ 200 ** AIR 1922 Pat 13 (17) = 24 Cri LJ 241 ** AIR 1923 Pat 76 (78) = 24 Cri LJ 279 ** (1899) 26 Cal 625 629, 630) (DB).

[See however AIR 1939 Pat 151 (152, 153) = 40 Cri LJ 339.]

(b) If there is a likelihood of a breach of the peace in such cases the duty of the Magistrate is to maintain the civil Court's decree or possession by taking action against the unsuccessful party under S. 107 or Section 144. AIR 1953 All 383 (Prs 14, 15, 16) = 1953 Cri LJ 832 ** AIR 1952 Vind Pra 67 (68, 69) (Prs 6, 7) = 1952 Cri LJ 1514 ** 1950 Trav-Co LR 36 (37) ** AIR 1922 Pat 435 (439) = 23 Cri LJ 549 (FB).

(9) A decree-holder or auction-purchaser placed in possession by the process of Court has to maintain his own possession if he is forcibly and wrongfully dispossessed within two months of such delivery of possession, and if he does not complain of such dispossession for over two months he has no right thereafter to come to a Criminal Court and ask the Magistrate to maintain the civil Court's decree for delivery of possession. AIR 1934 Nag 217 (219) = 36 Cri LJ 52 ** AIR 1928 Cal 610 (623) = 30 Cri LJ 69 (FB) ** AIR 1939 Pat 151 (154) = 40 Cri LJ 339.

(10) Where a dispute is going on as to who is entitled to succeed to a dying person's estate and take possession of it, the Magistrate can start proceedings under this section and attach the properties under Section 146 on such person's death. But where the dispute is not as to any right in relation to immovable property this section has no application. AIR 1949 Lah 273 (275) (Prs 10, 12) = Pak LR (1949) Lah 466 = 51 Cri LJ 55 (DB).

9. Likely to cause a breach of the peace. — (1) The jurisdiction conferred upon a Magistrate to institute proceedings under this section can be exercised only when the dispute is such that it is likely to cause a breach of the peace. AIR 1955 All 95 (96) = 1955 Cri LJ 270 ** AIR 1955 All 46 (47) = 1955 Cri LJ 102 ** AIR 1955 Hyd 65 (66, 67) = ILR (1955) Hyd 1 = 1955 Cri LJ 480 (FB) ** 1968 All WR (HC) 247 (248) ** AIR 1968 Ker 70 (71) = 1968 Cri LJ 350 ** AIR 1955 J and K 49 (50) = 1965 (1) Cri LJ 698 = 1963 Kash LJ 63.

(2) The jurisdiction of the Magistrate is determined by an apprehension of a breach of the peace and not by any infringement of private rights or by the dispossession of any of the parties. AIR 1914 All 62 (63) = 15 Cri LJ 27 (DB) ** ILR (1956) Patiala 9 (11, 12) ** (1913) 14 Cri LJ 223 (224) (All).

(3) The Magistrate should satisfy himself from the materials on record that on the date he purports to act there is a present fear that there will be a breach of the peace owing to the dispute unless proceedings are taken under this section. AIR 1952 Orissa 26 (Prs 5, 6) = 1952 Cri LJ 148 ** AIR 1943 Pat 44 (47) = 44 Cri LJ 25 (DB) ** AIR 1943 Cal 559 (560) = 45 Cri LJ 107 (DB).

(4) An apprehension of a breach of the peace arises only when both the parties start asserting their right of possession physically. AIR 1953 Ajmer 74 (76) = 1953 Cri LJ 1788.

(5) It is not necessary that there should be a danger of an immediate or imminent breach of the peace. (1905) 2 Cri LJ 670 (674, 675) = 33 Cal 33 (DB) ** AIR 1920 Pat 745 (746) = 22 Cri LJ 205 ** AIR 1932 Nag 134 (135) = 33 Cri LJ 937.

[But see AIR 1917 Pat 368 (369) = 18 Cri LJ 763.]

(6) It is not necessary that there should have been any overt act of violence. (1903) 30 Cal 155 (200) (FB).

[But see AIR 1917 Pat 368 (369) = 18 Cri LJ 763 (DB).]

(7) It is sufficient for a Magistrate to institute proceedings if there is a reasonable apprehension that a disturbance of the peace is likely to occur. (1906) 33 Cal 33 (44) = 2 Cri LJ 670 (DB). (7 Cal 385, Followed.) ** 7 Cal 385 (387) (DB).

(8) Though all the persons concerned in the dispute may be of peaceful disposition, yet if the dispute is of such a kind that it is likely, to lead to a breach of the peace, it is enough to give the Magistrate jurisdiction. 30 Cal 155 (200) (FB) ** AIR 1924 Lah 678 (679) = 25 Cri LJ 78.

(9) Once the Magistrate has given a finding to the effect that there is apprehension of breach of peace and that he has jurisdiction to take proceedings under Section 145, Criminal P. C., it is not necessary that at each stage of the proceedings he should be satisfied. AIR 1954 Hyd 93 (93) = 1954 Cri LJ 671 ** AIR 1967 Punj 378 (381) = 1967 Cri LJ 1051.

(10) Where the Magistrate finds that no breach of the peace is likely, he has no jurisdiction to give any directions regarding the subject of the dispute. AIR 1923 Mad 472 (472) = 24 Cri LJ 783 ** AIR 1969 Mys 160 (161) = (1968) 2 Mys LJ 532 = 1969 Cri LJ 622 ** (1968) 34 Cut LT 655.

(11) Where in the case of emergency the Magistrate directs that possession, of the property should be taken over by the police or the Court and later finds that there is no likelihood of a breach of the peace he has got to make restitution of

Section 145 — Note 9 (contd.)

possession to the person from whom it was taken. AIR 1953 Hyd 185 (Pr 1) = ILR (1952) Hyd 346 = 1953 Cri LJ 1114.

(12) The section does not require that the danger of a breach of the peace should be so imminent that the opposite party should have no sufficient time to go to the proper Court. AIR 1931 All 14 (15) = 53 All 215 = 32 Cri LJ 309.

(13) Proceedings under — Existence of recent decision of Civil or Revenue Court on question of possession in itself cannot be a ground for Magistrate to refuse to start proceedings under Section 145 because the dispute like the one mentioned in sub-section (1) can exist notwithstanding the recent decision of a competent Court. 1970 Cri LJ 770 (774) (All).

10. The subject of dispute. — (1) The subject-matter of dispute should be ascertained definitely and described clearly in the preliminary order. (1907) 5 Cri LJ 32 (35) (DB) (Cal) ** AIR 1953 Mys 131 (132) = ILR (1953) Mys 315 = 1953 Cri LJ 1530 ** 1931 Mad WN 1317 (1318).

(2) Absence of clear specification of the subject of dispute is a serious defect though it will not vitiate the proceedings when the parties were under no misapprehension regarding it. AIR 1920 Cal 344 (345) = 21 Cri LJ 593 (DB) ** AIR 1925 Oudh 152 (153) = 25 Cri LJ 1139 ** AIR 1920 Pat 219 (220) = 21 Cri LJ 625 ** AIR 1964 J and K 1 (4) = 1963 Kash LJ 108 = (1964) (1) Cri LJ 37.

(3) Where there is an apprehension of breach of peace in respect of a number of plots, the Magistrate should ask the parties concerned, to file an accurate map showing the exact location of the lands in dispute. Unless the plots or portions thereof can be carefully localised and identified at the spot, the entire proceeding may become infructuous. (1961) 3 Orissa JD 385.

(4) Where there is more than one dispute involved each one of the disputes should be made the subject-matter of a separate enquiry. The Magistrate has no jurisdiction to combine a number of disputes between several persons and treat them all as one dispute for the purpose of a proceeding under Section 145. (1955) 21 Cut LT 174 (175).

(5) Where land consists of several plots and each plot is the subject of a separate dispute and each such dispute stands on its own footing, the Magistrate should not club all such items together and treat them as one for the purposes of an inquiry under this section. AIR 1937 Pat 413 (414) = 38 Cri LJ 842 ** (1903) 30 Cal 155 (200) (FB) ** 1966 All WR (HC) 704 = 1966 All LJ 1026 ** AIR 1962 Orissa 161 (162) = (1962) 4 OJD 77 = 1962 (2) Cr LJ 391.

(6) Where none of the parties to the proceedings was prejudiced or where all separate items were coverd by the same state of circumstances and there was only a single dispute in respect of all of them the mere fact that the Magistrate did not institute separate proceedings in respect of each such item is not sufficient to invalidate the proceedings. AIR 1939 Pat 353 (354, 355) = 40 Cri LJ 749 ** AIR 1946 Pat 389 (392) = 47 Cri LJ 1013 ** AIR 1938 Pat 511 (512, 513) = 40 Cri LJ 17 ** AIR 1966 Orissa 122 (123) = 32 Cut LT 103 = 1966 Cri LJ 681 ** AIR 1965 Assam 79 (79) = ILR (1963) 15 Assam 379 = 1965 (2) Cri LJ 464.

(7) More than one item of property involved — Magistrate holding all items to be in dispute whereas one item was not under dispute — Held that though there is an error on record, it being minor one, entire proceeding need not be quashed. AIR 1969 Pat 317 (321) = 1969 Cri LJ 1197 (Pat).

(8) The fact that the area of the land in dispute is small or that the Magistrate has included in his proceedings only a portion of the land which is the subject of the police-report, will not vitiate the proceedings under this section. AIR 1939 Lah 108 (110) = 40 Cri LJ 519 ** AIR 1917 Pat 435 (436) = 18 Cri LJ 692.

(9) Where the dispute relates to possession of an undivided share in a property, the Magistrate has no power to institute proceedings under this section. AIR 1942 Sind 117 (119) = 43 Cri LJ 876 (DB) ** AIR 1936 Sind 143 (143) = 37 Cri LJ 1030 (DB) ** AIR 1915 Mad 1105 (1107) = 16 Cri LJ 284.

11. "Within the local limits of his jurisdiction." — (1) It is only where the dispute relates to property within the local limits of the Magistrate's jurisdiction that the Magistrate is empowered to institute proceedings under this section. AIR 1945 Nag 56 (57) = ILR (1944) Nag 836 = 46 Cri LJ 654 ** AIR 1928 Mad 1230 (1231) = 30 Cri LJ 340 ** AIR 1922 Pat 219 (220).

(2) Where only a portion of the subject of dispute lies within the Magistrate's jurisdiction, he has power to pass orders only in respect of such portion. AIR 1949 Mad 563 (Prs 2, 3) = 50 Cri LJ 866 ** (1905) 2 Cri LJ 406 (407) = 32 Cal 444 (DB).

[See however AIR 1935 Pat 436 (437) = 37 Cri LJ 55.]

(3) The Magistrate has jurisdiction to decide if the subject of the dispute is within the local limits of his jurisdiction. AIR 1920 Cal 912 (912) = 22 Cri LJ 392 (DB).

(4) Where it is uncertain as to whether the subject of dispute is situate in one or the other of two local areas, the proceedings may be taken by a Magistrate having jurisdiction over either of such areas. (1910) 11 Cri LJ 69 (71) = 12 Oudh Cas 400 ** (1954) 33 Pat 927 (937).

Section 145 — Note 11 (contd.)

(5) Territorial limits of Magistrate's jurisdiction are to be determined with reference to area comprised in police stations of particular sub-division over which Magistrate presides. (1966) All Cri R 322 = 1966 All WR (HC) 548.

(6) Trial of the proceedings under Section 145, by a Magistrate of a district holding first class powers, in respect of land situated in another sub-division of the same district, is not without jurisdiction, if there is nothing to show that the jurisdiction of the Magistrate has been limited only to his sub-division. AIR 1961 Pat 94 (95) = 1960 Pat LR 150 = 1961 (1) Cri LJ 304.

(7) Khasi and Jaintia Hills — Territory of Cherra Siemship — Additional Deputy Commissioner can take no action under Section 145. AIR 1963 Assam 31 (33) = ILR (1962) 14 Assam 244 = 1963 (1) Cri LJ 417 (DB).

(8) It is necessary that the Magistrate should continue to have territorial jurisdiction over the land in dispute until the final disposal of the proceedings under the section. AIR 1951 Hyd 122 (Pr 15) = 52 Cri LJ 1358 = ILR (1951) Hyd 598.

(9) An objection to the jurisdiction of the Magistrate should be taken at the earliest opportunity. AIR 1928 Cal 610 (612) = 30 Cri LJ 69 (FB) ** (1906) 2 Cri LJ 670 (676, 677) = 33 Cal 33 (46) (FB).

12. "Effect of non-compliance with the provisions of the section. — (1) Where the Magistrate proceeds under Sec. 145 without being satisfied as to the existence of a dispute likely to cause breach of the peace he acts without jurisdiction and Section 537 cannot cure the irregularity. AIR 1953 Orissa 255 (256) = ILR (1953) Cut 333 = 1953 Cri LJ 1499 ** AIR 1951 Pat 412 (Pr 3) = 52 Cri LJ 303 ** AIR 1950 All 734 (Pr 3).

(2) The foundation of the jurisdiction of the Magistrate under Section 145 is an apprehension felt by him with regard to the breach of peace. His failure to record his satisfaction in his preliminary order about the likelihood of breach of peace is a mistake which vitiates the order passed by him in the proceedings. 1959 Jab LJ 246 (247) = 1959 MPLJ 725 ** 1968 Pat LJR 427 ** 1961 (2) Cri LJ 577 (577, 578) (Assam).

(3) A non-compliance in the undermentioned instances, was held to have rendered all subsequent proceedings void and without jurisdiction—

(a) Failure to draw up a preliminary order. AIR 1953 Raj 119 (Pr 7) = ILR (1952) 2 Raj 86 = 1953 Cri LJ 846 ** AIR 1958 J and K 17 (17, 18) = 1958 Cri LJ 635 (FB) ** AIR 1955 Mad 229 (230) = 1955 Cri LJ 700 ** AIR 1952 Raj 100 (Pr 6) = 1952 Cri LJ 1031 ** AIR 1964 Andh Pra 168 (170) = 1964 1 An WR 24 = 1964 (1) Cri LJ 391.

(b) Failure to set out the grounds in the preliminary order. AIR 1945 Oudh 62 (63) ** (1908) 8 Cri LJ 399 (400) (DB) (Mad) ** 1969 Cri LJ 1170 (1172) = (1968) Mad LJ (Cr) 748 = (1968) 2 Mys LJ 521 ** AIR 1965 J and K 49 (50, 51) = 1965 (1) Cri LJ 698 = 1963 Kash LJ 63.

[See also AIR 1957 Punj 303 (304) = ILR (1957) Punj 1992 = 1957 Cri LJ 1450.]

(c) Failure to give details of the subject-matter of dispute in the preliminary order. AIR 1952 Pat 234 (Pr 3) = 1952 Cri LJ 699 ** AIR 1920 Cal 344 (345) = 21 Cri LJ 593 (DB) ** AIR 1965 J and K 49 (50, 51) = 1963 Kash LJ 63 = 1965 (1) Cri LJ 698.

(d) Failure to serve or publish the notice as required by sub-section (3). AIR 1938 Lah 345 (346) = 39 Cri LJ 702 ** AIR 1918 Nag 46 (46) = 20 Cri LJ 816 ** AIR 1917 Pat 71 (71) = 19 Cri LJ 112.

(4) The jurisdiction of the Magistrate does not depend upon how he proceeds. AIR 1933 All 264 (267, 268) = 34 Cri LJ 414 (FB) ** AIR 1949 Pat 146 (148) = 50 Cri LJ 299 (SB) ** (1905) 2 Cri LJ 618 (633) = 33 Cal 68 (FB) ** (1905) 2 Cri LJ 637 (642, 643, 648) (FB) (Cal) ** AIR 1957 J and K 46 (47) = 1957 Cri LJ 1125 ** (1967) 33 Cut LT 1021 (DB).

[See also AIR 1958 All 432 (435) = ILR (1958) 1 All 306 = 1958 Cri LJ 710 (DB).]

(5) The bare fact of an omission or irregularity in a matter of procedure unaccompanied by any suggestion of probable failure of justice having been occasioned thereby, is not sufficient to invalidate the proceedings. AIR 1927 PC 44 (49) = 28 Cri LJ 259 ** AIR 1959 Assam 54 (56) = ILR (1957) 9 Assam 75 = 1959 Cri LJ 303 ** AIR 1958 Tripura 37 (38) = 1958 Cri LJ 1250 ** (1961) 3 Orissa JD 256 = 27 Cut LT 314 (315).

(6) Mere omission to mention ground of satisfaction in preliminary order will not vitiate order, if it can be gathered from record that there was sufficient material to support it. AIR 1965 Orissa 208 (209) = 31 Cut LT 254 = 1965 (2) Cri LJ 788.

(7) Where the preliminary order passed by the Magistrate clearly stated that from the Police report he was satisfied that there was apprehension of breach of peace so as to justify taking action under Section 145 the acceptance of police report is itself a sufficient ground and the failure to record the grounds of satisfaction is not an illegality. ILR (1959) Cut 1 (4, 5) = 25 Cut LT 39.

Section 145 — Note 12 (contd.)

(8) If in spite of a failure to conform to the provisions substantial justice has been done, the defect is cured under Section 537 and the final order will not be interfered with in revision. AIR 1959 J and K 16 (17) = 1959 Cri LJ 321 (DB) ** AIR 1956 Bhopal 2 (3) = 1956 Cri LJ 42 ** AIR 1954 Raj 217 (221, 222) = 1954 Cri LJ 1452 = ILR (1954) 4 Raj 933 (DB). (1951 Raj LW 55; AIR 1954 Raj 51 = 1954 Cri LJ 349 = ILR (1954) 1 Raj 601 and AIR 1952 Raj 100 = 1952 Cri LJ 1031, **Overruled.)** ** AIR 1967 All 164 (166) = 1967 Cri LJ 417. (Preliminary order based upon police report — Order has to be read along with police report — If preliminary order is defective, it is curable irregularity.) ** AIR 1961 Tripura 36 (38) = 1962 (2) Cri LJ 292 ** ILR (1959) 1 Cut 1 (4, 5) = 25 Cut LT 39.

(9) Where once a valid preliminary order under Section 145 (1) has been passed subsequent errors or omissions relating to procedure or to specification of property in the preliminary order do not vitiate the subsequent proceedings. AIR 1957 Nag 27 (28) = ILR (1956) Nag 730 = 1957 Cri LJ 212 (DB).

(10) If the order of the Magistrate does not show that he had considered the affidavits put in by the parties such an order ex facie will be held to be improper as not complying with the mandatory provisions of Section 145 (4) of the Code. AIR 1954 Ker 308 (308) = 1964 Ker LT 179 = 1964 (2) Cri LJ 682 ** (1966) 1 Mys LJ 634 = (1966) Mad LJ (Cri) 826 (Mys) ** AIR 1964 All 394 (395) = 1963 All WR (HC) 715 = 1964 (2) Cri LJ 261 ** AIR 1964 Pat 239 (240) = 1963 BLJR 149 = 1964 (1) Cri LJ 534.

(11) Mandatory requirements of Section 145 (4) not complied with — High Court can exercise powers under Section 423 to correct illegality. AIR 1969 Pat 52 (55) = 1969 Cri LJ 985.

(12) Interim order passed by Magistrate — Persons interested in dispute not made parties to proceeding — Order cannot be assailed, as person interested in dispute though not made a party in the proceeding is entitled to come and show that no such dispute exists. 1968 Cri LJ 1136 (1141) (Guj).

13. Preliminary order. — (1) It is the duty of the Magistrate to pass and promulgate the preliminary order at the earliest moment. (1949) 2 Sau LR 125 (129) ** AIR 1969 Mad 411 (412) = 1969 Cri LJ 1410 = (1961) 1 Mad LJ 37. (1912) 23 Mad LJ 499, **Held, no longer good law.)** ** 1968 Lab LJ 373 (375, 379) = 1968 MPLJ 241.

(2) **Preliminary order must be passed within two months of dispossession — Passing of preliminary order delayed due to stay granted by Sessions Court — Magistrate cannot assume jurisdiction** later on to pass the order. AIR 1968 Delhi 231 (232) = (1968) 70 Punj LR (D) 264 = 1968 Cr LJ 1271.

(3) It is not, necessary that the order should be in any particular form. 10 Suth WR (Cr) 16 (16) (DB).

(4) The preliminary order passed by a competent Magistrate, is commonly an order which has to contain two elements, namely, (i) stating the grounds of the Magistrate being satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists; and (ii) requiring the parties concerned in such dispute to attend his Court in person or by pleader, within a time to be fixed by such Magistrate and to put in written statements of their respective claims. AIR 1966 Andh Pra 63 (65, 66) = (1965) 2 Andh WR 496 = 1966 Cri LJ 248.

(5) The Magistrate need not write in his preliminary order in so many words that he was 'satisfied' from police report that a dispute likely to cause a breach of peace existed. It is enough if he mentions the grounds on which he decided to pass the preliminary order. AIR 1961 Trpura 36 (38) = 1961 (2) Cri LJ 292.

(6) Order must make it evident that Magistrate had applied his judicial mind to the information and had come to the conclusion to pass order. (1966) 2 Mad LJ 96.

(7) When there is a preliminary order, the fact that it is not complete in some respects would not be sufficient to vitiate the proceedings. AIR 1949 East Punj 398 (Pr 10) = 51 Cri LJ 3 ** (1937) 39 Pun LR 503 (504) ** 1965 Mad LJ (Cri) 550 = (1965) 2 Andh WR 122. (Unless it has resulted in prejudice.) ** AIR 1964 Andh Pra 168 (170) = (1964) 1 An WR 24 = (1964) 1 Cri LJ 391.

(8) Where the trial Magistrate has simply repeated the contents of the application under Section 145, made before him by the non-applicant and then has directed that under sub-section (4) of Section 145, the police should attach the tree, this is no compliance with the provisions of Section 145 (1). AIR 1958 J and K 17 (17) = 1958 Cri LJ 635 (FB).

(9) The direction to draw up a preliminary order under sub-section (1) is only a matter relating to procedure and not to jurisdiction. AIR 1939 Lah 108 (109) = 40 Cri LJ 519 ** AIR 1932 All 446 (447, 448) = 34 Cri LJ 156.

14. Statement of grounds in the preliminary order. — (1) It is obligatory on the Magistrate to state in writing the grounds of his being satisfied that there is a likelihood of a breach of the peace on account of a dispute concerning immovable property. AIR 1942 Sind 117 (118) = 43 Cri LJ 876 (DB) ** AIR 1947 Oudh 159 (161) ** AIR 1969 Mad 411 (412) = (1969) 1 Mad LJ 37 = 1969

Section 145 — Note 14 (contd.)

Cri LJ 1410 ** (1967) 1 Mys LJ 212 ** (1966) 1 Mys LJ 730 (733, 734) = (1966) 6 Law Rep 823.

(2) The term "grounds" includes the particulars of the information which have satisfied the Magistrate that action is necessary and does not merely mean the source of the Magistrate's information. (1905) 9 Cal WN cclxiii (cclxiii) (DB) ** 19 Suth WR (Cr) 10 (10) (DB).

(3) It is a sufficient compliance with the provisions of sub-section (1) if the police-report or the complaint filed by any of the parties sets out the grounds sufficiently and is expressly referred to by the Magistrate in his preliminary order. AIR 1952 Assam 185 (Pr 6) = ILR (1952) 4 Assam 323 = 1952 Cri LJ 1693 (DB) ** (1905) 2 Cri LJ 637 (648) = 33 Cal 352 (FB) ** AIR 1920 All 227 (229) = 22 Cri LJ 97.

(4) Where an application under this section is dismissed and the Magistrate declines to take action as there is no apprehension of breach of peace, his order is not bad for not giving reasons. 1951 All WR (HC) 483 (484) ** AIR 1945 All 60 (63) = ILR (1944) All 727 = 46 Cri LJ 504.

15. "Parties concerned in such dispute". — (1) The jurisdiction to require particular persons to attend the proceedings would depend upon the Magistrate's being satisfied that they were concerned in such dispute. 24 Cal 55 (61) (FB).

(2) It is the duty of the Magistrate to ascertain, as far as he can, on the materials before him, who are the parties concerned in the dispute before he initiates the proceedings. (1903) 30 Cal 155 (201) (FB) ** (1897) 24 Cal 55 (61) (FB) ** AIR 1925 Nag 457 (458) = 26 Cri LJ 1289.

(3) Magistrate should mention names of the persons concerned in the dispute specifically in the preliminary order, require them to attend the Court and put forward their claims to possession of the property. (1900) 24 Bom 527 (532) (DB) ** 27 Cal 892 (917) (SB) ** (1901) 5 Cal WN 900 (903).

(4) The words "parties concerned in such dispute" do not mean merely the persons actually disputing or persons actually present at or near the land and concerned in the threatened breach of the peace. AIR 1952 Madh B 165 (Pr 6) = 1952 Cri LJ 1449 ** 21 Cal 29 (32) (DB) ** AIR 1946 Pat 389 (391) = 47 Cri LJ 1013.

(5) The words "parties concerned in such dispute" refer to persons claiming to be in possession at the time of the preliminary order though they are not themselves likely to cause a breach of the peace, or are not mentioned in the preliminary order but file their written statements after the publication of the order. (1903) 30 Cal 155 (195, 196) (FB) ** 21 Cal 404 (417) (SB) ** AIR 1946 Pat 389 (391) = 47 Cri LJ 1013 ** AIR 1967 Punj 378 (381) = 1967 Cr LJ 1051.

(6) If during the progress of the enquiry the person who had moved the Magistrate to start the proceedings or the person against whom the proceedings were initiated drop out and the persons really concerned in the dispute appear before the Court the dispute would still be there and it is not at all necessary for the Magistrate to issue a fresh order under Section 145 (1). AIR 1949 All 623 (Pr 11) = ILR (1950) All 720 = 50 Cri LJ 749 ** AIR 1969 Punj 101 (103) = 1969 Cri LJ 506.

(7) It is not necessary that all parties interested in or claiming a right to the property in dispute or entitled to it should be made parties to the proceedings. AIR 1945 Oudh 12 (14) = 46 Cri LJ 680 ** AIR 1953 Cal 777 (780) = 1953 Cri LJ 1782 (DB) ** AIR 1936 All 531 (531, 532) = 37 Cri LJ 886 ** (1903) 30 Cal 155 (198) (FB).

[But see (1894) 21 Cal 29 (32, 33) (DB).]

(8) The owner or proprietor of the property who is in possession through his servant or manager is a person concerned in the dispute. AIR 1917 Mad 742 (743) = 18 Cri LJ 44 (45) ** 21 Cal 915 (919) (DB) ** (1898) 25 Cal 423 (424) (DB) ** (1904) 1 Cri LJ 49 (53) = 31 Cal 48 (FB). (**Overruling** 7 Cal WN 208.) ** AIR 1970 Pat 132 (133).

[See however AIR 1953 Cal 397 (Pr 2) = 1953 Cri LJ 908 (DB).]

(9) Where the application for action under Section 145 does not give any indication that the person mentioned in it as the opposite party was acting as a manager or for anybody else, notice at the stage of the preliminary order can only go to such person and none else. AIR 1953 All 49 (Pr 8) = 1953 Cri LJ 215.

(10) A receiver appointed by a Court who is in possession on behalf of the Court cannot be said to be a person "concerned in the dispute". (1903) 30 Cal 593 (598) (DB) ** (1911) 12 Cri LJ 185 (185) (DB) (Mad).

(11) In a dispute between rival landlords, the tenants who are actually in possession in their own right are necessary parties to the proceedings. AIR 1937 Nag 93 (94) = 38 Cri LJ 395 ** 27 Cal 892 (917) (SB) ** AIR 1916 Cal 727 (727) = 16 Cri LJ 590 (DB).

(12) Where in a proceeding initiated by the Magistrate, the tenant of the land who is supporting the first party, has got no independent dispute of his own and files an affidavit accepting the stand taken by his landlord the proceeding cannot be said to have been vitiated for want of a necessary party. (1965) 3 Law Rep 795 (798).

Section 145 — Note 15 (contd.)

(13) In a dispute between a tenant and his sub-tenant the landlord is not a party to the dispute. AIR 1942 Mad 534 (534) = 43 Cri LJ 741.

(14) Dispute as to possession — Suit against trespasser by person in possession — Owner of disputed land not necessary party. ILR (1966) Cut 139.

(15) In a dispute between two communities the Magistrate may choose the right persons to represent each community and pass an order binding on the communities. AIR 1925 All 316 (317) = 26 Cri LJ 683.

(16) The fact that one of the parties to the dispute is a trustee will not render this section inapplicable. AIR 1936 Mad 188 (189) (DB).

(17) Action against Government under Section 145 is out of question especially under the existing set up of judicial administration in the State where all Magistrates are directly subordinate to Government. AIR 1957 Orissa 80 (85) = ILR (1956) Cut 555 (DB).

(18) Where the authorised agents who are really disputants in the matter of possession are on record then the Magistrate has jurisdiction to proceed in the case though the owners who were out of India on the date of the dispute were not brought on the record. AIR 1959 Raj 63 (69) = ILR (1959) 9 Raj 193 = 1959 Cri LJ 379.

16. Addition of parties. — (1) Subsection (5) does not enable new parties to be added. 4 Cal WN 748 (749) ** (1901) 5 Cal WN 900 (903) ** (1899) 3 Cal WN 329 (331) (DB)

(2-3) It has been held that the Magistrate has power to add parties even after the initiation of the proceedings provided that such parties were originally concerned in the dispute but that such power of adding parties should be exercised before the commencement of the inquiry under sub-section (4). AIR 1952 Pat 270 (Pr 4) = 1952 Cri LJ 942 ** (1903) 30 Cal 155 (201) (FB) ** AIR 1917 Cal 173 (174) = 17 Cri LJ 449 (449) (DB).

(4) Persons whose names are not mentioned in order under Section 145 (1) but who on order being notified appear and file written statements as being persons interested in proceeding before Magistrate, can be impleaded as parties. AIR 1967 Mys 169 (170) = 10 Law Rep 661 = 1967 Cr LJ 1153.

(5) Where vendees of a land, not made parties to a preliminary order made under Section 145, Cr. P. Code in respect of that land, are impleaded without the proceedings having to be taken up afresh, the impleading is correct. 1968 All Cri 286 = 1968 All WR (HC) 447.

(6) Where the proceedings are pending for several years without enquiry after the attachment of the property in dispute and considerable changes have taken place in the constitution of the parties, the Court can amend the previous proceedings by adding or changing the position of certain parties. AIR 1948 Pat 77 (78) = 48 Cri LJ 440.

(7) In all cases of amendment of a proceeding it will not follow as a matter of law that a fresh preliminary order has got to be and must he made or must be deemed to have been made although not expressly made on the date when the proceedings are amended by addition of parties or the like. 1968 Pat LJR 208 (210, 211) (DB).

(8) Addition of parties after commencement of enquiry but before its conclusion — Not barred. AIR 1969 Punj 101 (103) = 1969 Cri LJ 506.

(9) After the commencement of the inquiry new parties cannot be added, but if they are so added that will amount to an irregularity. (1903) 30 Cal 155 (201) (FB).

(10) The question of non-joinder or misjoinder of parties to a proceeding under this section is a matter relating to procedure and does not affect the jurisdiction of the Magistrate. It is at the most an irregularity. AIR 1959 Cal 505 (505) = 1959 Cri LJ 970 ** AIR 1946 Pat 330 (333) = 25 Pat 19 = 47 Cri LJ 328 (DB) ** AIR 1920 Cal 417 (418) = 21 Cri LJ 25 (DB) ** AIR 1952 Madh B 165 (Pr 6) = 1952 Cri LJ 1449.

17. Continuation of proceedings by or against legal representatives — Sub-section (7). — (1) Sub-section (7) specifically provides for bringing the legal representatives of deceased parties on the record and the Court has no power to drop the proceedings on the death of any of the parties. AIR 1934 Cal 787 (788) = 36 Cri LJ 303 (DB) ** AIR 1967 Manipur 47 (48) = 1967 Cri LJ 1660.

(2) Death of party during proceedings — Magistrate is bound to add all persons claiming to be legal representatives even if he is doubtful as to who are the real heirs — Order refusing to add such persons as legal representatives contravenes Section 145 (7) and is illegal. AIR 1967 Manipur 47 (48) = 1967 Cri LJ 1660.

(3) Party to proceeding under S. 145, dying — A person, claiming to be son of deceased and seeking to be impleaded as party to such proceeding — In view of mandatory provision in Section 145 (7) Magistrate has no choice except to implead such person as party to the proceeding — Magistrate has no jurisdiction to embark upon an elaborate inquiry regarding the claim of such person. AIR 1967 All 486 (487) = 1966 All WR (HC) 697 = 1966 Cri LJ 1259.

(4) There is no provision in sub-section (7) of Section 145 requiring notice to be served on any person who is to be impleaded as a legal representative of a

Section 145 — Note 17 (contd.)
deceased party. 1962 (1) Cri LJ 632 (633) = 1961 All LJ 82.

(5) After impleading the legal representatives the proceedings are not to be re-opened and restarted from the very beginning but are to continue from the stage at which the deceased party has died. 1962 (1) Cri LJ 632 (633) = 1961 All LJ 82.

(6) It has been held that where after the filing of a revision petition against an order under this section, the petitioner dies, the High Court has power to bring on record his legal representatives if the ends of justice require it. AIR 1942 Mad 249 (250) = 43 Cri LJ 487.

18. "Attend his Court." — (1) The preliminary order should direct that the parties should attend the Court of the Magistrate issuing the order. AIR 1952 Mys 4 (5) = 1952 Cri LJ 111 ** (1943) 24 Pat LT 326 (327).

(2) The jurisdiction to make the final order is not personal to the Magistrate making the preliminary order. (1895) 22 Cal 898 (902) (DB) ** (1906) 4 Cri LJ 223 (226) (DB) (Cal).

(3) The dismissal of the proceedings merely because one of the parties failed to attend the Court on the date fixed is not warranted. AIR 1958 Bom 450 (451) = ILR (1958) Bom 544 = 1958 Cri LJ 1383 ** ILR (1955) 5 Raj 709 (710) ** AIR 1953 Assam 198 (198) = ILR (1952) 4 Assam 330 = 1953 Cri LJ 1589 (DB) ** AIR 1964 Punj 444 (446) = 1964 (2) Cri LJ 456 = 66 Punj LR 196.

(4) Once the Magistrate dismisses an application even though wrongly, for default of appearance of the applicant, he cannot review his own order and restore the application. AIR 1964 Punj 444 (446) = 66 Pun LR 196 = (1964) 2 Cri LJ 456.

(5) Where by his previous order the Magistrate allows a party to appear by a pleader, he cannot insist upon the personal attendance of the party if they are not willing to appear in Court. AIR 1946 Mad 447 (448) = 47 Cri LJ 936 = ILR (1947) Mad 234.

(6) If both the parties are absent and there is no sufficient material before the Magistrate for proceeding under Section 145, he can proceed under Section 146. AIR 1952 Mys 4 (5) = 1952 Cri LJ 111.

(7) It is illegal for the Sub-Divisional Magistrate to direct the parties to appear before another Magistrate. AIR 1921 Pat 333 (333) = 22 Cri LJ 483.

19. Written statements, documents and affidavits. — (1) The inquiry into the question of possession is not necessarily limited to the allegation made in the written statements. AIR 1916 Mad 967 (969) = 16 Cri LJ 525 (DB).

(2) Failure of the parties to file their statements will not deprive the Magistrate of his jurisdiction to make the enquiry. AIR 1952 Mys 4 (5) = 1952 Cri LJ 111 ** AIR 1923 Pat 369 (370) = 24 Cri LJ 557.

(3) Where the parties do not file statements and the Magistrate is not in a position to decide from the material before him that one of the parties was in possession of the subject-matter of the dispute he has to proceed under Section 146. AIR 1952 Mys 4 (5) = 1952 Cri LJ 111.

(4) The Magistrate should not ordinarily refuse to provide opportunities to the parties to file statements of their respective claims. 178 Ind Cas 251 (252) = 40 Cri LJ 32 (Mad) ** AIR 1924 Pat 783 (783) = 25 Cri LJ 906 ** (1908) 8 Cri LJ 202 = 12 Cal WN 896 (897) (DB).

(5) The Magistrate cannot compel the parties to file written statements. AIR 1952 Mys 4 (5) = 1952 Cri LJ 111.

(6) The practice, as far as Andhra Pradesh is concerned, is that within the time fixed by the Magistrate the parties not only file their written statements, but also all documents and affidavits on which they want to rely in support of their claim. The wording of the section also contemplates the fixing of a time-limit. But if the petitioners are able to satisfy the Magistrate that for reasons beyond their control they could not file certain documents which support their claim in regard to actual possession, the Magistrate would not be precluded from accepting the same, on being so satisfied. AIR 1963 Andh Pra 401 (402) = 1963 (2) Cri LJ 491 = (1963) 1 Andh WR 414.

(7) Documents not marked as exhibits — Cannot be used as legal evidence. AIR 1966 Orissa 170 (171, 172) = 32 Cut LT 256 = 1966 Cri LJ 935.

(8) The report of the Pleader, Commissioner or the Police filed in a case under Section 145 are definitely documents legally put on record and for that purpose the Pleader, Commissioners or the Police officer need not be examined nor their affidavits are essential. 1968 Cri LJ 701 (703) = 1968 BLJR 327 (DB).

(9) Affidavits and documents constitute the evidence in a proceeding under this section. 1966 All WR (HC) 628 = 1966 All LJ 1115.

(10) The Code does not provide any method of swearing affidavits to be used in proceedings under Section 145 of the Code. Sections 539 and 539-A do not obviously apply. Evidence in proceedings under Section 145 regarding possession of immovable property being not of formal nature but of a substantive nature Section 510-A cannot be invoked so as to make Section 539-A applicable in the case of affidavits filed in proceedings under Section 145. AIR 1966 Raj 5 (7) = 1965 Raj LW 222 = 1966 Cri LJ 60.

Section 145 — Note 19 (contd.)

(11) In order that affidavit should be valid evidence in proceeding under Section 145, it may be sworn before any Magistrate who is otherwise competent to administer oath under Section 4 of Oaths Act and receive evidence. AIR 1969 Manipur 3 (5, 6) = 1969 Cri LJ 124. (AIR 1966 Raj 5 and AIR 1963 All 256, **Dissented from.**) ** AIR 1966 Punj 528 (529) = ILR (1967) 1 Punj 604 = 1966 Cri LJ 1479.

[But see 1966 All Cri R 474 = 1966 All WR (HC) 757 (759). (Affidavits receivable as evidence under Section 145 must be sworn before the Magistrate who is seized of the case.) ** AIR 1963 All 256 (256, 257) = 1963 (1) Cri LJ 722 = 1963 All WR (HC) 433. (Affidavits sworn before Oath Commissioner or Oath Officer appointed by High Court — Not proper affidavits — Affidavits can be sworn before Magistrate in whose Court proceedings are pending.)]

[See however AIR 1969 All 405 (406) = 1969 Cri LJ 963. (If evidence is of formal character, affidavit verified by Oath Commissioner is admissible in evidence — Evidence not of formal character — Affidavit will have to be verified by Magistrate himself.)]

(12) Affidavits sworn to before a Sub-Registrar are not admissible in evidence in a case under Section 145 of Criminal Procedure Code pending before the Special First Class Magistrate. (1967) 1 Mys LJ 322.

(13) Where the affidavits have not been filed in proper form or have not been properly sworn to, there is no other alternative but to ignore such affidavits. 1968 Raj LW 361 (364, 365).

(14) Magistrate can admit an affidavit filed at a late stage of the inquiry. AIR 1967 Manipur 23 (26) = 1967 Cri LJ 1342.

20. "Fact of actual possession". — (1) The term "actual possession" means actual physical possession — not necessarily lawful possession. AIR 1954 Pat 182 (184, 186) = 32 Pat 227 = 1954 Cri L Jour 500 (DB) ** AIR 1953 Nag 356 (356) = 1953 Cri L Jour 1795 ** AIR 1928 Cal 610 (639) = 30 Cri L Jour 69 (FB) ** ILR (1965) Cut 89 = 31 Cut LT 761 ** 1961 BLJR 282. (Registered kobalas executed in favour of a party — May prove title but not actual possession.)

(2) Actual possession includes the possession of a mere trespasser. AIR 1959 Raj 63 (72) = ILR (1959) 9 Raj 193 = 1959 Cri L Jour 379 ** AIR 1928 Cal 610 (639) = 30 Cri L Jour 69 (FB) ** 1969 Cri LJ 1312 (1315) = 1968 Pat LJR 639 ** AIR 1962 Pat 249 (252) = 1962 BLJR 865 = 1962 (1) Cri LJ 749.

[But see (1871) 6 Mad HCR (App) xiii (xiii, xiv).]

(3) Actual possession should be real and tangible. ('75) 23 Suth WR (Cr) 45 (48) (DB) ** AIR 1966 Punj 246 (247, 248) = 1966 Cri LJ 688 = 1965 Pun LR (Supp) 111 (DB) ** AIR 1962 Pat 249 (252) = 1962 (1) Cri LJ 749 = 1962 BLJR 865.

(3a) Proceedings under S. 145 — Should be decided by Magistrate before whom they are initiated — Only in extreme cases — Where complicated questions of law and fact arise making it extremely difficult for him to arrive at a conclusion he should take advantage of Section 146, Criminal P. C. 1970 Cri LJ 614 (615) (All).

(4) There should be effective occupation and control over the property. AIR 1954 Bilaspur 10 (12) = 1954 Cri LJ 1773 ** AIR 1948 Mad 118 (118) = 49 Cri L Jour 65 ** AIR 1962 Pat 249 (252) = 1962 BLJR 865 = 1962 (1) Cr LJ 749 ** AIR 1960 Pat 505 (505) = 1960 BLJR 328 = 1960 Cr LJ 1477.

(5) A stealthy act of ploughing and sowing in the absence of the other side is neither real nor tangible possession. AIR 1922 Pat 371 (372) = 23 Cri L Jour 125.

(6) The possession contemplated by the section is one that is continuous. AIR 1922 Cal 502 (503) = 24 Cri L Jour 175 (DB).

(7) An isolated act of trespass or the possession of the property for one day in a year or one day in a week is not such possession as is contemplated by the section. AIR 1922 Cal 502 (503) = 24 Cri L Jour 175 (DB) ** AIR 1934 Pat 565 (570) = 36 Cri L Jour 146 (DB) ** AIR 1960 Pat 505 (506) = 1960 Cri LJ 1477 = 1960 BLJR 328.

(8) By continuous possession is meant such possession which a party in possession may have to exercise, has exercised, or exercises whenever he likes. AIR 1950 Orissa 59 (Pr 4) = ILR (1949) 1 Cut 635 = 51 Cri L Jour 674 ** AIR 1927 Cal 313 (315) = 28 Cri L Jour 343 (DB).

(9) Continuity of possession should be understood with reference to the object over which it is exercised. AIR 1950 Orissa 59 (Pr 4) = ILR (1949) 1 Cut 635 = 51 Cri L Jour 674 ** AIR 1927 Cal 313 (315) = 28 Cri L Jour 343 (DB).

(10) 'Actual' possession is only such possession as the nature of the property is capable of. AIR 1942 Mad 249 (251) = 43 Cri L Jour 487 ** AIR 1955 Andhra 99 (104) = ILR (1955) Andhra 271 = 1955 Cri L Jour 909 (DB) ** AIR 1949 Pat 146 (159) = 50 Cri L Jour 299 (SB) ** AIR 1939 Pat 209 (213) = 40 Cri L Jour 631 (DB).

(11) Actual possession is not confined to mere bodily, personal possession. (1872) 18 Suth WR (Cr) 11 (13) = 9 Beng LR 229 (DB).

[See however AIR 1938 Mad 654 (655) = 39 Cri L Jour 922.]

Section 145 — Note 20 (contd.)

(12) A person may be deemed to be in actual possession of the property by reference to the theory of constructive possession. AIR 1949 Pat 146 (158) = 50 Cri L Jour 299 (SB) ** AIR 1963 Assam 31 (35) = ILR (1962) 14 Assam 244 = 1963 (1) Cri LJ 417 (DB).

[But see AIR 1952 Orissa 26 (Pr 5) = 1952 Cri L Jour 148 ** 1964 (2) Cri LJ 100 (101) = (1963) 2 Mys LJ 361.]

(13) Actual possession includes the possession of the master through his servant, of the proprietor through his agent or manager of the landlord through his immediate tenant or of a usufructuary mortgagee. AIR 1954 Pat 135 (136) = 1954 Cri L Jour 209 = 32 Pat 621 (DB) ** (1904) 1 Cri L Jour 49 (55) = 31 Cal 48 (FB) ** AIR 1953 Mys 27 (Pr 5) = ILR (1953) Mys 309 = 1953 Cri L Jour 644.

(14) Even if the tenant attorns to the new landlord that will not amount to the dispossession of the old landlord unless as a result of the attornment rent is paid or crop is delivered to the new landlord. AIR 1953 Mys 27 (Pr 6) = ILR (1953) Mys 309 = 1953 Cri L Jour 644 ** AIR 1953 Orissa 99 (102) = ILR (1951) Cut 576 = 1953 Cri L Jour 737 ** 1964 (2) Cri LJ 100 (101) (Mys).

(15) Though the possession of a property by a person may originally be that of a servant on behalf of his master, that possession becomes the servant's own when he continues to remain in possession after leaving the service of his master. (1961) 27 Cut LT 10 = (1960) 2 OJD 431.

(16) In the case of a rightful owner, slight evidence of possession may be enough to uphold his claim to actual possession. On the other hand, in the case of a wrong-doer, such slight evidence of possession may not be accepted as evidence of actual possession. AIR 1949 Pat 146 (160) = 50 Cri L Jour 299 (SB).

(17) Where there is a contest between a party in actual possession and another party who is only in constructive possession, the dispute must be determined in favour of the party in actual possession. AIR 1949 Pat 146 (159) = 50 Cri L Jour 299 (SB) ** 1961 (2) Cri LJ 426 (429) (Raj). (Dispute between agent in actual possession and principal.)

(18) In each case the Court has to determine the question of possession as a question of fact. AIR 1949 Pat 146 (160) = 50 Cri L Jour 299 (SB).

(19) The word "actual possession" would necessarily have to be given a more comprehensive meaning implying that possession contemplated includes that of a landlord claiming rents or profits from person or persons who are liable and willing to pay him the same. (1965) 3 Law Rep 795 (801).

(20) Where the dispute is between the landlord and his tenant, the Court cannot find possession of the landlord through his tenant. ('91) 2 Weir 107 (107) (DB) ** AIR 1915 Mad 1105 (1106) = 16 Cri L Jour 284 (285).

(21) The possession of a servant which is simply that of his master and merely permissive cannot be maintained as against his master. AIR 1923 Mad 60 (63) = 24 Cri L Jour 100 ** AIR 1926 Nag 286 (287, 288) = 27 Cri L Jour 212 ** 1967 All WR (HC) 641 ** ILR (1962) 12 Raj 660 (662) = 1962 Raj LW 363 ** AIR 1960 Pat 60 (61) = 1959 BLJR 407 = 1960 Cri LJ 269.

(22) Mere continuation of one land into another without any ridge between them is no evidence of oneness in title or possession especially in a place where soil is not all along productive. AIR 1955 Pat 161 (166) = 33 Pat 397 = 1955 Cri L Jour 597 (DB).

(23) If there is no dispute or clash of interest between the person who is in actual possession, and the petitioner through whom such person is in possession, the petitioner in constructive possession has a right to come to Court if his possession is interfered with in circumstances mentioned in Section 145. AIR 1959 Raj 50 (51) = ILR (1957) 7 Raj 936 = 1959 Cri L Jour 236.

(24) Where there is dispute between the master and the servant themselves about the possession of the property then the word 'possession' has to be interpreted in the sense of actual physical possession. AIR 1959 Raj 63 (69, 71) = ILR (1959) 9 Raj 193 = 1959 Cri L Jour 379.

(25) Natural guardian continuing in possession even after the ward became major — Guardian's possession held, not that of ward — His possession must be recognised for purposes of Section 145, proceedings. 1969 Cr LJ 1312 (1314) = 1968 Pat LJ 639.

(26) Dispute between A and B over possession of fishery — B in possession not as servant or workman under A but as an independent sub-contractor from A — B's possession cannot be considered to be possession of A and hence applicability of Section 145 to case cannot be excluded. AIR 1966 Goa 32 (35) = 1966 Cri LJ 1415 (FB).

(27) In a case where a Mutwalli of Wakf parted with possession of Sir land in favour of another for purpose of cultivation thereon by such person on batai system, even if the said person is deemed to be in actual possession of the land till the harvesting of the batai crop, the real tenant of the Sir plots being the mutwalli, the possession of the holdings after the removal of the crops, must be deemed to be that of Mutawalli or the wakf inasmuch as in the case of vacant land, possession follows title. 1965 All WR (HC) 788 = 1965 All Cri R 527.

Section 145 — Note 20 (contd.)

(28) Delivery of possession by Civil Court, in execution of a decree to the decree-holder as against the judgment-debtor, is as effective as actual physical possession. AIR 1959 Punj 518 (519) = 1959 Cri L Jour 1212 ** (1968) 34 Cut LT 655.

(29) The Magistrate should come to a definite conclusion about actual possession of the property. It is not enough in a proceeding under Section 145 to say that a particular person was in possession of an undivided share. The Magistrate should specify as accurately as possible the land which is the subject-matter of dispute. AIR 1959 Pat 476 (477) = 1959 Cri L Jour 1205.

(30) When a dispute likely to cause a breach of the peace, arises between the agent and third parties the principal cannot come in and ask the Magistrate to adjudicate upon his title, specially when his title is also disputed by the agent, and the agent sets up his own title. Even when the dispute is between the principal and the agent if the agency is disputed, the Magistrate will have to proceed on the basis of actual possession. AIR 1959 Tripura 1 (2) = 1959 Cri L Jour 89.

(31) Under Section 145 the Magistrate has to determine the fact of actual possession of the subject in dispute and not that a particular party was in possession some years before. (1963) 2 Mys LJ 281 = ILR (1963) Mys 763. (AIR 1955 Assam 1, **Dissented from.**)

(32) Under Section 145, Magistrate has only to decide about actual possession and not about right to possession. AIR 1963 Assam 38 (40) = 1963 (1) Cri LJ 565 = ILR (1963) 15 Assam 66 ** 1968 Cri LJ 1136 (1140) (Guj).

(33) Mere proof of title alone is not proof of actual possession. AIR 1964 Ker 308 (308) = 1964 Ker LT 179 = 1964 (2) Cri LJ 682.

(34) Dispute regarding possession of land — No dispute as to identity — Magistrate can decide factum of possession without issuing commission or to have local inspection. 1964 (2) Cr LJ 99 (99, 100) (Manipur).

(35) Standard of proof required in proceedings under Section 145 is not the same as in other criminal cases, but what the Magistrate has to decide is as to whose evidence is better on actual possession. AIR 1966 Goa 32 (36) = 1966 Cri LJ 1412 (FB).

21. "Land or water or the boundaries thereof". — (1) The following classes of disputes have been held to fall within the purview of this section. —

(a) Dispute regarding the right to collect the rent in respect of immovable property. (1885) 11 Cal 413 (416) (DB) ** AIR 1918 Mad 1203 (1203) = 18 Cri L Jour 156 (157).

[See however (1907) 5 Cri L Jour 394 (395) = 10 Oudh Cas 89.]

(b) Dispute relating to possession of standing crops and crops harvested but still on the land. AIR 1927 All 99 (100) = 27 Cri L Jour 1363 ** ILR (1945) Kar 72 (75) (DB) ** AIR 1917 Pat 183 (184) = 18 Cri L Jour 756 (DB).

(c) Dispute as to trees growing on the land. AIR 1920 Cal 708 (710) = 22 Cri L Jour 131 (DB) ** ILR (1957) Ker 646 (652) ** AIR 1948 All 94 (95) = 49 Cri L Jour 15 = ILR (1947) All 754.

(d) Dispute as to the right to the lac grown on the trees and as to the right to tap the trees. AIR 1934 Nag 112 (113) = 35 Cri L Jour 1381 ** AIR 1918 Pat 237 (237) = 19 Cri L Jour 656 (DB).

[But see AIR 1920 Cal 708 (710) = 22 Cri L Jour 131 (DB).]

(e) Dispute as to possession of a bund. AIR 1930 Cal 59 (60) = 31 Cri L Jour 944 (DB).

(f) Dispute as to possession of a temple. AIR 1953 All 382 (Prs 3, 4) = 1953 Cri L Jour 828 ** AIR 1925 Mad 779 (779) = 26 Cri L Jour 1057.

(g) Dispute as to mining and boring rights. AIR 1939 Pat 209 (211) = 40 Cri L Jour 631 (DB) ** AIR 1922 Cal 83 (84, 85) = 24 Cri L Jour 108 (DB) ** AIR 1949 Pat 146 (148) = 50 Cri L Jour 299 (SB).

(h) Dispute as to right to ferry. (1899) 26 Cal 188 (193, 194) (DB).

(i) Dispute as to right to fishery. AIR **1951 SC 247 (252) = 1951 SCR 431 = 30 Pat 871** ** AIR 1919 Pat 210 (212) = 20 Cri L Jour 199 ** AIR 1966 Goa 32 (34) = 1966 Cri LJ 1412 (FB).

(j) Dispute as to channel rights when the channel is used for irrigation purposes. AIR 1924 Oudh 341 (341, 342) = 25 Cri L Jour 227.

(k) Dispute relating to a mill. AIR 1951 Mad 722 (Pr 1).

(2) The following classes of disputes have been held not to come within the purview of this section —

(a) Disputes as to crops cut and removed from the land. AIR 1953 Orissa 99 (101) = ILR (1951) Cut 576 = 1953 Cri L Jour 737 ** AIR 1949 Pat 58 (59) = 27 Pat 670 = 49 Cri L Jour 657 (DB).

[But see ('40) 2 Sau LR 125 (127) ** AIR 1928 Sind 68 (69) = 28 Cri L Jour 989 (DB).]

(b) Disputes as to the right to share in the rents and profits of immovable property. ('96) 23 Cal 80 (82, 86) (DB) ** (1909) 36 Cal 986 (989) = 11 Cri L Jour 28 (DB) **

Section 145 — Note 21 (contd.)

AIR 1922 Oudh 199 (200) = 23 Cri L Jour 650 (DB).

(c) Dispute as to the rights to weigh grain in a market. AIR 1922 All 430 (430) = 23 Cri L Jour 612.

(d) Dispute regarding collections and offerings in a temple. AIR 1953 All 382 (Prs 3, 4) = 1953 Cri L Jour 828 ** AIR 1927 Nag 333 (334) = 28 Cri L Jour 687.

[See however AIR 1941 Nag 171 (174) = 42 Cri L Jour 675 ** AIR 1960 Pat 189 (190) = 1959 BLJR 780 = 1960 Cr LJ 506.]

(e) Dispute relating to collection of fees from pilgrims at Sradh ceremony at Gaya. (1906) 3 Cri L Jour 214 (215) (DB) (Cal).

(f) Dispute regarding the right to remove sandal wood paste from an idol. (1902) 4 Bom LR 438 (439) (DB).

(g) Dispute as to the right of succession to a mutt and its appurtenances. (1869) 11 Suth WR (Cr) 23 (23) (DB).

(h) Dispute as to right to joint possession of immovable property. AIR 1942 Sind 117 (119) = 43 Cri L Jour 876 (DB) ** AIR 1945 Sind 110 (113) = ILR (1945) Kar 78 = 47 Cri L Jour 78 (DB) ** AIR 1935 Nag 44 (45).

(i) Dispute regarding the film to be exhibited in a Cinema building. AIR 1950 Lah 132 (Pr 5) = Pak LR (1950) Lah 172 = 51 Cri L Jour 1142.

(j) Right to carry on boring operation for coal. AIR 1920 Cal 824 (827, 828) = 22 Cri L Jour 99 (DB).

(3) Moveable property as such would not ordinarily come within the purview of the section unless it is in the shape of standing crops or other produce of land or rents and profits of the land in dispute. AIR 1941 Oudh 515 (516) = 42 Cri L Jour 710 ** AIR 1920 Mad 209 (211, 212) = 21 Cri L Jour 73 (DB) ** AIR 1922 All 528 (528) = 24 Cri L Jour 85.

(4) Where moveable property is included in the immovable property or is in the premises of such immovable property, the Magistrate has jurisdiction to pass orders under this section even in respect of such property. (1912) 13 Cri LJ 222 (223) (Mad) ** AIR 1949 Pat 58 (60) = 27 Pat 670 = 46 Cri L Jour 657 (DB) ** 1964 BLJR 875.

[But see AIR 1920 All 225 (226) = 21 Cri L Jour 242 (DB).]

(5) Trees which are cut and severed a few hours or days before the preliminary order and are still lying on or near the land are held to come within the expression "crop or produce of land." AIR 1950 Mad 658 (Pr 2).

(6) Where, the preliminary order makes a sharp distinction between the "lands in dispute" on the one hand and "produce in dispute" on the other and both these are severable from each other the fact that the proceedings are bad in respect of the "produce in dispute" will not invalidate the entire proceedings provided no prejudice is caused to either party by the action of the Magistrate. AIR 1953 Orissa 99 (101) = ILR (1951) Cut 576 = 1953 Cri L Jour 737.

(7) The mere fact that the land is shamilat will not preclude the Court from making inquiry and taking proceedings under this section. AIR 1936 Lah 1015 (1015) = 36 Cri L Jour 123 ** AIR 1922 Lah 348 (349) = 23 Cri L Jour 325.

(8) Attached land in charge of receiver caretaker — Order regarding produce of —Disputes between jotedars and bargdars — Bhagchas officer had jurisdiction under Land Reforms Act — **Held,** case did not involve dispute over possession of land. (1962) 66 Cal WN 947.

(9) Where certain waste lands reserved for assignment were assigned to Harijans, under the Revenue Board's Standing Orders, the Harijans got title to the lands in question, and their right to remain in possession should be protected and disturbance of such possession should be forbidden until evicted in due course of law. (1960) 2 MLJ 473 = 1960 Mad WN 475.

22. Service and publication of the preliminary order — Sub-section (3). — (1) The object of publication of the preliminary order is to bring the proceedings to the notice of all persons interested in the property in dispute besides the persons named in the preliminary order and also to inform them of the grounds on which the proceedings are instituted. AIR 1953 Hyd 286 (288) = 1953 Cri L Jour 1862 = ILR (1953) Hyd 173 ** (1905) 2 Cri L Jour 618 (623, 624) = 33 Cal 68 (FB) ** 1968 All Cri 286 = 1968 All WR (HC) 447 ** 1967 All WR (HC) 570 = 1967 All Cri R 370.

(2) The order should specify the date and the place where the inquiry by the Magistrate is to be held in order to enable the parties to put in their written statements and to adduce evidence in support of their respective claims. AIR 1930 Sind 52 (53) = 30 Cri L Jour 1124 (DB) ** (1903) 7 Cal WN 705 (706) (DB).

(3) The Magistrate cannot issue a warrant to compel the attendance of a party. AIR 1952 Mys 4 (5) = 1952 Cri L Jour 111.

(4) All processes for service or publication of the order should be issued at Government expense. AIR 1925 Nag 142 (143) = 25 Cri L Jour 1109.

(5) The Magistrate should satisfy himself before proceeding to make the in-

Section 145 — Note 22 (contd.)

quiry under sub-section (4), that proper service of the order has been effected. (1904) 1 Cri L Jour 44 (46) (DB) (Cal) ** (1904) 1 Cri L Jour 716 (717) (DB) (Cal).

(6) Where a party appears and complains that he was not properly served, it is the duty of the Magistrate to investigate as to the truth or falsity of the allegations made by him. AIR 1951 Assam 141 (Pr 6) = ILR (1951) 3 Assam 24 = 52 Cri L Jour 1406 (DB) ** (1904) 1 Cri L Jour 44 (46) (DB) (Cal) ** AIR 1920 Cal 541 (542) = 21 Cri L Jour 848.

(7) The omission to affix a copy of order on the spot as required by Section 145 (3) is only an irregularity and does not invalidate the final order in the absence of any prejudice to the parties concerned. AIR 1958 Tripura 37 (37) = 1958 Cri L Jour 1250 ** ILR (1959) Cut 1 (4, 5) = 25 Cut LT 39.

[But see 1969 All Cr R 503 (504) (All). (Irregularity, not curable — Entire proceedings vitiated.)]

(8) Order drawing up proceedings passed in presence of parties — One group though not present represented by common pleader — Presumption that all persons of group had knowledge of the order can be made. 1962 BLJR 405.

(9) Where a person though interested is not a party to the proceedings under Section 145, the onus is on the contesting party who asserts that that person is bound by the order to plead and prove that either the notice under Section 145 (1), or the writ of attachment was served on the locality and that that person had notice of the same. AIR 1966 Orissa 49 (52) = (1965) 31 Cut LT 1112 = 1966 Cri LJ 275.

23. Omission to serve or publish the order. — (1) An omission to carry out the procedure laid down for the service or publication of the order is not an error of jurisdiction, but, if anything, an irregularity which may be sufficient to invalidate the proceedings only in cases where the parties are prejudiced by reason of such irregularity. AIR 1952 Madh B 165 (Pr 11) = 1952 Cri L Jour 1449 ** (1905) 2 Cri L Jour 618 (633, 634) = 33 Cal 68 (FB). (2 Cri L Jour 569 (Cal) and 1 Cri L Jour 529 (Cal), **Overruled.**) ** AIR 1956 Vindh Pra 43 (44) = 1956 Cri L Jour 1445 ** AIR 1954 All 24 (26) = 1953 Cri L Jour 1892

[But see AIR 1958 Punj 47 (50) = ILR (1957) Punj 1968 = 1958 Cri L Jour 215.]

24. Attachment in case of emergency. — (1) The power to order interim attachment of the property in dispute is limited to cases in which the likelihood of a breach of the peace is so imminent as to call for immediate action to prevent it, and should, therefore, be exercised with the great caution. AIR 1953 Vindh Pra 25 (27) = 1953 Cri LJ 1198 ** AIR 1958 J and K 17 (18) = 1958 Cri L Jour 635 (FB) ** AIR 1965 J and K 69 (70) = 1965 (2) Cri LJ 209 = 1965 Kash LJ 16 ** AIR 1965 Raj 143 (144, 145, 146) = 1965 Raj LW 1 = 1965 (2) Cri LJ 242.

(2) The provisions of third Proviso to Section 145 (4) with regard to attachment are not applicable to a proceeding under Section 147. AIR 1961 Pat 369 (371) = 1961 BLJR 144 = 1961 (2) Cr LJ 371.

(3) The Magistrate has no jurisdiction to attach a property merely for the purpose of avoiding future litigation. AIR 1926 Lah 205 (205, 206) = 27 Cri L Jour 761.

(4) The question whether the matter is one of emergency as to justify an attachment is one within the Magistrate's discretion. 1951 Ker L Tim 115 (116) ** AIR 1933 Lah 409 (410) = 34 Cri L Jour 342.

(5) The Magistrate cannot delegate to the police his power to make an attachment. AIR 1953 All 455 (Pr 4) = 1953 Cri LJ 1009 ** AIR 1954 All 579 (Prs 3, 4) = 1954 Cri L Jour 1257 ** AIR 1952 All 186 (188) = 1952 Cri L Jour 379.

(6) Apart from the power to attach the property in urgent cases, the Magistrate has no jurisdiction under this section to pass any other temporary order in respect of the property pending inquiry into the question of possession. AIR 1954 Madh B 144 (144) = 1954 Cri L Jour 1223 ** AIR 1925 Rang 111 (112) = 26 Cri L Jour 324 ** AIR 1953 Madh B 95 (96) = 1953 Cri L Jour 641.

(7) The Magistrate has no jurisdiction in proceedings under Section 145 to forbid both parties from entering on the land. He can only attach the land if he considered the case one of emergency. 1963 (1) Cri LJ 823 (827) (Manipur).

(8) The attachment is not effected merely by an order of restraint on alienation as in civil cases. AIR 1943 Pat 124 (125) = 44 Cri L Jour 414 (DB) ** AIR 1920 Mad 209 (211) = 21 Cri L Jour 73 (DB) ** 1968 Cri LJ 1136 (1141) (Guj) ** 1962 BLJR 405. (Factual attachment essential.)

[See also AIR 1934 Nag 142 (143) = 30 Nag LR 298 = 35 Cri L Jour 991.]

[But see AIR 1918 Pat 197 (198, 201) = 19 Cri L Jour 249 (DB).]

(9) There must be an order prohibiting entry upon the land or prohibiting the person or persons concerned from going over and making any alteration in the situation of the land. AIR 1960 Assam 109 (110, 111) = 1960 Cr LJ 891.

(10) The Magistrate should take possession of the property and manage it during the pendency of the proceedings and for this purpose it is quite competent for him in his administrative capacity or in the exercise of his inherent jurisdiction to appoint some person to manage on his behalf and subject to his control and supervision, or to settle the land with the

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highest bidder. AIR 1943 Pat 124 (125) = 44 Cri L Jour 414 (DB) ** AIR 1925 Nag 297 (298) = 26 Cri L Jour 1378 ** AIR 1969 Raj 82 (83, 85) = 1969 Raj LW 15.

[But see (1905) 2 Cri L Jour 13 (14) (DB) (Cal).]

(11) It is highly undesirable for the Magistrate to appoint one of the parties to the dispute to manage the property on his behalf. AIR 1953 Madh B 95 (96) = 1953 Cri L Jour 641.

[See 1961 (2) Cri LJ 580 (581) (J and K). (Receiver appointed by Court allowing one of the parties to cultivate disputed land and to remove crop — Magistrate should investigate and get the crop deposited in the Court and dispose it of according to law.)]

(12) The person appointed to manage the attached property can be reimbursed for legitimate costs incurred by him in the management of the property. AIR 1938 Rang 88 (90) = 39 Cri L Jour 484.

(13) The person appointed to manage the attached property is only an agent of the Magistrate and has not got all the powers of a receiver appointed under Section 146 or under the Civil Procedure Code. AIR 1951 Mad 764 (Pr 3) = 52 Cri L Jour 705 ** AIR 1938 Rang 88 (89) = 39 Cri L Jour 484 ** AIR 1920 Mad 209 (211) = 21 Cri L Jour 73 (DB).

(14) Where the Supurdar, to whom the property in dispute is made over in proceedings under this section fails to restore it to the party entitled, the Magistrate cannot attach the property of the Supurdar under Order 40, Rule 4, Civil P. C. AIR 1950 All 490 (Prs 4, 5) = 51 Cri L Jour 1314.

(15) It has been held that apart from power of the Magistrate to appoint a person to manage the property on his behalf the Magistrate has no jurisdiction to appoint an interim receiver of the property in dispute. AIR 1929 Lah 223 (224) = 30 Cri L Jour 411 ** (1910) 11 Cri L Jour 536 (536) (Mad).

[But see AIR 1969 Ker 188 = (1968) Mad LJ (Cr) 601 = 1969 Cri LJ 735. (Magistrate acting under Section 145 (4) has power not merely to attach property, but also to appoint a receiver to take charge of the same — AIR 1929 Lah 223 and 1933 Mad WN 917, **Dissented from.)]**

(16) Once an attachment is made under this section, the property attached passes into custodia legis and the custody of the Court during the attachment enures for the benefit of such party as is found by the Magistrate to be in possession of the subject of dispute at the institution of the proceedings. AIR 1956 Pat 116 (122) = 1956 Cri L Jour 543 (DB) ** (1890) 17 Cal 814 (819) = 17 Ind App 62 (PC) ** **AIR 1966 SC 359 (361) = (1965) 3 SCR 655** ** ILR (1964) 1 Punj 902 (904) = 1964 Cur LJ 113 ** AIR 1961 Pat 425 (435) = 1961 (2) Cr LJ 662.

(17) By interim attachment under Section 145, the Court takes possession of the property in dispute and the same is restored to the party which ultimately, comes out successful in the proceeding. It is not, however, meant for enabling one of the parties to use the property in accordance with their claim to exercise the customary right over the land, which is itself the subject-matter of enquiry in the proceeding. AIR 1961 Pat 369 (370) = 1961 BLJR 144 = 1961 (2) Cri LJ 371.

(18) The mere fact that the bailiff of the Court was asked to attach the property and he returned the warrant unserved expressing his inability to execute it, cannot amount to the warrant having been executed and it cannot, therefore, be regarded that the property was taken under Government supervision. AIR 1954 Hyd 93 (93) = 1954 Cri LJ 671.

(19) The Magistrate has no jurisdiction to pass an order of attachment before drawing up the preliminary order. AIR 1951 All 621 (621, 622) = 52 Cri LJ 893 ** AIR 1958 J and K 17 (17, 18) = 1958 Cri LJ 635 (FB) ** AIR 1958 Punj 47 (51) = ILR (1957) Punj 1968 = 1958 Cri LJ 215 ** AIR 1965 J and K 69 (70) = 1965 Kash LJ 16 = 1965 (2) Cri LJ 209 ** AIR 1960 Assam 109 (110) = 1960 Cr LJ 891.

[See however AIR 1943 Pat 124 (125) = 44 Cri LJ 414 (DB).]

(20) Attachment order can be made along with the preliminary order without it being first served on parties. AIR 1965 Raj 143 (144) = 1965 (2) Cri LJ 242 = 1965 Raj LW 1 ** 1964 All Cr R 438 = 1964 All WR (HC) 591. (Apprehension of breach of peace — Order conditionally attaching property and directing parties to put in written statement and lead evidence — Order held was reasonable and in accordance with law.) ** AIR 1962 Madh Pra 104 (104) = 1961 MPLJ 1241 = 1962 (1) Cr LJ 437 (1).

(21) The third proviso empowers the Magistrate to pass an order which is of an emergent nature, even before concluding his inquiry contemplated in the sub-section. 1968 Cri LJ 1136 (1140) (Guj).

(22) The Magistrate cannot continue the attachment or confirm it after the apprehension of a breach of the peace has ceased and the proceedings have been dropped. AIR 1952 Tripura 29 (30) = 1953 Cri LJ 71.

(23) The order of attachment does not subsist after the Magistrate has found in favour of a party on the question of possession. AIR 1946 Pat 330 (334) = 25 Pat 19 = 47 Cri LJ 328 (DB).

(24) Once an attachment is effected by a Magistrate under Section 145, he has no jurisdiction to set it aside unless he cancels the preliminary order under the

Section 145 — Note 24 (contd.)

provisions of Section 145 (5) or decides the entire proceedings finally. AIR 1965 J and K 69 (70) = 1965 Kash LJ 16 = 1965 (2) Cri LJ 209.

(25) The order of attachment will continue pending the decision of the Magistrate himself under this section, and not the decision in any other case that might be pending before any other Magistrate or any other Court. (1938) 42 Cal WN 351 (352) (DB).

(26) A receiver appointed by a civil Court in a civil suit cannot obtain possession of the property attached under this section without the permission of the Magistrate concerned. ILR (1961) Cut 264 (267, 268).

(27) Where a party is dispossessed by an order of attachment under this section, he cannot file a summary suit under Section 9 of the Specific Relief Act for recovery of possession. (1908) 7 Cal LJ 547 (548, 551, 552) (DB) ** AIR 1918 Cal 137 (137) (DB).

(28) Wrongful attachment under Section 145 — Suit based on injury to property maintainable, though there is provision for award of costs in respect of proceedings under the sections. AIR 1968 Pat 248 (253) = 1969 BLJR 411 (DB).

(29) An order of a Magistrate directing the recovery of a sum of money from a lessee holding certain property under a Receiver appointed in proceedings under Section 145, as damages for alleged waste (namely over-cropping of cocoanut trees) is altogether without jurisdiction. AIR 1959 Ker 55 (56) = 1959 Cri LJ 196 (DB).

(30) A Magistrate acting under Section 145 has no doubt, no jurisdiction to pass an order of attachment specifically with respect to movable property but where an order is passed in respect of immovable property which may incidentally include movable property which is either appurtenant to or lying in the immovable property, the order cannot be said to be suffering from any such infirmity. AIR 1963 J and K 2 (3) = 1962 Kash LJ 3 = 1963 (1) Cr LJ 52.

(31) Reaped crop of sugar-cane grown on disputed plot is also included under land and can alone be attached under proviso to sub-section (4) of Section 145 without attachment of the land, when the dispute was not only with regard to the land but also the standing or reaped sugar-cane crop. 1963 All Cr R 346 = 1963 All WR (HC) 620.

(32) Case under Section 107 converted into one under Section 145— C. I. sheets removed and stored by petitioner — Seizure of C. I. Sheets on production by petitioner after conversion of case into one under Section 145. — C. I. Sheets held ceased to be immovable property when they were removed and hence could not be attached. AIR 1968 Manipur 24 (25) = 1968 Cr LJ 188.

(33) An order of attachment under this section does not imply a prohibition against the parties concerned or even an outsider from entering into possession of the property attached — A violation of such an order by any person cannot be punished under Section 188, Penal Code. But he can be proceeded against under Section 447, Penal Code or under Contempt of Courts Act. AIR 1961 Assam 94 (95, 96) = 1961 (2) Cri LJ 64 ** 1968 All WR (HC) 448 (450) (DB).

25. "Crops or other produce subject to speedy and natural decay" — Sub-section (8). — (1) If the land with the crop is attached, the Magistrate has full power to deal with the crop apart from the provisions of Section 145 (8). AIR 1943 Pat 124 (125, 126) = 44 Cri LJ 414 (DB) ** AIR 1955 Him Pra 4 (5) = 1955 Cri LJ 265.

(2) Where in proceedings under Section 145, standing crops are attached and kept in the custody of sapurdar it is the bounden duty of the Magistrate under the provisions of Cl. (8) of Section 145 to make an order to the effect that the property should be sold and the sale proceeds of such property should be kept in the custody of the sapurdar which upon the completion of the inquiry, could be made over to the person entitled to it. AIR 1960 All 380 (382) = 1960 Cri LJ 730 (DB).

(3) The word "produce" is not necessarily confined to what is grown from the ground. It refers also to finished articles or semi-finished articles made from raw material. AIR 1930 Oudh 165 (166) = 31 Cri LJ 688.

(4) The mere fact that a sale has not commenced at the appointed hour or that it did not continue till the close of the day does not make it irregular. AIR 1959 Mys 50 (51) = ILR (1958) Mys 151 = 1959 Cri LJ 340.

(5) It is necessary for a Magistrate to pass such order as he thinks fit under Section 145 (8), even though he is of opinion that in a revision against his order declaring one of the parties to be in possession the High Court, while setting aside the order, has given no definite finding on the question of possession. He should consider whether prima facie one of the two parties is entitled to the money in deposit. 1956 Pat LR 594 (596).

26. Procedure at the inquiry. — (1) The procedure to be adopted in an inquiry under this section is prescribed by the section itself. AIR 1923 Pat 53 (54) = 24 Cri LJ 595 (DB).

(2) The inquiry is necessarily a short and summary one, and the words "if possible" in sub-section (4) show that it is unnecessary for the Magistrate to

Section 145 — Note 26 (contd.)
formulate a decision on the question of possession if it should present insuperable difficulties. He should either proceed under Section 146 or under the provisions of Section 107 in such cases. (1901) 25 Bom 179 (184) (DB) ** AIR 1926 Bom 313 (313) = 27 Cri LJ 734 (DB).

(3) Under Section 145, as amended, for the purposes of the inquiry affidavits alone are essential and not the oral statements. However, the proviso to Section 145 (4) empowers the Magistrate to summon and examine any person whose affidavit has been put in as to the facts contained therein. Adducing evidence by way of documents and affidavits being a rule and oral testimony being an exception to be permitted only at the discretion of the Magistrate, it is necessary to exercise such discretion only in fit cases. Further, its exercise should be judicial and not arbitrary. 1957-1 Andh WR 210 (211) ** AIR 1965 Tripura 43 (44) = 1965 (2) Cri LJ 811.

(4) A Magistrate enquiring into a matter arising under S. 145 is not precluded from recording oral evidence if he considers such evidence to be necessary. To say that sub-s. (4) of the section which requires a Magistrate enquiring into a matter under Section 145 to peruse the statements, document and affidavits produced by the parties and conclude the enquiry on the basis of those materials bars him from recording oral evidence is to overlook the provisions of sub-section (9) which controls sub-section (4). 1962 Mad LJ (Cri) 354 = ILR (1961) Mys 964.

(5) Where the Magistrate had not been requested by the opposite party to call any of persons who had put in their affidavits as witnesses and he did not feel it necessary to summon any of the deponents for examination he acts entirely within his powers in confining his attention to the affidavits and other documentary evidence produced in the case. AIR 1957 Mys 43 (43) = ILR (1956) Mys 369 = 1957 Cri LJ 467.

(6) By virtue of the first proviso to Section 145 (4) only those persons who have filed affidavits can be examined as witnesses. AIR 1958 Orissa 79 (80) = ILR (1957) Cut 676 = 1958 Cri LJ 650 ** AIR 1966 Orissa 170 (172) = 32 Cut LT 256 = 1966 Cri LJ 935. (AIR 1964 Mad 263, **Dissented from.**) ** (1959) 25 Cut LT 86.

(7) Procedure at inquiry into question of possession — There must be sworn affidavits or evidence by person who may be examined as provided under Section 145 (9) or documents put in by parties in support of their claims — Enquiry reports by some police or other officers not put in by parties, and not sworn to nor makers of reports examined before Court — Held, reports could not be considered by Magistrate. 1967 Cr LJ 1243 (1244) = 1965 BLJR 427.

(8) If a party in a proceeding under Section 145 is absent, the Magistrate can proceed ex parte, and hear the other party present and then decide whether the other party is entitled to an order in its favour. AIR 1959 Tripura 25 (26) = 1959 Cri LJ 774.

(9) Where the Magistrate has not complied with the mandatory requirements of Section 145 (4), ex facie the order must be held to be improper and from the failure of the Magistrate to take into consideration large portions of the material evidence the natural inference must be that there has been a miscarriage of justice. 1959 Andh LT 610 (613, 614).

(10) Where the Magistrate summarily disposed of the affidavits and written statements without weighing the evidence but relied on report by the Tahsildar and a notice issued by the forest department in support of his conclusion regarding possession and further made a spot enquiry, his order based on such materials cannot be legal and valid and has to be set aside. (1968) 34 Cut LT 475.

(11) Procedure provided for in regard to possession proceedings does not at all give room for dismissal of the application or cancellation of the order passed under sub-section (1) of Section 145, Cr. P. Code on account or as a result of the absence of the parties. A Court, placed in such a situation, can be definite about its inability to come to a conclusion as to possession. It has then to proceed to state a case to a Civil Court as required under sub-section (1) of Section 146. AIR 1959 Andh Pra 425 (425, 426) = 1959 Cri LJ 957.

(12) By the amendment made by Act 26 of 1955 there has been only a change in the mode of conducting the enquiry under Section 145. Any irregularity in the conduct of enquiry cannot by itself suffice to render the final order invalid, unless it can be shown that a party has been materially prejudiced thereby. AIR 1960 Orissa 61 (62) = 25 Cut LT 542 = ILR (1959) Cut 551 = (1959) 1 OJD 530 = 1960 Cri LJ 384.

(13) Interpolations in patta by including the lands in dispute therein — Scribe of affidavit admitting such interpolations — Failure of Magistrate to get the document examined by an expert — Proceedings vitiated. AIR 1968 Pat 129 (130) = 1968 Cri LJ 536.

(14) In proceedings under Section 145 unless the Magistrate is sure about the identity and the description of the land in dispute he cannot hold an enquiry under Section 145 (4). For ascertaining the identity of the subject-matter of dispute he can have local enquiry under Section 148. Such local enquiry must precede the enquiry contemplated under S. 145 (4). It should be held even before

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the preliminary order is passed or if it is done after the preliminary order is passed the report of enquiry must be made available to the parties and they must be heard on it. AIR 1964 Manipur 3 (4) = 1964 (1) Cri LJ 47 (2).

(15) Where the Magistrate without treating the report of the local inquiry as evidence in the case, has allowed his mind to be influenced by the said report in passing the final order, without supplying the parties with the copies of the report and without affording them opportunity to file objections to the said report it was held that the procedure adopted by the Magistrate was highly improper. AIR 1960 Manipur 43 (44) = 1960 Cri LJ 1643.

(16) If a Magistrate feels that it is necessary to get a report upon the physical features or the measurements of the lands in dispute, he can depute a pleader Commissioner for the purpose. By virtue of the amendments made in the Code in 1955, such a report need not be formally proved. AIR 1960 Pat 240 (240, 241) = 1960 Pat LR 30 = 1960 BLJR 179 = 1960 Cri LJ 843 ** 1968 Cri LJ 701 (703) = 1968 BLJR 327 (DB) ** AIR 1967 Pat 351 (357) = ILR 46 Pat 306 = 1967 Cri LJ 1555 (DB).

27. Issue of summons to witnesses — Sub-section (9) — (1) The procedure to be followed is laid down in the section itself. AIR 1940 Oudh 22 (23) = 41 Cri LJ 96 ** (1905) 32 Cal 1093 (1099) = 2 Cri LJ 679 (DB) ** (1903) 30 Cal 508 (514) (DB).

(2) Sub-section (9) of Section 145 gives no right to a party to summon or examine any witness orally apart from the right given to it to adduce evidence as detailed in sub-section (1) and oral examination of a witness must be confined within the limits imposed by the newly added proviso namely, the first proviso to sub-section (4). Hence reading sub-section (9) with the first proviso to sub-section (4), the powers given to a Magistrate under sub-section (9) can only be exercised to summon and examine persons who have filed affidavits. AIR 1961 Punj 187 (188, 189) = 1961 (1) Cr LJ 708 = 63 Punj LR 63 (DB). (Observation in AIR 1960 Raj 15, Held, obiter and Dissented from.) ** 1962 (1) Cr LJ 60 (60) = (1961) 3 Orissa JD 261. (Magistrate cannot summon witnesses merely to enable them to file affidavits. AIR 1960 Raj 15, Dissented from.)

(3) It has, however, been held that sub-section (9) to Section 145 is absolute in its terms and is not subject to the conditions laid down in sub-section (4) of Section 145. Having been retained as it stood before the amendment of 1955, sub-section (9) must be given its full meaning and cannot be disposed of as being very apt. The powers under sub-section (9) to summon a witness directing him to attend or produce a document at any stage of the proceedings on the application of the parties are not in any way affected by the first proviso to sub-section (4) and the Magistrate can summon any witness under Section 145 (9) to give evidence to or produce a document even though he may not have filed an affidavit under Section 145 (1). AIR 1964 Mad 263 (264, 265) = (1964) 2 Mad LJ 128 = 1964 (1) Cri LJ 674. (AIR 1959 All 763 and AIR 1961 Punj 187 and 1962 (1) Cr LJ 61 (Orissa), Diss. from.) ** AIR 1970 All 154 (157) = 1968 All WR (HC) 828 = 1970 Cri LJ 305 (DB). (AIR 1959 All 763, **Overruled;** AIR 1961 Punj 187, Diss.) ** AIR 1970 J and K 21 (23, 25) = 1969 Kash LJ 300 = 1970 Cri LJ 230 (D B) ** 1969 Ker LT 170 ** AIR 1968 Raj 324 (327) = 1968 Cri LJ 1578 ** AIR 1967 Manipur 23 (26) = 1967 Cri LJ 1342 ** AIR 1967 Tripura 10 (11, 13) = 1967 Cri LJ 257 ** AIR 1965 All 294 (295, 296) = 1965 (2) Cri LJ 39 = 1964 All LJ 534 (DB). (AIR 1959 All 763, **Overruled.** AIR 1961 Punj 187, Dissented from.) ** AIR 1965 Pat 25 (27, 28) = 1964 BLJR 377 = 1965 (1) Cr LJ 69 (DB) ** AIR 1962 Him Pra 5 (8) = 1962 (1) Cri LJ 34 ** AIR 1961 Madh Pra 302 (305) = 1961 Jab LJ 443 = 1961 (2) Cri LJ 642 ** AIR 1960 Raj 15 (15, 16) = 1960 Cri LJ 116 = 1960 Raj LW 113.

(4) The powers of the Court under Section 540 to summon any person as a witness at any stage of the enquiry are not in any way affected by any of the provisions of Section 145. AIR 1964 Mad 263 (264, 265) = 1964 (1) Cri LJ 674 = (1964) 2 Mad LJ 128 ** (1969) Mad LJ (Cri) 303 = 1969 Ker LT 110 ** AIR 1968 Raj 324 (327) = 1968 Cr LJ 1578 ** AIR 1967 Manipur 23 (26) = 1967 Cri LJ 1342 ** AIR 1961 Assam 105 (105) = 1964 (2) Cri LJ 272 (1) ** AIR 1964 Orissa 226 (227) = 30 Cut LT 486 = 1964 (2) Cri LJ 563 ** AIR 1962 All 68 (69) = 1961 All LJ 802 = 1962 (1) Cr LJ 116 ** 1962 (2) Cr LJ 640 (640) = 1961 All LJ 611 ** AIR 1962 Him Pra 5 (8) = 1962 (1) Cri LJ 34.

[But see (1885) 11 Cal 762 (766) (DB) ** (1894) 21 Cal 29 (33) (DB).]

(5) It is entirely a matter for the discretion of the Magistrate whether he will summon witnesses or not. AIR 1949 All 230 (Pr 9) = 50 Cri LJ 345 ** AIR 1939 Pat 281 (282) = 40 Cri LJ 276 ** AIR 1936 All 322 (323) = 37 Cri LJ 694.

(6) Though the Court has discretion in summoning witnesses, it is not the same thing to say that there is no provision in law. The effect of rejecting the applications made by both the parties for summoning witnesses, who have given affidavits for examination and cross examination is to shut out the evidence and

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this will vitiate the decision made on merits. AIR 1968 Mys 16 (17) = (1967) 1 Mys LJ 256 = 1968 Cr LJ 71.

(7) The discretion ought to be exercised judicially and not arbitrarily. AIR 1957 Raj 382 (383) = 1957 Cri LJ 1455 (1) ** AIR 1968 Raj 324 (327).

(8) The words 'at any stage of the proceedings' and 'on the application of either party' in sub-section (9) of Section 145 signify that a party can submit an application under that sub-section at any stage of the proceedings. There is no bar to submit it after the closure of the evidence. AIR 1968 Raj 324 (326) = 1968 Cr LJ 1578.

(9) To arrive at a just decision, Court can allow a party to file documents whether private or public, even after arguments provided he gives the other party opportunity to file additional documents by way of rebutting evidence. (1965) 31 Cut LT 191

(10) Proceedings under Section 145 — Police cannot under Section 160, summon witnesses for inquiry. AIR 1968 Mad 225 (225) = 1967 Mad LW (Cri) 173 = 1968 Cri LJ 760.

28. Power to adjourn enquiry. — (1) The parties have no right to obtain time from the Court. AIR 1952 Mys 4 (5) = 1952 Cri LJ 111.

(2) The Magistrate has a discretion in proper cases to adjourn the enquiry to enable the parties to file written statements of their claims. AIR 1952 Mys 4 (5) = 1952 Cri LJ 111.

(3) Proceedings under Section 145, Cr. P. C. are meant to be taken immediately in order to prevent breach of the peace if there is such an apprehension. The case should not be repeatedly adjourned without giving any reason. 1962 Raj LW 384 = ILR (1962) 12 Raj 642.

29. Perusal of statements, documents and affidavits. — (1) The word 'peruse' used in sub-section (4) of Section 145 means 'to go through critically' that is, 'to read attentively and examine critically in detail one by one'. AIR 1962 Pat 253 (253) = 1961 BLJR 833 = 1962 (1) Cri LJ 752 ** AIR 1967 Manipur 23 (27) = 1967 Cri LJ 1342 ** AIR 1962 Pat 249 (251) = 1962 BLJR 865 = 1962 (1) Cri LJ 749.

(2) It is imperative, that the Magistrates should peruse the affidavits filed by the parties and also other statements, and documents if any, as required by Section 145 (4) of the Code. That being so, the order of the Magistrate must show that he has considered the affidavits, that is, he has applied his judicial mind to the assertions contained therein. AIR 1965 Pat 104 (106) = 1965 BLJR 528 = 1965 (1) Cr LJ 328 (DB) ** (1969) 35 Cut LT 1036 (1037) ** AIR 1966 Orissa 170 (172) = 32 Cut LT 256 = 1966 Cri LJ 935 ** AIR 1965 Orissa 208 (210) = 31 Cut LT 251 = 1965 (2) Cri LJ 788 ** AIR 1962 Pat 253 (253) = 1961 BLJR 833 = 1962 (1) Cri LJ 752 ** AIR 1962 Pat 249 (251) = 1961 BLJR 865 = 1962 (1) Cr LJ 749. ** 1959 Raj LW 241.

(3) The Magistrates should give reasons for accepting or rejecting statements made in each affidavit. AIR 1960 Pat 505 (506) = 1960 BLJR 328 = 1960 Cri LJ 1477 ** AIR 1962 Pat 253 (253) = 1961 BLJR 833 = 1962 (1) Cri LJ 752 ** AIR 1962 Pat 249 (251) = 1962 BLJR 865 = 1962 (1) Cr LJ 749 ** AIR 1960 Pat 513 (513, 514) = 1960 BLJR 419 = 1960 Cr LJ 1486.

(4) The failure to consider the affidavits is an illegality which vitiates the order of the Magistrate. AIR 1965 Tripura 43 (45) = 1965 (2) Cr LJ 811. (Perusal of affidavits is mandatory.) ** 1967 All WR (HC) 106 = 1967 All Cri R 100 ** (1967) 1 Andh WR 437 = (1967) Mad LJ (Cr) 456 ** AIR 1967 Manipur 23 (27) = 1967 Cri LJ 1342 = (1966) MLJ (Cr) 43 = 1965 Ker LT 1184 ** 1959 Raj LW 241.

(5) A statement in the written statement is not evidence by itself and has to be proved like any other statement. (1904) 1 Cri LJ 631 = 8 Cal WN 642 (643) (DB).

(6) Competency of witnesses to speak about possession is no ground to rely upon them — Magistrate refusing to rely upon such witnesses does not commit any error of law — Magistrate has to decide whether they are truthful witnesses and not merely competent witnesses. AIR 1970 Pat 97 (100) = 1969 BLJR 675 = 1970 Cri LJ 481.

(7) Even where one of the parties is absent and the other party files a statement alleging that he is in possession, the Magistrate cannot make an order in favour of the second party merely on the strength of that statement without any evidence in support thereof. (1901) 5 Cal WN 71 (72) ** (1908) 8 Cri LJ 27 (28) (DB) (Cal).

(8) If a party is absent the Magistrate can proceed ex parte, but it must appear from his order that he has considered the written statements, documents and affidavits, if any, filed by the parties, and further, that there is some evidence to show that the party, who is present, is entitled to an order in his favour. 1962 BLJR 279.

(9) Documents adduced by parties can be taken into consideration in proceedings under Section 145 even without formal proof. (1968) 34 Cut LT 522 ** (1967) 33 Cut LT 1098 = ILR (1967) Cut 862 (DB). (Documents need not be legally proved before perusal. 31 CLT 761 and 32 CLT 256, **Overruled.**)

(10) Documents tendered by a party with his written statement do not be-

Section 145 — Note 29 (contd.)

come entitled to be acted upon without being required to be proved unless the documents are public documents which are not required to be proved. 1963 Jab LJ 422 (424) = ILR (1963) Madh Pra 360.

(11) Party claiming possession of immovable property on basis of unregistered gift deed — Deed being unregistered held not admissible in evidence. 1962 Ker LT 792 (793).

30. "Hear the parties." — (1) The Magistrate should not debar a party from exercising his right of audience on the ground that there is documentary evidence in the case or that such party has not filed any written statement in support of his claim. AIR 1945 Nag 127 (129) = ILR (1945) Nag 419 = 47 Cri LJ 240 ** AIR 1920 Pat 383 (383) = 21 Cri LJ 572 ** AIR 1923 Pat 369 (370) = 24 Cri LJ 557.

(2) The hearing contemplated by the employment of the words 'hear the parties' is something other than the receiving of evidence such as hearing arguments. AIR 1957 Mys 43 (44) = ILR (1956) Mys 369 = 1957 Cri LJ 467.

(3) The words "hear the parties" occurring in sub-section (4) of Section 145, Cr. P. Code, mean 'hear the arguments of parties" and do not include taking the evidence of the parties if they desire to appear as witnesses. AIR 1958 Orissa 79 (80) = ILR (1957) Cut 676 = 1958 Cri LJ 650 ** AIR 1967 Manipur 5 (6) = 1967 Cr LJ 95 ** (1967) 33 Cut LT 1098 = ILR (1967) Cut 862 (DB) ** AIR 1961 Punj 187 (189) = 1961 (1) Cri LJ 708 = 63 Pun LR 63 (DB).

(4) Under Section 145 (4) as amended by Act XXVI of 1955 the statement on affidavit must be taken into consideration. It will not do for the Magistrate to brush aside statements on affidavit by saying that it has no evidentiary value as they are ex parte matters. If. however, the Magistrate finds that statements on affidavit are such that he is not able to get much assistance in order to determine who is in possession then it is open to him to summon, and examine any person whose affidavit is put in as to the facts contained therein. Failure by Magistrate to take into consideration the affidavits filed vitiates his order. AIR 1959 Pat 430 (431) = 1959 Cri LJ 1098.

(5) Powers of Magistrate functioning under sub-section (4) of Section 145 to record evidence are extremely restricted. 1962 (1) Cr LJ 632 (634) (All).

31. Possession at the date of the preliminary order. — (1) The Magistrate has to decide on inquiry and give a finding as to whether any and which of the parties was in possession of the property in dispute at the date of the preliminary order. AIR 1958 Orissa 153 (158) = ILR (1958) Cut 253 = 1958 Cri LJ 919 ** AIR 1958 Punj 47 (50) = ILR (1957) Punj 1968 = 1958 Cri LJ 215 ** 1957 Cri LJ 682 (685) (Raj).

(2) Except as provided by second proviso to sub-section (4) the Magistrate is not concerned with previous possession or with the question as to how the possession was obtained, though he may take these facts into consideration in deciding the question of possession at the date of the preliminary order. AIR 1949 East Punj 398 (Prs 11, 12, 13) = 51 Cri LJ 3 ** (1909) 9 Cri LJ 505 (506) (Mad) ** AIR 1915 Mad 1176 (1177) = 16 Cri LJ 239 (240) (DB).

(3) In arriving at a decision, the Magistrate should have due regard to the nature of the property and the mode in which acts of possession may be exercised over the property. (1889) 16 Cal 281 (286) (DB) ** AIR 1939 Pat 209 (212, 213) = 40 Cri LJ 631 (DB).

(4) A single act of trespass will not constitute dispossession of the party who is otherwise in possession thereof. AIR 1934 Pat 565 (570) = 36 Cri LJ 146 (DB).

(5) Where the Magistrate passed an order first under Section 144 restraining both parties from exercising acts of possession over the property and subsequently instituted proceedings under this section in respect thereof, it was held that the Magistrate was right in finding possession on the date of the preliminary order with the party who was in possession at the date of the order under Section 144. (1900) 27 Cal 785 (788, 789) (DB) ** AIR 1958 Orissa 153 (158) = ILR (1958) Cut 253 = 1958 Cri LJ 919.

(6) Where one of the parties to the dispute claims to be in possession under a lease and is found to be in actual possession on the date of the preliminary order, the Magistrate is bound to uphold his possession even though the lease has expired. AIR 1946 Pat 330 (335) = 25 Pat 19 = 47 Cri LJ 328 (DB).

(7) The Magistrate has no power to decide who should be in possession of the property in future without reference to possession at the date of the preliminary order. AIR 1949 East Punj 398 (Prs 11, 12, 13) = 51 Cri LJ 3 ** AIR 1929 Nag 285 (286) = 31 Cri LJ 191 ** AIR 1924 Pat 589 (591) = 27 Cri LJ 220 (DB).

(8) Even where the dispute is as to the right to possess the Magistrate can draw up proceedings under this section and on finding that none of the parties is in possession attach the properties under Section 146. AIR 1949 Lah 273 (Pr 10) = Pak LR (1949) Lah 466 = 51 Cri LJ 55 (DB).

(9) Where the subject of dispute is a very considerable area of land, and the contention of both the parties is that they hold possession of this area through ryots, the question which the Magistrate

Section 145 — Note 31 (contd.)

has to solve with regard to possession is as to who is in possession of the constituent portions of the land piece by piece by the hands of his ryots. (1874) 21 Suth WR (Cr) 55 (55) (DB).

(10) Where the landlord claims a large number of plots to be in his possession while different sets of tenants claim different plots in their respective possession separately. It is proper that the Magistrate should come to a conclusion in respect of such plot separately. AIR 1938 Pat 511 (513) = 40 Cri LJ 17 ** 1933 Mad WN 1260 (1261).

(11) Where, the tenants are in possession under one title and separate possession amongst them is a matter of arrangement, the order of the Magistrate upholding their possession would not be bad merely because he had not considered the separate possession of each particular tenant. AIR 1949 Mad 226 (228) = 50 Cri LJ 253 ** AIR 1946 Pat 330 (335) = 25 Pat 19 = 47 Cri LJ 328 (DB).

(12) Where neither party files a written statement claiming to be in possession, the Magistrate cannot pass an order declaring a party to be in possession unless he has a local inquiry made under Sec. 148. AIR 1952 All 538 (Pr 5) = ILR (1951) 1 All 709 = 1952 Cri LJ 637.

(13) Where the Magistrate holds that the application under Sec. 145 is not competent he has no jurisdiction to pass an order restoring possession to the parties jointly on the ground that they were in joint possession. AIR 1949 East Punj 231 (Pr 5) = 50 Cri LJ 573.

32. Reference to arbitration and compromise. — (1) It is not proper to delegate the inquiry as to possession, even with the consent of parties, to arbitrators. AIR 1952 Assam 118 (Pr 2) = 1952 Cri LJ 1166 (DB) ** AIR 1941 All 42 (43) = 42 Cri LJ 246 ** AIR 1921 Cal 637 (638) = 22 Cri LJ 623 (DB).

(2) Where the matter has been compromised there is no longer any "dispute likely to cause a breach of the peace" and the Magistrate should cancel the preliminary order and stay all further proceedings thereon under sub-s. (5). AIR 1942 Pat 289 (289) = 43 Cri LJ 172 ** AIR 1925 Oudh 190 (193) (DB) ** AIR 1921 Cal 637 (638) = 22 Cri LJ 623 (DB).

(3) Even where the Magistrate passes an order in terms of the compromise, it should in reality be treated as an order under sub-section (5) and the Magistrate is competent to institute fresh proceedings in respect of the subject of dispute. (1911) 12 Cri LJ 32 (33) (DB) (Cal).

[But see AIR 1923 Lah 46 (47) = 23 Cri LJ 724.]

(4) Where the parties refer the question as to who was in possession on the date of the preliminary order to arbitration, the Magistrate may accept the findings of the arbitrators as evidence of possession and pass an order under subsection (6) on the basis of such evidence. AIR 1942 Pat 289 (289) = 43 Cri LJ 172 ** (1903) 7 Cal WN 461 (462) (DB).

(5) Where on the parties reporting that the dispute has been referred by them to arbitration, the Magistrate stays the proceedings, he cannot revive and continue the same proceedings if subsequently it is brought to his notice that the arbitration has become infructuous. AIR 1953 Mad 436 (438) = 1953 Cri LJ 825 ** AIR 1952 Assam 118 (Pr 2) = 1952 Cri LJ 1166 (DB) ** (1910) 11 Cri LJ 729 (729) (DB) (Cal).

33. Question of title. — (1) The Magistrate should confine himself to the question of actual possession, and has no power to inquire into and decide on the rights of the parties to possession of the property. **AIR 1959 SC 960 (966) = 1959 Cri LJ 1223** ** AIR 1959 Tripura 1 (2) = 1959 Cri LJ 89 ** AIR 1964 All 394 (395) = 1963 All WR (HC) 715 = 1964 (2) Cri LJ 261 ** ILR (1960) 1 Andh Pra 327 ** AIR 1960 Pat 254 (257) = 1959 BLJR 813 = 1960 Cri LJ 970.

(2) The Magistrate can consider questions relating to title where such consideration is necessary in order to effectively decide the question of possession or to corroborate or supplement other evidence as to possession. AIR 1952 All 918 (Pr 2) = 1952 Cri LJ 1650 ** AIR 1954 Pat 135 (137) = 32 Pat 621 = 1954 Cri LJ 209 (DB) ** AIR 1952 Assam 185 (Pr 8) = ILR (1952) 4 Assam 323 = 1952 Cri LJ 1693 (DB) ** ILR (1965) Cut 89 = 31 Cut LT 761 ** 1961 (2) Cri LJ 426 (430) = 1961 Raj LW 136 ** AIR 1960 Pat 505 (506) = 1960 BLJR 328 = 1960 Cri LJ 1477.

(3) When the evidence of possession is equally balanced between the parties, the Court should look into the question of title to find out as to whose possession is in accordance with the same. 1965 All Cr R 125 = 1965 All WR (HC) 119.

(4) Presumption that possession follows title cannot be applied to cases where the evidence as to possession on both sides is equally unworthy of credit. In such a case the Magistrate should pass an order under Section 146. AIR 1952 Assam 185 (Pr 8) = ILR (1952) 4 Assam 323 = 1952 Cri LJ 1693 (DB) ** AIR 1923 Cal 303 (304) = 24 Cri LJ 141 (DB) ** AIR 1954 Mad 325 (326) = 1954 Cri LJ 412.

(5) Though the scope of enquiry under the section is limited to the fact of possession, the dispute need not relate to the fact of possession but may relate to the right to possess. AIR 1949 Lah 273 (276) = Pak LR (1949) Lah 466 = 51 Cri LJ 55 (DB).

(6) Where the petitioner in proceedings under Section 145 himself asked for an adjudication of his status it is not

Section 145 — Note 33 (contd.)
open to him in proceedings under Articles 226 and 227 of the Constitution to say that the question ought not to have been decided by the Magistrate. AIR 1959 Ker 275 (276) = ILR (1959) Ker 70 = 1959 Cri LJ 1082.

34. Effect of prior proceedings on the proceedings under this section — See also Note 8. — (1) It has been held that where a decree had been passed by a civil Court awarding possession of the property in dispute or that possession of the property was delivered by that Court to one of the parties it is the duty of the Magistrate to find possession in accordance with the civil Court's decree or order and to maintain such possession. AIR 1953 All 383 (Prs 14, 15, 19) = 1953 Cri LJ 832 ** AIR 1953 Mad 594 (Pr 2) = 1953 Cri LJ 1119 ** (1968) 34 Cut LT 655 ** 1966 Cri LJ 339 (339) = 1965 BLJR 278 ** 1963 (1) Cri LJ 697 (698) = (1964) Mad LJ (Cri) 60 ** 1962 (2) Cri LJ 709 (710) = 40 Mys LJ 294. (Recent interim injunction granted by Civil Court should be respected by Criminal Court.)

(2) The Magistrate who initiates the proceedings under this section has to determine the question of actual possession with reference to the date of the preliminary order, and in investigation of this question any previous order of a Civil or Criminal Court relating to possession of the property may throw considerable light upon the matter. AIR 1956 All 320 (320) = 1956 Cri LJ 571 (1) ** AIR 1919 Nag 98 (99) = 20 Cri LJ 445 ** AIR 1919 Cal 526 (528) = 20 Cri LJ 840 (DB).

(3) The fact of delivery of possession or the entry in the record of rights may raise a presumption in favour of the continuance of possession unless the other party can show that subsequently they have succeeded in effectively displacing the person put in possession. AIR 1941 Pat 516 (517) = 42 Cri LJ 876 ** AIR 1947 Pat 175 (177) = 48 Cri LJ 683 ** AIR 1928 Cal 610 (616) = 30 Cri LJ 69 (FB) ** (1968) 34 Cut LT 655.

(4) If the civil Court had either taken cognizance of civil suit filed in respect of disputed property or if the civil Court had passed interim injunction in respect of the same, Magistrate is bound to drop proceedings under Section 145 and should take action under Sections 107 and 117 against the party disregarding the civil Court's order. Magistrate has to respect the civil Court's order. 1965 All Cri R 72 = 1964 All WR (HC) 46 ** 1969 Cri LJ 331 (334) = 1968 Ker LT 503. (Pendency of litigation before Civil Court — Criminal Court will do better to take action either under Section 107 or Section 144.) ** 1967 All LJ 747 = 1967 All WR (HC) 550.

(5) Suit under U. P. Zamindari Abolition and Land Reforms Act already pending before making application under Section 145, Criminal P. C. — Pendency of suit brought to notice of Magistrate — He should have either stayed the proceedings till that fact was proved to his satisfaction or he should have forthwith dropped proceedings under Section 145 and resorted to provisions of Section 107 instead, if he found that necessary — Proceeding with the case under Section 145, held, illegal. 1968 All Cri R 20 (21) = 1968 All WR (HC) 12.

(6) Where the competent civil or revenue Court has just given its adjudication on the right of one of the parties to retain possession, there is no necessity for any fresh decision by a criminal Court; and all that the Magistrate has to do, is to take steps to ensure that the civil or revenue Court's decision is respected and adhered to by resorting to proceedings under Section 107 or Section 144, Criminal P. C. if necessary. 1961 All Cr R 374 = 1961 All WR (HC) 658 = 1961 All LJ 873. (1956 ALJ 450, Dist.) ** AIR 1968 Orissa 239 (240) = 1968 Cr LJ 1629 ** 1968 Raj LW 523 (525, 526) ** 1967 All WR (HC) 752 (753) = 1967 All Cri R 467 ** AIR 1964 Orissa 204 (205) = 30 Cut LT 379 = 1964 (2) Cri LJ 326 = (1964) 6 OJD 156.

[See however 1963 (1) Cri LJ 512 (512, 513) (All). (Prior decision of Civil Court—Appeal pending — Magistrate has a choice between drawing up proceedings under either of the Sections 145 and 107 — AIR 1959 Mys 122 and 1961 All LJ 873, Not foll.)]

(7) There is no inflexible rule of law that a Magistrate is debarred by every previous order of a Civil or Criminal Court relating to the property and the weight to be attached to any such previous order must depend upon the facts and circumstances of the particular case. AIR 1941 Pat 516 (517) = 42 Cri L Jour 876 ** AIR 1925 Cal 186 (186, 187) = 25 Cri L Jour 1104 (DB) ** 1964 (1) Cr LJ 95 (99) (DB) (J and K) ** (1961) 3 Orissa JD 256 = 27 Cut LT 314. (The decree in the partition suit has also great value.) ** AIR 1960 Mys 203 (204) = 38 Mys LJ 192 = 1960 Cri LJ 1112.

(8) If a dispute about a certain immovable property is pending before a revenue or a Civil Court and if one of the parties to that suit moves a Magistrate to take proceedings under Sec. 145, about the same immovable property which is involved in the suit, the Magistrate should not lightly proceed in the matter. He should weigh and consider whether there is a real apprehension of the breach of peace and even if there is such an apprehension, whether the same cannot be averted by proceedings under Section 107 The jurisdiction of the Magistrate to proceed under Sec-

Section 145 — Note 34 (contd.)

tion 145, is not ousted simply because a suit about the same immovable property is already pending in a revenue or Civil Court. AIR 1960 Raj 216 (218, 219) = 1961 (2) Cri LJ 552 = 1961 Raj LW 469 (FB).

(9) Application under Section 145, dismissed in limine for want of specific allegations as to breach of peace — Fresh petition on same facts — Entertainment of — Such petition is not illegal. AIR 1960 Punj 464 (465) = 1960 Cri LJ 1232 = 62 Pun LR 568.

(10) A delivery of symbolical possession is of little value as against third persons in possession under independent title. AIR 1918 Cal 662 (663) = 18 Cri L Jour 718 (DB) ** AIR 1916 Mad 640 (640) = 16 Cri L Jour 736 (DB) ** (1906) 4 Cri L Jour 503 (504) (DB) (Cal).

(11) When there are records like a Court decree evidencing actual delivery of possession of the property to a person and the report of the responsible police officers that such person has actually raised the crops and there was no apprehension of the breach of the peace an action under Section 145 is unwarranted. 1960 Ker LT 401 = 1960-1 Ker LR 466 = 1960 MLJ Cri 286 = 1960 Ker LJ 414 = ILR (1960) Ker 1011.

(12) The Magistrate is bound to refer to the Civil Court's decree or order relating to possession and to give his reasons in case he comes to a conclusion at variance with it. AIR 1916 Pat 292 (296) = 17 Cri L Jour 369 (373) (FB).

(13) The Magistrate cannot discard other evidence relating to actual possession simply on the ground that there has been a previous delivery of possession in respect of the property. AIR 1918 Cal 662 (663) = 18 Cri L Jour 718 (DB).

(14) If the Civil Court has itself appointed a Receiver and taken possession of the property or has issued any order restraining the defendant from disturbing plaintiff's possession, after finding that the latter's case of possession is prima facie true, the Magistrate should stay his hands. AIR 1955 Trav-Co 190 (191) = ILR (1954) Trav-Co 1209 = 1955 Cri L Jour 1212 (DB) ** (1962) 4 OJD 364 = 29 Cut LT 111.

(15) Proceedings started under Section 144 and order issued restraining parties from entering the land — Order dissolved on Magistrate finding that possession was with a particular party — Finding is not binding in a subsequent proceeding under Section 145, if on proper material Magistrate is satisfied that there is a likelihood of a breach of peace. AIR 1953 Cal 397 (Pr 2) = 1953 Cri L Jour 908 (DB).

(16) Where there is a gap of nearly six months between the termination of the proceedings under Section 144 and the commencement of the proceeding under Section 145 and during this period possession of one of the parties seemed to be beyond doubt, possession of such party over the disputed lands should be declared and the other party should be restrained from interfering with their possession until evicted in the course of law. 1961 (2) Cri LJ 520 (521) = 26 Cut LT 519.

35. Joint possession. — (1) Even where the parties have a right to joint possession of the property in dispute the Magistrate has jurisdiction to institute proceedings under this section. AIR 1940 Pat 135 (136) = 41 Cri L Jour 171 ** AIR 1932 Pat 366 (368) = 34 Cri L Jour 115 (DB) ** AIR 1967 All 164 (169) = 1967 Cri LJ 417 ** 1965 All Cri R 22 = 1964 All WR (HC) 750 ** AIR 1963 Pat 320 (323) = 1963 BLJR 665 = 1963 (2) Cri LJ 313 (DB).

[But see AIR 1945 Oudh 62 (63) ** AIR 1954 Hyd 91 (92) = ILR (1954) Hyd 243 = 1964 Cri L Jour 656 ** 1937 Oudh WN 214 (217) ** AIR 1922 Pat 423 (425) = 23 Cri L Jour 379.]

(2) The Magistrate cannot consider the question whether the parties have a title to possession jointly or have a title to separate possession. AIR 1941 Oudh 515 (516, 517) = 42 Cri L Jour 710 ** AIR 1953 Pat 363 (364) = 1953 Cri L Jour 1747 ** (1913) 14 Cri L Jour 269 (271) = 40 Cal 982.

(3) Where the Magistrate decides that one of the parties was in possession in fact on the date of the preliminary order even though the parties are entitled only to joint possession, the Magistrate should uphold the possession of the person in actual possession irrespective of the rights of the parties. AIR 1940 Nag 265 (266) = 41 Cri L Jour 799 ** AIR 1934 Nag 196 (197) = 35 Cri L Jour 1384 ** AIR 1917 Cal 404 (405) = 17 Cri L Jour 251 (DB) ** AIR 1924 Cal 444 (445) = 24 Cri L Jour 304 (DB).

[But see (1904) 1 Cri L Jour 847 (848) = 32 Cal 249 (DB) ** (1906) 4 Cri L Jour 215 (216) (DB) (Cal).]

(4) Where the managing member of a joint Hindu family is in possession of the property, his possession can be maintained against the other members of the coparcenary. AIR 1953 Vindh Pra 14 (15) = 1953 Cri L Jour 975 ** AIR 1930 Bom 172 (173, 174) = 31 Cri L Jour 933 (DB) ** AIR 1927 Oudh 316 (316) = 28 Cri L Jour 877.

(5) Even where one member is in fact in actual possession, an order should be passed upholding his possession as against the other members who may be entitled to joint possession. (1913) 14 Cri L Jour 269 (271) = 40 Cal 982.

(6) Where the property in dispute is a joint family property, proceedings

Section 145 — Note 35 (contd.)

under Section 145 cannot be initiated on the ground that one member of the family is in actual and exclusive possession of part of the family property, which may give rise to the dispute likely to cause breach of peace. AIR 1969 Andh Pra 150 (150) = 1969 Cri LJ 644. = (1969) 1 An WR 139.

[But see 1970 Cri LJ 770 (774) (All). (AIR 1969 Andh Pra 150, **Dissented from.**)]

(7) Where the Magistrate finds that one party was in actual possession of a specific portion of the property or of some particular items and the other party was in possession of the rest and possession of one party is not likely to interfere with the possession of the other, orders should be passed under sub-section (6) maintaining the possession of the parties in regard to their respective portions. (1907) 5 Cri L Jour 490 (490, 491) (DB) (Cal) ** AIR 1923 Pat 369 (371) = 24 Cri L Jour 557 ** AIR 1915 Mad 1105 (1107) = 16 Cri L Jour 284.

(8) Where the Magistrate finds that on the date of the preliminary order, both the parties were in joint possession of the property, he cannot pass an order under sub-section (6) upholding the possession of one of the parties to the exclusion of the other, nor can he uphold such joint possession. AIR 1951 Raj 156 (Pr 6) = ILR (1951) 1 Raj 265 = 52 Cri L Jour 1209 (DB) ** AIR 1956 Vindh Pra 43 (44) = 1956 Cri L Jour 1445 ** AIR 1967 All 44 (45) = 1967 Cr LJ 18 = 1967 All WR (HC) 113 ** AIR 1964 J and K 1 (4) = 1963 Kash LJ 108 = 1964 (1) Cr LJ 37 ** AIR 1964 Mys 195 (200) = 1963 (2) Mys LJ 103 = 1964 (2) Cri LJ 319 (DB).

[See however AIR 1953 Vindh Pra 14 (15) = 1953 Cri L Jour 975.]

(9) In case of joint possession of disputed land, no effective order forbidding other side to go upon land can be passed and parties should seek appropriate remedy before civil Court. 1968 Pat LJR 427.

(10) A group of persons claiming exclusive possession as a unit against persons other than those belonging to that group can assert its possession under Section 145. 1961 (2) Cri LJ 426 (429) = 1961 Raj LW 136.

(11) Land of 20 Paris sold to 22 persons by separate sale deeds within specified boundaries — Each vendee in possession of separate piece of land within 20 Paris — All of the vendees cannot join together and file a single petition under Section 145 in respect of 20 Paris of land — Their possession cannot be said to be joint — If each of the vendees wanted to establish his possession of his separate plot by means of proceedings under Section 145, separate petitions pointing out the land in their separate possession have to be filed. 1962 (1) Cr LJ 821 (822, 823) (Manipur).

36. Forcible and wrongful dispossession "within two months next before date of order". — (1) The second proviso becomes applicable only if a Magistrate can come to a definite finding that any particular party had been dispossessed within a period of two months next preceding the preliminary order. In the absence of such a finding possession should be restored to the party found in actual possession on the date of the preliminary order. AIR 1949 All 97 (98) = ILR (1949) All 125 = 49 Cri L Jour 751 ** (1966) 1 Mys LJ 627 (630, 631) = (1966) 6 Law Rep 333.

[See also ('40) 1940 AMLJ 21 (22).]

[See however AIR 1953 Ajmer 74 (76) = 1953 Cri L Jour 1788.]

(2) Dispossession of party within two months next preceding the date of order has to be considered — Fact that party in de facto possession is found in possession does not divest the Magistrate of his jurisdiction. **AIR 1968 SC 1444 (1449) = 1968 Cur LJ 980 = 1969 Cr LJ 13.** (Criminal Revn. Appln. No. 668 of 1967, dated 17-8-1967 (Bom), **Reversed.**)

(3) The party complaining of disturbance of possession must show that he was in possession within two months of the preliminary order. AIR 1953 Cal 397 (Pr 5) = 1953 Cri L Jour 908 (DB) ** AIR 1958 Punj 47 (52) = ILR (1957) Punj 1968 = 1958 Cri L Jour 215 ** AIR 1952 Tripura 31 (32) = 1953 Cri L Jour 93.

(4) The statute specifically and in express terms fixes two months under the proviso and there is no provision either expressly or by necessary implication empowering a Magistrate to invoke the fiction to cover a period extending beyond the said two months. AIR 1955 Andhra 99 (101) = ILR (1955) Andhra 271 = 1955 Cri L Jour 909 (DB) ** AIR 1967 Mad 445 (448) = (1967) 1 Mad LJ 392 = 1967 Cri LJ 1650 (FB) ** AIR 1961 Andh Pra 208 (213) = (1960) 2 Andh WR 383 (FB). (Crucial date under Second proviso is the date of preliminary order — AIR 1955 Hyd 140, **Overruled.**) ** AIR 1962 Pat 352 (354) = 1962 BLJR 241 = 1962 (2) Cri LJ 396. (Actus curiae neminem gravabit and Nunc pro tunc — Not applicable to order passed by Magistrate under Section 145 (4).)

(5) The proviso is not mandatory. AIR 1943 Mad 402 (402) = 44 Cri L Jour 557.

(6) Proviso (2) to sub-section (4) is discretionary — Magistrate may refuse to take notice of dispossession if he is of opinion that the rightful owner has dispossessed the trespassers within two months of preliminary order. AIR 1965 Pat 261 (261, 262) = 1964 BLJR 880 = 1965 (2) Cr LJ 114.

Section 145 — Note 36 (contd.)

(7) If the Magistrate decides the question as to which of the parties was in possession on the date of the preliminary order, it is not necessary to see whether or not any of the parties had been dispossessed within two months next before the date of the preliminary order. AIR 1939 Oudh 31 (32) = 39 Cri L Jour 963 ** AIR 1936 Nag 271 (272) = 38 Cri L Jour 375.

(8) The Magistrate should find the actual date of dispossession in respect of every item of the property in dispute before proceeding to apply the proviso. AIR 1917 Lah 171 (172) = 18 Cri L Jour 660 (662).

(9) Where a person dispossessed of the property moves the Criminal Court to take action under this section within two months of such dispossession, but the Court does not pass the preliminary order until after the expiry of two months of such dispossession, the Court has no power to restore to possession such party under this section. AIR 1945 Mad 216 (216) = 46 Cri L Jour 767 ** AIR 1959 All 141 (146) = 1959 Cri L Jour 261 (FB) ** 1957 Cri L Jour 682 (687) (Raj) ** AIR 1955 Trav-Co 262 (263, 264) = ILR (1955) Trav-Co 559 = 1955 Cri L Jour 1531 (DB) ** AIR 1954 Pat 169 (170) = 1954 Cri L Jour 443 (DB). (AIR 1942 Pat 489 = 42 Cri L Jour 95, **Overruled.**) ** AIR 1967 Mad 445 (449) = (1967) 2 MLJ 392 = (1967) Cri LJ 1650 (FB). (AIR 1954 Orissa 183 (186), **Dissent. from.**; AIR 1927 Mad 816 (1), and AIR 1929 Mad 198 (198) and AIR 1951 Mad 500, **Overruled.**) ** AIR 1961 Andh Pra 208 (213) = (1960) 2 Andh WR 383 (FB). (AIR 1951 Mad 500, Not foll.; AIR 1955 Hyd 140, **Overruled.**) ** (1964) 66 Pun LR 245 (246) ** 1963 All Cr R 430 = 1963 All WR (HC) 733 (734) ** AIR 1962 Bom 8 (11, 12) = 1961 (2) Cri LJ 724 = 63 Bom LR 570 ** 1962 (2) Cri LJ 439 (440, 441, 442, 443) = 1961 Ker LT 515 ** AIR 1961 Tripura 36 (39, 40) = 1961 (2) Cri LJ 292.

[But see AIR 1954 Hyd 215 (216) = ILR (1954) Hyd 288 = 1954 Cri L Jour 1492 ** AIR 1954 Orissa 183 (185, 186) = ILR (1954) Cut 215 = 1954 Cri L Jour 1133.]

(10) Where no preliminary order at all was passed, the Magistrate has been held to have no power to apply the second proviso to sub-section (4). AIR 1933 Lah 143 (144).

[But see 1957 Cri L Jour 682 (686, 687) (Raj).]

(11) Mere act of moving Court not enough to seek protection from exemption from mischief of proviso — Party must be vigilant of his rights and must seek protection from Court from time to time — In absence of vigilance preliminary order passed beyond two months of dispossession works out to his disadvantage. ILR (1967) Cut 854 = 34 Cut LT 96.

(11a) Delay of nearly two years in taking proceeding after dispossessing entirely due to complainant's negligence — Complainant could not be deemed dispossessed within two months preceding the order. 1970 Cri LJ 936 (937) (Orissa).

(12) In calculating the period of two months, the period during which one party was restrained by an injunction from entering the property by an order under Section 144 cannot be excluded. AIR 1917 Cal 100 (101) = 18 Cri L Jour 301 (DB) ** AIR 1962 Pat 352 (354) = 1962 BLJR 241 = (1962) 2 Cri LJ 396 ** 1961 BLJR 536.

(13) As against a party, who became a contending party within the meaning of Section 145 (1), Criminal P. C., on a subsequent date, the possession that has to be decided is with reference to such subsequent date and possession on a date more than two months before such subsequent date cannot permit the operation of the proviso. It will not be fair to apply this Rule, however to cases where the person added is added for the purpose of completions only and the real contending parties are already on the record. AIR 1958 Cal 122 (123) = 1958 Cri L Jour 365 (DB).

(14) Applicant in actual possession on date of order — Opposite party claiming that applicant was never in possession — Question of dispossession of applicant does not arise — Proviso not attracted. AIR 1965 Assam 79 (80) = ILR (1963) 15 Assam 379 = 1965 (2) Cri LJ 464.

37. "Forcibly and wrongfully", meaning of. — (1) The dispossession should be both forcible and wrongful. AIR 1940 Sind 33 (36) = 41 Cri L Jour 486 (DB) ** AIR 1955 Andhra 99 (103) = ILR (1955) Andhra 271 = 1955 Cri L Jour 909 (DB) ** AIR 1925 Pat 33 (34) = 26 Cri L Jour 268 (DB).

(2) Where a person armed with a warrant of delivery of possession makes a forcible entry into the property, it is not a case of wrongful dispossession; but if the person had only a right to possession and taking the law into his own hands makes a forcible entry, it is a case of wrongful and forcible dispossession. AIR 1926 Bom 91 (92, 93) = 27 Cri L Jour 661 (DB).

(3) The word "wrongfully" means no more than "otherwise than in due course of law". AIR 1926 Bom 91 (94) = 27 Cri L Jour 661 (DB) ** AIR 1927 Cal 944 (944) = 28 Cri L Jour 245 (DB) ** AIR 1960 Pat 505 (506) = 1960 Cri LJ 1477 = 1960 BLJR 328.

(4) In order that a dispossession should be held to be forcible, it is enough if it is effected by a show of criminal force sufficient to intimidate those in possession and to deter them from resist-

Section 145 — Note 37 (contd.)

ance. AIR 1921 Cal 553 (554) = 22 Cri L Jour 637 (DB) ** AIR 1953 Ajmer 74 (76) = 1953 Cri L Jour 1788 ** AIR 1947 Mad 133 (134) = 48 Cri L Jour 435.

(5) The mere ouster of a person having no title to the land, by the rightful owner, without using any physical violence and by removing things which had no right to be on the land, cannot amount to an unlawful and forcible entry on the land. AIR 1940 Sind 167 (168) = 42 Cri L Jour 27 (DB) ** AIR 1954 Orissa 183 (185) = ILR (1954) Cut 215 = 1954 Cri L Jour 1133 ** AIR 1927 Cal 261 (262) = 28 Cri L Jour 210 (DB).

(6) A casual act of trespass cannot be construed to be an act of possession, and it would not come under wrongful possession which is implied in the wording of the proviso to sub-section (4) of Section 145. ILR (1956) 8 Assam 188 (189).

38. Cancellation of the preliminary order — Sub-section (5). — (1) If in the course of proceedings the Magistrate finds at any stage that there is, or has been, no dispute, likely to cause a breach of the peace, he should cancel the preliminary order and stay all further proceedings thereon. AIR 1958 All 803 (806) = 1958 Cri L Jour 1369 (DB) ** AIR 1952 Mad 531 (Prs 6, 7) = 1952 Cri L Jour 1145 ** AIR 1970 Manipur 12 (13) = 1970 Cri LJ 57 ** 1968 All WR (HC) 247 (248) ** 1968 Cri LJ 1002 (1003) = 1968 Jab LJ 389 (391) ** 1967 All WR (HC) 144 = 1967 All Cri R 130 ** 1965 Ker LT 1013 (1015) = ILR (1966) 1 Ker 153 (DB) ** 1962 (1) Cr LJ 271 (272) (Assam) ** AIR 1960 Raj 216 (218) = 1960 Cri LJ 1138 = 1960 Raj LW 37.

(2) A party to the proceeding is not in the position of a plaintiff in a civil suit and has no right to require a decision on the points in dispute. AIR 1925 Mad 1252 (1253) = 27 Cri L Jour 95 ** (1902) 30 Cal 112 (117) (DB) ** 1968 Cr LJ 1002 (1003) = 1968 MPLJ 237.

(3) Sub-section (5) provides for a special case in which the parties to the proceedings and even third parties are given the right to show that no dispute exists or has existed. AIR 1925 Mad 1252 (1253) = 27 Cri L Jour 95 ** (1907) 5 Cri L Jour 91 (92, 93) = 29 Mad 561 (DB) ** (1921) 25 Cal WN lvi (lvi) (DB) ** AIR 1932 Oudh 21 (22) = 33 Cri L Jour 46.

(4) The sub-section does not take away the power of the Magistrate to drop the proceedings suo motu. AIR 1954 All 13 (14) = 1953 Cri L Jour 1858 ** AIR 1954 Mad 1017 (1017, 1018) = 1954 Cri L Jour 1558 ** 1962 (1) Cr LJ 271 (272) (Assam) ** AIR 1962 Pat 415 (416, 417) = 1962 BLJR 459 = 1962 (2) Cri LJ 623.

[See however AIR 1936 Lah 1012 (1013) = 38 Cri L Jour 242.]

(5) Where on the recent survey settlement papers, one party was recorded in exclusive possession over one plot and the other party was recorded in exclusive possession over the remaining, the question of joint possession will not arise, and, therefore, that cannot be a ground for dropping the proceeding. AIR 1962 Pat 415 (416, 417) = 1962 BLJR 459 = 1962 (2) Cri LJ 623.

(6) Merely because there has been no further violence it cannot be said that there would be no breach of the peace. AIR 1947 Mad 133 (134) = 48 Cri L Jour 435.

(7) The fact that the evidence adduced by the parties is equally balanced is no ground for dropping the proceedings. AIR 1962 Pat 415 (417) = 1962 BLJR 459 = 1962 (2) Cri LJ 623. (Proper order to be passed in such circumstances is one under Section 146 (1).)

(8) The mere institution of a civil suit, or the fact that a decision as to possession was incidentally arrived at in a criminal case, or the fact that one of the parties gives an undertaking not to enter the land does not per se put an end to the dispute likely to cause a breach of the peace. AIR 1935 Oudh 255 (256) = 36 Cri L Jour 464 ** AIR 1956 All 12 (13) = 1956 Cri L Jour 3 ** AIR 1953 Nag 356 (356, 357) = 1953 Cri L Jour 1795.

(9) When the Magistrate has the guidance of the civil Court as to who is the person entitled to the properties which were attached under Section 145, he is empowered to pass an order dropping the proceedings and an incidental order releasing properties in favour of the party found entitled by the decision of the Civil Court. 1963 (1) Cri LJ 697 (698) = 40 Mys LJ 749 = 1964 Mad LJ (Cri) 60.

(10) Where during the pendency of proceedings under Section 145, Criminal P. C., one of the parties had moved the Civil Court for an adjudication of the rights inter se in regard to the disputed property and the Civil Court has issued an injunction restraining the defendant to interfere with the possession of the disputed property, there would be no justification whatsoever for refusing to drop further proceedings on application being made, and for continuing the proceedings under Section 145. ILR (1965) 17 Assam 439 (441, 442).

(11) Where each party filed a statement that that party did not intend to break the peace, saying nothing about the intentions of the other party, it was held that these statements taken together could not be held to establish the facts required by this sub-section. AIR 1952 Cal 713 (Prs 30, 62) = 1952 Cri L Jour 1411 (DB) ** AIR 1943 Cal 559 (560) = 45 Cri L Jour 107 (DB).

Section 145 — Note 38 (contd.)

(12) Mere absence of both the parties would not be a sufficient ground for dropping the proceedings. AIR 1952 Mys 4 (7) = 1952 Cri L Jour 111 ** 1955 Raj LW 536 (536).

(13) Only one party filing written statement and documents — Magistrate must either decide question of possession on basis of written statement and documents filed by a party, if possible, or proceed under Section 146 — Proceedings can be terminated only when he is satisfied that there is no apprehension of breach of peace but not simply on ground of default of parties. AIR 1965 Pat 469 (470, 472) = 1965 BLJR 239 = 1965 (2) Cri LJ 664.

(14) Parties applying for time alleging that they were not ready with their documents so as to file written statements and affidavits — It cannot be said that they did not want to contest the proceedings — Hence it cannot be said that dispute in respect of which preliminary order was passed had ceased to exist — Proceedings should not be dropped. (1967) 33 Cut LT 953 (959) = ILR (1967) Cut 669.

(15) If there has been a subsequent settlement between the parties or if the petitioner has agreed to give up his right to possession, the proceedings under this can be dropped. AIR 1962 Pat 415 (416, 417) = 1962 (2) Cri LJ 623 = 1962 BLJR 459.

(16) Even where both the parties present a joint petition for dropping the proceedings the Magistrate should satisfy himself that the compromise between the parties is a real one and not a device to get the dispute out of Court and fight it out in their own way. AIR 1952 Vindh Pra 81 (82) = 1953 Cri L Jour 66 ** 1955 All L Jour 656 (656).

(17) Where the Magistrate decides that the case under Section 145 will continue and separate proceedings under Sec. 107 are required, he cannot pass an order cancelling his previous order directing attachment of property. AIR 1951 Ajmer 12 (Pr 5).

(18) The question whether upon the materials before him the proceedings should be dropped is one entirely within the Magistrate's discretion. AIR 1952 Vind Pra 81 (82) = 1953 Cri L Jour 66 ** AIR 1924 Mad 795 (795, 796) = 25 Cri L Jour 978.

(19) It is not obligatory on the Magistrate in case he acts suo motu, to record any evidence or to afford opportunities to the parties to adduce evidence to the contrary. AIR 1952 Mad 513 (Prs 6, 7) = 1952 Cri L Jour 1145 ** AIR 1929 Cal 328 (329) = 31 Cri L Jour 409 (DB) ** AIR 1925 Mad 1252 (1253) = 27 Cri L Jour 95.

(20) Where the Magistrate passes an order without any materials whatever, the order being without jurisdiction can be set aside in revision. ILR (1952) 2 Raj 90 (92) ** (1909) 10 Cri L Jour 560 (563) (DB) (Cal) ** AIR 1924 Pat 689 (691) = 26 Cri L Jour 105.

(21) Magistrate deciding that there was no likelihood of breach of the peace on wrong basis and dropping proceedings — High Court can set aside order in revision. 1962 (1) Cri LJ 271 (272) (Assam).

(22) Where the Magistrate passes an order dropping the proceedings without recording any finding that no dispute likely to cause a breach of the peace existed his order is illegal. AIR 1952 Trav-Co 531 (534) = ILR (1952) Trav-Co 1016 = 1953 Cri L Jour 9 ** ILR (1952) 2 Raj 90 (92).

(23) Neither parties nor any person interested, showing that no dispute existed relating to land — Magistrate dropping proceeding relying on report of Circle Inspector — Order held was not lawful. AIR 1966 Tripura 6 (7) = 1966 Cri LJ 302.

(24) Parties not called upon to file written statements and adduce evidence — Magistrate making site inspection and dropping proceedings on the ground that there was no apprehension of breach of peace on that date as he found opposite party on the land — **Held,** that in dropping proceedings abruptly in that manner he had acted arbitrarily without any regard to procedure laid down by law. 1962 Raj LW 384.

(25) On the making of an order dropping the proceedings, the Magistrate is functus officio and has no jurisdiction thereafter to pass any order relating to the claims of the parties, or to the disposal of the property or the crops thereon. AIR 1953 All 341 (Pr 5) = 1953 Cri LJ 740 ** AIR 1957 All 797 (798) = 1957 Cri LJ 1376 ** 1956 Andh WR 1002 (1003) ** AIR 1954 Tripura 2 (3) = 1954 Cri LJ 1336.

[But see (1902) 2 Weir 108 (108) (DB).]

(26) With the cancellation of the preliminary order the Magistrate becomes functus officio except, to pass orders necessary to wind up the proceedings, and so he ceases to have jurisdiction to pass an order that one of the two contestants should not interfere with the possession of the other over the property in dispute. AIR 1970 Manipur 12 (14) = 1970 Cri LJ 57.

(27) The Magistrate cannot simultaneously act both under sub-section (5) and under sub-sections (4) and (6). Once the Magistrate cancels the preliminary order, it befits him to ensure that none out of the parties arrayed before him gets an advantage at the expense of another. The ideal step to take on cancellation of preliminary order under sub-section (5) would be to restore the parties to the

Section 145 — Note 38 (contd.)
status quo ante. AIR 1970 Manipur 12 (14) = 1970 Cri LJ 57.

(28) It has however been held that after dropping a proceeding under Section 145, Cr. P. Code, the Magistrate does not become functus officio, but still has jurisdiction to pass further orders of an ancillary nature in respect of the attached property. AIR 1957 Orissa 92 (93) = 1957 Cri LJ 526 ** 1968 Cri LJ 1002 (1003) = 1968 MPLJ 237 ** AIR 1967 Orissa 182 (184) = 32 Cut LT 1194 = 1967 Cri LJ 1549 ** (1965) 31 Cut LT 132 = ILR (1964) Cut 78 ** AIR 1963 All 148 (152) = (1963) 1 Cri LJ 399 = 1962 All LJ 894 ** AIR 1961 Orissa 121 (122) = 1961 (2) Cri LJ 133 = 27 Cut LT 23 ** AIR 1960 Raj 216 (218, 219) = 1960 Cr LJ 1138 = 1960 Raj LW 37.

(29) Where the profits, rents or realizations from the attached property are in deposit in Court, the proper course to adopt, on the cancellation of the preliminary order, would be to keep the amount in deposit in Court, until the party entitled to it has established his rights in a proper proceeding. AIR 1952 Tripura 29 (30) = 1953 Cri LJ 71 ** AIR 1955 Vindh Pra 45 (45) = 1955 Cri LJ 1641 ** AIR 1925 Mad 327 (328) = 26 Cri LJ 512 ** AIR 1939 Oudh 284 (286) = 40 Cr LJ 930.

(30) It has been held that after the cancellation of the preliminary order by an order under this sub-section, the Magistrate has jurisdiction to place the parties, so far as possible, in the position they occupied in relation to the land or crops before the order under sub-section (1) was passed. AIR 1952 Vindh Pra 81 (82) = 1953 Cri LJ 66 ** AIR 1953 Hyd 263 (264) = ILR (1953) Hyd 358 = 1953 Cri LJ 1630 ** AIR 1951 Nag 201 (Pr 9) = ILR (1950) Nag 787 = 52 Cri LJ 1 (DB). (('34) 17 Nag LJ 225; AIR 1925 Nag 297 = 26 Cri LJ 378. **Overruled.**) ** 1968 Cri LJ 1002 (1003, 1004) = 1968 Jab LJ 389 ** AIR 1963 All 148 (158, 159) = 1963 (1) Cri LJ 399 = 1962 All LJ 894.

(31) It has been held that when the proceedings are dropped the Magistrate can invoke the power conferred by sub-section (1) of Section 517. 1957 Cri LJ 288 (288) (Orissa) ** 1968 Cri LJ 1002 (1003, 1004) = 1968 Jab LJ 389 ** AIR 1967 Orissa 182 (183) = 32 Cut LT 1194 = 1967 Cr LJ 1549.

(32) Where the proceedings are dropped under sub-section (5), the Magistrate has no jurisdiction to revive the proceedings on any ground whatever. But he can start fresh proceedings if there are fresh materials sufficient to give him jurisdiction to do so. AIR 1953 Mad 436 (437) = 1953 Cri LJ 825 ** AIR 1951 Pat 479 (Prs 1, 3) = 52 Cri LJ 651 ** AIR 1923 Cal 314 (314) = 23 Cri LJ 195 (DB) ** AIR 1967 Pat 309 (309) = 1967 Cri LJ 1359.

(33) Under the guise of passing an ancillary order the Magistrate cannot render the provisions of sub-section (6) of Section 145, or of Section 146, nugatory by dropping the proceeding under Section 145, and then pass an order for the purpose of either handing over the property to the party who, according to him was in possession prior to the commencement of the proceeding or keeping it in charge of a third party Receiver. AIR 1959 Orissa 81 (83) = ILR (1958) Cut 731 = 1959 Cri LJ 624 ** AIR 1961 Orissa 121 (122) = 27 Cut LT 23 = 1961 (2) Cri LJ 133.

(34) When subsequent to the dropping of the proceedings under Sec. 145, Cr. P. C. the magistrate passes an ancillary order without proper enquiry and without finding as to whether a party has established his possession in such a proceeding, and the order has the effect of putting the party into possession of the disputed property it would amount to an evasion of the provisions of the Cr. P. C. AIR 1966 Orissa 5 (5, 6) = (1965) 31 Cut LT 839 = 1966 Cri LJ 38.

(35) Where the Magistrate finds that there were separate disputes between the same parties in respect of several parcels of disputed property the Magistrate while dropping the proceedings should draw up separate proceedings in respect of the various parcels of the disputed property and then dispose of the same in accordance with law. AIR 1959 Orissa 81 (83) = ILR (1958) Cut 731 = 1959 Cri LJ 624.

(36) Magistrate passing order under Section 145 (6) even after holding that no apprehension of breach of peace existed and no action under Section 145 was called for — **Held,** Magistrate acted illegally and in excess of jurisdiction in passing order under Section 145 (6) as he had become functus officio on finding that no apprehension of breach of peace existed. 1966 All WR (HC) 536 = 1966 All Cri R 318.

(37) Proceeding under Section 145 at the instances of intervener party dropped by Magistrate on ground that he could not revise or review Board's decision. **Held,** that decision of Board was binding only upon those who were parties before it and not upon those who were refused hearing. The intervener tenants were not parties to the proceedings before Bakasht Board. Hence the reason given for dropping proceeding under Section 145, was erroneous. 1960 BLJR 384.

39. Finality of the preliminary order.— (1) The preliminary order passed under sub-section (1) is final, unless it is cancelled, the Magistrate has no jurisdiction to strike off proceedings on any other ground. AIR 1956 All 12 (13) = 1956 Cri LJ 3 ** AIR 1926 All 242 (242) = 48 All 258 = 27 Cri LJ 466 ** AIR 1921 Cal 631 (632) = 22 Cri LJ 484 (DB).

Section 145 — Note 39 (contd.)

(2) Once a Magistrate passes an order after his satisfaction that there was a danger of the breach of peace he cannot at a subsequent stage, record a contradictory finding. AIR 1956 All 337 (2) (338) = 1956 Cri LJ 663.

(3) It is not necessary for the Magistrate at the time of the final order to come to a finding that there is or was no likelihood of a breach of the peace. AIR 1953 All 540 (Pr 5) = 1953 Cri LJ 1266 ** AIR 1953 Hyd 286 (287) = 1953 Cri LJ 1862 = ILR (1953) Hyd 173 ** AIR 1952 Cal 713 (Prs 30, 62) = 1952 Cri LJ 1411 (DB) ** 1964 Cur LJ 400 = 66 Pun LR 963.

(4) Where the Magistrate orders the Sub-Inspector of Police to enquire and report and attach the property in dispute if there is an apprehension of the breach of the peace and the Sub-Inspector attaches the property accordingly, the subsequent proceedings are without jurisdiction and can be dropped at any stage. AIR 1952 All 186 (Prs 6, 9) = 1952 Cri LJ 379.

(5) Finality of the preliminary order — Order open to challenge before a Court of competent jurisdiction — There can be no presumption in favour of the successful party in Section 145 proceeding that he continued in possession. AIR 1968 Orissa 36 (41, 42) = 33 Cut LT 974 = 1968 Cr LJ 336. (AIR 1947 Lah 173, Diss.).

40. "Any other person interested". — (1) The "person interested" who is enabled under sub-section (5) to show that no dispute exists or has existed does not become a "party" to the proceedings. The Magistrate cannot, therefore, pass the final order under sub-section (6) in his favour. (1903) 30 Cal 155 (199) (FB) ** AIR 1918 Cal 117 (118) = 19 Cri LJ 653 (DB).

(2) After the contesting parties have compromised and there is no danger of a breach of the peace, a third person will not be allowed to intervene. 1939 Nag LJ 197 (198).

(3) A tenant of part of the property in dispute is a person interested within the meaning of sub-section (5). (1910) 11 Cri LJ 371 (371) = 37 Cal 285 (DB).

(4) Person claiming to be in actual possession of disputed property is 'person interested' within meaning of Section 145 (5). 1967 All WR (HC) 570 = 1967 All Cri R 370.

(5) Dispute concerning wakf properties in Mysore State — Proceedings under Section 145 — Mysore Muslims Wakf Board is party interested in wakf and is entitled to be impleaded in proceedings. AIR 1962 Mys 128 (129, 130) = 1962 (2) Cri LJ 77 = 40 Mys LJ 518.

41. Order under this section. — (1) Continuance of breach of the peace is not necessary for passing of the final order. AIR 1947 Mad 133 (134) = 48 Cri LJ 435 ** (1962) 2 Mad LJ 99 (100) = 1961 Mad WN 709.

(2) It is not necessary for the Magistrate to record in the final order, a finding as to the likelihood of a breach of the peace. (1940) 71 Cal LJ 152 (155) (DB) ** AIR 1925 Oudh 605 (606) = 26 Cri LJ 1581.

(3) The Magistrate should give a definite finding as to which of the parties was in possession of the subject of the dispute on the date of the preliminary order. AIR 1923 Mad 24 (24, 25) = 24 Cri LJ 156 ** (1908) 7 Cri LJ 336 (337) (DB) (Cal) ** AIR 1923 Mad 180 (181) = 24 Cri LJ 64 ** AIR 1965 J and K 69 (70) = 1965 Kash LJ 16 = 1965 (2) Cri LJ 209 ** AIR 1965 Tripura 41 (42) = 1965 (2) Cri LJ 809.

(4) The judgment of the Magistrate must be self-contained, so self-contained that the finding with regard to possession can be sustained by a bare perusal of it. It is not sufficient if the order merely states that possession has been proved nor is it sufficient if it states that the evidence which has been first in the case was not satisfactory on that point. 1967 Cri LJ 1726 (1727) = (1967) 2 Mys LJ 255.

(4a) If the Magistrate does not take care to consider the intrinsic merit of the affidavits filed by parties specially with reference to the fact of possession and it appears that he did not apply his mind to the material before him in a judicious manner his order is liable to be set aside being not in accordance with law. (1969) 35 Cut LT 333 (335).

(5) Under the provisions of Section 145 finding about the merits cannot be given till both parties have led their evidence, unless of course the Magistrate under sub-section (5) of Section 145 comes to the conclusion that no dispute as alleged by a party exists in which case the Magistrate shall cancel his preliminary order. AIR 1965 J and K 69 (70) = 1965 Kash LJ 16 = 1965 (2) Cri LJ 209.

(6) Magistrate in his order stating that from statements of witnesses of both sides, facts could not be correctly ascertained — Magistrate discussing other materials on record but not stating why facts could not be so ascertained — Such bare statement does not indicate that he applied his mind to contents of affidavits of parties. AIR 1967 Pat 223 (224) = 1967 Cr LJ 907 (DB).

(7) The finding that a certain party was in possession should be supported by a statement of the reasons which have influenced the Magistrate in coming to such a conclusion. AIR 1956 All 297 (303) = 1956 Cri LJ 561 (DB) ** AIR 1925 Cal 1040 (1045) = 26 Cri LJ 915 (SB) ** 31 Cut LT 761 = ILR (1965) Cut 89 ** 1962 (2) Cri LJ 557 (558, 559) (Manipur).

Section 145 — Note 41 (contd.)

(8) An order of a Magistrate under Section 145 (4) which does not give any reasons for the order cannot be upheld merely because the Magistrate chose to make the order in Form 22 of Sch. V of the Code of Criminal Procedure. AIR 1956 All 297 (304) = 1956 Cri LJ 561 (DB). (1951 All WR (HC) 507 and AIR 1932 All 325 = 33 Cri LJ 157, **Overruled.**) ** AIR 1955 All 257 (258) = 1955 Cri LJ 750.

(9) A finding arrived at by misreading certain documents and by relying upon certain passages in documents which do not refer to the property in dispute is bad in law. AIR 1947 Pat 175 (177) = 48 Cri LJ 683.

(10) The Magistrate has no general powers to pass any final order except as provided by sub-section (6). ('68) 9 Suth WR (Cr) 20 (21) (DB) ** AIR 1915 Bom 98 (98) = 16 Cri LJ 434 (DB) ** (1905) 2 Cri LJ 552 (554) = 32 Cal 602 (DB) ** (1913) 14 Cri LJ 138 (139) (Lah).

(11) Order under Section 145 (6) can be passed only in respect of property of which dispossession is alleged. AIR 1964 Raj 81 (83) = 1963 Raj LW 543 = 1964 (1) Cri LJ 429.

(12) The final order should accurately specify the property in dispute with boundaries, descriptions, etc., in respect of which it is passed. AIR 1920 Cal 904 (905) = 22 Cri LJ 385 (DB).

(13) The Magistrate has no jurisdiction to pass a final order in respect of lands not covered by the preliminary order nor in respect of any moveable property. AIR 1939 Pat 565 (566) = 40 Cri LJ 629 ** AIR 1947 Pat 175 (176) = 48 Cri LJ 683 ** AIR 1927 Nag 333 (334) = 28 Cri LJ 687 (688) ** (1907) 6 Cri LJ 291 (292) = 4 Low Bur Rul 65 ** AIR 1969 Manipur 52 (55) = 1969 Cri LJ 985. (Final order including property not included in preliminary order — Order liable to be set aside.) ** (1967) 1 Mad LJ 143 ** 1963 (1) Cri LJ 545 (546) = (1962) 2 Mad LJ 150.

(14) If, the order is passed in respect of both moveable and immovable property, only that part of the order which relates to immovable property is valid. AIR 1917 Pat 183 (185) = 18 Cri LJ 756 (DB).

(15) Where the final order relates only to a portion of the lands included in the preliminary order the final order is not bad. AIR 1953 Orissa 99 (101) = ILR (1951) Cut 576 = 1953 Cri LJ 737.

(16) Where the lands are distinguishable and the evidence of possession adduced in relation to them is easily separable, the Magistrate's order with regard to the land of which possession has been found with the party and which really comes within the ambit of the proceedings can be sustained and only the finding which relates to land which is in excess of the proceedings may be vacated. AIR 1947 Pat 175 (176) = 48 Cri LJ 683 ** AIR 1959 Pat 196 (198) = 37 Pat 1227 = 1959 Cri LJ 634 (DB).

(17) Both parties claiming that the disputed plot was part of their undisputed plot — Magistrate had to decide the question only as regards the possession of attached plot. 1968 All Cri R 515 (518) = 1968 All WR (HC) 808.

(18) An order in favour of a person who was not a party to the proceedings or who, though made a party, disclaims any interest in the disputed property is without jurisdiction. AIR 1939 Pat 187 (187) = 40 Cri LJ 220 ** AIR 1947 Pat 175 (177) = 48 Cri LJ 683 ** AIR 1936 Oudh 188 (189) = 37 Cri LJ 1058.

(19) Orders to be passed by Magistrate himself and not left to the clerk. AIR 1964 J and K 1 (3, 4) = 1964 (1) Cri LJ 37 = 1963 Kash LJ 108.

(20) Use of Form No. 22 in Sch. V is not obligatory. AIR 1918 Cal 901 (903) = 18 Cri LJ 1024 (DB).

[See also AIR 1956 All 297 (301) = 1956 Cri LJ 561 (DB).]

(21) Order drawn up in Form XXII of Sch. V is a final order which is required to be drawn up not necessarily to embody decision but to embody directions of Magistrate to parties concerned. AIR 1965 Guj 158 (163) = (1965) 6 Guj LR 14 = 1965 (2) Cri LJ 91.

(22) Magistrate holding proceedings alone can pronounce final order — No delegation to successor Magistrate in case of his transfer permissible — Order of S. D. M. recalling proceedings from successor Magistrate and transferring same to another Magistrate— Not illegal. 1969 Cri LJ 1315 (1317) = 1969 BLJR 342 (DB). (AIR 1948 Mad 510, Dissented from.)

(23) Proceedings under Section 145 — Certain orders passed behind the back of a party — Such orders are without jurisdiction and are nullities — Such orders can be ignored by the Magistrate in the very proceedings and he can proceed with the case. (1966) 32 Cut LT 659.

(24) Land attached pending proceeding under Section 145 — Proceedings under Section 145 decided — Magistrate passing order directing superdar to deposit certain amount towards profits utilised by him, arising out of attached land — Order is without jurisdiction — Amount due can be determined only in civil Court. 1968 Cri LJ 1531 (1532) = 1966 All LJ 792.

(25) Where, in an auction held for settlement of land attached under S. 145 (4), the highest bidder deposited certain amount as earnest money but defaulted in payment of the balance and the Magistrate ordered forfeiture of the earnest money.

Held, that as there was no provision of law, nor any term in the bid-sheet or in

Section 145 — Note 41 (contd.)
the order of settlement, to the effect that the Magistrate could forfeit the earnest money on non-payment of the balance, the order of forfeiture was incorrect and liable to be set aside. 1961 (2) Cr LJ 542 (1) (542) = 1961 BLJR 348.

42. "Declare that such person is entitled to possession" — Sub-section (6). — (1) The Magistrate should declare that the person found to be in possession on the date of the preliminary order is entitled to the possession of the property until evicted in due course of law. 1957 Cri LJ 682 (688) (Raj) ** AIR 1946 Pat 330 (335) = 47 Cri LJ 328 (DB) ** AIR 1964 Ker 308 (308, 309) = 1964 (2) Cri LJ 682 = 1964 Ker LT 179.

[See also AIR 1936 All 177 (178) = 37 Cri LJ 215. (Party ordered to be put in possession — Order based on revenue Court's order in mutation proceedings regarding same property — Magistrate held could not direct party to be put in possession.)]

(2) Where the case of 'A' party, which is being treated as in possession, has always been that they are in actual possession of the property in dispute and that the 'B' party has no possession the final order should declare 'A' party to be in possession, and not that "No. 2 of 'A' party to be entitled to the possession of the disputed property until evicted therefrom in due course of law". AIR 1964 Ker 308 (308, 309) = 1964 Ker LT 179 = 1964 (2) Cri LJ 682.

(3) The Magistrate has no jurisdiction to order that one party should be in possession throughout the year but that during certain seasons he should be in joint possession with the other party. AIR 1926 Cal 1022 (1025) (DB).

(4) The Magistrate cannot order that one party should be in possession until he reaped the harvest and then surrender possession to the other party. ('78) 1 Cal LR 136 (139, 140) (DB).

(5) Having found possession with one party the Magistrate cannot declare possession of a portion only of the property leaving out the other portions for pathways. (1913) 14 Cri LJ 391 (392) (DB) (Cal).

(6) The Magistrate cannot permit the other party to cultivate the land pending establishment of his possessory rights or order division of the crops on the land. ('72) 18 Suth WR (Cr) 27 (27) (DB) ** (1908) 8 Cri LJ 387 (388) (DB) (Cal).

(7) The Magistrate cannot award compensation to a party on account of loss suffered due to his inability to harvest crop by reason of the proceedings under this section. AIR 1949 Assam 48 (Pr. 2) = 50 Cri LJ 1002.

(8) Under the section the Magistrate is not competent to call upon a party to abstain from any act. AIR 1953 Vindh Pra 25 (27) = 1953 Cri LJ 1198.

(9) The Magistrate can find possession of the property restricted in its enjoyment by a right of way over it in favour of the other party and declare such restricted possession. AIR 1924 Bom 452 (453) = 26 Cri LJ 772 (DB).

(10) A declaration of a right to possess a temple subject to performance of puja in it by the other party is permissible. AIR 1917 Mad 840 (841) = 17 Cri LJ 235.

(11) Order directing division of the land between the parties at the discretion of the Magistrate is not an order contemplated under Section 145 (6). AIR 1954 Assam 83 (83, 84, 85) = ILR (1953) 5 Assam 243 = 1954 Cri LJ 721 (DB).

(12) It is not open to a Court acting under Section 145, Criminal P. C., to convert itself into an execution Court to the convenience of the parties. AIR 1957 All 797 (799) = 1957 Cri LJ 1376.

(13) Where during the pendency of proceeding under Section 145 in respect of certain land, the Civil Court in pursuance of a partition decree granted delivery of possession of a portion of the land to one of the parties, holding that opposite party were mere farzidars having no right of possession over the disputed land:

Held, that it could not be said in the facts and circumstances of the case that the opposite party or their successors in interest had a bona fide claim over the disputed land. 1959 Pat LR 21 (23) (DB).

43. Evicted in due course of law. — (1) A final order under sub-s. (6) is intended to be effective only up to the time a competent Court takes seisin of the matter and passes an order of delivery of possession to the successful party to the proceedings, or passes such orders as may be necessary for the protection of the property. **AIR 1959 SC 960 (966) = 1959 Cri LJ 1223** ** AIR 1949 All 203 (204) = 50 Cri LJ 257 ** (1967) 10 Law Rep 798 (Mys).

(2) The order should be passed by a Court acting under statutory authority to award possession. An order of the settlement officer merely recording possession is not such an order. AIR 1917 Pat 220 (220) = 18 Cri LJ 682.

(3) The decree or order of eviction passed by a Revenue Court or any statutory authority other than a civil Court is also one passed "in due course of law." AIR 1954 Orissa 129 (129, 130) = ILR (1953) Cut 267 (DB) ** AIR 1968 Orissa 36 (40, 42) = 33 Cut LT 974 = 1968 Cri LJ 336. (Eviction contemplated by the section is not confined to one through a Civil Court.) ** AIR 1967 Orissa 110 (112) = 33 Cut LT 688 = 1967 Cri LJ 1036.

(4) An order for redelivery of possession of the disputed property under Sec-

Section 145 — Note 43 (contd.)

tion 144, C. P. C. amounts to ejectment of opposite party 'in due course of law'. 1968 All WR (HC) 444 (446).

(5) When the Criminal Court has under Section 522 ordered the opposite party to be put in possession of the property in dispute, that amounts to the applicant's eviction in due course of law. AIR 1953 All 684 (685) = 1953 Cri LJ 1518.

(6) The term "evicted" applies to cases where a person "in possession" is found to be disentitled to possession altogether as well as to cases where he is found disentitled to the extent of possession awarded to him by the Magistrate. AIR 1920 Mad 209 (211) = 21 Cri LJ 73 (DB).

(7) It is not enough if the unsuccessful party to the proceedings succeeds in getting a suit for confirmation of possession filed by the other party dismissed; his remedy is to bring a suit for recovery of possession. ('69) 11 Suth WR (Cr) 43 (44) = 3 Beng LR (AC) 57 (DB).

(8) Even though a property may be in custodia legis on attachment under Section 145 (4), a subsequent delivery of possession by the Civil Court on such property can be effective. 1959 Pat LR 21 (25) (DB).

(9) If the party has already obtained possession in due course of law, it will not be proper for the Magistrate to refuse to recognise such possession and again drive that party to the very Court or authority from whom he obtained possession. ILR (1959) Cut 7 (11, 12) ** 1967 All WR (HC) 704.

44. Restoration of possession. — (1) The words "and when he proceeds under the second proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed", in sub-section (6), enables the Magistrate now to put such person in actual possession. AIR 1927 Mad 304 (306).

(2) It is not necessary that an order for restoration of possession should form part of the order declaring a person, dispossessed within two months, to be entitled to possession. AIR 1952 Cal 713 (Prs 61, 62) = 1952 Cri LJ 1411 (DB).

(3) Without a clear finding by the Magistrate that the applicant was dispossessed within two months next before the date on which the proceedings were started, no order for restoration of possession can be made. ILR (1956) Patiala 9 (13).

(4) Restoration of attached property — No person named in memorandum of attachment from whose possession property attached — Property to be retained in custody of Court — Parties to be directed to get declaration of title. 1968 Cri LJ 1002 (1004) = 1968 MPLJ 237.

(5) Attachment of property under Section 145 (4) — Property in custody of Court — Decree declaring title — No other decree for possession necessary. 1968 Cri LJ 1002 (1004) = 1968 MPLJ 237.

(6) Sub-Divisional Officer is not authorised to pass an order for restoration of possession of any land in favour of any aggrieved party and that with the help of police force — A Magistrate cannot mix up judicial functions with his executive functions. AIR 1967 Pat 319 (320) = 1967 Cri LJ 1363.

44A. — Power to award costs — See s. 148.

45. Effect of order under this section. — (1) An order under this section is final and conclusive and is intended to be effective until the party in whose favour the order is made is evicted in due course of law. AIR 1921 Oudh 119 (119) = 22 Cri LJ 384 ** AIR 1932 Cal 29 (31) ** 1968 All WR (HC) 444 (446) ** AIR 1968 Orissa 36 (40) = 33 Cut LT 974 = 1968 Cr LJ 336 ** 1967 BLJR 600 = ILR 46 Pat 551 (DB). (Finding is conclusive only so long as there is no contrary finding of civil Court.) ** 1966 Cri LJ 339 (1) (339) (Pat) ** (1963) 65 Punj LR 526 (527) = 1963 Cur LJ 137. (AIR 1947 Lah 173, Diss. from.) ** AIR 1960 All 573 (578) = 1960 All LJ 314. (Final order is provisional and subject to final adjudication of rights of parties by civil Court. **Overruled** on another point in AIR 1962 All 248.)

(1a) Final order under — During pendency of proceedings under Section 145, Revenue Court rejecting the prayer for ejectment of opposite parties granting a declaration that parties were co-bhumidars — Final order under Section 145 (6) holding opposite parties in possession on date of preliminary order and directing release of property from attachment in their favour, does not come to an end by reason of decree of revenue Court. 1970 Cri LJ 770 (771) (All).

(2) The remedy of the unsuccessful party is to file a civil suit. AIR 1936 All 322 (324) = 37 Cri LJ 694 ** AIR 1936 Cal 659 (661) = 38 Cri LJ 79 (DB) ** ILR (1966) Cut 661 (671) ** 1961 (2) Cr LJ 880 (883) (DB) (Pat) ** AIR 1960 Raj 196 (200).

(3) Order under Section 145 — Dispute taken by party adversely affected to Civil Court — Temporary injunction by Civil Court stopping other party from taking possession according to order of Magistrate — Order of Magistrate though valid cannot be enforced so long as injunction is in force. AIR 1962 All 68 (70) = 1961 All Cr R 364 = 1962 (1) Cri LJ 116 = 1961 All LJ 802.

(4) If the parties to the two sets of proceedings are the same or derived their interest from the same parties, the order in the previous proceedings operates as a bar to the institution of fresh proceedings. AIR 1939 Pat 611 (618) =

Section 145 — Note 45 (contd.)
41 Cri LJ 191 (DB) ** AIR 1958 Pat 222 (222) = 1958 Cri LJ 552 ** 1968 BLJR 461 (463) ** AIR 1967 J and K 129 (130) = 1967 Kash LJ 24 = 1967 Cr LJ 1508 ** 1961 (2) Cri LJ 650 (652) (Manipur).

(5) If the parties to the fresh proceedings are not the same, the Magistrate can initiate fresh proceedings. AIR 1946 Pat 330 (333) = 25 Pat 19 = 47 Cri LJ 328 (DB) ** AIR 1938 Pat 1 (4) = 39 Cri LJ 268 ** AIR 1935 Cal 494 (494) (DB).

[But see AIR 1943 Oudh 229 (231) = 44 Cri LJ 459 ** AIR 1941 Pat 607 (608) = 42 Cri LJ 791 ** AIR 1929 Pat 505 (506) = 30 Cri LJ 840.]

(6) The practical result of order of the Magistrate is to enable the successful party to take possession of the property. AIR 1943 Oudh 229 (231) = 44 Cri LJ 459 ** (1908) 7 Cal LJ 547 (551) (DB).

[See however AIR 1915 Cal 816 (818) = 22 Cri LJ 415 (DB).]

(7) The Magistrate should enforce his order against persons disobeying it either by instituting proceedings against them under Section 188, Penal Code, or by proceedings under Section 144 or S. 107. AIR 1939 Pat 611 (618) = 41 Cri LJ 191 (DB) ** AIR 1943 Oudh 229 (231) = 44 Cri LJ 459 ** AIR 1941 Pat 607 (608) = 42 Cri LJ 791.

(8) If there has been a previous attachment under Section 145 (4), then the order under Section 145 (6) amounts to a confirmation of the dispossession of one party and declaration of the other party to be entitled to possession. AIR 1956 Pat 116 (123) = 1956 Cri LJ 543 (DB).

(9) An order of the Criminal Court under Section 145 (6) having been passed in the presence of the parties, must be deemed to have been duly promulgated within the meaning of Section 188, Penal Code, qua the parties to the litigation in the Court. AIR 1955 All 423 (425, 429, 431) = ILR (1955) 2 All 547 = 1955 Cri LJ 1111 (DB) ** AIR 1967 All 579 (580) = 1967 All LJ 267 = 1967 Cri LJ 1586.

(10) Petitioner in possession under a registered lease deed — Respondent directed not to disturb possession but to file a civil suit — During pendency of civil suit respondent alleged to have again disturbed possession of lessee — Remedy contemplated in such circumstances is not one under Section 145, Criminal P. C., but under relevant provisions of the Penal Code as for instance Section 188, Penal Code. 1964 Mad LJ (Cri) 343 = (1964) 1 MLJ 440.

(11) Violation of order under Section 145, Cr. P. C., without prohibitory order — Section 188, Penal Code, is not attracted. AIR 1965 Assam 29 (30) = 1965 (1) Cri LJ 424.

(12) It is the right and duty of the Magistrate to give due respect to an order of his own Court in a prior proceeding under Section 145 and to see that is obeyed and enforced. The party cannot be said to be raising a bona fide dispute regarding possession by disobeying earlier order of the Magistrate's Court which is still in force. An order such as one under Section 144 Cr. P. C. or that he should be prosecuted under Section 188 Penal Code, can straightway be passed against him. 1966 Cri LJ 1080 (1086) = (1965) 2 An WR 237.

(13) If an order under Section 145 is disobeyed and it "causes or tends to cause a riot or affray" the person disobeying such order ought to be punished as the object of the order is to prevent breach of the peace. But before a person can be punished for disobedience of an order under Section 145, Cr. P. Code, there should be evidence that this act of disobedience caused or tented to cause a riot or affray. (1970) 1 Mad LJ 58 (59) = 1969 Mad LW (Cri) 210 (2).

(14) Violation of prohibitory order under Section 145 — Magistrate may prefer complaint under Section 188 Penal Code — He cannot take cognizance himself. AIR 1970 Pat 102 (103) = 1970 Cri LJ 484.

(15) Injunction order — Disobedience of, on strength of Cr. Court's order under S. 145, Cr. P. C. — Note justified— So long as injunction order is in force, finding of criminal Court under Section 145 is of no consequence. AIR 1961 Madh Pra 9 (10) = 1962 Jab LJ 487.

(16) A final order under this section does not in any manner affect the rights of the parties. (1901) 25 Bom, 179 (184) (DB) ** AIR 1933 Lah 409 (412) = 34 Cri LJ 342 ** AIR 1923 All 77 (78) (DB) ** AIR 1960 Assam 111 (114) (SB). (AIR 1955 Assam, 156, **Overruled.**)

(17) A final order under this section does not give rise to a presumption in a Civil Court, in favour of the successful party. AIR 1923 Pat 401 (402) ** AIR 1959 Pat 406 (407) (DB) ** AIR 1956 Manipur 42 (44) ** AIR 1915 Mad 926 (926) (DB).

[See however AIR 1947 Lah 173 (174).]

(18) A finding of a Criminal Court in proceedings under Section 145 on the question of possession is not binding in a Civil suit subsequently filed by one of the parties against the other, so as to preclude the Civil Court from going into the question of possession. 1963 (1) Cri LJ 345 (345, 346) (All) ** AIR 1967 Orissa 39 (41) = 1967 Cri LJ 395= ILR (1966) Cut 329 ** AIR 1960 All 573 (578) = 1960 All LJ 314. **(Overruled on another point in AIR 1962 All 248.)** ** 1960 All LJ 145 (146). (It can only be admissible as a piece of evidence.) ** AIR 1969 Pat 317 (320) = 1969 Cri LJ

Section 145 — Note 45 (contd.)

1197 (Pat). (Judgment of High Court in previous criminal case — Use by Court to prove possession of land of, Evidence quantum valebat relevant under Section 13, Evidence Act.)

(19) It is not necessary for the unsuccessful party to the proceedings to sue to vacate the order of the Magistrate. AIR 1924 Mad 224 (225) (DB) ** (1912) 14 Ind Cas 566 (567) = 1912 Pun Re No. 84 (DB).

(20) The onus is, on the unsuccessful party to show that he has a better title to the property than the person whose possession has been declared by the Magistrate. **AIR 1923 PC 128 (130)** ** (1902) 29 Cal 187 (199) = 29 Ind App 24 (PC) ** AIR 1919 Cal 672 (673) (DB) ** (1900) 27 Cal 943 (947) = 27 Ind App 136 (PC).

(21) The order of the Magistrate is admissible in evidence in the subsequent civil suit to prove the fact of the dispute, to show how it was settled, who were the parties thereto, and who was placed in possession by the Magistrate. (1902) 29 Cal 187 (198) = 29 Ind App 24 (PC) ** AIR 1927 Cal 701 (702) = 28 Cri LJ 827 (DB) ** AIR 1930 Cal 450 (452) (DB) ** 1960 All LJ 145 (146) = 1960 All WR (HC) 98.

(22) The findings of the Magistrate on questions of fact relating to possession are inadmissible. AIR 1939 Lah 188 (190) ** AIR 1916 Cal 582 (592) (SB) ** AIR 1930 Cal 450 (452) (DB).

(23). An order under sub-section (6) dispossessing a person will not be a ground for a suit under Section 9 of the Specific Relief Act. (1908) 7 Cal LJ 547 (550, 551) (DB).

(24) Where the dispossession occurred long before the institution of the proceedings, an order under this section will not be a bar to a suit under Section 9 of the Specific Relief Act. (1908) 30 All 331 (333) (DB) ** (1873) 20 Suth WR 12 (12) (DB) ** AIR 1929 Rang 21 (22).

(25) The Magistrate has no power to review the final order passed by him under sub-section (6). AIR 1935 Rang 447 (447) = 37 Cri LJ 92 ** AIR 1953 Orissa 281 (282, 283) = ILR (1953) Cut 311 = 1953 Cri LJ 1726 (DB) ** (1908) 7 Cri LJ 401 (403) = 35 Cal 350 (DB).

(26) The Magistrate can at any time correct clerical or arithmetical mistakes in the order or errors arising therein from any accidental slip or omission. AIR 1918 Cal 472 (472) = 18 Cri LJ 995 (DB) ** 1955 Andh WR 124 (125) ** AIR 1918 Cal 238 (238) = 19 Cri LJ 732 (DB).

(27) The final order passed under this section does not amount to a "judgment" in a trial. AIR 1948 Mad 510 (511) = ILR (1949) Mad 293 = 49 Cri LJ 754 ** AIR 1953 Orissa 281 (282) = ILR (1953) Cut 311 = 1953 Cri LJ 1726 (DB).

(28) The action of a Magistrate in pronouncing in Court the order of his predecessor under Sec. 145 (6), which had been written and signed by the latter when he was in office, is not illegal. AIR 1948 Mad 510 (512) = ILR (1949) Mad 293 = 49 Cri LJ 754.

(29) The fact that a proceeding is pending under this section is no bar to the Magistrate deciding, in a case of rioting, who was at that time in possession of the subject of dispute. AIR 1926 Cal 945 (946) = 27 Cri LJ 975 (DB).

(30) Defendants first party who were second party in proceedings under S. 145 declared entitled to possession of land in proceedings under Section 145 — In suit for recovery of possession of land, order under Section 145 given as cause of action — Held defendants were not joint tort-feasors. 1966 Cri LJ 1098 (1099) = 1966 BLJR 1009 (DB).

(32) Finding of possession in favour of accused not in conformity with subsection (4) and 2nd proviso thereunder — Such finding would not be binding as to the question of possession of disputed land in criminal case for theft of standing crop on disputed land. AIR 1966 Orissa 186 (188) = 1966 Cri LJ 1039 = 32 Cut LT 175.

(32) A person who has in his favour an order under Section 145 Cr. P. C. stands on a better footing than a person who merely makes a payment under Section 14 (2) of U. P. Z. A. & L. R. Act (1951), without having a right to do so. 1968 All LJ 1133 (1138) (DB).

(33) Merely because final order under Section 145 Cr. P. C. had been passed after the institution of civil suit for declaration of title and recovery of possession, it will not be open to the defendants, who were on the losing side in the proceeding, to contend that their title was not affected even after three years of the order of criminal Court. (1967) ILR 46 Pat 1103 (1118) (DB).

45A. Effect of an order under this section on limitation. — See notes on Articles 64 and 65 of Limitation Act (1963).

46. Persons bound by the order. — (1) All persons concerned in the dispute who had notice of the proceedings are bound by the order though they are not parties. 1954 Raj LW 735 (735) ** AIR 1930 Cal 63 (64) = 31 Cri LJ 945 (DB) ** AIR 1923 All 151 (152) (DB) ** AIR 1936 Nag 192 (197). (1938) 39 Cri LJ 868 (869) (DB) (Oudh) ** AIR 1929 Pat 505 (506) = 30 Cri LJ 840. (Order binds all persons interested in the property.) ** AIR 1951 Pat 325 (Pr 4) = 29 Pat 311 (DB) ** AIR 1966 Orissa 170 (171) = 32 Cut LT 256 = 1966 Cri LJ 935 ** AIR 1966 Orissa 49 (50, 52) = 1966 Cri LJ 275 = 31 Cut LT 1112.

[But see 1965 All LJ 654 = 1965 All WR (HC) 429. (Persons bound by order must be parties to the proceedings.) **

Section 145 — Note 46 (contd.)
AIR 1935 Lah 115 (118) (DB) ** AIR 1941 Pesh 65 (67) = 42 Cri LJ 872 ** AIR 1950 All 693 (Prs 7, 8, 18).]

(2) Where the order under Sec. 145 was passed after notice to all the landlords and was brought about by reason of the action of all of them, it has been held by their Lordships of the Supreme Court that the order bound the full sixteen annas interest in the zamindari, that the benefit of the order passed under Section 145 can be taken by those who are parties to the proceedings or persons represented by them. **AIR 1951 SC 247 (252) = 1951 SCR 431 = 30 Pat 871** (SC).

(3) Where a person is "bound by the order" under this section, he or a person claiming through him should, under Article 47 of the Limitation Act, file a suit to recover the property within three years from the date of such order. AIR 1941 Pesh 65 (67) = 42 Cri LJ 872 ** (1896) 23 Cal 731 (737) (FB).

(4) Where a tenant is in possession of the premises which is the subject of proceedings under Sec. 145 between two other parties, no order of eviction against the tenant can be passed without making him a party to the proceedings. 1957 Cri LJ 274 (275) (All).

(5) The fact that an order is passed to be operative against persons who are not mentioned as parties, and are therefore obviously not bound by such an order is no ground for setting aside the order even against those persons who are parties to the proceeding. AIR 1959 Pat 196 (198) = 37 Pat 1227 = 1959 Cri LJ 634 (DB) ** AIR 1959 Cal 366 (367) = 1959 Cri LJ 705.

47. Conversion of proceedings. — (1) Jurisdiction of the Magistrate to institute proceedings under Section 107 is not ousted by the mere fact that the dispute relates to immoveable property. AIR 1942 Pat 331 (333) = 43 Cri L Jour 637 ** AIR 1943 Pat 44 (47) = 44 Cri L Jour 25 (DB) ** (1911) 12 Cri L Jour 569 (571) = 39 Cal 150 (FB) ** AIR 1967 Orissa 17 (19) = 32 Cut LT 472 = 1967 Cri LJ 231. (Dispute concerning land — Dispute likely to cause breach of peace — Magistrate has jurisdiction to proceed under Section 107.)

(2) Whether the Magistrate may institute proceedings under Section 107 in addition to proceedings under Section 145 or whether it would be proper for him to act under Section 145 after instituting proceedings under Section 107, would depend only upon the circumstances of each case. (1911) 12 Cri LJ 569 (571) = 39 Cal 150 (FB) ** AIR 1954 All 461 (462) = 1954 Cri L Jour 976 ** AIR 1917 Cal 226 (226) = 18 Cri L Jour 129 (DB).

(3) The proceedings started under Section 145 can be converted into those under Section 107. AIR 1948 Nag 76 (77) = ILR (1947) Nag 706 = 49 Cri L Jour 61 ** AIR 1954 All 461 (Pr 4) = 1954 Cri L Jour 967.

[See however AIR 1949 Pat 482 (483) = 51 Cri L Jour 92.]

(4) It would be very undesirable to institute simultaneous proceedings under Sections 145 and 107 when each section provides by itself a sufficient remedy for the prevention of a breach of the peace. AIR 1953 Vindh Pra 14 (15) = 1953 Cri L Jour 975 ** 1957 MPC 373 (374) ** 1951 Raj LW 176 (177) ** AIR 1919 Cal 465 (465) = 19 Cri L Jour 367 (DB).

[See however (1872) 9 Beng LR (Cri) 229 (235) (DB).]

(5) Even where action is taken simultaneously under Sections 145 and 107 there should be two separate proceedings. AIR 1953 Raj 119 (Pr 6) = ILR (1952) 2 Raj 86 = 1953 Cri L Jour 846 ** AIR 1952 Raj 100 (101) = 1952 Cri L Jour 1031 ** AIR 1951 Raj 156 (Pr 3) = ILR (1951) 1 Raj 265 = 52 Cri L Jour 1209 (DB).

(6) A proceeding under Section 107 cannot be converted into one under Section 145. AIR 1918 Pat 625 (625) = 19 Cri L Jour 320 ** (1904) 1 All L Jour 185n (185n).

[See also AIR 1958 Manipur 15 (16) = 1958 Cri L Jour 394.]

[See however (1951) 1951 Raj LW 14 (16).]

(7) When proceedings under Sec. 107, Criminal P. C., against a person were pending before the Sub-Divisional Magistrate, he is not justified in entertaining a petition by such person for action being taken without passing a preliminary order under Section 145 (1) and without issuing a direction under Section 145 (4) and, in passing an order for taking possession of the land in dispute, even without notice to the opposite party. AIR 1969 Mys 181 (183) = (1969) 1 Mys LJ 1 = 1969 Cri LJ 752.

(8) Petition under Section 107 made by Pradhan representing all other villagers — Proceedings subsequently converted into those under Section 145 — Final order under Section 145 not vitiated by non-joinder of all the villagers. AIR 1969 Manipur 52 (56) = 1969 Cri LJ 985.

(9) Proceedings under Section 107 — Previous proceedings under Section 145 in favour of petitioner — Opposite party threatening to dispossess him relying on settlement entries and non-delivery of possession — Discharge of opposite party under Section 107 improper. 31 Cut LT 581 = ILR (1965) Cut 174.

(10) In a proceeding under Section 145 the Magistrate cannot take security from any or all of the parties. (1906) 10 Cal WN clxx (DB) ** AIR 1916 All 237 (238) = 17 Cri L Jour 527 (527, 528) ** AIR

Section 145 — Note 47 (contd.)
1914 Sind 8 (10) = 16 Cri L Jour 235 (237) (DB).

(11) A notice of conversion of proceedings from Section 144 to those under Section 145, Criminal P. C. should ordinarily be served on parties in the manner indicated in Section 145 (3). But it need not necessarily be in writing. It is enough, if parties have even otherwise a notice of proceedings with grounds thereof. 1962 BLJR 405.

(12) Where, the Magistrate initiated a proceeding under Section 144, but subsequently converted it into one under this section, in the presence of the parties who took active part in the subsequent inquiry into possession, it was held that the Magistrate's action was not illegal. AIR 1918 Pat 481 (481, 482) = 19 Cri L Jour 396 (DB).

(13) Proceedings under Section 144 — Preliminary order converting them into one under Section 145 must be passed before expiry of prohibitory order under Section 144. AIR 1968 Orissa 221 (223) = 34 Cut LT 537 = 1968 Cri LJ 1623.

(14) Where the Magistrate converted a proceeding under Section 147 into one under this section without notice to the parties and without passing a preliminary order as required by this section, it was held that the order should be set aside. (1909) 9 Cri L Jour 565 (565) (DB) (Mad).

(15) Unlike the old law, the new procedure in Sections 145, 147 is different in nature. The Magistrate cannot therefore convert a proceeding under Section 145, to one under Section 147. The position may be different if the parties had been given opportunities to adduce evidence which they would have done in case under Section 147, Criminal P. C. (1961) 27 Cut LT 458 (462).

48. Revision. — (1) An application for revision of an order under this section should be made without unreasonable delay. AIR 1940 Pat 135 (137) = 41 Cri L Jour 171 ** AIR 1929 Pat 404 (405) = 30 Cri LJ 1053 (DB) ** 1962 (1) Cri LJ 821 (824) (Manipur).

(2) Limitation period of 90 days prescribed by Article 131 of Limitation Act (1963) is to be counted from the date of the final order of the Magistrate under Section 145 and not from the date of the order of the Sessions Judge refusing to make reference — Hence party is not bound to approach the Sessions Court before coming to High Court. AIR 1967 Pat 223 (224) = 1967 Cri LJ 907 (DB) ** AIR 1967 Pat 351 (357) = ILR 46 Pat 306 = 1967 Cri LJ 1555 (DB). (Revision must be filed before High Court within 90 days of Magistrates order.)

(3) An application for revision of an order under this section should be made only by persons who have present claim to the possession of the property in dispute and not by persons having only contingent or future rights to possession. (1902) 24 All 443 (445).

(4) The District Magistrate and the Sessions Judge have power only to make a report under Section 438 and have no power to revise the orders or to order futher inquiry under Section 436. AIR 1954 Trav-Co 102 (103) = 1954 Cri L Jour 194 (DB) ** (1951) 1951 Raj LW 14 (16) ** AIR 1949 Cal 241 (Prs 3, 4) = 50 Cri L Jour 471 ** AIR 1941 Pat 105 (106) = 42 Cri L Jour 340 ** 1969 Cri LJ 90 (94) (Pat).

(5) Order of trial Court under Section 145 — Sessions Judge disagreeing with Magistrate on question of possession of land and making reference — Reference not being on question of law, is not sustainable. 1970 Cri LJ 378 (383) = 1969 All WR (HC) 119.

(6) Sub-Divisional Magistrate acting under Section 145 is not inferior criminal Court as contemplated by Section 435 (1) — Revision against the order of such Magistrate who is an executive Magistrate lies to the District Magistrate and not to the Sessions Judge. AIR 1967 Bom 41 (43) = 68 Bom LR 233 = 1967 Cri LJ 163.

[See however AIR 1967 Punj 482 (484, 485) = 1966 Cur LJ 886 = 1967 Cri LJ 1690. (Order by Executive Magistrate under Section 145 is open to consideration in revision by Sessions Judge and he can make order of reference to High Court — AIR 1967 Punj 191, **Overruled.**)]

(7) The Sessions Judge cannot release the attachment made in proceedings under Section 145 against which an application in revision is pending before him. AIR 1953 All 498 (498, 499) = 1953 Cri L Jour 1167.

(8) Section 145 proceedings are purely of a summary nature and it is only very-rarely that the High Court interferes in orders made under the section, firstly because the object of such orders is to preserve peace and secondly because the aggrieved party has always his remedy by a Civil suit. 1967 Ker LJ 185 (188).

(9) The High Court will not interfere if no order has been passed by the Magistrate or where an order under Section 145 (1) has been passed unless the Magistrate has acted with gross irregularity. AIR 1955 Sau 73 (74) = 1955 Cri L Jour 1398 (DB) ** AIR 1954 Pat 182 (186) = 32 Pat 227 = 1954 Cri L Jour 500 (DB) ** 1951 All L Jour 653 (654) ** (1966) MLJ (Cr) 40 = 1965 Ker LT 1135 ** AIR 1964 Mys 177 (178, 179) = 1964 (2) Cri LJ 313 = (1963) 2 Mys LJ 369 ** AIR 1963 Tripura 35 (37) = 1963 (2) Cri LJ 326.

(10) The High Court rarely interferes with findings of fact arrived at by the Magistrate on an enquiry under Section 145. AIR 1959 Cal 366 (367) =

Section 145 — Note 48 (contd.)
1959 Cri L Jour 705 ** AIR 1954 All 579 (580) = 1954 Cri L Jour 1257 ** AIR 1954 Tripura 10 (11) = 1954 Cri L Jour 1810 ** AIR 1953 Mys 27 (Pr 4) = ILR (1953) Mys 309 = 1953 Cri L Jour 644 ** AIR 1969 All 405 (405) = 1969 Cri LJ 963. (Finding of fact, challenge to — Normal remedy is under Sec. 145 (6).) ** AIR 1969 Punj 101 (103) = 1969 Cri L Jour 506.

[See also AIR 1959 Ker 275 (276) = ILR (1959) Ker 70 = 1959 Cri L Jour 1082.]

(11) The High Court will not, as a rule of practice, go into the evidence in revision unless it is necessary to do so by reason of special circumstances or by reason of the character of the error of law. AIR 1951 Ajmer 86 (Pr 2) = 52 Cri L Jour 1472 ** AIR 1942 Pat 489 (490) = 44 Cri L Jour 95 ** AIR 1969 Punj 101 (103) = 1969 Cri LJ 506 ** 1967 All WR (HC) 133 (134) = 1967 All (Cri) R 120.

(12) The High Court will not interfere in revision with the order made by the Magistrate under Section 145 where from the evidence, however, meagre, the Magistrate is satisfied as to there being a likelihood of a breach of the peace. ILR (1951) 1 Raj 347 (351) ** Madh BLJ 1955 HCR 487 (490) ** 3 Pepsu LR 71 (76) ** AIR 1968 Ker 70 (71) = 1968 Cri LJ 350.

(13) Where the order of the Magistrate is based on no evidence or material at all it will be interfered with in revision. ('51) 3 Pepsu LR 71 (76) ** AIR 1954 Bilaspur 10 (11) = 1954 Cri L Jour 1773.

(14) Final order under Section 145 is not judgment — But yet it should be reasoned and speaking order — Failure to consider material evidence — Order must be quashed. 31 Cut LT 761 = ILR (1965) Cut 89.

(15) Provisions of Section 145 (4) are mandatory and Magistrate must peruse the affidavits — Order passed without perusal of affidavits is erroneous and materially irregular — High Court can interfere in revision and set aside the order. AIR 1967 Manipur 23 (27) = 1967 Cri LJ 1342 ** AIR 1960 Andh Pra 500 (501, 502) = 1959 Andh LT 610 = 1960 Cri LJ 1305.

[See also 1962 (1) Cri LJ 819 (820, 821) (Mad). (Affidavits of important persons in locality acquainted with facts — Omission to discuss their effect in final order — Order liable to be set aside in revision.)]

(16) Where the Magistrate gives a finding that a particular party was in possession on the material date and there is evidence to support the finding, the High Court will not interfere in revision merely because it might come to a different conclusion on the evidence. 1951 All L Jour 653 (654) ** AIR 1955 Him Pra 4 (5) = 1955 Cri L Jour 265 ** 1955 All L Jour 656 (657) ** 1968 Cri LJ 1386 (1390) = 1968 Raj LW 300 ** ILR (1965) Cut 89 = 31 Cut LT 761 ** (1961) 2 Guj LR 430 = (1961) 2 Guj HCR 222 ** 1961 Jab LJ 148 (149) = 1961 MPLJ 442.

(17) Preliminary order under sub-section (1) — Order of attachment under sub-section (4) — Orders will not be interfered with in revision unless revisional Court is satisfied that power under the section had been exercised by the Magistrate in an arbitrary or capricious manner. AIR 1966 Goa 32 (35) = 1966 Cri LJ 1412 (FB).

(18) The absence of reasons in an order converting proceedings under Section 144 into one under Section 145 would not affect Magistrate's jurisdiction to pass such an order. High Court in revision cannot quash such an order if otherwise there are materials on record justifying Magistrate's satisfaction. (1967) 33 Cut LT 766.

(19) If the Court passes a palpably wrong or perverse order under Section 145 (8) the Superior Court would have the authority to rectify it in a suitable manner. AIR 1954 Pat 74 (76) = 1954 Cri L Jour 78 = 32 Pat 613 (DB).

(20) If the order initiating the proceedings under Section 145 is vitiated not merely by an irregularity but by an illegality affecting the jurisdiction of the Magistrate, the point regarding illegality can be taken even at the revision stage. AIR 1953 Orissa 255 (256) = ILR (1953) Cut 333 = 1953 Cri L Jour 1499.

(21) The High Court in exercising revisional jurisdiction has no power to appoint a receiver pending disposal of the revision application or to award costs in respect of the application. AIR 1926 Mad 139 (140) = 27 Cri L Jour 126 (DB) ** AIR 1948 Mad 133 (134) = 49 Cri L Jour 113 ** AIR 1925 Mad 438 (440) = 26 Cri L Jour 707 (FB).

(22) A revision application lies to the High Court against an order of a Magistrate with regard to the management of the property attached under Section 145 (4) of the Code. AIR 1955 Pat 92 (94, 95) = 1955 Cri L Jour 387. (13 Cri L Jour 295 (Mad) and AIR 1948 Mad 234 = 49 Cri L Jour 456, **Dissented from.**)

(23) Attachment of property under — Appointment of Receiver — Attachment order not challenged within time prescribed — Cannot be challenged in revision against appointment of receiver. AIR 1969 Raj 82 (85) = 1969 Cri LJ 441 = 1969 Raj LW 15.

(24) The order of the Magistrate under Section 145 (4), Criminal Procedure Code setting aside the sale of the standing crops by the Amildar and directing the Amildar to hold a fresh sale is judicial order and liable to be revised by the High Court. AIR 1959 Mys 50 (52)

146. Power to attach subject of dispute.—°[(1) If the Magistrate is of opinion that none of the parties was then in such possession, or is unable to decide as to which of them was then in such possession, of the subject of dispute, he may attach it, and draw up a statement of the facts of the case and forward the record of the proceeding to a Civil Court of competent jurisdiction to decide the question whether any and which of the parties was in possession of the subject of dispute at the date of the order as explained in sub-section (4) of Section 145; and he

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Section 145 — Note 48 (contd.) = ILR (1958) Mys 151 = 1959 Cri L Jour 340.

(25) If a party contends in the lower Court that there was an apprehension of a breach of the peace he should not be allowed in revision to say that there was no such apprehension. AIR 1953 Hyd 185 (Pr 3) = ILR (1952) Hyd 346 = 1953 Cri L Jour 1114.

(26) A receiver cannot be appointed to take possession of the lands in dispute pending a Criminal Revision in the High Court or in the Court of Session against the final order of a Magistrate under Section 145 (6), Criminal P. C., nor can such an order be stayed. (1969) 1 Andh WR 549 = 1969 Mad LJ (Cri) 513.

(27) During the pendency of a revision against the Magistrate's order under Section 145, the Court has full power to pass an order staying the operation of the Magistrate's order regarding delivery of possession. AIR 1956 All 297 (304) = 1956 Cri L Jour 561 (DB).

(28) Mere delay in drawing up the formal proceedings under this section after the receipt of the police report is no ground for interference in revision where there is no injustice caused by the Magistrate's order. AIR 1933 Pat 601 (602) = 35 Cri LJ 91.

(29) Absence of statement of grounds in preliminary order — Not merely preliminary order but entire proceedings which followed, vitiated — Final order can be quashed in revision. 1969 Cri LJ 1170 (1172) = (1968) 2 Mys LJ 521.

(30) Where during the pendency of a revision petition filed by the opposite party against the order of the Magistrate under Section 145 declaring the other party to be entitled to possession of the land in dispute, the parties file a compromise petition, there is no occasion for the High Court to exercise its revisional jurisdiction. AIR 1954 Him Pra 40 (40) = 1954 Cri L Jour 855.

(31) Four persons claiming joint right in certain land — Order under S. 145 restraining them from interfering with possession thereof — Revision by one of them — Other parties not even arrayed as opposite parties — No effective or final order being possible, revision is not maintainable. 1970 Cri LJ 378 (383) = 1969 All WR (HC) 119.

(32) A judgment of a single Judge passed in revision in proceedings under this section is open to appeal under Clause 15 of the Letters Patent. (1907) 5 Cri L Jour 343 (343, 344) (FB) (Mad).

(33) Where a dispute relating to paddy fields between persons who claimed to be bhag chasis on one hand and landlords on the other as regards their respective right to possession was already taken up before Revenue Court competent to decide such dispute under Section 7 (1) (a), Orissa Tenants Protection Act, subsequent order under Sec. 145 declaring opposite party in possession should not be allowed to stand. AIR 1953 Orissa 312 (312) = 1953 Cri L Jour 1705.

(34) An order of the Magistrate refusing to confirm the sale held by an Amildar and directing him to resell the crops is a judicial order and is revisable by the High Court. AIR 1959 Mys 50 (52) = ILR (1958) Mys 151 = 1959 Cri L Jour 340.

(35) When a Receiver appointed by the Munsif-Magistrate was directed to deliver possession it was an administrative direction. It is not a judicial order which can be interfered with by any superior appellate or revisional authority. 1959-1 Andh WR 61 (62, 63).

(36) In giving a lease or accepting the offer of a highest bidder in an auction, it cannot be said that a judicial act is being performed. This act remains purely an administrative one. 1959-2 Andh WR 64 (65, 66).

(37) Proceedings under Section 145 pending — Magistrate ordering lessee of land in dispute to deposit certain amount — Order held administrative — Cannot be revised by High Court. AIR 1966 Andh Pra 80 (83) = (1966) 1 An WR 145 = 1966 Cri LJ 256.

SECTION 146 — SYNOPSIS

1. Scope.
2. Inquiry into possession.
3. "None of the parties was then in such possession."
4. "Unable to decide as to which of them was then in such possession."
5. Separate possession of different parts of the property and joint possession.
6. Reference to Civil Court of competent jurisdiction.

6A. Inquiry by Civil Court — Procedure.
6B. "Take such further evidence as may be produced." — Sub-sec. (1A).
6C. "Hearing the parties."
6D. "Decide the question of possession."
6E. "As far as may be practicable" — Sub-sec. (1B).

shall direct the parties to appear before the Civil Court on a date to be fixed by him:

Provided that the District Magistrate or the Magistrate who has attached the subject of dispute may withdraw the attachment at any time, if he is satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute.

(1A) On receipt of any such reference, the Civil Court shall peruse the evidence on record and take such further evidence as may be produced by the parties respectively, consider the effect of all such evidence, and after hearing the parties, decide the question of possession so referred to it.

(1B) The Civil Court shall, as far as may be practicable, within a period of three months from the date of the appearance of the parties before it conclude the inquiry and transmit its finding together with the record of the proceeding to the Magistrate by whom the reference was made; and the Magistrate shall, on receipt thereof, proceed to dispose of the proceeding under Section 145 in conformity with the decision of the Civil Court.

(1C) The costs, if any, consequent on a reference for the decision of the Civil Court, shall be costs in the proceedings under this section.

(1D) No appeal shall lie from any finding of the Civil Court given on a reference under this section nor shall any review or revision of any such finding be allowed.

(1E) An order under this section shall be subject to any subsequent decision of a Court of competent jurisdiction.]

Section 146 — Synopsis (contd.)

- **6F. Dispose of the proceedings in conformity with the decision of Civil Court.**
- **6G. Finality of finding of Civil Court — Sub-sec. (1D).**
- **6H. Decision of a Court of competent jurisdiction — Sub-sec. (1E).**
- **7. Order of attachment.**
- **8. Effect of an order of attachment.**
- **9. Withdrawal of attachment.**
- **10. Appointment of a receiver — Sub-section (2).**
- **11. Powers of the receiver.**
- **12. Remuneration of the receiver.**
- **13. Disobedience to an order under this section.**
- **14. Review.**
- **15. Revision.**
- **16. Interference under Arts. 226 and 227 of the Constitution.**

1. Scope. — (1) Proceedings under this section are only in continuation of those under Section 145. AIR 1936 All 177 (178) = 37 Cri L Jour 215.

(2) In the absence of cogent evidence as to possession on either side it would be more proper to proceed under this section than under Section 145. AIR 1919 Cal 930 (934) = 19 Cri L Jour 681 (DB).

(3) Object of an attachment is to keep the property in custodia legis so as to prevent contesting parties from creating a breach of the peace in their attempts to obtain actual possession of the property, until the rights of the parties are effectively determined by a competent Court. AIR 1920 Mad 209 (211) = 21 Cri L Jour 73 (DB) ** AIR 1933 Lah 195 (195) (DB).

(4) Magistrate should not make use of this section except on full inquiry and in exceptional cases. AIR 1952 All 918 (919) = 1952 Cri L Jour 1650 ** AIR 1955 All 56 (59) = 1955 Cri L Jour 178 ** 1955 BLJR 519 (522) ** AIR 1952 Pat 233 (234) = 1952 Cri L Jour 708 ** ILR (1967) Cut 669 (674) = (1967) 33 Cut LT 955.

(4a) Jurisdiction to take action under — Magistrate has no jurisdiction unless there is likelihood of any breach of peace. (1970) 72 Pun LR 118 (120).

(5) Duty of Magistrate under S. 146 (1) — Firstly, he has to attach the subject of dispute — Secondly, he has got to draw up a statement of facts of case and forward it to the Civil Court. (1963) 2 Mys LJ 281.

(6) Where a Magistrate is unable under Section 147 to decide whether a right of easement exists or not in respect of certain lands he cannot order the attachment of these lands under this Section. ILR (1948) 1 Cal 374 (375) ** AIR 1959 Manipur 29 (29) = 1959 Cri L Jour 743 ** AIR 1942 Mad 77 (77, 78) = 43 Cri L Jour 103.

(7) Magistrate cannot order attachment of movable property, such as stock of medicines in a shop. AIR 1941 Oudh 515 (516) = 42 Cri L Jour 710.

(8) The proceedings under Sections 145 and 146 are of a summary character and it is essential that they should be disposed of as expeditiously as possible. It is always open to a party to proceed through

(2) When the Magistrate attaches the subject of dispute, he may, if he thinks fit †[and if no receiver of the property, the subject of dispute, has been appointed by any Civil Court], appoint a receiver thereof, who, subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the Code of Civil Procedure (1882)‡

§[Provided that, in the event of a receiver of the property, the subject of dispute, being subsequently appointed by any Civil Court, possession shall be made over to him by the receiver appointed by the Magistrate, who shall thereupon be discharged.]

[1882—S. 146; 1872—S. 531; 1861—S. 319.]

[*] Sub-sections (1) to (1E) were substituted for the old sub-section (1), by the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), S. 19 (1-1-1956). This amendment is not retrospective: ibid S. 116 (a).

[†] Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), Section 29.

[‡] See now the Code of Civil Procedure, 1908 (V of 1908).

[§] Inserted by Act XVIII of 1923, Section 29.

Section 146 — Note 1 (contd.)

a civil court and get any matter finally settled. 1954 All L Jour 269 (270).

(9) Proceedings as to possession pending before revenue Court — One party moving Magistrate under Section 145, Criminal P. C. — Proper procedure to be followed by Magistrate — Magistrate at once attaching property under Section 146 (1) and referring matter to Revenue Court — Order held not legal. AIR 1961 Raj 216 (218, 220) = 1961 (2) Cri LJ 552 = 1961 Raj LW 469 (FB). (AIR 1959 Raj 153 (1), **Overruled.**)

(10) Magistrate coming to finding that both parties are in possession — Section 146 cannot be invoked — Proper order is one under Section 107. AIR 1963 Pat 320 (323, 324) = 1963 BLJR 665 = 1963 (2) Cri LJ 313 (DB).

(11) Section 146 cannot be invoked in proceedings under Section 147. AIR 1960 J and K 66 (67) = 1960 Cri LJ 582.

(12) Section 146 (1) as amended not applicable to proceedings under Section 145 or Section 146 pending on commencement of Amendment Act of 1955 — Order passed in pending proceeding referring dispute to Civil Court under Section 146 (1) is without jurisdiction. ILR (1959) 11 Assam 162.

(13) Dispute about land — Proceedings started under Section 144 converted into one under Section 145 — Subsequent order dropping proceedings held perverse — If it was not possible to decide question of possession, Magistrate's duty was to proceed under Section 146. AIR 1960 Tripura 1 (2, 3) = 1960 Cri LJ 117.

(14) The duty of the Magistrate who is unable to come to a conclusion as to which of the rival parties was in possession, is to draw up a statement of the facts of the case and forward the record of the proceedings to a Civil Court of competent jurisdiction to decide the question whether any and which of the parties was in possession of the subject-matter in dispute at the relevant point of time. The Magistrate cannot dispose of proceedings under Section 145, Criminal P. C. by referring the parties to a Civil Court. (1965) Mad LJ (Cr) 117 = (1965) 1 Mys LJ 306.

(15) A Magistrate, before making a reference under Section 146 (1), must apply his mind to the case. His order must show that he has perused the statements, the documents and the affidavits in the case and understood the case of both parties and that he was of opinion either that neither party was in possession or that he was unable to decide as to which of them was in possession. AIR 1963 Tripura 35 (36, 37) = 1963 (2) Cri LJ 326 °° AIR 1968 Orissa 82 (83, 84) = 34 Cut LT 181 = 1968 Cri LJ 646 °° AIR 1967 All 44 (45) = 1967 Cri LJ 18 = 1967 All WR (HC) 113 °° AIR 1962 Pat 468 (471) = 1962 BLJR 267 = 1962 (2) Cri LJ 770 (DB). (**Overruled** on another point in AIR 1963 Pat 243 (FB).)

(16) Magistrate without making serious effort to decide question of possession making reference — Reference though improper is not incompetent. 1963 BLJR 131 °° (1964) (2) Cri LJ 112 = 1964 BLJR 260.

[See also 1962 (2) Cri LJ 577 (578) = 1962 BLJR 105 (DB). (Order of reference under Section 146 without consideration of affidavits — Not proper.)]

(17) Where a Magistrate attached the subject in dispute and directed both parties to approach the Civil Court for a decision regarding possession of the land, there is some irregularity in the form of the order but for that reason alone his decision cannot be said to be bad. (1963) 2 Mys LJ 281.

2. Inquiry into possession. — (1) Before an order of attachment and reference to the Civil Court is made under this section, it is necessary that proceedings should have been properly instituted under Section 145, the preliminary order duly passed and a proper inquiry made into the question of possession. AIR 1914 Mad 78 (81) = 15 Cri L Jour 559 (DB) °° AIR 1954 Trav-Co

OBJECTS AND REASONS

"In respect of amendments made in this section by Act 26 of 1955, the Joint Committee observe: If the Magistrate cannot come to a decision on the question of possession, he should draw up a statement of the facts of the case and refer the matter to a Civil Court for decision. In order to avoid any delay, the Magistrate himself should fix a date on which the parties are to appear before the Civil Court. The Civil Court should take into consideration the evidence on record and such further evidence as it may think necessary. It should conclude its inquiry within a period of three months, at the latest and transmit its finding to the Magistrate that made the reference, and the Magistrate should dispose of the case in accordance with the decision of the Civil Court. The Civil Court should determine only the question of possession and not the question of title. The proceedings before it would be analogous to a suit for possession under Section 9 of the Specific Relief Act, 1877. No appeal, review or revision shall lie against the finding of the Civil Court. Such a finding, however, will not debar any person from instituting a suit for a declaration of his title and for recovery of possession."—J.C.R., Gaz. of Ind., 1954, Ext., Pt. 2, p. 418.

Section 146 — Note 2 (contd.)
248 (249) = 1954 Cri L Jour 642 = ILR (1953) Trav-Co 1161 (DB) °° AIR 1928 Cal 703 (703) = 30 Cri L Jour 802 (DB) °° AIR 1923 Nag 297 (298) = 24 Cri L Jour 880 °° AIR 1960 J and K 66 (67). =1960 Cri LJ 582. (Section cannot be invoked before starting inquiry on merits.)

(2) It is not necessary that Magistrate should give a finding as to the likelihood of a breach of the peace again at the time of the order of attachment when such finding has been arrived at under S. 145, sub-section (1). AIR 1932 All 683 (684) = 34 Cri L Jour 480. (**Overruled** on another point in AIR 1956 All 297.)

3. **"None of the parties was then in such possession."**— (1) A Magistrate cannot attach where he finds that a third person was in possession of the property in dispute. AIR 1920 Cal 898 (898) = 22 Cri L Jour 464 (DB).

(2) Magistrate cannot declare the possession of third person under this section. AIR 1921 Pat 173 (174) = 22 Cri L Jour 616.

(3) Third person not claiming to be in possession, Magistrate may attach property under this section. AIR 1919 Pat 130 (131) = 20 Cri L Jour 215.

(4) Where after the death of the previous owner his relatives are quarrelling over his estate and there is an apprehension of a breach of the peace, the estate may be attached under this section. AIR 1953 Orissa 278 (280) = ILR (1952) Cut 626 °° AIR 1949 Lah 273 (275) = Pak LR (1949) Lah 466 = 51 Cri L Jour 55 (DB).

(5) Neither party found in actual possession — Magistrate should attach property and refer the case to competent Civil Court — Magistrate directing attachment but not referring the case to Civil Court — Order is illegal. AIR 1962 Pat 254 (255) = 1962 BLJR 914 = 1962 (1) Cri LJ 753.

4. **"Unable to decide as to which of them was then in such possession."** — (1) Magistrate cannot pass an order under this section on the ground of his inability to decide the rights of the parties to possession. 1951 All WR (HC) 507 (508). (**Overruled** on another point in AIR 1956 All 297.) °° (1910) 11 Cri L Jour 560 (560) (Mad).

(2) Magistrate cannot attach on ground of his inability to understand and interpret the terms of a competent Court's decree. AIR 1924 Pat 711 (712) = 25 Cri L Jour 88.

(3) The doubt on which a Magistrate can act under Section 146 must arise from his inability to decide on evidence offered by the contending parties as to their possession and not on a doubt entertained without such enquiry. AIR 1954 Trav-Co 248 (249) = ILR (1953) Trav-Co 1161 = 1954 Cri L Jour 642 (DB).

[See also AIR 1958 Punj 47 (52) = ILR (1957) Punj 1968 = 1958 Cri L Jour 215.]

(4) A mere ipse dixit of a Magistrate that he is unable to arrive at a definite finding on the question of possession is not a compliance with the provisions of law. Only after a critical and detailed examination of the affidavits, a Magistrate can arrive at a finding that a reference to the Civil Court is warranted. 1966 All WR (HC) 546 = 1966 All Cr R 320.

(5) The Magistrate cannot, without making a proper inquiry and without receiving evidence offered by the parties hold that he is unable to decide the fact of possession. AIR 1936 All 177 (178) = 37 Cri L Jour 215 °° 1957 BLJR 106 (107) °° AIR 1954 Pat 169 (170) = 1954 Cri L Jour 443 °° AIR 1954 Trav-Co 248 (249) = 1954 Cri LJ 642 = ILR (1953) Trav-Co 1161 (DB) °° 1970 Cri LJ 614 (615) (All). (The reference of the question in a routine manner for the decision of the Civil Court is not intended by the section.)

[See also AIR 1959 Andh Pra 425 (426) = 1959 Cri L Jour 957.]

(6) Where the parties do not adduce any evidence at all though they are given ample opportunities to do so, there is no obliga-

Section 146 — Note 4 (contd.)
tion imposed on the Magistrate to make any independent inquiry or to hold any local investigation, he is entitled to attach the property on the ground of his inability to decide the fact of possession. 1953-1 Mad L Jour 482 (483) °° AIR 1956 Assam 119 (120) = 1956 Cri L Jour 858 °° AIR 1952 Mys 4 (6) = 1952 Cri L Jour 111 °° AIR 1930 Pat 29 (30) = 30 Cri L Jour 894 (DB).

(7) Evidence equally unreliable on both sides—Magistrate cannot consider question of title to draw any presumption as to possession and he should attach the property under this section. AIR 1923 Cal 303 (304, 305) = 24 Cri L Jour 141 (DB).

[See also AIR 1951 Assam 89 (90) = ILR (1950) 2 Assam 419 = 52 Cri L Jour 695 (DB).]

(8) Where a week before the report of the police officer recommending proceeding under Section 145 there has been a scramble for possession between the two parties and in this scramble some kind of work is done here and there by one party or the other to lend support to their pleas of possession, neither side has the effective possession and an order under sub-sec. (1) of this section is the proper one under such circumstances. AIR 1948 Mad 118 (118) = 49 Cri L Jour 65.

(9) Order under this section is to be passed in exceptional cases when it is quite impossible for the Magistrate to choose between the conflicting evidence adduced by the two sides. AIR 1952 Pat 233 (234) = 1952 Cri L Jour 703 °° AIR 1953 All 751 (752) = 1953 Cri L Jour 1717 °° AIR 1940 Pat 113 (114) = 41 Cri L Jour 101.

(10) An order under Section 146 (1) before the amendment cannot be accepted as correct unless it is found that the Magistrate has fully considered the evidence, and has been unable to decide which party is in possession. 1965 BLJR 8.

(11) The fact that it was difficult to decide the question of possession will not justify an order under this section. 1953 Raj LW 115 (115) °° AIR 1952 All 918 (919) = 1952 Cri L Jour 1650.

(12) Evidence for one party, though weak preferable to evidence for other party — Magistrate's duty is to decide in favour of the former. AIR 1940 Pat 113 (114) = 41 Cri L Jour 101.

(13) It is necessary for the Magistrate to decide the question of actual possession after judicially balancing the evidence produced by either party. Where far from showing that the evidence of the two parties was judicially balanced, the judgment of the Magistrate shows that he did not at all make a serious effort to appreciate the evidence produced by the parties, his judgment cannot be maintained. 1953 Raj LW 210 (211).

(14) Land in dispute under water for two months preceding the proceedings. Proper course for Magistrate was to pass an order under this section. AIR 1917 Cal 82 (82) = 18 Cri L Jour 80 (DB).

(15) Possession of one of the parties on the date of the preliminary order admitted. Magistrate cannot attach property under this section, on ground that he is unable to decide who was in possession for two months before the date of the preliminary order. AIR 1930 Lah 422 (422, 423) = 31 Cri L Jour 1075 °° AIR 1955 All 56 (59) = 1955 Cri L Jour 178.

(15a) Where the order of reference showed that the Magistrate had come to a conclusion on considering affidavits of the parties that one party was in possession of the property and the other was not, the reference under Section 146 (1) was bad in law as the requisite pre-condition for making a reference was wanting. (1969) 35 Cut LT 936 (938).

(16) An order of attachment under this section cannot be passed where a competent Court has determined the rights of the parties to the property as well as possession thereof or has decreed possession in favour of one party. AIR 1926 All 685 (686) = 27 Cri L Jour 559 °° AIR 1955 Assam 1 (2) = 1955 Cr L Jour 54 = ILR (1954) 6 Assam 511 (DB) °° AIR 1944 Mad 472 (473) = 46 Cri L Jour 104.

5. Separate possession of different parts of the property and joint possession. — (1) Where the Magistrate decides that one party is in possession of a specific portion of the property and the other in possession of the rest the Magistrate should not pass an order under this section attaching the entire property. (1905) 2 Cri L Jour 408 (410) (DB) (Cal) °° (1901) 5 Cal WN 710 (712, 713).

[But see (1895) 22 Cal 297 (305) (DB).]

(2) When the dispute is in respect of a specific portion of the property in possession of one of the parties no order of attachment under this section should be passed as regards that portion of the property. AIR 1941 Pat 607 (608) = 42 Cri L Jour 791.

(3) Where the Magistrate finds that the parties were in joint possession on the date of the preliminary order, he can pass an order of attachment under this section. AIR 1932 All 683 (684) = 34 Cri L Jour 480 °° AIR 1930 Bom 172 (173) = 31 Cri L Jour 933 (DB) °° AIR 1932 Pat 366 (368) = 34 Cri L Jour 115 (DB) °° AIR 1953 Orissa 278 (280) = ILR (1952) Cut 626.

[But see AIR 1915 Mad 396 (397) = 15 Cri L Jour 572 (DB) °° 1955-2 Mad L Jour 382 (382) °° AIR 1948 Oudh 130 (131) = 49 Cri L Jour 202 °° AIR 1951 Raj 156 (157) = ILR (1951) 1 Raj 265 = 52 Cri L Jour 1209 (DB) °° AIR 1964 Mys 195 (199, 200) = 1964 (2) Cri LJ 319 (DB).]

(4) The attachment of an undivided share in a village is not permissible under this section. AIR 1941 Mad 744 (744).

Section 146 (contd.)

6. Reference to Civil Court of competent jurisdiction. — (1) The term 'civil Court' appearing in Section 146 (1) does not include a revenue Court. AIR 1961 Raj 216 (219, 220) = 1961 (2) Cri LJ 552 = 1961 Raj LW 469 (FB). (AIR 1960 Raj 279, **Overruled.**) °° AIR 1963 All 17 (17, 18) = 1963 (1) Cri LJ 28 (1) = 1963 All WR (HC) 55 °° 1961 Raj LW 247 = ILR (1961) 11 Raj 412 (416) (DB). (ILR (1960) 10 Raj 945, **Overruled.**) °° ILR (1959) 9 Raj 673.

[See however AIR 1969 Mys 315 (317, 318) = 1969 Cri LJ 1251.]

(2) 'Civil Court of competent jurisdiction' means Civil Court of competent territorial jurisdiction and not pecuniary jurisdiction. AIR 1961 Raj 245 (246, 247) = 1960 Raj LW 187 = 1961 (2) Cri LJ 693 °° AIR 1969 Assam 81 (84) = 1969 Cri LJ 854 °° AIR 1967 Mad 91 (93, 94) = 1967 Cri LJ 213 = (1967) 2 Mad LJ 70. (Both District Munsif as well as superior Court are Courts of competent jurisdiction under Section 146 (1).) °° AIR 1964 Mys 195 (201) = (1963) 2 Mys LJ 103 = 1964 (2) Cri LJ 319 (DB) °° AIR 1963 All 17 (17) = 1963 All WR (HC) 55 = 1963 (1) Cri LJ 28 (1) °° AIR 1963 Pat 252 (254) = 1963 BLJR 442 = 1963 (2) Cri LJ 34 (FB) °° AIR 1963 Tripura 35 (37, 38) = 1963 (2) Cri LJ 326 °° AIR 1960 All 599 (600) = 1960 Cr LJ 1279.

[See however AIR 1968 Punj 301 (301) = 1968 Cri LJ 971. (Expression 'competent jurisdiction' in S. 146 refers to competency as to territorial jurisdiction as well as pecuniary jurisdiction.)]

(3) Reference is to a constituted Court and not to a persona designata. AIR 1966 SC 1888 (1889) = 1966 Cri LJ 1514 = (1966) SCR (Supp) 393.

(4) A reference made under S. 146 (1) to a Civil Court not being either a suit or a proceeding, cannot be put to any limitation of pecuniary jurisdiction and can be made to any Civil Court having territorial jurisdiction. But as a rule it should be made to a Court of the lowest grade unless otherwise the Magistrate is of opinion that the reference to a Court of higher grade is necessary in the circumstances of the case. AIR 1958 Pat 308 (309, 310) = 1958 Cri L Jour 796 °° AIR 1959 All 467 (471) = 1959 Cri L Jour 912.

(5) Section 146 is a sort of corollary of Section 145 and Magistrate must refer case to civil Court in the circumstances covered by Section 146 (1). 1969 BLJR 892.

(6) The reference contemplated by this section to a Civil Court is to decide the question whether any and which of the parties was in possession of the subject of dispute at the relevant date under S. 145(4). 1957 Cri L Jour 682 (685) (Raj).

(7) Reference of dispute to Civil Court — In judging whether Magistrate had sufficient ground what has to be seen is substance and not form of order of reference. AIR 1970 All 119 (121) = 1970 Cri LJ 193 (DB).

(8) Reference to Civil Court — Magistrate should always draw up a statement of the case — Mere omission to do so cannot, however, be fatal to the validity of the proceedings. AIR 1969 Assam 81 (84) = 1969 Cri LJ 854.

(9) Reference to Civil Court without drawing up statement of facts — Opinion not expressed — Reference is incompetent — Civil Court cannot decide question of possession on such reference. AIR 1965 Pat 411 (412-413) = 1965 (2) Cri LJ 527 = 1965 BLJR 97 (DB).

(10) Before ordering reference to Civil Court, Magistrate must apply his mind to the case of the parties and to the evidence, both documentary and affidavit. 1970 Cri LJ 115 (117) (Pat).

6A. Inquiry by Civil Court — Procedure. — (1) A proceeding before a civil Court arising out of a reference under S. 146 (1) Cr. P. Code is a civil proceeding as contemplated by Section 141, C. P. Code and the District Judge has got the power to transfer such proceeding from one civil Court to another under Section 24 (1) (b), Civil P. C. (1968) 34 Cut LT 43 °° AIR 1966 SC 1888 (1891) = 1966 Cri LJ 1514 = (1966) SCR (Supp) 393 °° 1969 All WR (HC) 803 (806) °° AIR 1965 All 446 (449) = 1965 All LJ 12 °° AIR 1961 Mad 247 (249, 251) = 1961 (1) Cr LJ 821 = (1961) 1 Mad LJ 342. (To such a proceeding, provisions of Civil P. C. are applicable except those relating to costs, appeals reference, review etc.)

[But see AIR 1965 All 368 (369, 370) = (1965) 2 Cri LJ 177 = 1964 All LJ 635 (DB). (Order 9, Civil P. C. does not apply.) °° AIR 1965 Andh Pra 17 (18) = 1965 (1) Cri LJ 8 = (1964) 2 Andh WR 129. (Provisions of Section 141, Civil P. C. not attracted — Application under Order 19, Rule 2 in such a reference is not maintainable.) °° AIR 1963 Mad 338 (341) = 1963 (2) Cri LJ 381 = (1963) 1 Mad LJ 376. (DB). (Provisions of Sec. 141 and Order 9, Rule 13, Civil P. C. do not apply. AIR 1961 Mad 384, **Overruled.**)]

(2) A Civil Court is not merely a delegate or agent of the referring Magistrate but can exercise all the powers vested in it by the Civil P. C., except to the extent to which the application of the Code of Civil Procedure is excluded by sub-section (1-D) of Section 146. 1962 (2) Cri LJ 708 (708, 709) = 40 Mys LJ 546.

(3) Even if a reference is not in accordance with law, the Munsiff has no jurisdiction to return the record direct to the Magi-

Section 146 — Note 6A (contd.)
strate. The Munsiff is not a Court of Appeal or revision over a Magistrate and cannot return the record saying that the Magistrate's order was contrary to law and unsatisfactory. The only course open to the Munsiff is to bring it to the notice of the High Court by way of a reference. AIR 1968 Orissa 82 (84) = 34 Cut LT 181 = 1968 Cri LJ 646.

[See also AIR 1970 Pat 97 (99) = 1970 Cri LJ 481 = 1969 BLJR 675. (Incompetent reference by Magistrate — Civil Court is not clothed with any jurisdiction so that it can neither record any finding nor give directions to Magistrate as to what course he should adopt — Proper course for Civil Court is to return the reference.)]

6B. "Take such further evidence as may be produced."— Sub-sec. (1A).— (1) The term 'further evidence' used in the subsection (1A) means 'evidence which is not already on record'. That evidence may be of various kinds, the only restriction being that that evidence should not already be on the record of the case. 1962 (1) Cri LJ 632 (633, 634) = 1961 All LJ 82.

(2) In the context and in the setting in which the expression 'evidence' has been used in Section 146 (1-A) it can be reasonably held that it includes the affidavits which by virtue of the provisions of Section 145 (1) of the Code form part of the evidence on record in the proceeding, even though the Evidence Act does not apply to affidavits. AIR 1969 All 82 (86) = 1969 Cri LJ 139 = 1968 All WR (HC) 88 °° AIR 1965 All 442 (442) = 1964 All WR (HC) 550 = 1965 (2) Cri LJ 337. (Question of possession under S. 146 (1-A) — No legal bar for Civil Court to take evidence on affidavits.)

(3) Under sub-section (1-A) of Sec. 146 it is not open to the Civil Court to call for further evidence. The initiative under that section, after the reference has been received in the Civil Court, is with the parties and all that is necessary under Section 146 is that the parties must be given ample opportunity to place their respective cases before the Civil Court. If, however, they do not avail of this opportunity and do not address the Court, the Civil Court is within jurisdiction in giving a decision upon the question of possession on the evidence that is already on the record. AIR 1960 Pat 519 (520, 521) = 1960 Cri LJ 1487 = 1960 BLJR 428. (Upon failure of parties to adduce evidence, the order of the Civil Court returning the record to the Magistrate is wholly illegal and without jurisdiction.) °° 1962 (2) Cri LJ 577 (579) = 1962 BLJR 105 (DB). (Sub-section (1-A) of Section 146 as amended in 1955 has put upon the Civil Courts a statutory duty regarding consideration of evidence which is already on record.)

6C. "Hearing the parties." — (1) The expression 'hearing the parties' in Section 146 (1A) would not include the taking of evidence of the parties as witnesses but is limited to hearing arguments only. AIR 1958 Orissa 79 (80) = ILR (1957) Cut 676 = 1958 Cri L Jour 650 °° (1967) 33 Cut LT 1098 = ILR (1967) Cut 862 (DB).

(2) Under sub-section (1A) the parties are at liberty to produce any further evidence that they may like to produce. The Court has to hear the parties in respect of the entire materials that have come on the record and then to decide the question referred to him. 1962 (1) Cri LJ 632 (634) = 1961 All LJ 82. (AIR 1958 Orissa 79, Diss. from.)

6D. "Decide the question of possession." — (1) Civil Court bound to record a finding in favour of one of rival parties — Finding that it was unable to decide which party was in possession — Finding is erroneous. AIR 1965 All 127 (128) = 1963 All LJ 1101 = (1965) (1) Cri LJ 271.

6E. "As far as may be practicable" — Sub-sec. (1B). — (1) If an enquiry is not concluded within the period of three months as prescribed by Section 146 (1B), it cannot at all vitiate the decision of the Court. AIR 1959 Cal 366 (368) = 1959 Cri L Jour 705.

6F. Dispose of the proceedings in conformity with the decision of Civil Court. — (1) Sub-clause (1-B) of Section 146 leaves no alternative to the Magistrate but to carry out the decision of the Civil Court. It is not the function of the Magistrate to question the finding of the Civil Court. Once the Magistrate has done so, his order cannot be said to be illegal. AIR 1958 Pat 85 (86) = 1958 Cri L Jour 202 °° AIR 1959 Cal 366 (368) = 1959 Cri L Jour 705 °° AIR 1968 Cal 216 (218) = 1968 Cri LJ 600. (Parties need not be heard again.) °° AIR 1968 Manipur 94 (95) = 1968 Cri LJ 1559. (Provisions of Section are mandatory.)

(2) Where a reference made by the Magistrate under Section 146 (1) is competent and within jurisdiction, he has no further jurisdiction to go into the materials and pass a judgment on the record returned by the Civil Court without deciding the question of possession. AIR 1968 Orissa 82 (84) = 34 Cut LT 181 = 1968 Cri LJ 646.

(3) Reference to Civil Court under Section 146 — Finding of Civil Court received — Recording of evidence regarding apprehension of breach of peace is obligatory before final order is passed. (1963) 65 Pun LR 217.

(4) Reference to civil Court by S. D. M. 'A' — Civil Court sending back record under Section 146 (1B) after concluding inquiry — 'A' ceasing to be S. D. M. but continuing as a First Class Magistrate — 'A' making final orders — Mere irregularity — No interference if there is no failure

Section 146 — Note 6F (contd.)

of justice. AIR 1963 Tripura 35 (37) = 1963 (2) Cri LJ 326.

(5) Final order under Section 145 cannot include properties not included in preliminary order even if the Civil Court to whom a reference is made under S. 146 (1), holds after inquiry that one of the parties was in possession of larger extent of properties. (1963) 1 Cri LJ 545 (546) = 1962 Mad WN 279.

(6) "Joint possession" — Finding not vitiated when separate and individual possession is not in dispute. AIR 1968 Cal 216 (220) = 1968 Cri LJ 600.

6G. Finality of finding of Civil Court — Sub-sec. (1D). — (1) Section 146 (1D) means not only that there can be no direct attack on the finding of Civil Court under the section through an appeal or an application for review or revision but also that there can be no indirect or collateral attack by or during an appeal against or an application for review or revision of the order of the Magistrate passed under Section 146 (1-B). AIR 1959 All 568 (569) = 1959 Cri L Jour 1043 (2) °° AIR 1959 Mad 111 (112) = 1959 Cri L Jour 335. (Revision against order of Criminal Court after decision by Civil Court on reference is not barred but Court's power in revision is limited to ascertaining whether the Criminal Courts have implemented the decision of the Civil Court.) °° AIR 1968 Cal 216 (219) = 1968 Cri LJ 600. (AIR 1963 Pat 243 (FB) and AIR 1963 Pat 320, Not foll.—High Court cannot interfere with the finding of the Magistrate made under Section 146 (1-B) of the Cr. P. Code, on the ground that the civil Court's order is incorrect.) °° AIR 1965 All 127 (128) = 1963 All WR (HC) 772 = 1965 (1) Cri LJ 271 °° 1963 BLJR 131 (Pat).

[See also AIR 1959 Cal 366 (368) = 1959 Cri L Jour 705. (Remedy of aggrieved party is to go to a competent Court under Section 146 (1-D).]

[See however AIR 1966 Orissa 119 (120, 121) = 1966 Cri LJ 679 = 32 Cut LT 166. (Final order passed by Magistrate in conformity with decision of civil court is, however, revisable and all other matters can be assailed therein excepting the finding of Civil court — Finding of civil court, however, erroneous, is final until set aside in a court of competent jurisdiction under Sec. 146 (1E) — AIR 1960 Mad 169 and majority judgment in AIR 1963 Pat 243 (FB), Not foll.)]

(2) Order passed by Magistrate under Section 146 (1-B) on basis of decision of Civil Court regarding the question of possession — Order being by an inferior criminal Court, is amenable to the revisional jurisdiction of the Court of Session or the High Court — Sub-s. (1-D), which bars appeal, revision or review against the findings of the civil Court only does not bar revision against order under sub-s. (1-B). AIR 1964 Raj 81 (82, 83) = 1963 Raj LW 543 = 1964 (1) Cri L Jour 429 °° AIR 1963 Pat 243 (244, 246) = 1963 BLJR 496 = 1963 (2) Cri LJ 25 (FB). (The High Court can interfere with the finding of the civil Court under Sections 435 and 439 of the Criminal P. C., after the finding is adopted by the Magistrate and the final order is passed — AIR 1960 All 599 and AIR 1959 Mad 111 and AIR 1959 Cal 366, Dissented from; AIR 1958 Pat 85 and AIR 1962 Pat 468, Overruled.) °° AIR 1969 Assam 81 (83) = 1969 Cri L Jour 854 °° 1968 Cri L Jour 1386 (1388) = 1968 Raj LW 300 °° 1967 All LJ 397 (399) = 1967 All Cri R 312 °° 1963 (1) Cri LJ 545 (546) = (1962) 2 Mad LJ 150 = 1962 Mad LJ (Cri) 448 = 1962 Mad WN 279. (High Court cannot, however, go into correctness or legality or otherwise of the proceedings of the civil Court.)

[But see AIR 1970 All 119 (122) = 1970 Cri L Jour 193 (DB). (Order of Magistrate under Sec. 146 (1-B) — It cannot be set aside in revision: AIR 1963 Pat 243 (FB), held impliedly overruled by AIR 1966 SC 1888.) °° (1968) MLJ (Crl) 281 = 1968 Ker LT 261. (A finding given by a Civil Court under Section 146, not being a finding of criminal Court cannot be revised under Section 435. A revision against an order passed under Section 146 (1-B) is not maintainable). °° 1967 All LJ 649 (657) = 1967 All Cri R 321 (DB).]

(3) Section 146 (1-D) cannot be interpreted as conferring a finality upon a proceeding which is without jurisdiction. 1967 All Cri R 438 = 1967 All WR (HC) 706 (707).

(3a) When the Court's order is attacked in revision on the grounds of illegality of the reference and lack of initial jurisdiction of the Court to proceed with the matter under reference, revision cannot be said to be not maintainable. (1969) 35 Cut LT 936 (938).

(4) The restriction placed on the revisional powers of the High Court by S. 146 (1-D) involves no invasion of fundamental right or diminution of High Court's jurisdiction. AIR 1960 Mad 169 (169) = 1960 Cri LJ 489 = 1959 Mad WN 599.

(5) Restoration application alleging order passed under Section 146 as ex parte — Restoration implies review of final order which is not allowed under Sec. 146 (1-D) — Restoration application not maintainable. 1964 All WR (HC) 289 = 1964 All LJ 668.

(6) Section 146 (1-D) bars an appeal, review or revision against any finding of the civil Court given on a reference under Section 146, but not against any other order passed by that Court and therefore revision can be entertained by High Court against the order allowing restoration application in respect of order passed under

Section 146 — Note 6G (contd.)
Section 146. 1964 All WR (HC) 289 = 1964 All LJ 668.

(7) Finding by civil Court that none of rival parties was in possession — Magistrate on receipt of finding, dropping proceedings and releasing attachment — Magistrate's order improper — As civil Courts order is not subject to appeal, review or revision under Section 146 (1-D), Magistrate's order can be set aside under inherent powers. AIR 1965 All 127 (127, 128, 129) = 1965 All LJ 1101 = 1965 (1) Cri LJ 271.

(8) Reference under Section 146 to Civil Court — Stay order by superior Court — Judgment pronounced after stay but before it is communicated to Civil Court — Not valid — Findings given by Civil Court not immune to review or revision under Section 146, Cl. (1-D). AIR 1962 All 80 (81, 82) = 1962 (1) Cri LJ 119 = 1962 All WR (HC) 165.

6H. Decision of a court of competent jurisdiction — Sub-sec. (1E). — (1) A court of competent jurisdiction referred to in sub-section (1-E) does not necessarily mean Civil Court but may be a revenue court. AIR 1961 Raj 216 (220) = 1961 (2) Cri LJ 552 = 1961 Raj LW 469 (FB) °° AIR 1968 Manipur 94 (95, 96) = 1968 Cri LJ 1559. (S. 146 (1-E) applies to decision of Revenue Court.)

[See also AIR 1969 Mys 315 (317, 318) = 1969 Cri LJ 1251. (The decision of the Mysore Revenue Appellate Tribunal is a decision by a competent Court within the meaning of Section 146 (1).]

(2) Though words 'a civil Court of competent jurisdiction' in Section 146 (1) resemble much with words 'a Court of competent juriisdiction' in Section 146 (1-E) they are not identical. AIR 1967 Mad 91 (93, 94) = 1967 Cri LJ 213 = (1967) 2 Mad LJ 70.

(3) Finding of civil court, however, erroneous it may be, is final until set aside in a court of competent jurisdiction under Section 146 (1-E). AIR 1966 Orissa 119 (120, 121) = 1966 Cri LJ 679 = 32 Cut LT 166.

(4) After attachment of disputed land under Section 146 (1), P filed a suit for declaration of title to the land and for such other reliefs as the Court deemed fit. P, however, averred all facts that he was in possession of the said land till the date of proceeding under Section 145, Cr. P. Code.

Held, though P did not ask for relief in plaint in terms of Section 146, he was entitled to possession of the disputed property. ILR (1966) Cut 139 (143).

7. Order of attachment. — (1) An order of attachment under Section 146 contemplates actual taking and keeping of possession. AIR 1943 Nag 246 (247) = 44 Cri L Jour 739 °° AIR 1920 Mad 209 (211) = 21 Cri L Jour 73 (DB) °° AIR 1925 Nag 297 (298) = 26 Cri L Jour 1378.

(2) The object of proceedings under Section 146 is to hold the property in anticipation of an action in Civil Court regarding possession and to enure for the benefit of the party in possession — Attachment lasts till the decision of Civil Court under Section 146. AIR 1961 Pat 425 (429, 430) = 1961 (2) Cri LJ 662.

(3) Magistrate should give reasons for his order under this section. AIR 1956 All 297 (299, 300) = 1956 Cri L Jour 561 (DB). (Overruling 1951 All WR (HC) 507 (512).)

(4) The order itself need not be long, but it should contain sufficient material to indicate to the revisional Court that the Court of enquiry had applied its mind to the case, and had made a genuine attempt to give a decision in the matter and in spite of it had found itself unable to come to any definite conclusion in favour of either party, and hence it was taking action under this section. AIR 1953 All 751 (752) = 1953 Cri L Jour 1717.

(5) Attachment order not indicating satisfaction of Magistrate of likelihood of breach of peace — Order passed after perusal of police report — Order held proper. 1964 (1) Cri LJ 240 (241) = 1963 Kash LJ 294.

(6) Magistrate has power to make an order respecting management and control of property during the period of attachment. AIR 1925 Nag 297 (298) = 26 Cri L Jour 1378. (Overruled on another point in AIR 1951 Nag 201 (DB).)

(7) Where properties of a mutt are attached under this section, Magistrate has power to pass an order regarding moveable property appurtenant to the mutt. AIR 1927 All 125 (125) = 27 Cri L Jour 429 °° AIR 1916 Pat 42 (43) = 18 Cri L Jour 287 (DB).

(8) Reference to Civil Court by Magistrate — Unable to satisfy himself which party was in actual possession — Order of attachment by Magistrate — Civil Court returning the case holding that it had no jurisdiction to decide the question — Order of attachment still valid. 1963 BLJR 583 (Pat).

(9) Attachment of property — Magistrate must refer matter to Civil Court after attachment — He cannot both attach property and drop proceedings under Sec. 145 without referring matter to Civil Court. (1961) 27 Cut LT 431.

8. Effect of an order of attachment. — (1) Attachment does not operate as dispossession of the rightful owner. AIR 1916 Cal 751 (752) (DB) °° (1903) 26 Mad 410 (415) (DB) °° AIR 1969 J and K 48 (49, 50) = 1968 Kash LJ 116.

(2) The effect of an order of attachment is to place the property in custodia legis and the possession of the Court during the period of attachment enures to the benefit of the person who is ultimately found by the Civil Court to be in possession of the property. AIR 1964 Andh Pra 109 (116)

Section 146 — Note 8 (contd.)
= (1963) 2 Andh WR 169 (DB) °° AIR 1966 SC 359 (361) = (1965) 3 SCR 655.

(3) When the land is attached the Magistrate cannot permit one of the parties to use it. 1951 All WR (HC) 507 (508). (Overruled on another point in AIR 1956 All 297.)

(4) Where the Court passes an order of attachment and the order is subsequently found to be erroneous and without jurisdiction, the person aggrieved by such an order has no cause of action for damages against the party who procured such an order as the Court is not an agent of the litigant so as to make that litigant liable for errors of law or procedure which the Court commits. (1910) 14 Cal WN 96 (98) (DB) °° AIR 1956 All 119 (121) °° (1911) 12 Cri L Jour 14 (15) (Cal).

(5) Where third parties are injured when the Magistrate takes possession of the attached property they have only two remedies: they can apply to the Magistrate to withdraw the attachment on the ground that no fear of breach of the peace exists any longer or else they can file a suit to establish that they are the persons entitled to possession. AIR 1943 Nag 246 (247) = 44 Cri L Jour 739.

(6) Prior to amendment of 1955 — Attachment under Sec. 146 — Declaratory suit is maintainable at the instance of a person who is in possession but has no title. 1961 (2) Cri LJ 880 (883 to 885) (Pat) (DB).

9. Withdrawal of attachment. — (1) The proviso to sub-section (1) gives no direction as to whom the Magistrate is to hand over the property if he is satisfied that there is no likelihood of a breach of the peace. AIR 1944 All 210 (211) = 45 Cri L Jour 769.

(2) It is impossible for the Magistrate to withdraw the attachment until it is agreed between the parties concerned in Court, as to whom the property should be made over. The Magistrate's satisfaction therefore that there is no longer a likelihood of a breach of the peace is equivalent to his being able to hand over the property to somebody with the consent of the parties concerned and unless there is agreement on the point the Magistrate must keep it attached until the question has been decided by a competent Court. AIR 1944 All 210 (211) = 45 Cri L Jour 769 °° AIR 1953 Trav-Co 388 (389) = 1953 Cri L Jour 1566.

(3) In withdrawing attachment Magistrate may make over possession of the property to any party he thinks fit, and is not bound simply to direct the receiver to abandon the property leaving the parties to scramble for it; but in making over possession to any particular party, he should exercise a sound discretion. AIR 1926 Oudh 146 (146, 147) = 26 Cri L Jour 1629.

[See also 1957 Andh LT 682 (685).]

(4) The power of Court to grant restitution is not confined to the proviso to Section 146 (1) but the Magistrate has inherent power to grant restitution of property to the person from whom it was taken on the date of the preliminary order after he had passed an order under Section 145 (5) that there was no likelihood of breach of peace. ILR (1954) Hyd 892 (900, 901).

10. Appointment of a receiver. — Sub-section (2). — (1) Appointment of receiver of attached property can only be made under the circumstances mentioned in this section and after the completion of the inquiry. (1912) 13 Cri L Jour 536 (536) (Mad).

[See also AIR 1959 Orissa 81 (82) = ILR (1958) Cut 731 = 1959 Cri L Jour 624. (Magistrate dropping proceedings under Section 145 and keeping property in custody of third party receiver till rights of parties are decided by civil Court. Order set aside.)]

(2) A person who has shown a partiality for one of the parties or a party to the action should not be appointed a receiver unless by consent, or unless there are special circumstances justifying his appointment in preference to others. AIR 1927 Pat 393 (394) = 28 Cri L Jour 776 (DB).

(3) A Court is bound to hear both sides and cannot delegate its function to any other authority in the absence of any specific and lawful provision authorising such delegation. It is therefore not desirable for a Magistrate to delegate to a subordinate of his the necessary enquiry to be conducted even if it be in the limited field of management of properties ordered to be attached under Section 146 (1). AIR 1957 Mad 405 (408) = ILR (1958) Mad 72 = 1957 Cri L Jour 761 °° AIR 1959 Ker 55 (59) = 1959 Cri L Jour 196.

(4) Land attached under Section 146 pending proceeding under Section 145 — Proceeding under Section 145 decided — Magistrate passing order directing supurdar to deposit certain amount towards profits utilized by him, arising out of attached land — Order is without jurisdiction — Amount due can be determined only in Civil Court. 1968 Cri LJ 1531 (2) (1532) = 1966 All LJ 792.

11. Powers of the receiver.— (1) A receiver appointed under this section has, subject to the control of the Court, all the powers of a receiver appointed under the Code of Civil Procedure. (1912) 13 Cri LJ 295 (295) (Mad).

(2) In the absence of any limitation on power prescribed by the Court the receiver will have all general powers of management including the power to grant leases. AIR 1933 Mad 67 (68) = 33 Cri L Jour 956.

[See also AIR 1944 Pat 87 (87, 90) (FB).]

(3) A receiver obtained permission from Court to lease the property without disclos-

Section 146 — Note 11 (contd.)

ing all material facts and granted a lease for an indefinite period in favour of one of the parties. **Held** that granting of such a lease amounted to a fraud practised upon Court and that Court had jurisdiction to set aside the lease. AIR 1933 Mad 67 (69) = 33 Cri L Jour 956.

(4) A receiver should obtain directions and instructions from Magistrate with regard to management of property. AIR 1915 Cal 236 (237) = 15 Cri L Jour 725 (DB).

(5) The receiver has a right to take possession also of accretions to attached property. (1910) 11 Cri L Jour 288 (290) (DB) (Cal).

(6) Powers of the receiver appointed under Section 145 (4) are different from the powers of a receiver appointed under Section 146 (2). AIR 1969 Ker 188 (189) = 1968 Ker LT 554 = 1969 Cri LJ 735.

12. Remuneration of the receiver. — (1) The remuneration to be paid to receivers should not exceed the total realizations from the property. AIR 1925 Nag 462 (462, 463) = 27 Cri L Jour 22.

(2) The remuneration ordinarily fixed for receivers appointed under Order 40, Rule 1 of the Civil Procedure Code does not furnish any standard for the remuneration to be paid to receivers under this section. AIR 1925 Nag 462 (462) = 27 Cri L Jour 22.

13. Disobedience to an order under this section.—(1) Any person entering the attached land is liable for the offence of criminal trespass under Section 447, Penal Code. He is not liable to be punished under Sec. 188, as in the case of an order under Section 145, sub-section (6). AIR 1943 Nag 246 (248) = 44 Cri L Jour 739 °° (1898) 8 Mad L Jour 253 (256) (DB) °° AIR 1960 Pat 125 (125, 126) = 1960 Cri LJ 387.

14. Review.— (1) Magistrate has no power to review an order under this section passed by himself or by his predecessor except to correct a clerical error. AIR 1917 Pat 110 (111) = 19 Cri L Jour 225 ° AIR 1926 All 242 (242) = 27 Cri L Jour 466.

(2) Once the Munsif has given his finding however inadvertently, there is no power left in him to review that order nor can a revision be filed. 1966 Cri LJ 820 (822) = 1966 All WR (HC) 462.

15. Revision.— (1) The High Court is not only competent to set aside an erroneous order but also to pass such orders as should have been made by the Magistrate upon the facts proved at the enquiry. (1895) 22 Cal 297 (305) (DB) °° AIR 1917 Cal 82 (82) = 18 Cri L Jour 80 (DB).

(2) Where an order which ought to have been passed by the Magistrate under Section 146 (1) is passed by the High Court in revision it is meaningless to say that all further orders that may be found necessary in virtue of the provisions of Section 146 should be passed by the High Court alone. AIR 1953 Trav-Co 388 (389) = 1953 Cri L Jour 1566.

(3) Mere brevity of an order is no ground for interference. AIR 1923 Cal 483 (483) = 24 Cri L Jour 575 (DB).

(4) Where the Magistrate has failed to give full judicial consideration to the evidence in the case, the order will be set aside. AIR 1919 Cal 99 (100) = 20 Cri L Jour 342 (DB) °° 1955 BLJR 440 (441) °° AIR 1953 All 751 (752) = 1953 Cri L Jour 1717.

(5) Magistrate holding that evidence adduced by parties is not enough for a positive finding of possession. High Court cannot interfere with order of attachment. AIR 1951 Assam 89 (90) = ILR (1950) 2 Assam 419 = 52 Cri L Jour 695 (DB).

(6) High Court will not ordinarily interfere with orders passed by the Magistrate with regard to management of property. (1902) 29 Cal 382 (384) (DB) °° AIR 1957 Mad 405 (408) = ILR (1958) Mad 72 = 1957 Cri L Jour 761 °° AIR 1927 Pat 393 (394) = 28 Cri L Jour 776 (DB).

(7) Where an order with regard to management offends against an elementary rule founded on the desire of Courts to place the parties on a footing of absolute equality High Court will interfere in revision. AIR 1927 Pat 393 (394) = 28 Cri L Jour 776 (DB).

(8) The District Magistrate has no power to revise an order under this section passed by a subordinate Magistrate. AIR 1922 Pat 554 (554, 555) = 23 Cri L Jour 562.

(9) The High Court can interfere with the finding of the Civil Court under Sections 435 and 439, Cr. P. C. after the finding is adopted by the Magistrate and the final order is passed. AIR 1963 Pat 243 (246) = (1963) 2 Cri LJ 25 = 1963 BLJR 496 (FB). (AIR 1958 Pat 85 and AIR 1962 Pat 468, **Overruled.**) °° AIR 1963 Pat 320 (322) = 1963 (2) Cri LJ 313 = 1963 BLJR 665.

[But see AIR 1970 All 119 (122) = 1970 Cri LJ 193 (DB). (Order of Magistrate under Section 146 (1-B) cannot be set aside in revision. AIR 1963 Pat 243 (FB), held impliedly overruled by AIR 1966 SC 1888).]

(10) Where the party did not challenge the Magistrate's order of reference to the Civil Court under Section 146 (1) of the Criminal P. C., it cannot do so at the revisional stage against the final order. AIR 1965 All 127 (128) = 1965 (1) Cri LJ 271 = 1963 All LJ 1101 °° AIR 1970 All 119 (121) = 1970 Cri LJ 193 (DB).

(11) Reference to Civil Court without attachment of property — Reference is still competent — Decision of Civil Court cannot be challenged in revision against order of Magistrate on basis of decision of Civil Court, even if order of Civil Court contained any mistake. 1967 All Cr R 16 = 1967 All WR (HC) 8.

[**147. Disputes concerning rights of use of immovable property, etc.**— (1) Whenever any District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class is satisfied from a police report or other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water as explained in Section 145, sub-section (2) (whether such rights be claimed as an easement or otherwise), within the local limits of his jurisdiction, he may make an order in writing stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend the Court in person or by pleader, within a time to be fixed by such Magistrate and to put in written statements of their respective claims, and shall thereafter inquire into the matter †[in the manner hereinafter provided.]

‡[(1A) The Magistrate shall then peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence, if any, as he thinks necessary and, if possible, decide whether such right exists and the provisions of Section 145 shall, as far as may be, be applicable in the case of such inquiry.]

(2) If it appears to such Magistrate that such right exists, he may make an order prohibiting any interference with the exercise of such right:

Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months

Section 146 — Note 15 (contd.)

(12) Reference to Civil Court — Civil Court refusing to summon deponent of affidavit before Magistrate for being cross-examined — It is 'case decided' within Section 115 C. P. C. AIR 1969 All 82 (88) = 1969 Cri LJ 139 = 1968 All WR (HC) 88.

(13) Objection as to want of jurisdiction in Civil Court to decide reference under Section 146 (1) — Objection can be raised for first time in revision arising out of proceedings under Section 145. AIR 1965 All 446 (448) = 1965 (2) Cri LJ 342 = 1965 All LJ 12.

(14) See also Note 6-G for effect of sub-section (1-D) on maintainability of revision against order under this section.

16. Interference under Articles 226 and 227 of the Constitution. — (1) Erroneous finding of Civil Court under S. 146 (1-B) Criminal P. C. — Finding may be challenged under Article 226 or Article 227 of the Constitution of India — Section 146 (1-D) does not affect such jurisdiction of High Court. AIR 1965 All 127 (128) = 1965 (1) Cri LJ 271 = 1963 All LJ 1101.

(2) Finding of Civil Court in proceeding under Section 146 (1-A), Criminal P. C. cannot be challenged in writ proceedings. AIR 1965 All 442 (443) = 1964 All WR (HC) 500 = 1965 (2) Cri LJ 337.

(3) Finding of Civil Court given on reference — Finding can be challenged only by a regular suit and not by means of writ petition. AIR 1960 All 599 (600) = 1960 Cri LJ 1279.

(4) The powers of the High Court under Article 227 of the Constitution cannot be taken away or abridged by a legislative enactment, and as such sub-section (1-D) of Section 146, Criminal P. C., has not and cannot have that effect. AIR 1963 Pat 243 (252) = 1963 BLJR 496 = 1963 (2) Cri LJ 25 (FB).

SECTION 147 — SYNOPSIS

1. **Scope.**
2. **Nature of proceedings.**
3. **"Is satisfied from police-report or other information".**
4. **"Dispute likely to cause a breach of the peace".**
5. **Right of user of land or water.**
6. **"Easement or otherwise."**
7. **Preliminary order in writing.**
8. **"Parties concerned in such dispute."**
9. **Notice.**
10. **Inquiry into the existence of the right.**
11. **Exercise of the right.**
12. **"Order prohibiting any interference with the exercise of such right."**
13. **"Prohibiting the exercise of such right.**
14. **Decision of a Civil Court.**
15. **Conversion of proceedings.**
16. **Dropping and revival of proceedings.**
17. **Revision.**

1. Scope.— (1) Magistrate is not bound to institute proceedings under this section. AIR 1950 Assam 165 (Pr. 7) = ILR (1951) 3 Assam 52.

(2) Magistrate is not prohibited from proceeding under this section merely on the ground that proceedings under Section 107 are pending. AIR 1936 Sind 147 (147) = 37 Cri L Jour 1036 (DB).

(3) Magistrate can proceed under Section 107 or under Section 144, especially if an inquiry into dispute referred to in Section 147 would involve an investigation into complicated questions relating to the title of the parties. AIR 1950 Assam 165 (Pr 7) = ILR (1951) 3 Assam 52 °° (1906) 3 Cri L Jour 31 (33) = 29 Mad 97 (DB).

(4) Ordinarily, proper course for Magistrate to adopt would be to take action under

next before the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such institution.

(3) If it appears to such Magistrate that such right does not exist, he may make an order prohibiting any exercise of the alleged right.

(4) An order under this section shall be subject to any subsequent decision of a Civil Court of competent jurisdiction.]

[1882—S. 147; 1872—S. 532; 1861—S. 320.]

[*] Substituted for the original Section 147 by the Code of Criminal Procedure (Amendment) Act 1923 (XVIII of 1923), Section 30.

[†] Substituted for the words "in the manner provided in Section 145, and the provisions of that section shall, as far as may be, be applicable in the case of such inquiry," by the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), S. 20 (a) (1-1-1956).

[‡] Inserted, ibid, Section 20 (b).

STATE AMENDMENTS

Gujarat:

In its application to the State of Gujarat, the amendment made in Section 147 is the same as that made in Maharashtra— See Central Act XI of 1960, Section 87.

NOTE.—For the appointment of an Executive Magistrate for the City of Ahmedabad, see Guj. Act XIX of 1961, Section 14 (3A) as inserted by Guj. Act LI of 1963, Section 2.

Section 147 — Note 1 (contd.)

this section rather than make temporary orders under Section 144 or Section 107 without any inquiry into respective claims of parties. AIR 1950 Assam 165 (Pr 7) = ILR (1951) 3 Assam 52 ** AIR 1936 Pat 59 (60) = 37 Cri L Jour 378 ** AIR 1967 Orissa 198 (199) = 1967 Cri LJ 1672 = 34 Cut LT 118. (If however, Magistrate adopts a proceeding under Section 107, his action is not without jurisdiction.)

[See also AIR 1966 J & K 29 (30) = 1966 Cri LJ 145 = 1966 Kash LJ 1 ** AIR 1958 Tripura 47 (48) = 1958 Cri L Jour 1554. (Dispute about right to collect toll in Bazar raging for sometime past — Proceedings under Section 145 or 147 and not under Section 144 held appropriate.)]

(5) Magistrate has no jurisdiction to start a proceeding under this section at the instance of the party restrained by an order under Section 144 which is in force. The proper course for the Magistrate is to deal with such party for any breach of the order if and when any fresh attempt is made to disturb the peace. AIR 1951 Assam 77 (Pr. 6) = ILR (1950) 2 Assam 386 (DB).

(6) Obstruction to free flow of water in nullah causing inundation — Proceeding under Section 147 is not proper when there is no claim of right of use of water or any interference therewith — Proceedings under Section 133 may be resorted to. (1858) 24 Cut LT 394 (395).

(7) Dispute relating to right of user of land — Claimed as incident of ownership — Claim of ownership by both parties — Magistrate to proceed under Section 145 and not under Section 147. 1968 Cr LJ 1386 (1389) = 1968 Raj LW 300 ** 1969 Cri LJ 579 (580) = 1968 Pat LJR 382.

(8) Difference between proceedings under Sections 145 and 147 lies in nature of right and not with manner of inquiry or with order. AIR 1960 Assam 90 (92, 93, 94) = 1960 Cri LJ 794.

(9) A right to worship in a particular place must involve the right to use that particular place for a particular purpose or in a particular manner. It must therefore be held that an inquiry into the existence of the alleged right of the general public to go upon the disputed land for the purpose of worshipping the idol and the Bargad tree falls within the ambit of Section 147. 1969 Pat LJR 470 (474).

(10) Jurisdiction to take action under — Magistrate has no jurisdiction unless there is likelihood of any breach of peace. (1970) 72 Punj LR 118 (120).

(11) In a proceeding under Sec. 147 the Magistrate has to find whether the right of user which has been claimed in the property exists, and then he has to find whether such right has been exercised within a period of three months next before the institution of the inquiry, in cases where the right is exercisable at all time of the year, or during the last of the seasons or occasions before the institution of the inquiry where the right is exercisable only at particular seasons or particular occasions. 1969 Pat LJR 470 (475).

2. Nature of proceedings. — (1) District Magistrate has power to transfer a proceeding under this section under Sections 192 and 528. AIR 1949 All 616 (Pr 5) = 50 Cri L Jour 929 ** AIR 1923 Pat 366 (367) = 24 Cri L Jour 487.

Maharashtra:

(1) In its application to the State of Maharashtra, in sub-section (1) of Section 147, for the words "or Magistrate of the first class", substitute the words "or any other Executive Magistrate specially empowered by the State Government in this behalf".—Bom. Act XXIII of 1951, Section 2 and Schedule (1-7-1953).

(2) After the reorganization of the State of Bombay in 1956, the amendment made in Section 147 by the above-mentioned Bombay Act is extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Punjab: Haryana: Chandigarh:

In its application to the States of Punjab and Haryana and the Union territory of Chandigarh, in S. 147, in sub-sec. (1), for the words "Magistrate of the first class", substitute the words "Executive Magistrate of the first class,"—Punj. Act XXV of 1964, Section 2 and Schedule, Pt. I, item (37) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Section 147 — Note 2 (contd.)

(2) A proceeding under this section is a quasi civil proceeding. AIR 1952 Pat 251 (Pr 1) = 1952 Cri L Jour 765.

3. "Is satisfied from police-report or other information." — (1) The jurisdiction of the Magistrate to institute proceedings under this section arises on his being satisfied that a dispute exists concerning the right of user of land or water and further that such a dispute is likely to cause a breach of the peace. AIR 1950 Assam 165 (Pr 7) = ILR (1951) 3 Assam 52 °° AIR 1940 Cal 330 (330) = 41 Cri L Jour 728 (DB).

(2) Magistrate must record a finding that he is satisfied on the materials before him that a dispute referred to in Section 147 is likely to cause a breach of the peace. (1896) 6 Mad L Jour 193 (194) (DB) °° (1896) 23 Cal 557 (562) (DB). (Evidence recorded during enquiry is not sufficient to give him jurisdiction.) °° 1969 Cri LJ 1154 (1156) = 1968 All LJ 750.

(3) Where a Magistrate without drawing up formal proceedings and without passing a preliminary order enters into the merits of the controversy and arrives at certain findings on matters which could only be examined after the passing of a preliminary order and ultimately declines to take action under Section 147, the order is without jurisdiction. AIR 1950 Assam 165 (Pr 10) = ILR (1951) 3 Assam 52.

(4) Magistrate making use of police-report for satisfying himself as to existence of dispute — Examination of Police officer to ascertain correctness of Police report not necessary. AIR 1931 All 14 (15) = 32 Cri L Jour 309.

(5) Magistrate cannot drop proceedings merely on the ground that the dispute relates to a right exercisable only at particular season and that the season is over. AIR 1941 Pat 281 (282) = 42 Cri L Jour 620.

4. "Dispute likely to cause a breach of the peace." — (1) Magistrate has to be satisfied that a real present dispute exists and that it is likely to cause a breach of the peace. (1936) 37 Cri L Jour 512 (513) (DB) (Cal) °° AIR 1941 Pat 281 (282) = 42 Cri L Jour 620 °° (1910) 11 Cri L Jour 729 (730) (DB) (Cal).

(2) Where the rights of the parties have been already determined by a Court of law, Magistrate cannot take proceedings under this section inasmuch as the object of an inquiry under this section is only to find out if the alleged right exists. AIR 1927 Bom 654 (655) = 28 Cri L Jour 578 °° AIR 1952 Pat 251 (252) = 1952 Cri L Jour 765.

(3) The fact that the counter petitioners were in the habit of running away at the very sight of the petitioners is not sufficient reason to infer that there is no likelihood of a breach of the peace. AIR 1950 Mad 593 (Pr 6) = 51 Cri L Jour 1508.

5. Right of user of land or water. — (1) This section applies only to cases where the dispute relates to the right of user of land or water and not to disputes concerning immovable property itself. (1913) 14 Cri L Jour 605 (606) = 16 Oudh Cas 192 °° AIR 1934 Pat 86 (88) = 35 Cri L Jour 481 (DB) °° ILR (1964) 1 Ker 147 (150) = 1964 Ker LJ 29 (DB).

[See also (1967) 1 Mad LJ 143 = 1966 Mad LW (Cri) 186.)]

[See however AIR 1956 Cal 231 (231) = 1956 Cri L Jour 616.]

(2) The expression "land or water" is not confined to private property only and is wide enough to include public property such as public roads, streets and pathways. AIR 1950 Pat 315 (Pr 2) = 51 Cri L Jour 1188 °° AIR 1924 Nag 294 (295) = 25 Cri L Jour 353 °° AIR 1927 Mad 985 (985, 986) = 28 Cri L Jour 948.

(3) Section 133 does not bar institution of proceedings under this section if the conditions necessary for the exercise of the jurisdiction under this section are established. AIR 1914 Mad 712 (712, 713) = 15 Cri L Jour 362 (DB).

[See however AIR 1954 Cal 560 (560) = 1954 Cri L Jour 1712. (Obstruction of a

Rajasthan:

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendment made in Section 147 is the same as that made in (1) of Maharashtra.—See Central Act XXXVII of 1956, Section 119 (1-11-1956).

Union Territories (except Chandigarh):

In its application to the Union territories, in sub-section (1) of Section 147, for the words "Magistrate of the first class", substitute the words "Executive Magistrate of the first class".—Act 19 of 1969, Section 3 and Schedule, Item 38 (in Delhi, on 2-10-1969).

West Bengal

In Section 147 (1), for the words "Sub-divisional Magistrate or Magistrate of the first class" substitute the words "Sub-divisional Executive Magistrate or Executive Magistrate of the first class."—W. B. Act 8 of 1970, Section 2 and Schedule, item 54.

Section 147 — Note 5 (contd.)

public thoroughfare being a public nuisance action should be taken under Section 133 and not under Section 147.)]

(4) The power of Magistrates to pass orders in respect of public streets or pathways should not be exercised until it is clearly proved that there is a right by custom or by grant or by statute, in one section of the public to prevent another section of the public from using the public street or pathway on particular occasions or for particular purposes, when such use is ordinarily and prima facie lawful. AIR 1916 Mad 775 (778) = 16 Cri L Jour 767 (770) (DB) °° (1910) 11 Cri L Jour 721 (722) (DB) (Mad) °° AIR 1927 Mad 985 (985, 986) = 28 Cri L Jour 948.

(5) A "right" under the section must be a legal right. AIR 1937 Cal 513 (514) = 38 Cri L Jour 1071 (DB) °° 1960 BLJR 84 (87) (DB). (Not just a bona fide claim of right.)

(6) For the purpose of Section 147, there must be evidence of user 'as of right' and not by way of mere licence or permission. ILR (1957) Cut 613 (618, 619) °° 1969 Pat LJR 470 (476) °° 1960 BLJR 84 (87) (DB).

(7) Since a right to restrain another from fishing in the sea is not recognized by law, it cannot be enforced under this section. AIR 1935 Mad 350 (352) = 37 Cri L Jour 4 (DB).

(8) The following are rights of user of land or water.—

(a) a right to take a car in procession along a public road to a temple. AIR 1925 Bom 536 (537) = 26 Cri L Jour 1422 (DB) °° 1959 Raj LW 332 (335). (Dispute about use of road for taking out procession.)

(b) A right to enter a temple or other place of public worship and to worship therein. AIR 1952 Trav-Co. 531 (Pr 4) = ILR (1952) Trav-Co 1016 = 1953 Cri L Jour 9. (Church.) °° AIR 1951 Cal 93 (Pr 38) = 52 Cri L Jour 940 (FB). (37 Cal 578; 38 Cal 387 and AIR 1926 Cal 437 = 27 Cri L Jour 239, Overruled.) °° AIR 1938 Mad 537 (538) = 39 Cri L Jour 705 °° 1961 (2) Cri LJ 466 (467) (Cal). (Right to worship.)

[But see AIR 1917 Mad 840 (840) = 17 Cri L Jour 235 (235).]

(bb) Right of service in place of public worship like a church. 1969 Cri LJ 331 = 1968 Ker LT 503.

(c) A right to enter a mosque and officiate as Kazi therein. (1906) 4 Cri L Jour 58 (59) = 29 Mad 237.

(cc) A right to perform festival at mosque. 1961 (2) Cri LJ 234 (235, 236) = 1961 Ker LT 329.

(d) A right to bury the dead in a burial ground. AIR 1928 Mad 598 (599) = 29 Cri L Jour 644.

(e) A right to enter a samadhi. AIR 1930 All 452 (454) = 31 Cri L Jour 1217.

(f) A right to erect a bund. AIR 1930 Cal 59 (59) = 31 Cri L Jour 944 (DB).

(g) A right to go upon land of another for the purpose of collecting gratuities for a certain religious purpose. AIR 1917 Cal 256 (257) = 18 Cri L Jour 113 (DB).

(h) A right of way absolute or limited by exclusion of vehicular traffic. (1901) 5 Cal WN 335 (336) °° AIR 1921 Pat 227 (228) = 22 Cri L Jour 739.

(i) A right to lay wraps in a street. AIR 1919 Mad 812 (813) = 19 Cri L Jour 977.

(j) A right to let off water by its natural course. (1911) 12 Cri L Jour 319 (320) (DB) (Cal).

(k) A right to fish. (1896) 23 Cal 557 (560) (DB) °° AIR 1934 Pat 86 (88) = 35 Cri L Jour 481 (DB).

(l) A right to moor boats and dry fishing nets on the land of another. AIR 1920 Cal 561 (562) = 21 Cri L Jour 697 (DB).

(m) A right to use the water emanating from the river and running through a particular channel. AIR 1919 Pat 174 (175) = 20 Cri L Jour 209.

(n) A right to use the water of a well. AIR 1924 Nag 294 (295) = 25 Cri L Jour 353.

Section 147 — Note 5 (contd.)

(o) A right to ply ferries. (1899) 3 Cal WN 148 (149) (DB).

(p) A right to drain off surplus water. AIR 1936 Pat 59 (60) = 37 Cri L Jour 378.

(q) A right to receive offerings at a shrine depending upon the right to sit in a particular spot. AIR 1941 Nag 171 (174) = 42 Cri L Jour 675.

(9) The following are not rights of user of land or water:—

(a) A right of privacy. 1888 Rat 357 (358) (DB) °° (1913) 14 Cri L Jour 400 (401) (DB) (Bom).

(b) Right of a Muhammadan to worship on land of another. AIR 1925 Pat 435 (435) = 27 Cri L Jour 44.

(c) A right to an undivided share in a property. (1883) 5 All 607 (608).

(d) Right to remove sandalwood paste from the person of an idol. (1902) 4 Bom LR 438 (439) (DB).

(e) A right to a dignity or privilege not properly cognizable by a Civil Court. (1890) 14 Bom 25 (27) (DB).

(f) A dispute relating to offerings in temple. AIR 1938 Mad 537 (538) = 39 Cri L Jour 705 °° AIR 1960 Pat 189 (190 to 192) = 1959 BLJR 780 = 1960 Cri LJ 506 (DB).

(10) A right to recite sankalpams to such persons as bathe in the holy Pushkarani thirtham is not a right of user of water within the meaning of this section unless there is an exclusive right in a person to compel every person bathing in it to submit himself to his sankalpam before using the water. AIR 1950 Mad 593 (Pr 1) = 51 Cri L Jour 1508.

(11) Dispute as to — Mining right comes within Section 145 and not Section 147. AIR 1919 Pat 210 (212) = 4 Pat L Jour 154 = 20 Cri L Jour 199.

(12) Dispute relating to pathway Magistrate should draw proceedings under Section 147 and not under Section 107. AIR 1966 J and K 29 (30) = 1966 Cri LJ 145 = 1966 Kash LJ 1.

(13) Two local bodies wanting to hold cattle fair at certain place on same date — Dispute not relating to particular piece of land but regarding attracting customers to their respective camps — **Held,** as there was no dispute between parties about their right to use the land of other party Section 147 did not apply. AIR 1963 Raj 42 (43) = (1963) 1 Cri LJ 226 = 1962 Raj LW 644.

6. "Easement or otherwise". — (1) The words "or otherwise" show that Sec. 147 applies to rights not resembling easements. (1942) 46 Cal WN 313 (316) (DB). (Customary right of user of ghat for ablution purposes.) °° AIR 1930 All 452 (454) = 31 Cri L Jour 1217 °° AIR 1930 Mad 865 (865) = 32 Cri L. Jour 215. (Dispute as to right to flow of water down a channel — Section applies.) °° AIR 1934 Pat 86 (88) = 35 Cri L Jour 481 (DB). (Jalkar rights — Dispute as to — Section applies.)

(2) The word "easement" is not used in the restricted sense in which it is used under the English law. (1896) 23 Cal 55 (59) (DB).

(3) Word 'easement' is not confined to the right of easement acquired by uninterrupted enjoyment for a period of twenty years as provided by Section 26 of the Limitation Act. (1909) 10 Cri L Jour 292 (292, 293) (DB) (Cal).

(4) For purposes of this section, it is enough if the right existed and was exercised during the last season or within three months next before commencement of proceedings. AIR 1930 Mad 865 (865) = 32 Cri L Jour 215.

7. Preliminary order in writing. — (1) The preliminary order should direct the parties to attend the Court of the Magistrate making the order; it is not proper to direct the parties to appear before another Magistrate. AIR 1921 Pat 333 (333) = 22 Cri L Jour 483.

(2) Order directing parties to appear before another Magistrate would not be illegal if there is an express or implied order transferring the case to such Magistrate. AIR 1949 All 616 (Pr 5) = 50 Cri L Jour 929.

(3) The preliminary order may, at the most, direct a party not to interfere with the exercise of the right claimed by the other party pending disposal of the matter before the Magistrate. But the Magistrate has no power at that stage to order a party to desist from interfering with the exercise of such right until he obtains a decree or order from a competent Civil Court. AIR 1949 All 616 (Pr 7) = 50 Cri L Jour 929.

(4) On a complaint about closure of drain the Magistrate directed that a proceeding under Section 147, Criminal P. C. should be instituted and also made the following order: "Local police to see that the status quo is maintained." The police went to the spot, demolished the wall constructed over the drain and reopened the drain. **Held,** that the Magistrate had not authorised the police to do what they did and even if he had so authorised them it was very doubtful if his order would have been a proper and legal one. AIR 1941 Pat 560 (561) = 42 Cri L Jour 753.

(5) Preliminary order by Magistrate under Section 147 (1) — Failure to state grounds — Order is made without jurisdiction — Entire proceedings vitiated. 1968 All LJ 750 = 1969 Cri LJ 1154 (1156).

8. "Parties concerned in such dispute." — (1) Magistrate has full power and is indeed required to add such persons as seem necessary for the proper decision of the dispute. (1942) 46 Cal WN 313 (315) (DB).

(2) The proprietor of the land in which a right of way is claimed is a necessary

Section 147 — Note 8 (contd.)
party though such person may not be actually concerned in the dispute. (1898) 2 Cal WN 670 (672) (DB).

(3) It is not necessary to implead the person from whom one of the parties derives his title; it is sufficient if the actual claimants are impleaded. (1896) 22 Cal 55 (59) (DB).

(4) The omission to implead necessary parties is only an irregularity and does not render the proceedings illegal unless prejudice is caused to the parties. AIR 1926 Pat 196 (197) = 27 Cri L Jour 142.

(5) Order passed without the necessary parties on record will not be binding on such parties. AIR 1941 Mad 939 (940) = 43 Cri L Jour 136 °° AIR 1919 Pat 174 (176) = 20 Cri L Jour 209 °° AIR 1925 Cal 263 (264) = 25 Cri L Jour 674 (DB).

(6) The Magistrate has no power to add parties after the commencement of the inquiry. (1901) 5 Cal WN 67 (70).

9. Notice.— (1) The service of notice is imperative and Magistrate should not pass final orders without issuing a notice. AIR 1936 All 759 (761) = 38 Cri L Jour 46 °° AIR 1958 Assam 112 (114) = 1958 Cri L Jour 1131 °° (1894) 21 Cal 727 (730). (Notice to servants of parties not sufficient.)

[See also AIR 1960 Assam 90 (93) = 1960 Cri LJ 794. (Notice issued to opposite party to show cause why disputed construction should not be removed — Order further directing parties to file their written statements — Held assuming notice was defective entire proceedings were not vitiated.)]

(2) A notice issued under Section 145 is not a sufficient compliance with this section. AIR 1933 Lah 145 (147) = 34 Cri L Jour 616.

(3) A notice served under Section 144 would be sufficient notice where proceedings are converted into one under this section. AIR 1936 Pat 59 (60) = 37 Cri L Jour 378.

10. Inquiry into the existence of the right.— (1) A lengthy and elaborate inquiry into the rights of the parties is not contemplated. The Magistrate would be justified in passing an order in favour of one party if he thinks, on a summary inquiry into the rights of the parties, that there are reasonable grounds showing the existence of the right in favour of such party. AIR 1926 Pat 348 (351) = 27 Cri L Jour 841.

[See also AIR 1951 All 238 (Pr 8) = 52 Cri L Jour 795 (FB). (Magistrates are not expected to hold complicated enquiries as to title and try to adjust the same. Their orders are intended to be only of a temporary nature till the rights of the parties are finally determined by competent Courts.)]

(2) A Magistrate must, in a proceeding under Section 147, receive all such evidence as may be produced by the parties, and the procedure applicable to a proceeding under Section 145, whereby parties are to be asked to produce affidavits of witnesses, is no applicable to a proceeding under Sec. 147 AIR 1961 Pat 410 (411) = 1961 BLJR 297 (1) = 1961 (2) Cri LJ 541 °° 1966 All WR (HC) 628 = 1966 All LJ 1115 °° (1964) 30 Cut LT 287 = ILR 1964 Cut 206. (Taking of evidence in proceedings under section is mandatory.) °° (1964) (1) Cri LJ 600 (600) = (1964) 2 Mad LJ 481. (Magistrate cannot act on evidence of affidavits.) °° (1969) 35 Cut LT 373 (376).

(3) The words "provisions of Section 145, shall as far as may be, be applicable in the case of such inquiry" occurring in sub-section (1-A) of Section 147 cannot be interpreted to mean that evidence in proceedings under Section 147 may also be given by putting in affidavits of persons. The above words only indicate that other matters of procedure such are contained in sub-sections (5), (7) and (9) of Section 145 would as far as may be, applicable to the proceedings under Section 147. ILR (1963) 13 Raj 549 (551) = 1963 Raj LW 283.

(3a) Even if the second party might not be in a position to prove that the disputed plot of land is public property or the property of a public deity, it is open to it to prove that the public in general has acquired a right of user in the land by easement or otherwise. It is, however, necessary to keep in mind the provisions of sub-sections (2) and (3) of Section 147. 1969 Pat LJR 470 (473) °° (1969) 1 Mad LJ 585. (Section 147 (1-A) does not give power to the Magistrate to receive affidavits and consider them but he can only receive evidence and consider the same.) °° AIR 1961 Pat 278 (278, 279) = 1961 BLJR 217 = 1961 (1) Cri LJ 850.

(4) The filing of the petition before the Magistrate to take action under Sec. 147 will be institution of the inquiry and it is not the drawing up of the preliminary order under Section 147 (1) that will constitute the institution. (1965) MLJ (Cr) 394. = 1964 Ker LJ 1177 = 1965 Ker LT 119.

(5) Magistrate should not refer the matter to a Civil Court without any inquiry whatever. (1870) 14 Suth WR (Cr) 28 (29) (DB).

[See however AIR 1960 J and K 66 (67) = 1960 Cr LJ 582. (Section 146 cannot be invoked in a case under Section 147.) °° AIR 1959 Manipur 29 (29, 30) = 1959 Cri L Jour 743. (Magistrate must take all evidence produced and then come to a decision — There can be no reference to civil Court.)]

(6) The Magistrate should not pass an order merely on the following grounds.

(a) Convenience of the parties. AIR 1914 Oudh 381 (382) = 15 Cri L Jour 668 (668).

(b) On basis of any private information furnished to him. AIR 1924 Pat 717 (718) = 25 Cri L Jour 455.

Section 147 — Note 10 (contd.)

(c) On a consideration of sentimental caste objections. AIR 1916 Mad 775 (777) = 16 Cri L Jour 767 (769) (DB).

(7) As the subject-matter of the dispute is a right of user of land or water, the Magistrate cannot pass any order of attachment or an order appointing a receiver. AIR 1953 Trav-Co 202 (Pr. 11) = ILR (1953) Trav-Co 73 = 1953 Cri L Jour 1013 °° ILR (1948) 1 Cal 374 (375) °° AIR 1942 Mad 77 (77) = 43 Cri L Jour 103 °° AIR 1955 Raj 75 (76) = 1955 Cri L Jour 734 = ILR (1955) 5 Raj 207 °° ILR (1964) 1 Ker 147 (150) = 1964 Ker LT 29 (DB) °° AIR 1961 Pat 369 (371) = (1961) (2) Cri LJ 371 = 1961 BLJR 144 °° 1961 (2) Cr LJ 234 (235, 236) = 1961 Ker LT 329 °° AIR 1960 J and K 66 (67) = 1960 Cri LJ 582.

[But see (1963) All LJ 784 = 1963 All WR (HC) 609 °° AIR 1956 Cal 231 (231) = 1956 Cri L Jour 616. (By virtue of Section 147 (1) the provision contained in Section 145 (4) is attracted under the proviso whereof, a Magistrate may where necessary attach the subject-matter of dispute.)]

(8) Magistrate has no power to pass any interlocutory order restraining the parties from exercising their rights pending the inquiry under this section. AIR 1953 Trav-Co 202 (Pr. 10) = ILR (1953) Trav-Co 73 = 1953 Cri L Jour 1013 °° AIR 1950 Raj 8 (Pr. 5) = 51 Cri L Jour 807 °° AIR 1940 Cal 330 (330) = 41 Cri L Jour 728 (DB) °° AIR 1932 Nag 83 (84) = 33 Cri L Jour 556 °° 1964 All WR (HC) 731 = 1965 All Cri R 10. (Enquiry under Section 147 pending — Magistrate passing interim order without allowing parties to lead evidence — Order is illegal.)

(9) If the case is emergent and calls for immediate action he has power to prevent a breach of the peace by taking action under Section 144. AIR 1916 Mad 775 (777) = 16 Cri L Jour 767 (DB).

(10) Where both parties claimed an exclusive right to take water from a certain water course but the Magistrate was not satisfied that such exclusive right existed the Magistrate could pass an order prohibiting the exercise of the right by either party under sub-section (3) of this section. AIR 1948 All 105 (106) = ILR (1947) All 746 = 49 Cri L Jour 48.

(11) A Magistrate enquiring into a case under this section has no power to dismiss the application for default of the applicant. AIR 1953 All 440 (Pr. 9) = 1953 Cri L Jour 983.

11. Exercise of the right. — (1) Where the Magistrate finds that the right claimed exists, he should also give a finding as to whether such right was exercised within 3 months next before the institution of the inquiry or, where the right is exercisable only at particular seasons or on particular occasions, whether it was exercised during the last of such seasons or on the last of such occasions. AIR 1921 Pat 486 (486) = 22 Cri L Jour 463 °° AIR 1955 Pat 265 (267, 268) = 1955 Cri L Jour 977 °° AIR 1924 Pat 784 (784) = 25 Cri L Jour 996 °° (1913) 14 Cri L Jour 303 (303) (DB) (Cal.) °° AIR 1961 Pat 374 (376, 377) = 1961 BLJR 350 = 1961 (2) Cri LJ 374. (Finding can be implicit.)

[See also AIR 1934 Pat 557 (558) = 36 Cri L Jour 106. ('Last of such occasions' mean last of such occasions on which the right would have been exercisable.)]

(2) A finding as to the exercise of the right is not necessary where the Magistrate decides that the right itself does not exist. (1913) 17 Cal WN ccxlvii (ccxlviii) (DB).

(3) Specific instance of exercise of the right need not be proved where a general continuous exercise of such right is satisfactorily proved. AIR 1926 Pat 348 (351) = 27 Cri L Jour 841 °° 1960 BLJR 84 (87) (DB).

(4) Magistrate may draw a presumption under Section 114, Evidence Act that the party having the right of user of the land also exercised such right in the absence of clear evidence to the contrary. AIR 1931 Mad 495 (496) = 32 Cri L Jour 972.

(5) The word "exercise" does not mean "successfully and completely to assert". It is sufficient if the person having such right makes even a small gesture in the assertion of such right. AIR 1931 Mad 495 (496) = 32 Cri L Jour 972.

(6) The period of three months has to be calculated from the date the Magistrate draws up formal proceedings and passes the preliminary order. (1942) 46 Cal WN 313 (315) (DB) °° AIR 1959 Mys 177 (179) = 1959 Cri L Jour 878 °° AIR 1930 All 452 (455) = 31 Cri L Jour 1217 °° AIR 1930 Pat 291 (292) = 31 Cri L Jour 361 (DB).

[See however AIR 1955 Pat 265 (266) = 1955 Cri L Jour 977 °° 1952 All WR (Sup) 9 (10) °° AIR 1936 Pat 44 (44, 45) = 37 Cri L Jour 327 (DB) °° AIR 1930 Pat 349 (351) = 31 Cri L Jour 791 (DB).]

(7) Where a person was prevented from exercising his right within the period of three months because of circumstances beyond his control — as by obstruction by the other party — the proviso has no application and the right of such a person may be declared under this section. AIR 1925 Bom 536 (537) = 36 Cri L Jour 1422 (DB).

[See also AIR 1959 Mys 177 (179) = 1959 Cri L Jour 878.]

[But see AIR 1931 Mad 495 (496) = 32 Cri L Jour 972.]

(8) The right to use a bank of a tank as a burial ground is not exercisable at all times of the year but is exercisable on certain occasions within the meaning of the proviso to sub-section (2). AIR 1950 Cal

Section 147 — Note 11 (contd.)

425 (Pr. 2) = ILR (1951) 1 Cal 480 = 51 Cri L Jour 1530.

12. "Order prohibiting any interference with the exercise of such right." — (1) Order under the section is directed against the person who is interfering with such right. AIR 1930 Mad 865 (866) = 32 Cri L Jour 215.

(2) A Magistrate has power to issue a positive order under this section as sub-section (2) does, in a proper case, cover the power of a Magistrate to order a person to do something. AIR 1959 Mad 28 (30, 31) = ILR (1958) Mad 880 = 1959 Cri L Jour 52 °° AIR 1959 Mys 177 (179) = 1959 Cri L Jour 878 °° AIR 1958 Assam 112 (114) = 1958 Cri L Jour 1131 °° AIR 1941 Mad 752 (752) = 42 Cri L Jour 780 °° AIR 1951 All 238 (Prs. 23, 28) = 52 Cri L Jour 795 (FB). (AIR 1947 All 302 = 48 Cri LJ 1, **Overruled.**) °° AIR 1964 Manipur 24 (27, 28) = (1964) (1) Cri L Jour 676. (Removal of obstruction can be ordered.) °° AIR 1960 Assam 90 (94) = 1960 Cri LJ 794.

[See however AIR 1929 Pat 351 (352).]

[But see AIR 1959 Cal 314 (315) = 1959 Cri L Jour 587 °° AIR 1954 Bom 368 (369, 370) = 1954 Cri L Jour 1128 = ILR (1954) Bom 733 (DB) °° AIR 1937 Cal 513 (514) = 38 Cri L Jour 1071 (DB) °° AIR 1935 Cal 454 (455) °° AIR 1942 Cal 244 (245) (FB). (No power to direct removal of obstruction — AIR 1933 Cal 752 = 34 Cri L Jour 1230 and AIR 1940 Cal 545 = 42 Cri L Jour 94, **Overruled.**) °° AIR 1938 Nag 297 (298) = 39 Cri L Jour 584 °° AIR 1949 Nag 275 (275) = ILR (1949) Nag 388 = 50 Cri L Jour 693 °° 1944 Pat WN 321 (322) (DB) °° 1964 BLJR 290 (291) °° AIR 1961 Pat 374 (383, 384) = 1961 BLJR 350 = 1961 (2) Cri LJ 374 (DB) °° AIR 1965 Pat 17 (18) = 1964 BLJR 765 = 1965 (1) Cri LJ 64.

(3) Where there was a complaint regarding a channel and the channel itself was destroyed before any orders could be passed, the Court can direct the restoration of the channel. But in giving a positive order in the nature of a mandatory injunction, care should be taken in adopting a proper form. The aggrieved party cannot be given power to have the channel restored by himself as it will only lead to further breaches of the peace. If the nature of the obstruction is such that it could be restored without any great inconvenience or cost to the counter-petitioner the Court should direct him to restore the channel within a specified time and if he fails to do so the Magistrate can appoint a Commissioner to restore the channel at the cost of the offending party. AIR 1959 Mad 28 (30, 31) = ILR (1958) Mad 880 = 1959 Cri L Jour 52.

(4) An order passed under this sub-section should be in the words of Form No 24 of schedule V to the Code. AIR 1941 Lah 210 (211) = 42 Cri L Jour 651.

(5) It is incumbent on a Magistrate to give a finding as to whether the right exists or not. It would not be sufficient for him to say that there is an allegation of the existence of a right, he must sift the evidence and come to a conclusion that (prima facie at any rate) a legal right has been matured and is in existence, before he can pass any prohibitory order. 1965 All WR (HC) 444 (445) = 1965 All Cri R 287.

(6) The Magistrate has to prevent arbitrary interference with the right; he has no power to pass a purely declaratory order under this section. (1884) 7 Mad 49 (51) (DB) °° (1880) 5 Cal 194 (197) (DB).

(7) Final order under Section 147 though not judgment must show that Magistrate has gone through record and arrived at findings. AIR 1966 Orissa 56 (57) = ILR (1965) Cut 77 = 31 Cut LT 546 = 1966 Cri LJ 279.

13. "Prohibiting the exercise of such right. — (1) If the Magistrate finds that a right as claimed does not exist, he should pass an order prohibiting such party from exercising that right. AIR 1930 Pat 291 (292) = 31 Cri L Jour 361 (DB).

(2) Where both parties were claiming exclusive right to take water from a water course but the Magistrate was not satisfied that such exclusive right did exist it was held that the Magistrate was competent to pass an order prohibiting the exercise of the right by either party. AIR 1948 All 105 (106) = ILR (1947) All 746 = 49 Cri L Jour 48.

(3) Where the Magistrate finds that the right existed, but that it was not exercised within the period of three months or during the last season, he cannot pass a prohibitory order under this section. 1944 Pat WN 321 (323) (DB) °° AIR 1925 Bom 536 (537) = 26 Cri L Jour 1422 (DB).

14. Decision of a Civil Court. — (1) Where the right in dispute is itself not a right that can be adjudicated upon by a Civil Court, the Magistrate has no power to institute proceedings under this section. (1890) 14 Bom 25 (27) (DB).

(2) A proceeding under this section being of a quasi-civil nature if the question at issue has already been adjudicated upon by a Civil Court, the Magistrate has no jurisdiction to institute a proceeding under this section. AIR 1952 Pat 251 (252) = 1952 Cri L Jour 765. (AIR 1927 Bom 654 = 28 Cri L Jour 578, **Followed.**)

(3) An order as to costs is a part of the order which the Magistrate passes under Section 147 and by virtue of Section 147 (4) it will be subject to any decision of a Civil Court. AIR 1957 Mad 764 (765) = 1957 Cri L Jour 1420.

(4) When a civil litigation is pending, the criminal Court will do better to take action either under Section 107 or under Section 144, though the pendency of the

148. Local inquiry.—(1) Whenever a local inquiry is necessary for the purposes of this Chapter, any District Magistrate or Sub-Divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

Section 147 — Note 14 (contd.)

civil litigation does not by itself deprive the criminal Court of its jurisdiction under Section 145 or under Section 147. 1969 Cri LJ 331 (334) = (1968) Mad LJ (Cri) 478.

(5) An order under this section declaring a party to have the right to use a certain land as a pathway does not fetter the discretion of the Civil Court under Order 39, Rule 1 or Rule 2, Civil P. C. AIR 1960 Assam 111 (114) (SB). (AIR 1955 Assam 156, Overruled.)

15. Conversion of proceedings. — (1) Magistrate instituting proceedings under Section 145 should not ordinarily convert the proceedings into one under this section without passing a preliminary order as required by this section and providing opportunities to adduce evidence with regard to the existence of such right. (1909) 11 Cri L Jour 61 (62) = 1909 Pun Re (Cr) No. 12.

[See also AIR 1925 Cal 1022 (1023) = 26 Cri L Jour 558 (DB) °° AIR 1924 Bom 452 (452) = 26 Cri L Jour 772 (DB) °° (1909) 9 Cri L Jour 565 (565) (Mad). (Same rule applies to a converse case.)]

(2) Where the proceedings were actually conducted under Section 145 though they ought to have been conducted under S. 147, it was held that there was no ground for interference in revision, the reason being that proceedings were substantially the same. AIR 1939 Pat 206 (207) = 40 Cri L Jour 538 °° ILR (1957) Cut 613 (615) °° AIR 1949 Nag 275 (275) = ILR (1949) Nag 388 = 50 Cri L Jour 693 °° AIR 1936 All 320 (321) = 37 Cri L Jour 705.

[See also AIR 1956 All 452 (453) = 1956 Cri L Jour 955.]

(3) A proceeding under Section 133 cannot be converted into a proceeding under Section 147 unless the conditions necessary to give the Magistrate jurisdiction under Section 147 are established and a preliminary order is passed. AIR 1950 Pat 315 (Pr 2) = 51 Cri L Jour 1188 °° ('1911) 12 Cri L Jour 43 (44) (DB) (Cal).

(4) Prior to amendment, parties could as of right adduce oral evidence in proceedings both under Sections 145 and 147 — Hence conversion of proceedings only formal — After amendment, procedure under Sections 145 & 147 is different — Hence Magistrate cannot convert proceedings under Section 145 to one under Section 147. ('61) 27 Cut LT 458.

16. Dropping and revival of proceedings.— (1) A Magistrate is competent to pass an order staying or dropping proceedings under Section 147 on ground that a civil suit has been instituted and that there is no likelihood of a breach of the peace after the institution of the civil suit. AIR 1951 Pat 479 (Prs 1, 3) = 52 Cri L Jour 651.

[See also (1954) 58 Cal WN 962 (963) °° AIR 1961 Pat 404 (405) = 1961 BLJR 281 = 1961 (2) Cri LJ 535.]

(2) Where the proceedings are dropped, they cannot subsequently be revived. AIR 1951 Pat 479 (Prs. 1, 3) = 52 Cri L Jour 651.

17. Revision. — (1) High Court will not interfere with a finding of fact. Remedy of person aggrieved by such a finding is to bring a suit in a Civil Court. AIR 1926 Mad 154 (154) °° AIR 1922 Pat 214 (214) °° AIR 1949 All 616 (Pr. 6) = 50 Cri L Jour 929 °° AIR 1964 Manipur 24 (25) = 1964 (1) Cri LJ 676.

(2) Where a Magistrate is satisfied that a dispute does exist, the High Court cannot permit him to abuse the procedure by dropping the proceedings on an untenable ground and directly passing an order which he could not directly have passed without hearing all the evidence and the order of the Magistrate dropping the proceedings will be set aside. AIR 1941 Pat 281 (282) = 42 Cri L Jour 620.

(3) Order which ought to have been made by Magistrate can be passed by High Court in revision. AIR 1941 Lah 210 (211) = 42 Cri L Jour 651.

(4) A party who does not challenge an irregular preliminary order by way of revision will be precluded from challenging the same in a revision against the final order. AIR 1949 All 616 (Prs. 7, 8) = 50 Cri L Jour 929.

(5) Where a Magistrate comes to a proper conclusion that no case for proceeding under this section is made out the High Court will not in revision direct him to initiate proceedings. AIR 1939 Pat 111 (112) = 40 Cri L Jour 345.

SECTION 148 — SYNOPSIS

1. **Scope.**
2. **"Local inquiry," meaning of.**
3. **Ex parte inquiry.**
4. **Who can hold the inquiry.**
5. **Report of the inquiry.**
6. **Costs — Sub-section (3).**
7. **Amount of costs.**
8. **When order for costs should be made.**
9. **For and against whom order can be passed.**
10. **Notice.**

(2) The report of the person so deputed may be read as evidence in the case.

(3) **Order as to costs.**—When any costs have been incurred by any party to a proceeding under this Chapter °[° ° °] the Magistrate passing a decision under Section 145, Section 146 or Section 147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. †[Such costs may include any expenses incurred in respect of witnesses, and of pleaders' fees, which the Court may consider reasonable.]

[1882—S. 148; 1872—S. 533; 1861—Nil.]

[°] The words "for witnesses' or pleaders' fees or both" were omitted by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), Section 31.

[†] Substituted for the words "All costs so directed to be paid may be recovered as if they were fines," ibid.

Section 148 — Synopsis (contd.)

11. **Recovery of costs.**

12. **Revision.**

1. Scope. — (1) It is not in every case that a local inquiry should be held. It should be held if it will assist the Magistrate in determining the boundaries of the property in dispute. AIR 1919 Cal 884 (885) = 20 Cri L Jour 17 (DB) °° AIR 1969 Manipur 52 (55) = 1969 Cri LJ 985. (S. D. M. should conduct local enquiry to identify actual land in dispute.)

(2) The object of an inquiry is to aid the Magistrate in appreciating the evidence as to the main point. (1906) 3 Cri L Jour 193 (194) (DB) (Cal) °° AIR 1923 Pat 31 (32) = 24 Cri L Jour 507 (DB) °° AIR 1923 Pat 366 (367) = 24 Cri L Jour 487 °° (1911) 12 Cri L Jour 319 (319) (DB) (Cal).

(3) A local inquiry should not be directed on matters which may be proved by evidence. AIR 1918 Nag 136 (137) = 20 Cri L Jour 107 °° (1908) 8 Cri L Jour 150 (150) (Mad) °° AIR 1923 Pat 31 (32) = 24 Cri L Jour 507 (DB) °° (1879) 3 Cal L Rep 134 (136) (DB).

(4) An order completely transferring the function of making investigation into the dispute to a subordinate Magistrate is an abuse of the power. AIR 1932 Mad 368 (369) = 33 Cri L Jour 536 °° 1954 Raj LW 740 (741) °° (1907) 6 Cri L Jour 384 (385) = 31 Mad 82 °° (1879) 3 Cal L Rep 134 (136) (DB).

(5) The order deputing the inquiry must show the necessity for an inquiry. (1908) 8 Cri L Jour 150 (150) (Mad).

2. "Local inquiry," meaning of. — (1) A person deputed to hold an inquiry under this section is competent to examine witnesses. AIR 1939 Pat 206 (207) = 40 Cri L Jour 538 °° AIR 1918 Mad 791 (793) = 18 Cri L Jour 715 (DB) °° AIR 1919 Mad 166 (167) = 20 Cri L Jour 773.

(2) A mere survey of lands, after inquiry from all parties, is not a "local inquiry" but merely a ministerial act. AIR 1922 Pat 224 (225) = 23 Cri L Jour 152 °° AIR 1959 Pat 549 (550) = 1959 Cri L Jour 1460 (2).

3. Ex parte inquiry. — (1) Inquiry should not be held without due notice to the parties. AIR 1920 Pat 749 (749) = 22 Cri L Jour 424.

4. Who can hold the inquiry. — (1) The section does not prevent a District Magistrate or Sub-divisional Magistrate from making the inquiry himself. (1901) 5 Cal WN 686 (688) °° (1911) 12 Cri L Jour 319 (319, 320) (DB) (Cal) °° AIR 1923 Pat 366 (367, 368) = 24 Cri L Jour 487 °° AIR 1922 Pat 294 (294) = 25 Cri L Jour 545.

(2) The person deputed to make the inquiry must be a Magistrate and not a kanungo or an amin or a pleader. (1881) 7 Cal L Rep 352 (353). (Kanungo.) °° (1873) 20 Suth WR (Cr) 57 (57) (DB). (Amin.) °° AIR 1950 Pat 472 (Pr 3). (Pleader.)

[See however (1911) 12 Cri L Jour 480 (480) (Cal).]

(3) A person deputed under this section must make the inquiry himself and cannot delegate it to some other person. AIR 1918 Nag 136 (137) = 20 Cri L Jour 107.

(4) A ministerial act, e. g., the survey of the disputed land, not being a local inquiry can be deputed to a pleader, or a commissioner, or an amin, or a kanungo. AIR 1922 Pat 224 (225) = 23 Cri L Jour 152 °° AIR 1959 Pat 549 (550) = 1959 Cri L Jour 1460 (2) °° (1911) 12 Cri L Jour 480 (480) (Cal) °° AIR 1960 Pat 240 (240) = 1960 BLJR 179 = 1960 Cri LJ 843.

5. Report of the inquiry. — (1) The report of the Magistrate holding the enquiry may be read as evidence. AIR 1918 Nag 136 (136) = 20 Cri L Jour 107 °° 1954 Raj LW 740 (741) °° AIR 1960 Manipur 43 (44) = 1960 Cri L Jour 1643.

(2) The party affected by the report should be given an opportunity of rebutting it. AIR 1950 Pat 472 (Pr. 3) °° 1954 Raj LW 740 (741) °° AIR 1918 Nag 136 (136) = 20 Cri L Jour 107 °° AIR 1964 Manipur 3 (4) = 1964 (1) Cri LJ 47 (2) °° AIR 1960 Manipur 43 (44) = 1960 Cri LJ 1643.

(3) If the evidence taken by the Magistrate at the inquiry is acted upon, without objection from the parties, the Magistrate

STATE AMENDMENTS

Gujarat:

(1) In its application to the State of Gujarat, the amendment in Section 148 (1) is the same as in Maharashtra.—See Central Act XI of 1960, Section 87 (1-5-1960).

(2) Chief Magistrate of the City of Ahmedabad has the powers and exercises the jurisdiction of a Chief Presidency Magistrate.—See Guj. Act XIX of 1961, Section 14 (3).

Maharashtra:

In its application to the State of Maharashtra, in sub-sec. (1) of Section 148, after the words "any District Magistrate", insert the words "a Chief Presidency Magistrate".—Bom. Acts XXXIV of 1953, Section 7 (1-7-1953): XCVII of 1958, Section 2 (ii) (1-9-1959).

West Bengal

In its application to the State of West Bengal in sub-section (1), for the words "Sub-divisional Magistrate" substitute the words "Sub-divisional Executive Magistrate".—W. B. Act 8 of 1970, Section 3 and Schedule, Item 55.

Section 148 — Note 5 (contd.)
does not act without jurisdiction. AIR 1918 Mad 791 (792, 793) = 18 Cri L Jour 715 (DB). (At most it amounts to irregularity curable by Section 537.) °° AIR 1919 Mad 166 (167) = 20 Cri L Jour 773 °° (1879) 3 Cal L Rep 134 (136) (DB).

(4) The report of a kanungo or an amin deputed for inquiry does not automatically form part of record. In order that it may form part of record so as to be admissible under Section 157, Evidence Act, he must go into the witness box and give his deposition. (1911) 12 Cri L Jour 480 (480) (Cal) °° (1873) 20 Suth WR (Cr) 57 (57) (DB).

(5) In the undermentioned case arising after amendment of Section 145 in 1955, it has been held that a report of a pleader commissioner relating to physical features of the land and measurements thereof need not be formally proved before it can be considered by the Magistrate. AIR 1960 Pat 240 (241) = 1960 Cri LJ 843 = 1960 BLJR 179.

(6) On receipt of the report, the deputing Magistrate must hold further inquiry. AIR 1918 Mad 791 (792, 793) = 18 Cri L Jour 715 (DB) °° 1954 Raj LW 740 (741) °° AIR 1932 Mad 368 (369) = 33 Cri L Jour 536.

(7) The deputing Magistrate cannot base his order merely on the report; he must take evidence tendered by the parties. (1900) 4 Cal WN 779 (780) (DB) °° 1954 Raj LW 740 (741) °° AIR 1922 Pat 294 (294) = 25 Cri L Jour 545 °° (1906) 3 Cri L Jour 193 (194) (DB) (Cal) °° AIR 1922 Pat 249 (251) = 25 Cri L Jour 412 °° AIR 1920 Lah 114 (115) = 21 Cri L Jour 563.

(8) It is not illegal to act upon the report alone when no evidence is tendered by the parties. AIR 1918 Mad 791 (792) = 18 Cri L Jour 715 (DB) °° AIR 1917 Mad 854 (854) = 17 Cri L Jour 478 (478) °° (1913) 14 Cri L Jour 302 (302, 303) (DB) (Cal).

6. Costs — Sub-section (3).— (1) The powers under the Civil Procedure Code as to costs cannot be imported into criminal proceedings. AIR 1926 Bom 91 (96) = 27 Cri L Jour 661 (DB).

(2) Costs in respect of proceedings under this chapter can be awarded only under this section. (1905) 2 Cri L Jour 552 (554) = 32 Cal 602 (DB).

(3) High Court in revision can also pass an order as to costs incurred in the original proceedings as an incidental or consequential order under Section 439 read with Section 423 (d). AIR 1926 Bom 91 (96) = 27 Cri L Jour 661 (DB) °° AIR 1933 Rang 288 (291) = 35 Cri L Jour 1 (FB).

(4) High Court can pass an order as to costs incurred in the revision proceedings as a consequential and incidental order. AIR 1926 Bom 91 (96) = 27 Cri L Jour 661 (DB) °° AIR 1933 Rang 288 (291) = 35 Cri L Jour 1 (FB).

[But see AIR 1933 All 264 (269) = 34 Cri L Jour 414 (FB) °° AIR 1925 Mad 438 (440) = 26 Cri L Jour 707 (FB).]

(5) Where the original case has been tried by one Magistrate, his successor or any other Magistrate cannot pass an order for costs. AIR 1943 Mad 478 (478, 479) = 44 Cri L Jour 778 °° AIR 1959 Pat 151 (152) = 1959 Cri L Jour 506 °° AIR 1929 Pat 93 (94) = 30 Cri L Jour 252 °° AIR 1920 Cal 320 (320) = 21 Cri L Jour 751 (DB).

[But see AIR 1965 Pat 21 (22 to 25) = 1965 BLJR 198 = 1965 (1) Cr LJ 65 (DB). (Successor of Magistrate who passed final order under Section 145 can pass order for costs.)]

(6) Where the Magistrate trying the case has passed an order for costs, the assessment thereof may be made by his successor. (1910) 11 Cri L Jour 335 (336) = 13 Oudh Cas 66 (DB) °° AIR 1959 Pat 151 (152) = 1959 Cri L Jour 506 °° AIR 1915 Mad 92 (92) = 15 Cri L Jour 676 (677) (DB) °° (1896) 23 Cal 37 (39) (DB) °° (1906) 4 Cri L Jour 171 (172) (DB) (Cal) °° 1968 Cri LJ 1255 (1255) (Pat).

Section 148 — Note 6 (contd.)

[But see (1894) 21 Cal 609 (611) (DB).]

(7) An award for compensation on account of loss suffered due to the inability of the opposite party to harvest the crops by reason of proceedings under Sec. 145 cannot be treated as an order for costs. AIR 1949 Assam 48 (49) = 50 Cri L Jour 1002.

(8) Order as to costs under Sec. 148 (3) should be deemed to be part of the order passed under Section 147 and, therefore, the part of the order relating to costs must also be deemed to be subject to the decision of a Civil Court of competent jurisdiction. AIR 1957 Mad 764 (765) = 1957 Cri L Jour 1420. (Decree of civil Court not setting aside or modifying order of Magistrate as to costs — Order set aside only with regard to rights of parties — That did not affect other part of the order regarding costs.)

(9) Magistrate making final order under Section 145 transferred to another place in the same district — Notification of transfer not defining his jurisdiction within meaning of Section 12, Cr. P. C. — He has jurisdiction to order payment of costs under Section 148 (3). 1957 Cri L Jour 153 (155) (Pat).

(10) No period of limitation is prescribed for assessment of costs in Section 148 (3) or any other provision of the Code. Once therefore, a direction for payment of costs has been made by the Magistrate passing the final order, there is no reason why any delay short of unreasonable delay which is caused in the proceeding for assessment of costs, should preclude the successful party from getting what the Magistrate, who decided the case under Section 145, directed that he would get. AIR 1959 Pat 151 (152, 153) = 1959 Cri L Jour 506.

7. Amount of costs. — (1) A Magistrate in making an order of attachment under Section 145 (4) is competent to order the payment of remuneration of the manager appointed to manage the land attached. AIR 1945 Sind 3 (4) = ILR (1944) Kar 204 = 46 Cri L Jour 240 (DB) °° AIR 1968 Andh Pra 383 (384) = 1968 Cri LJ 1645 = (1968) 2 Andh WR 512.

(2) Under this section only the costs actually incurred by the party can be awarded and hence the order should be passed after due enquiry into the amount of costs incurred. AIR 1929 Pat 93 (94) = 30 Cri L Jour 252 °° AIR 1957 Mys 21 (22) = ILR (1956) Mys 250 = 1957 Cri L Jour 210 °° AIR 1916 Pat 396 (396) = 17 Cri LJ 348 (DB).

[But see 1957 Cri L Jour 153 (155) (Pat) °° AIR 1954 Pat 135 (136) = 1954 Cri L Jour 209 = 32 Pat 621 (DB).]

(3) The sum awarded need not be arrived at after exact calculation. It should only be a reasonable sum. AIR 1932 All 325 (326) = 33 Cri L Jour 157 °° 1961 (2) Cri LJ 147 (148) = 1960 BLJR 751.

(4) The number of witnesses and the number of hearings should be considered in fixing the reasonable amount. AIR 1934 Cal 80 (80) = 35 Cri L Jour 478 (DB).

(5) The scale of award should not be too liberal. (1905) 2 Cri L Jour 408 (411) (DB) (Cal) °° AIR 1931 All 3 (6) = 32 Cri L Jour 372.

(6) Witnesses may be examined locally to avoid expenses. AIR 1939 Pat 206 (207) = 40 Cri L Jour 538.

(7) The value of the property in dispute is not by itself a sure test in assessing costs. AIR 1931 All 3 (6) = 32 Cri L Jour 372.

(8) Sub-section (3) of Section 148 gives a very wide discretion to the Magistrate for the assessment of the amount of costs and the only restriction which this sub-section appears to place upon the Magistrate's discretion is that the costs must be reasonable. AIR 1959 Pat 151 (153) = 1959 Cri L Jour 506.

(9) Where the order directs the first party to bear the pleader's costs incurred by the second party, the successor Magistrate is not entitled to assess costs incurred by the second party in respect of other items than the pleader's fees. AIR 1959 Pat 151 (153) = 1959 Cri L Jour 506.

8. When order for costs should be made. — (1) The awarding of costs is entirely within the discretion of the Court. Section 148 (3) does not prescribe any time limit for the awarding of costs. AIR 1968 Andh Pra 383 (384) = 1968 Cri LJ 1645 = (1968) 2 Andh WR 512.

(2) An order awarding costs should ordinarily be passed simultaneously with the final order on the merits. AIR 1941 Mad 374 (374) = 42 Cri L Jour 518 °° 1939 Mad WN 1011 (1011) °° AIR 1934 Cal 80 (80) = 35 Cri L Jour 478 (DB) °° (1897) 24 Cal 757 (759) (DB) °° (1911) 12 Cri L Jour 376 (376) (DB) (Cal) °° AIR 1968 Andh Pra 383 (384) = 1968 Cri LJ 1645 = (1963) 2 Andh WR 512 °° 1961 (2) Cr LJ 147 (148) = 1960 BLJR 751. (Costs ordered on subsequent application is not illegal.)

[See however AIR 1943 Mad 478 (478) = 44 Cri LJ 778.]

(3) The actual assessment may be made subsequently. (1913) 14 Cri L Jour 570 (571) (Mad) °° AIR 1915 Mad 92 (92) = 15 Cri L Jour 676 (677) (DB) °° (1911) 12 Cri L Jour 376 (376) (DB) (Cal) °° (1910) 11 Cri L Jour 335 (336) = 13 Oudh Cas 66 (DB) °° (1906) 4 Cri L Jour 171 (172) (DB) (Cal).

(4) When it is not possible to pass an order at the time of the final order, the Magistrate may reserve judgment as to costs. AIR 1934 Cal 95 (96) = 35 Cri L Jour 489 (DB) °° AIR 1923 Mad 87 (88) = 24 Cri L Jour 80 °° AIR 1918 Pat 358

CHAPTER XIII

PREVENTIVE ACTION OF THE POLICE

149. Police to prevent cognizable offences.—Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.

[1882—S. 149; 1872—S. 95; 1861—S. 102.]

Section 148 — Note 8 (contd.)

(660) = 19 Cri L Jour 764 °° (1911) 12 Cri L Jour 319 (320) (DB) (Cal).

(5) Court has power to award costs even subsequent to passing of an order under Section 145 — But application for costs must be made within reasonable time. (1968) 2 Mad LJ 526 = 1968 Mad LW (Cr) 140.

(6) Order must be made within a reasonable time and cannot be passed after great delay. 1938 Mad WN 1011 (1011) °° AIR 1929 Pat 93 (94) = 30 Cri L Jour 252 °° AIR 1920 Cal 320 (321) = 21 Cri L Jour 751 (DB) °° AIR 1933 All 264 (269) = 34 Cri L Jour 414 (FB) °° AIR 1968 Andh Pra 383 (384) = 1968 Cr LJ 1645 = (1968) 2 Andh WR 512. (Order awarding costs passed on an application filed in about two months after the main order, cannot be held illegal.) °° 1968 Cri LJ 1255 (1255) (Pat).

9. For and against whom order can be passed. — (1) No order can be passed against a person who is not a party. AIR 1926 Oudh 269 (269) = 27 Cri L Jour 21.

[See however AIR 1937 Pat 559 (559, 560) = 38 Cri L Jour 1099.]

(2) Where a party has substantially succeeded, the opposite party, who had wrongfully dispossessed him, should pay the costs. AIR 1939 Pat 206 (207) = 40 Cri L Jour 538 °° AIR 1926 Bom 91 (96) = 27 Cri L Jour 661 (DB).

(3) Fact that a party took little interest in the proceedings does not absolve him from the liability when the complainant was compelled to make him a party on account of his denial of the complainant's right to possession. AIR 1931 All 3 (7) = 32 Cri L Jour 372.

(4) An order for costs can be passed even in favour of the legal representatives of the successful party. AIR 1915 Mad 92 (92) = 15 Cri L Jour 676 (677) (DB). (Per Spencer J.)

(5) Sub-section (3) covers a case where both the parties are ordered to pay the costs, as where a Magistrate orders both the parties to pay the remuneration of the manager appointed by him to manage the lands attached by him under Sec. 145 (4). AIR 1945 Sind 3 (4) = 46 Cri L Jour 240 = ILR (1944) Kar 204 (DB).

10. Notice. — (1) When an order awarding costs is passed simultaneously with the final order on the merits, no notice to the parties is necessary. AIR 1934 Cal 80 (80) = 35 Cri L Jour 478 (DB).

(2) Magistrate reserving judgment must give notice to the party against whom such order is to be passed and an order passed ex parte is without jurisdiction. AIR 1934 Cal 95 (96) = 35 Cri L Jour 489 (DB) °° AIR 1923 Mad 87 (88) = 24 Cri L Jour 80 °° AIR 1918 Pat 658 (660) = 19 Cri L Jour 764 °° (1911) 12 Cri L Jour 319 (320) (DB) (Cal).

[But see AIR 1945 Sind 3 (4) = 46 Cri L Jour 240 = ILR (1944) Kar 204 (DB) °° AIR 1933 All 264 (269) = 34 Cri L Jour 414 (FB).]

(3) A Magistrate passing an order of assessment of costs cannot subsequently set it aside himself on the ground that it was passed without due notice to the parties. (1906) 4 Cri L Jour 171 (172) (DB) (Cal).

11. Recovery of costs. — (1) A party to the proceedings cannot bring a civil suit for the recovery of costs awarded or refused by an order under this section. (1907) 11 Cal WN cclxiii (cclxiii).

(2) A civil suit by a witness for his costs against the party for whom he appeared is maintainable. (1904) 8 Cal WN 178 (180) (DB).

(3) Magistrate or his successor cannot refuse to recover the costs on the ground of long delay. AIR 1923 Pat 57 (57) = 24 Cri L Jour 126.

12. Revision. — (1) As the award of costs is in the discretion of the trial Court, the High Court will not ordinarily interfere with the discretion so exercised. AIR 1939 Pat 206 (207) = 40 Cri L Jour 538 °° (1905) 2 Cri L Jour 408 (411) (DB) (Cal).

(2) High Court will not in the absence of sufficient materials, interfere with an order for costs passed by the trial Court. AIR 1915 Mad 825 (826) = 16 Cri L Jour 156 (157).

(3) Where the trial Court fails to exercise any discretion at all or exercises its discretion on wrong principles altogether, the High Court will interfere in revision and award costs to the successful party. AIR 1939 Pat 206 (207) = 40 Cri L Jour 538 °° AIR 1937 Pat 559 (559) = 38 Cri L Jour 1099.

Section 149 — Note 1

(1) Preventive action started under this chapter may lapse into investigation under chapter XIV. AIR 1931 Cal 745 (747, 748) = 33 Cri L Jour 138 (DB).

(2) A Police constable is duty bound to intervene on receipt of information that theft is being committed. (1963) 1 Cri LJ 826 (827) = 29 Cut LT 100.

(3) A power to prevent the commission of an offence does not include a power to

150. Information of design to commit such offences.—Every police officer receiving information of a design to commit any cognizable offence shall communicate such information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

[1882—S. 150; 1872—S. 96; 1861—S. 103.]

151. Arrest to prevent such offences.—A police officer[*] knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

[1882—S. 151; 1872—S. 97; 1861—S. 104.]

[*] By notifications issued under Section 1 (2) of this Code, the State Government of West Bengal has extended Section 151 of the Code to the Commissioner of Police and the police in the town of Calcutta—See Notifications Nos. 1048J dated 15-3-1943 read with Nos. 1002J dated 25-3-1946 and 3019J dated 25-9-1946.

Section 149 — Note 1 (contd.)
remove certain banners from a Hindu procession on the ground that carrying of those banners being obnoxious to Mahomedans would produce a breach of the peace. (1894) 17 Mad 37 (42) (DB).

(4) A police officer is not justified in removing an axe carried by a person under the impression that such person was carrying it on his way to attack his enemy. AIR 1926 Lah 19 (20) = 26 Cri L Jour 1631.

(5) This section does not empower a police-officer to pass any order either against the person who was apprehended to commit an offence or against the would-be victims of the offence. AIR 1925 All 165 (169) = 26 Cri L Jour 599 (DB).

(6) A police-officer cannot shirk his duty of interposing effectively by being content with passing an oral order not to do a certain act. AIR 1925 All 165 (169) = 26 Cri L Jour 599 (DB). (Per Sulaiman, J.)

SECTION 151

1. Scope. — (1) This section empowers such officer to arrest without warrant any person designing to commit a cognizable offence. The object of this section is to prevent the commission of an offence by arresting beforehand the person who designs or intends to commit the same. AIR 1949 Mad 744 (Pr. 3) = 51 Cri L Jour 143 (DB) °° AIR 1968 Pat 22 (23) (DB).

(2) In order that the section may apply the following conditions must be satisfied:

(1) there must be a design to commit a particular offence which is cognizable;
(2) the police-officer must have knowledge of that design;
(3) the person arrested must be a party to that design; and
(4) it must appear to the police-officer that the commission of the offence cannot be prevented otherwise than by such arrest. An arrest made without the emergency contemplated by this section is illegal. AIR 1950 Orissa 107 (Pr. 11) = ILR (1949) 1 Cut 821 = 51 Cri L Jour 891 (FB) °° AIR 1930 Lah 348 (349, 350) = 31 Cri L Jour 294 (DB) °° AIR 1965 All 161 (163, 164) = 1963 All WR (HC) 760 = 1965 (1) Cri LJ 413. (Person likely to commit breach of the peace or disturb the public tranquillity could not be said to be guilty of any offence, much less, of a cognizable offence.) °° AIR 1967 Delhi 31 (32) = 1967 Cri LJ 865. (Police Officer cannot arrest a person merely on apprehension of imminent danger of breach of peace by him.)

(3-4) The power conferred under this section on the police-officer is only the limited and exceptional one of preventing the commission of a cognizable offence by the individual concerned and is in no sense analogous to the power of preventive detention. AIR 1950 Orissa 107 (Pr 11) = ILR (1949) 1 Cut 821 = 51 Cri L Jour 891 (FB) °° AIR 1957 All 189 (Pr 6) = 1957 Cri L Jour 427 (DB).

(5) The scope of Section 23, Police Act, is not wider than Section 151. The legal authority to arrest is circumscribed by the provisions of Section 151 Criminal P. C. and can be exercised only in cases of cognizable offences, where their commission cannot be otherwise prevented. The provisions of Section 151, Criminal P. C. and Section 23 of the Police Act have to be read together. AIR 1965 All 161 (165) = 1965 (1) Cri LJ 413 = 1963 All WR (HC) 760.

(6) A police-officer has no power under this section to keep a person under arrest in anticipation of and pending a contemplated order of detention. AIR 1950 Orissa 107 (Pr. 11) = ILR (1949) 1 Cut 821 = 51 Cri L Jour 891 (FB) °° AIR 1965 All 161 (165, 166) = (1965) (1) Cri LJ 413 = 1965 All WR (HC) 760. (Executive can detain a person either for violation of some law or for preventive purposes, as prescribed by law.)

(7) The section does not authorise the jail authorities to detain a person in their

Section 151 — Note 1 (contd.)

custody. AIR 1957 All 189 (Pr. 6) = 1957 Cri L Jour 427 (DB).

(8) To arrest a person merely because he belongs to a particular party and that party has a programme to commit some offences in general is to exercise the powers of preventive detention. An arrest of a person under this section in order to prevent him from joining and pursuing the policy and programme of violence and lawlessness of the Communist Party of India is illegal. AIR 1950 Orissa 107 (Pr. 11) = ILR (1949) 1 Cut 821 = 51 Cri L Jour 891 (FB). (Ray, C. J. contra.— Such an arrest is not illegal.)

(9) It has been held that the question whether the police-officer had the knowledge required by the section and whether the commission of the designed offence could have been prevented otherwise than by the arrest of the person are matters entirely within the purview of the police-officer and are not capable of independent investigation by the Court while enquiring into the legality of the detention. AIR 1949 Mad 744 (Pr. 3) = 51 Cri L Jour 145 (DB) °° AIR 1962 Ker 215 (217, 219) = 1961 (2) Cri LJ 72 = 1962 Ker LT 17 °° AIR 1960 Ker 297 (297) = 1960 Ker LT 460 = 1960 Cri LJ 1212 (2).

[See however AIR 1965 All 161 (165) = 1963 All WR (HC) 760 = 1965 (1) Cri LJ 413.]

[But see (1967) All Cr R 488 (494) = 1967 All WR (HC) 776.]

(10) Police acting under honest impression or on data and appearances reasonably indicating design or possibility of commission of cognizable offence — Arrest is justified. 1961 (2) Cri LJ 875 (877) (Madh Pra) (DB).

(11) Where one of the two parties was likely to cause a breach of the peace because the other party wanted to exhibit a certain film in his cinema house, proceedings under Section 107 read with S. 151 should be taken against the former alone in order to guard the latter in the enjoyment of his civil rights and not against both of them. AIR 1950 Lah 132 (Pr. 5) = Pak LR (1950) Lah 172 = 51 Cri L Jour 1142.

(12) Sub-Magistrate ordering arrest of person under Section 151 but not proceeding further — Police filing independent charge under Section 109 against that person — This amounted to dropping action in the proceedings started by the Sub-Magistrate. AIR 1960 Ker 227 (228) = 1960 Cri LJ 907 (1) = 1959 Ker LT 1305 (DB).

(13) Lawyer trying to defend accused, himself committing offence or doing something which creates a reasonable apprehension in minds of police officers on duty that he was designing to commit cognizable offence — Not immune from arrest by police. 1961 (2) Cri LJ 875 (877) (Madh Pra) (DB).

(14) Complainant requesting action under Section 145, against petitioners — Magistrate sending complaint to police for enquiry for more than one month during which there was no apprehension of breach of peace — Police arresting petitioners under Section 151 and mala fide reporting that action under Section 107, should be taken — Proceedings taken by Magistrate under Section 107, on the Police report are invalid. 1965 (1) Cri LJ 512 (514, 515) (Manipur).

(15) Where a person was arrested under Section 151 and the report of Police did not contain sufficient material for arrest but requested Magistrate not to grant bail till fresh materials were compiled to detain that person under Defence of India Rules, it was held that detention was improper. 1965 BLJR 35 = 1967 Cri LJ 1118 (1118, 1119) (DB).

(16) Person detained in jail custody under an order under Section 151 which was ultra vires and illegal — Order under Sec. 151 not cancelled or recalled — His continued detention under the detention order served on him while in jail custody is illegal and he must be released. AIR 1968 Pat 22 (23, 24) = 1968 Cri LJ 75 = 1967 BLJR 37 (DB).

(17) Person arrested under Section 151 — He could not be detained in jail custody by order of the Sub-Divisional Magistrate or any other Magistrate in purported exercise of powers under Section 151 when no further action has been taken by way of institution of a case or the like. The detention is illegal. AIR 1968 Pat 22 (23, 24) = 1968 Cri LJ 75 = 1967 BLJR 37 (DB).

(18) Administrative circulars based on cabinet decisions regarding 'Gheraos' in industrial establishments addressed to Police Officers and District Officers directing them to obtain Labour Ministry's direction before discharging their statutory duties were held to violate Articles 14, 256 and 166 (3) of the Constitution and Sections 54, 127, 100, 151, 154, 157 of the Code and are invalid. AIR 1968 Cal 407 (438, 455, 486) = 72 Cal WN 441 (SB).

(19) Section 151 provides merely for arrest and not for any detention. There is no question of release of the arrested person on bail and such an order for release on bail is illegal. 1967 All Cri R 265 (268, 269) = 1967 All WR (HC) 385 (DB).

2. Section 107 and S. 151. — (1) Complaint under Ss. 107/151 dismissed for default of complainant — Application by accused under Section 476 against complainant for giving false evidence is maintainable. AIR 1966 Punj 458 (459, 460) = 1966 Cri LJ 1323 = 1966 Cur LJ 64.

(2) Proceedings under Sections 107/151 are intended to deal with threatened breach of peace — Prompt action is necessary — Prosecution should not be allowed to prolong proceedings with a view to harass

152. Prevention of injury to public property.—A police officer may of his own authority interpose to prevent any injury, attempted to be committed in his view to any public property, movable or immovable, or the removal or injury of any public landmark or buoy or other mark used for navigation.

[1882—S. 152; 1872—S. 98, paras. 1 and 2; 1861—S. 105.]

153. Inspection of weights and measures.—(1) Any officer in charge of a police station[*] may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

(2) If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

[1882—S. 153; 1872—S. 381; 1861—S. 129.]

[*] For powers of any Police officer generally or specially deputed in Greater Bombay by the Commissioner and elsewhere by the District Magistrate, in the States of Maharashtra, Gujarat and Abu area of the State of Rajasthan as to inspection, search and seizure of false weights and measures notwithstanding anything contained in this section, see the Bombay Police Act, 1951 (Bom. Act XXII of 1951), Section 95 (1-8-1951). The said Bombay Act, as applicable to the Bombay Area of the State of Mysore, has now been repealed by Mysore Police Act, 1964 (IV of 1964), Section 178.

NOTE.—Besides Greater Bombay, Cities of Nagpur and Poona have also Commissioners of Police appointed for areas comprised by them.

Section 151 — Note 2 (contd.)

the persons proceeded against. 1960 Cri LJ 866 (867, 868) = (1966) 68 Pun LR 143 °° 1967 Cur LJ 79 (81) = 69 Pun LR 230.

(3) Proceedings under Section 107/151 commenced to prevent apprehended breach of peace on a particular occasion — Occasion in question passing off peacefully — Proceedings should be quashed thereafter unless there is evidence to show that there still exists a likelihood of breach of peace. (1964) 66 Pun LR 39 (40) °° ILR (1964) 1 Punj 719 (721, 722).

3. Applicability of S. 167. — (1) Section 167 (2) not confined only to cases where accused is arrested and a case has been registered — Provisions are applicable even to arrests made under Section 151. (1965) 2 Cri LJ 271 (272) = 1963 All LJ 744 (DB) °° AIR 1960 Ker 297 (298) = 1960 Cri LJ 1212 (2) = 1960 Ker LT 460.

(2) Whether arrest was under S. 151 or S. 54 is not relevant for purpose of remanding accused under Section 167. AIR 1962 Ker 215 (219, 220) = 1962 (2) Cri LJ 72 = 1962 Ker LT 17 (DB).

SECTION 153

1. Scope and applicability. — (1) This section specifically authorizes an officer in charge of a police-station to enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures under the circumstances mentioned in the section. AIR 1914 Lah 42 (43) = 15 Cri L Jour 11 °° AIR 1959 Raj 191 (Pr. 6) = ILR (1959) 9 Raj 86 = 1959 Cri L Jour 1112.

2. "If he finds .... any weights .... are false." — (1) Before coming to a conclusion that any weight or measure is false there must be some standard weight or measure prescribed by lawful authority or generally recognised by custom. AIR 1914 Lah 42 (44) = 15 Cri L Jour 11 °° (1909) 9 Cri L Jour 415 (415) = 1908 Upp Bur Rul (3rd Qr. Penal Code) 17.

(2) To assume indiscriminately that some shopkeeper's weight is the correct one and proceed for comparison is not proper. AIR 1914 Lah 42 (44) = 15 Cri L Jour 11.

(3) Some reasonable allowance should always be made for wear and tear and for the rough and ready methods of bazar shopkeepers. AIR 1914 Lah 42 (44) = 15 Cri L Jour 11.

(4) Where a five seer weight was found to be short by one tola, it was held that it could not be regarded as a false weight. 1883 All WN 224 (224).

(5) There is no reason to restrict Section 190 (1) (b) only to reports under Section 173, Criminal P. C. The information given to the Magistrate under Sec. 153 (2) is as much a report as a report under Section 173, and the Magistrate is empowered to take cognisance on such a report under Section 190 (1) (b). AIR 1959 Raj 191 (193) = ILR (1959) 9 Raj 86 = 1959 Cri L Jour 1112.

PART V

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

CHAPTER XIV

154. Information in cognizable cases.—Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station,* shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the †[State Government] may prescribe in this behalf.

[1882—S. 154; 1872—S. 112; 1861—S. 139.]

[*] By its Notification No. 577J dated 25-1-1956 as amended by Notification No. 1384J dated 24-2-1958 issued under Section 1 (2) of this Code, the State Government of West Bengal has extended S. 154 of the Code of the Commissioner of Police and the Police in the town of Calcutta—See Cal. Gaz., 9-2-1956 Pt. I, p. 463 and ibid 6-3-1958, Pt. I, p. 640.

[†] Substituted for 'Provincial Government' by A.L.O., 1950.

SECTION 154 — SYNOPSIS

1. Scope and object.
2. What is first information.
3. "Relating to the commission of a cognizable offence."
4. "Shall be reduced to writing by him or under his direction, and be read over."
5. "Shall be signed by the person giving it."
6. "Officer in charge of a police-station."
7. "Shall be entered in a book to be kept by such officer in such form as the State Government may prescribe."
8. Importance of first information.
9. How to use first information report.
10. First information by accused.
10A. Commencement of investigation.
11. Duty of the prosecution to tender first information report in evidence.
12. Grant of copies of first information.
13. Effect of giving false information under this section.
14. Effect of the police-officer in charge recording first information falsely.
15. Power of High Court to interfere under Section 561A.

1. Scope and object. — (1) One of the modes by which a person aggrieved may put the criminal law into motion is by giving information under this section. (1890) 17 Cal 574 (577) (FB) °° (1962) 4 Orissa JD 323 (329).

[See AIR 1959 All 45 (Pr 10) = 1959 Cri L Jour 7 (DB). (Prosecution commences with the lodging of complaint.)]

(2) The information so given is called the "first information." It is a basis upon which an investigation is commenced under this chapter. (1912) 13 Cri L Jour 65 (89) (Cal) °° AIR 1958 Andhra Pra 37 (Pr 15) = 1958 Cri L Jour 18 (DB) °° AIR 1958 Bom 125 (Pr 11) = ILR (1958) Bom 96 = 1958 Cri L Jour 481 (DB) °° AIR 1958 Mad 368 (Prs. 22, 23) = 1958 Cri L Jour 906 °° AIR 1958 Tripura 40 (Prs. 10, 11) = 1958 Cri L Jour 1549 °° AIR 1925 Cal 831 (833) = 26 Cri L Jour 1213 (DB).

(3) But the receipt and recording of an information report is not a condition precedent to the setting in motion of a criminal investigation. AIR 1945 PC 18 (20) = 71 Ind App 203 = ILR (1945) Lah 1 = 46 Cri L Jour 413 = ILR (1945) Kar (PC) 89 °° AIR 1958 Andh Pra 37 (Pr. 15) = 1958 Cri L Jour 18 (DB).

(4) The object of this section is threefold.

(a) Firstly, to inform the Magistrate of the district and the District Superintendent of Police who are responsible for the peace and safety of the district of the offences reported at the station (1897) 20 All 151 (154) (DB).

(b) Secondly, to make known to the judicial officers before whom the case is ultimately tried, what are the facts given out immediately after the occurrence and on what materials the investigation commenced. AIR 1942 Pat 113 (117) = 43 Cri L Jour 90 (DB) °° (1903) 7 Cal WN 345 (347, 348) (DB) °° (1907) 6 Cri L Jour 86 (88) (DB) (Cal).

(c) Thirdly, to safeguard the accused against subsequent variations or additions. AIR 1931 Pat 150 (151) = 32 Cri L Jour 638 (DB).

(5) The section does not make it incumbent on the informant to state facts in the first information report showing that the Court has jurisdiction to try the offence. Therefore the question of jurisdiction cannot be decided with reference to the first information report. AIR 1956 Punj 127 (128) (Prs 3, 6) = 1956 Cri L Jour 774.

Section 154 — Note 1 (contd.)

(6) The information need not mention the circumstances of the commission of the offence or the names of the offenders or the witnesses. AIR 1958 Andh Pra 37 (Pr 15) = 1958 Cri L Jour 18 (DB).

(7) Section 1, sub-section (2) renders this section inapplicable to the cases arising in Calcutta. AIR 1940 Cal 97 (103) = 41 Cri L Jour 329 (DB).

(8) By itself Section 242 (1) of the Companies Act (1956) does not divest a police officer of the jurisdiction conferred upon him under Section 154 of the Code. Section 630 of the Companies Act, 1956 provides no statutory bar to the exercise of the jurisdiction vested in a police officer under Section 154. AIR 1957 Mad 65 (Prs 15, 16) = 1957 Cri L Jour 205.

2. What is first information. — (1) The information recorded under this section is known as "first information" though the word "first" is not mentioned in the Code. AIR 1945 PC 18 (20) = ILR (1945) Lah 1 = 46 Cri L Jour 413 = 71 Ind App 203 = ILR (1945) Kar (PC) 89 °° AIR 1958 Mad 368 (Pr 22, 23) = 1958 Cri L Jour 906 °° AIR 1954 Mad 442 (446, 447) = 1954 Cri L Jour 610 °° AIR 1960 SC 391 (395) = 1960 Cri LJ 532 °° 25 Cut LT 433 (440) = (1959) 1 OJD 460.

(2) The information contemplated by the section is usually given by the complainant or by somebody on his behalf. AIR 1924 All 207 (207) = 25 Cri L Jour 490.

(3) The information need not necessarily be given by a person who has first-hand knowledge of the facts and may be merely hearsay. AIR 1941 Rang 209 (211) = 43 Cri L Jour 157 (DB) °° ILR (1967) 1 Ker 640 (DB).

(4) A telephone message given to the police about the commission of a cognizable offence can be recorded by the station-writer as a first information report and the station-writer can sign it himself as the person giving the information. AIR 1941 Rang 209 (211) = 43 Cri L Jour 157 (DB).

(5) As the word "first" indicates, "first information" is that information which is given first in point of time and on which the investigation is commenced by the police. AIR 1923 Pat 158 (159) = 23 Cri L Jour 406 (DB) °° AIR 1956 Trav-Co 207 (Pr 5) = ILR (1956) Trav-Co 311 = 1956 Cri L Jour 1099 (DB) °° (1894) 22 Cal 50 (72) (DB) °° AIR 1925 All 303 (304) = 26 Cri L Jour 554 °° 1950 All WR (Sup) 86 (87) °° (1903) 7 Cal WN 345 (347, 348) (DB) °° AIR 1962 Raj 3 (9, 10) = 1961 Raj LW 441 = 1962 (1) Cri LJ 82 (DB).

[See also AIR 1958 Madh Pra 380 (Pr 22) = 1958 Cri L Jour 1402 (DB). (Writing of three copies of F. I. R. because there were three victims is irregular — There cannot be more than one F. I. R. in one case.) °° AIR 1967 Cal 478 (488) = 1967 Cri LJ 1272 (DB)]

(6) Three different versions of occurrence — Statement of persons who had given first information report which would not be hit by Section 162 held should have been produced in order to enable Court to arrive at the real truth in the case. AIR 1964 Tripura 45 (48) = 1964 (2) Cri LJ 213.

(7) Where, information of the commission of the same offence is given to the police at two different places by different persons at different times not far separated, both the reports will be independent "first information reports"; the later in respect of time cannot be said to be a statement made in the course of investigation. AIR 1936 Pat 11 (12) = 36 Cri L Jour 235 (DB) °° AIR 1946 Nag 173 (182) = ILR (1946) Nag 126 = 47 Cri L Jour 851 (DB) °° (1959) 25 Cut LT 433 (440) = (1959) 1 OJD 460.

(8) As a matter of fact all statements, whether one or more, relating to the commission of a cognizable offence made to the police before the commencement of investigation can very well be designated as first information reports. 1951 Raj LW 105 (109) (DB) °° AIR 1959 J & K 105 (Pr 4, 5) = 1959 Cri L Jour 1168 °° AIR 1958 Bom 125 (Pr 11) = ILR (1958) Bom 96 = 1958 Cri L Jour 481 (DB) °° AIR 1957 All 755 = ILR (1957) 1 All 479 = 1957 Cri L Jour 1200 (DB).

(9) All statements recorded subsequent to the starting of the investigation fall under Section 162. ILR (1952) 2 Raj 1031 (1036) (DB) °° AIR 1959 Cal 342 (Pr 15) = 1959 Cri L Jour 694 (DB) °° AIR 1959 J & K 105 (Prs. 4, 5) = 1959 Cri L Jour 1168 °° AIR 1958 Tripura 40 (Pr 12) = 1958 Cri L Jour 1549 °° AIR 1949 All 364 (Pr 4) = ILR (1949) All 697 = 50 Cri L Jour 561 (DB) °° AIR 1969 Goa 68 (72) = 1969 Cri LJ 739 °° AIR 1967 Cal 478 = 1967 Cri LJ 1272 (DB) °° ILR (1959) Andh Pra 797 (818) (DB).

(10) Statement recorded under Sec. 154 by police is not statement during investigation — Section 162 does not apply to such statement. AIR 1965 Guj 143 (144) = (1964) 5 Guj LR 834 = 1965 (1) Cri LJ 696.

(11) Where, no formal investigation is commenced upon the information, such information does not fall under this section, nor would statements recorded by the police till they commence the investigation come within the provisions of Section 162. AIR 1942 Oudh 60 (63) = 43 Cri L Jour 115 °° AIR 1959 J & K 105 (Prs 4, 5) = 1959 Cri L Jour 1168 °° AIR 1931 Cal 745 (748, 749) = 33 Cri L Jour 138 (DB) °° AIR 1970 Goa 96 (101).

(12) Unless it becomes apparent from the facts of the prosecution case that the so-called first informant had initiated the in-

Section 154 — Note 2 (contd.)
vestigation, the so-called first information report should not be marked as an exhibit on the record of the case but should be marked for identification. AIR 1965 Guj 319 (320) = (1964) 5 Guj LR 591 = 1965 (2) Cri LJ 762 (DB).

(13) Substantial information and evidence gathered before F. I. R. was registered — Violation of rules in taking statements during investigation cannot be got round by ignoring the investigation which preceded formal lodging of F. I. R. AIR 1968 Mad 117 (128) = 1968 Cri LJ 493 = (1968) 1 Mad LJ 480 (DB).

(14) Preliminary inquiries do not become "investigation" by the police and if, during the preliminary inquiries, the police-officer receives a statement from a reliable source confirming the suspicion, this latter statement is the real first information and it does not fall under Section 162. AIR 1915 Mad 312 (314) = 15 Cri L Jour 622 (DB) °° AIR 1958 Mad 368 (Prs 29, 32) = 1958 Cri L Jour 906. (Statements made by the accused to witnesses at this stage of preliminary inquiry before investigation are not hit by Section 162, Cr. P. Code.) °° AIR 1967 Cal 478 (488) = 1967 Cri LJ 1272 (DB) °° (1959) 25 Cut LT 433 (440) = (1959) 1 OJD 460.

[See also 1965 (2) Mys LJ 646 (649) (DB).]

(15) Investigation commences not with the mere arrival of the Investigating Officers on the scene of occurrence but when the police take the first concrete step for ascertaining the offence and the culprits. AIR 1957 Madh B 33 (Pr 8) = 1957 Cri L Jour 179.

(16) Illustrations.

(a) A informs B (a village Magistrate) of the commission of a cognizable offence. B transmits the information to the police. The police arrive at the village, take a statement from A and get it signed by A. The latter statement of A falls under Sec. 162. The first information is that given by B. (1908) 9 Cri L Jour 77 (78, 79) = 31 Mad 506 (DB) °° AIR 1930 All 746 (749) = 32 Cri L Jour 152 (DB) °° (1908) 9 Cri L Jour 170 (177) = 32 Mad 258 (FB). (Vide judgment of Sir Sankaran Nair, J.)

(b) A person informed the police that he saw a woman in a field with her throat cut. The police did not record this; but treated the information lodged by the woman's father given subsequently as the first information. It was held that the former information was the first information and the latter only a statement under Section 162. AIR 1922 Pat 535 (539) = 24 Cri L Jour 129 (DB)

(c-d) Report made by father of injured person at the police station containing all information regarding a cognizable offence, reduced to writing by sub-Inspector and thumb impression made thereon — Second statement by father, after he brought the injured son to police station, recorded with his thumb impression — Second statement is not admissible as F. I. R. and must be held as recorded under Section 162. 1961 Pat LR 60 (64, 65) (DB).

(e) A, the wife of the deceased, informed the police about the disappearance of her husband and of her suspicion of foul play. This statement was not recorded. The police investigated, and after discovery of the dead body drew up a ruqa which the police entered as the first information. It was held that the ruqa was not the first information under this section. AIR 1926 Lah 179 (180) = 27 Cri L Jour 121 (DB).

(f) Accused informing police by phone that he had shot two persons in self-defence, but furnishing no particulars — Information conveyed does not disclose commission of a cognizable offence and no case can have been registered thereon. ILR (1967) 1 Ker 640 (DB)

(g) A Sub-Inspector after hearing a person made an entry in the daily diary of the thana mentioning the names of the alleged culprits. He left the thana instructing the moharir to record the statement of the person. It was held that the entry by the Sub-Inspector was a part of the proceedings of the police and not a "first information report." AIR 1938 Lah 787 (789) = 40 Cri LJ 435 (DB) °° AIR 1965 Cal 348 (350) = 1965 (2) Cri LJ 79 (DB).

(h) See also the undermentioned cases. AIR 1953 Raj 117 (Pr 4) = 1953 Cri L Jour 835. (Complaint to Superintendent of Police giving one version of incident — Another version in statement to police during investigation — Latter version found true — Court cannot treat the latter version as first information report.) °° AIR 1957 Cal 372 (Pr 4) = 1957 Cri L Jour 707. (Statement that person committing theft had been surprised and that when the thief was about to attack informant with deadly weapon, the informant used his gun in exercise of his right of defence of property and person — Statement held did not seek to give any information relating to commission of cognizable offence and could not therefore be treated as F. I. R.) °° AIR 1956 Andhra 103 (104) =

Section 154 — Note 2 (contd.)

1956 Cri L Jour 578. (Information of crime given by wounded person to Sub-Inspector.) °° AIR 1956 Tra-Co 83 (84) = 1956 Cri L Jour 274 (DB). (The report sent by the Head Constable in charge of a police station). °° AIR 1955 Cal 177 (181) = ILR (1956) 1 Cal 259 = 1955 Cri L Jour 657 (DB). (Information of robbery given to Circle Inspector of Police by a certain person.) °° 1954 Raj LW 37 (42) (DB). (First information supplied not disclosing whether any offence has been committed.) °° 58 Cal WN 515 (516) (DB). (Statement recorded under Section 161, stating that offence other than those under investigation was committed by other persons — Statement can be used as F. I. R. and used in investigation and trial of that offence.) °° AIR 1952 Him Pra 81 (Pr 18) = 1952 Cri L Jour 1720. (Fourth hand information given by a person that a dacoity had been committed in a certain village and a particular person was murdered and that police should soon reach the spot — Information totally lacking in details — Police proceeding to the spot and taking down detailed statement of wife of deceased — **Held** that neither of them came within the purview of Section 162.) °° AIR 1951 Him Pra 1 (Pr 27) = 52 Cri L Jour 50. (Police informed of offence of robbery — On arriving at spot, Sub-Inspector finding that person was wounded — Sub-Inspector recording dying declaration of person who subsequently died — Simultaneously with dying declaration deceased's wife giving list of stolen property — Dying declaration held was first information report and list of stolen property did not come within prohibition of Section 162.) °° AIR 1951 Mad 812 (Pr 3) = 52 Cri L Jour 857. (A going to police station and reporting that his cousin, B. had been shot at and was removed to a certain hospital — Entry made by police in General Diary to that effect — Police-officer subsequently going to hospital and recording statement of B — **Held** that General Diary entry must be regarded as first information and B's statement fell under Section 162.) °° 1950 All WR (Sup) 86 (87). (First information given by a person to the effect that the injured complainant had come from the side of the town and crying 'mardala', fell down and became silent and that he did not utter anything except telling his name — Police tracing injured complainant and taking his statement — Such statement amounts to first information.) °° AIR 1949 All 364 (Pr 11) = ILR (1949) All 697 = 50 Cri L Jour 631 (DB). (First information report not giving articles stolen — List of stolen articles handed over to police-officer immediately on his arrival on spot constitutes part of first information.) ° AIR 1942 Oudh 60 (62, 63) = 43 Cri L Jour 115. (Person giving vague information of riot to Superintendent of Police — Latter going to place of occurrence — Subsequent information recorded by police-officer — First vague information is not first information report.) °° AIR 1948 All 289 (290) = ILR (1948) All 119 = 49 Cri L Jour 367 (DB). (H receiving lathi blows — Chaukidar C of another village making report to police — Police not recording it but immediately proceeding to village where H was attacked and recording H's statement — C's statement held first information report — H's statement to investigation officer was not admissible in evidence.) °° AIR 1946 Nag 173 (182) = ILR (1946) Nag 126 = 47 Cri L Jour 851 (DB). (Vague statement made by person suffering from gunshot wounds soon after shooting — Police-officer requiring more information — Such statement cannot be treated as coming under Section 154 so as to make it incumbent on police to start investigation.) °° AIR 1930 Cal 130 (131) = 31 Cri L Jour 771 (DB). (Person of accused's party first going to police-station and giving information of offence — Real complaint though lodged later cannot be kept aside to be only made use of under Section 162.) °° 1969 Mad LW (Cr) 124 (126) (Mad). (Eye witness shortly after occurrence, informing Police of incident — Diary entry made and investigation commenced — Written complaint given sometime later by that witness — Earlier information is really the first information report — Later written complaint is a statement made in the course of investigation and totally inadmissible.) °° **AIR 1960 SC 391 (395) = 1960 Cri LJ 532.** (First information report is distinct from information received after commencement of investigation which is covered by Sections 161 and 162.)

(i) The statement given by the Police Officer recorded by himself after the accused were arrested and the articles seized was not really the first information and he should have recorded the statement of the person who told him that the accused were actually engaged in counterfeiting

Section 154 — Note 2 (contd.)
coins. 1959 Ker LT 801 (803) = 1959 Ker LR 731.

(17) Telegrams and telephonic messages are not informations under this section, since they are neither reduced to writing by the police, nor given in writing signed by the informant, unless after the receipt of the telegram or telephonic message, the police proceed to the spot and take down the information from the complainant or informant and get it signed. AIR 1928 Mad 791 (792) = 29 Cri L Jour 717 (DB) °° AIR 1959 Tripura 11 (Pr 17) = 1959 Cri L Jour 237 °° AIR 1958 Cal 263 (Pr 5) = 1958 Cri L Jour 758 °° ILR (1951) 1 Cal 539 (545) (DB) °° AIR 1954 Sau 55 (60) = 1954 Cri L Jour 678 (DB) °° AIR 1953 Trav-Co 275 (279) = 1953 Cri L Jour 1301 (DB) °° AIR 1965 Cal 89 (94) = 1965 (1) Cri LJ 160 (DB). (Police party trapped and attacked by violent mob — Cryptic message for help.) °° (1965) 2 Mys LJ 646 (649) (DB) °° AIR 1964 Punj 508 (509) = 67 Pun LR 5 = 1964 (2) Cri LJ 718 (DB) °° 1962 Mad LJ (Cri) 345 (350) = 39 Mys LJ 823 (DB).

[See however AIR 1941 Rang 209 (211) = 43 Cri L Jour 157 (DB) °° AIR 1934 Lah 413 (414) = 36 Cri L Jour 97 °° AIR 1930 Lah 457 (459) = 31 Cri L Jour 444 (DB).]

(18) The operation of Section 162 cannot be evaded by the police choosing to record as first information a statement obtained after the investigation has commenced. AIR 1952 Mad 821 (Pr 13) = 1953 Cri L Jour 29 °° AIR 1956 Andhra 103 (104) = 1956 Cri L Jour 578. (AIR 1951 Mad 812 = 52 Cri L Jour 857, **Rel on.**) °° AIR 1942 Cal 593 (597) = 44 Cri L Jour 145 (DB) °° AIR 1920 Nag 170 (171) = 21 Cri L Jour 486 °° AIR 1965 Guj 319 (320) = (1964) 5 Guj LR 591 = 1965 (2) Cri LJ 762 (DB).

[See also 1968 Mad 117 (127, 128) = 1968 Cri LJ 493 = (1968) 1 Mad LJ 480 (DB) °° AIR 1955 Nag 121 (125) = 1955 Cri L Jour 819 = ILR (1954) Nag 922 °° AIR 1951 Mad 812 (Pr 3) = 52 Cri L Jour 857.]

(19-20) The police cannot evade the operation of Section 162 by getting the statement made after investigation, signed contrary to the provisions laid down under that section. AIR 1925 Mad 106 (112) = 25 Cri L Jour 401 (DB).

(21) Investigation by Circle Inspector and first information thereafter by Deputy Superintendent of Police — There is violation of Section 162. AIR 1961 Ker 99 (103, 104) = 1961 (1) Cri LJ 505 = 1960 Ker LT 666 (FB).

(22) The police-officer should not wait to record an information till he has some good reason to believe that a cognizable offence has been committed; it is enough if there is a reasonable suspicion that a crime has been perpetrated. (1907) 6 Cri L Jour 86 (88) (DB) (Cal).

(23) Where the President of the Hill Tribes Association sent a petition to the Police, complaining that the accused, a forester, was taking bribes from the members of the tribe and gave all the details. The Police filed a report about 8 months after the receipt of the petition of the President:

Held, that the petition of the President should be considered as the first information report and the case should have been registered at least by the time when by questioning him, the police was assured that it was he who sent the petition. AIR 1961 Ker 99 (103) = 1961 (1) Cri LJ 505 = 1960 Ker LT 666 (FB).

(24) A statement purporting to be F. I. R. which is recorded by the officer-in-charge in his own name and on the basis of his own personal knowledge four days later, cannot be treated as the first information report. AIR 1958 Tripura 1 (Prs 45, 46) = 1958 Cri L Jour 97.

(25) If someone goes to a police-station and definitely tells the officer-in-charge that a cognizable offence has been committed and that statement is made with a view to inducing the police-officer to enquire into the matter, there is no reason for refusing to call it information relating to the commission of a cognizable offence within the meaning of this section. AIR 1951 Mad 812 (Pr 3) = 52 Cri L Jour 857 °° AIR 1958 Tripura 40 (Prs 10, 11) = 1958 Cri L Jour 1549.

(26) Where information is given that a certain person was shot at, the mere fact that it is meagre and does not indicate whether he was shot at by accident or deliberately by someone is by itself no reason for not treating it as first information. AIR 1951 Mad 812 (Pr 4) = 52 Cri L Jour 857.

(27) In every case it is for the Court to decide whether a statement in question falls under this section or under Section 162. AIR 1952 Him Pra 81 (Pr 16) = 1952 Cri L Jour 1720 °° AIR 1958 Mad 368 (Pr 27) = 1958 Cri L Jour 906 °° AIR 1951 Mad 812 (Pr 4) = 52 Cri L Jour 857 °° AIR 1923 Pat 550 (557) = 24 Cri L Jour 641 (DB) °° AIR 1930 Cal 130 (131) = 31 Cri L Jour 771 (DB) °° AIR 1967 Cal 478 (492) = 1967 Cri LJ 1272 (DB) °° 1959 Ker LR 1124 (1126).

(28) Whether or not a particular statement would constitute the first information in a case is a question of fact and would depend on the circumstaces of the case. AIR 1961 Ker 99 (102) = 1961 (1) Cri LJ 505 = 1960 Ker LT 666 (FB).

(29) The mere fact that a police-officer goes to the spot on hearing of an occurrence does not necessarily mark the commencement of an investigation. AIR 1952 Him Pra 81 (Pr 16) = 1952 Cri L Jour 1720 °° AIR 1959 J & K 105 (Prs 4, 5) = 1959 Cri L Jour 1168 °° 1957 MPC 704 (706).

Section 154 — Note 2 (contd.)
[See also AIR 1952 Punj 375 (Pr 10) = 1952 Cri L Jour 1602 (DB).]

(30) In dacoity or theft cases, the list of stolen property is regarded as part of the first information report and it should be signed. The fact that the list of the stolen property was filed shortly after the police had taken the first information report in the diary cannot render the list inadmissible in evidence. AIR 1951 Him Pra 1 (Pr 27) = 52 Cri L Jour 50 °° AIR 1959 J & K 105 (Prs 4, 5) = 1959 Cri L Jour 1168 °° 1957 MPC 704 (706) °° AIR 1949 All 364 (Pr 4) = ILR (1949) All 697 = 50 Cri L Jour 561 (DB).

(31) Very often the F. I. R. lodged with the Police is not a complete document and during the interval between the F. I. R. and taking of some step in the nature of investigation further information is furnished to the police. Such further information is merely supplemental to the F. I. R. and cannot be considered to be a statement made to the police in the course of investigation. AIR 19 Madh B 33 (Pr 8) = 1957 Cri L Jour 179 °° (1968) 34 Cut LT 1077 (1085).

(32) Where in the F. I. R. the complainant specifically stated that he will furnish a list of the stolen articles when the police officer comes to his house, and he did furnish a list accordingly before the commencement of the investigation, that list must be taken to be part and parcel of the First Information Report. The list properly fell under Section 154 and was not hit by Section 162. AIR 1959 J & K 105 (Prs 4, 5) = 1959 Cri L Jour 1168.

(33) Where the police upon receipt of a telephonic message, which was not a first information report, inasmuch as it did not comply with the provisions of Section 154 but it furnished materials to the police for action and the police upon those materials commenced investigation under Section 156 and thereafter a list of articles stolen was given to the police the list comes within the mischief of Section 162 and is inadmissible in evidence on behalf of the prosecution. ILR (1951) 1 Cal 539 (545) (DB).

3. "Relating to the commission of a cognizable offence." — (1) The conditions that necessitate the recording of an information under this section are, firstly, that it must be an information and, secondly, it must relate to a cognizable offence on the face of it and not merely in the light of subsequent events. AIR 1958 Tripura 1 (Prs 45, 46) = 1958 Cri L Jour 97 °° AIR 1956 Mys 51 (Pr 14) = ILR (1956) Mys 118 = 1956 Cri L Jour 904 °° AIR 1961 Ker 99 (102) = 1960 Ker LT 666 = 1961 (1) Cri LJ 505 (FB) °° AIR 1962 Cal 504 (509) = (1962) 2 Cri LJ 354 (DB).

[See AIR 1958 Bom 125 (Prs 11, 12) = ILR (1958) Bom 96 = 1958 Cri L Jour 481 (DB). (Offence under Section 165-A, Penal Code is cognizable offence.)]

(2) It need not give the circumstances of the commission of the crime. The mere fact that an information is first in point of time is not sufficient. AIR 1958 Tripura 1 (Prs 45, 46) = 1958 Cri L Jour 97 °° AIR 1958 Tripura 40 (Prs. 10, 11) = 1958 Cri L Jour 1549.

(3) It is essential that the information must relate to the commission of a cognizable offence. An information about the design to commit a cognizable offence such as a dacoity will not fall within the purview of this section. 1951 All L Jour 466 (468) °° AIR 1954 All 106 (107) = 1954 Cri L Jour 188 °° AIR 1968 Mad 117 (127) = 1968 Cri LJ 493 = (1968) 1 Mad LJ 480 (DB).

(4) The word "relating" shows that there need not be complete or satisfactory proof or evidence given at the time; it is sufficient if the information given indicates that a cognizable offence has been committed. AIR 1931 Cal 745 (749) = 38 Cri L Jour 138 (DB) °° AIR 1958 Tripura 40 (Prs 10, 11) = 1958 Cri L Jour 1549.

(5) First information report need not mention all documents on which prosecution wants to rely. ILR (1962) 1 All 451 (453).

(6) The words "relating to" does not mean that details should be given. AIR 1958 Tripura 40 (Prs 10, 11) = 1958 Cri L Jour 1549.

(7) Illustrations.

(a) A reports to the police that he saw a mob of armed men going towards a certain place. This is not first information. There is no information of any offence in such a case. AIR 1927 Pat 100 (102) = 28 Cri L Jour 77.

(b) On 23-12-1930, one S, a prostitute was abducted and murdered. K, her aunt (who was not aware of the murder), reported on 24-12-1930 that S went with the accused but had not returned. The police directed her to search for S in her usual resorts. On the 25th of December K returned to the police and informed them that S was not to be found On the 26th the Sub-Inspector of Police found one of the accused and on questioning him suspected that an offence had been committed. He took the statement of K (a third statement by her) and this was treated as the first information. It was held that since the first two statements did not disclose a cognizable offence, the third statement on the 26th was rightly treated as the first information and that it did not come within Section 162 AIR 1931 Cal 745 (751) = 38 Cri L Jour 138 (DB).

Section 154 — Note 3 (contd.)

(c) A gave information to the head constable but the latter was not satisfied that a cognizable offence had been committed. Subsequently, B made a statement which the constable, being so satisfied thereon, recorded as "first information." It was held that he was justified in so recording it. AIR 1928 Pat 634 (636) = 29 Cri L Jour 728 (DB).

(d) A report to police that the accused was carrying on a scheme for the manufacturing of counterfeit coins and currency notes with fraudulent intention and that the accused was in possession of counterfeit coins was held to be information relating to the commission of an offence. AIR 1956 Mys 51 (Pr 14) = ILR (1956) Mys 118 = 1956 Cri L Jour 904.

(8) Every report to the police is not a first information report. AIR 1962 Cal 504 (509) = 1962 (2) Cri LJ 354 (DB). (A report that some lady is missing is not an information under Section 154.) °° AIR 1963 Guj 111 (112) = 1963 (1) Cri LJ 596. (Report of accident by driver under Section 89, Motor Vehicles Act 1939).

(9) Scope — Statement not relating to offence under investigation is not hit by Section 162. AIR 1962 Cal 641 (644, 645) = 1962 (2) Cri LJ 751 (DB).

4. **"Shall be reduced to writing by him or under his direction, and be read over."**— (1) It is in the interest of the public that the statements should be recorded faithfully and truly. 1898 All WN 52 (53) = 20 All 307 (DB) °° AIR 1923 Pat 550 (553) = 24 Cri L Jour 641 (DB).

[See AIR 1957 All 809 (Pr 14) = 1957 Cri L Jour 1378 (DB). (There is no presumption that if the police has the requisite opportunity of noting down time of registration of first information report they will abuse or misuse it. The presumption should be the very opposite of it.)]

(2) The substance of Section 154 is, that every information lodged in the police station relating to the commission or suspected commission of a cognisable offence must be reduced to writing if not already in written form and a substance of it must be entered in a book kept in the police station. AIR 1967 Cal 478 (488) = 1967 Cri LJ 1272 (DB) °° AIR 1965 Bom 195 (215). (Central Excise Officer while discharging his duties as a Customs Officer under Sea Customs Officer is not a Police Officer.)

(3) It would always be safe to record the report in the language in which it is made. ILR (1951) 1 Raj 460 (466).

(4) The police-officer is bound to record the information at once. A statement recorded several days after the occurrence and after there has been development is no first information. (1912) 13 Cri L Jour 65 (89) (Cal) °° AIR 1968 Cal 407 (431) = 72 Cal WN 441 (SB) °° AIR 1965 Ker 196 (198) = 1965 (2) Cri LJ 215 = 1965 Ker LT 20 °° AIR 1961 All 169 (171, 172, 173). (Non-registration of information is an irregularity.) °° 1959 Ker LR 1124 (1126).

(5) Postponing taking down of F. I. R. and making an investigation before this is done is illegal and not warranted by law. AIR 1968 Cal 407 (431) = 72 Cal WN 441 (SB).

[See also AIR 1961 Ker 99 (102) = 1960 Ker LT 666 = 1961 (1) Cri LJ 505.]

(6) The information must be taken as the informant gives it; it becomes valueless if it is drawn up by some other person; thus, a first information drawn up by a police officer and finally settled by an attorney is not a "first information." (1912) 13 Cri L Jour 65 (90) (Cal).

(7) Policeman in charge of police outpost unable to write — Informant directed to bring written report — Informant himself illiterate — Some one else writing report for him — Writer not examined as witness — Report not read over to informant — Informant held was not bound by report. AIR 1950 Kutch 9 (Pr 8) = 51 Cri L Jour 396.

(8) Where a report is made at a police-station it is desirable that the Police-Officer should record it at the police station. But the mere fact that the recording of the report has taken place at the spot instead of at the Police station will not seriously affect the strength of the prosecution case or in any way detract from the value of the evidence of prosecution witnesses unless it can be shown that there is a possibility of fabrication of evidence by the investigating Officer at the spot. AIR 1952 Punj 375 (Pr 10) = 1952 Cri L Jour 1602 (DB) °° AIR 1956 Pepsu 50 (Pr 7) = ILR (1956) Patiala 28 = 1956 Cri L Jour 651 (DB).

(9) Though the police-officer is bound to take down the information given, a refusal to do so will not give a cause of action for filing a suit for damages against the officer. AIR 1926 Mad 54 (55) (DB).

(10) The non-recording by the D. S. P. of the information given to him by a witness and his non-examination are serious omissions from which an adverse inference has to be drawn as against the prosecution. AIR 1956 Mys 51 (Pr 17) = ILR (1956) Mys 118 = 1956 Cri L Jour 904.

(11) In the case of cognizable offences which a Station House Officer considers futile to investigate, as for instance, on account of the delay in giving the information, he could refuse investigation under Section 157 (b). But the Code does not authorise him to refrain from entering the information in the station diary, on the ground that he intends to launch only security proceedings. AIR 1957 Andh Pra 268 (Pr 5) = 1957 Cri L Jour 826 °° AIR

Section 154 — Note 4 (contd.)
1968 Cal 407 (465) = 72 Cal WN 441 (SB).

(12) Blanket direction that whenever a complaint is made, even of the commission of the cognizable offence, in connection with any trade union activity the officer in charge must first make an investigation into the complaint and satisfy himself that it is based on fact before taking any step whatsoever is violative of Section 154. AIR 1968 Cal 407 (431) = 72 Cal WN 441 (SB) °° AIR 1961 Ker 99 (102) = 1961 (1) Cri LJ 505 = 1960 Ker LT 666 (FB).

(13) Oral complaint reduced to writing by officer in charge of police station — Report signed by complainant and counter-signed by police officer — Handwriting of police officer not proved — Document not admissible in evidence for corroboration. AIR 1962 Guj 214 (215, 216) = (1962) 2 Guj LR 107 = 1962 (2) Cri LJ 55 (DB).

(14) What Section, 154 provides is that the information if given orally shall be reduced in writing. In view of this, the provisions of Section 91, Evidence Act are attracted. AIR 1962 Guj 214 (215, 216) = (1962) 3 Guj LR 107 = 1962 (2) Cri LJ 55 (DB).

(15) If first information report could be recorded after a detailed enquiry into the offence is conducted, there is danger and temptation to incorporate in the first information report details and circumstances advantageous to the prosecution. AIR 1968 Mad 117 (127) = 1968 Cri LJ 493 = (1968) 1 Mad LJ 480 (DB).

(16) Where the first information recorded by a Police patil accompanies a first information report sent by a Police Officer, the Magistrate should affix his initials both upon the first information and upon the first information report in order to protect the first information against the reproach that it was subsequently fabricated. 1966 Cri LJ 483 (488) = (1965) 4 Law Rep 593 (DB) (Mys).

5. "Shall be signed by the person giving it." — (1) This section requires that the first information should be signed by the person giving it so that there may be a guarantee as to its correctness. AIR 1931 Cal 745 (750) = 33 Cri L Jour 138 (DB).

[See also AIR 1953 All 163 (Pr 4) = 1953 Cri L Jour 428. (Telephone report to police — Person making it dying without signing it — No guarantee can be given as to the identity of the person making it or as to the correctness of its contents.) °° AIR 1941 Rang 209 (211) = 43 Cri L Jour 157 (DB). (Telephone message to police — Station writer can record it and sign it himself as first information report — Such report may be merely hearsay.)]

(2) This is the only section by which the police officer can compel an informant to sign. (1908) 9 Cri L Jour 170 (176) = 32 Mad 258 (FB).

(3) The failure to sign the report by the maker may affect the credit that is to be given to the report but nevertheless it will be admissible in evidence. 1951 Raj LW 105 (108) (DB). (AIR 1935 Pesh 165, Rel. on.) °° AIR 1962 Cal 641 (644) = (1962) 2 Cri LJ 751 = 1963 All Cri R 11 (DB) °° AIR 1960 Bom 146 (148) = 1960 Cri LJ 461 = 61 Bom LR 1161 (DB).

(4) The provision in Section 154 regarding the reduction of oral statements to writing and obtaining the signature of the informant to it, indicates that some similar procedure may be adopted to authenticate information, received by other methods also. AIR 1961 Ker 99 (102) = 1961 (1) Cri LJ 505 = 1960 Ker LT 666 (FB).

6. "Officer in charge of a police-station."— (1) This section does not apply unless the information is given to an officer in charge of a police-station. An information given to a police-officer who is on tour and who is not an officer in charge of a police-station or one given to a Magistrate, or one given to a police patel, does not come within this section. AIR 1928 Cal 771 (772) = 30 Cri L Jour 803 (DB). (Police officer on tour.) °° AIR 1953 All 726 (727) = 1953 Cri L Jour 1677. (A verbal report of the occurrence to the Tahsildar). °° AIR 1930 Lah 457 (459) = 31 Cri L Jour 444 (DB). (Magistrate.) °° AIR 1950 Sau 11 (Pr 3) (DB) (First information given to the Police Patel.)

(2) A Magistrate cannot direct the police to treat a complaint presented to himself as the first information. AIR 1928 Pat 359 (361) = 29 Cri L Jour 374.

(3) Officers in charge of police outposts in Sind are not officers in charge of police-stations within the meaning of this section and the police-officers at such outposts are not therefore empowered to record first information reports. AIR 1944 Sind 33 (37, 38) = 45 Cri L Jour 650 (DB).

[See also 1962 (2) Cri LJ 682 (684) = 1962 MPLJ 352 (DB) °° 1963 (1) Cri LJ 120 (122) (Him Pra).]

(4) Till this is done information given at a beat house could not amount to first information report. AIR 1960 Cal 519 (520) = 1960 Cri LJ 1078 (DB).

(5) Under Section 551 a police-officer superior in rank to an officer in charge of a police-station has the same powers as the officer in charge of a police-station. So an information given to a Deputy Superintendent of Police of a murder during a dacoity is first information under this section and is, therefore, admissible in evidence. AIR 1923 Mad 694 (697) = 25 Cri L Jour 7 (DB).

[See also AIR 1961 SC 1117 (1121) = (1961) 2 SCR 295.]

(6) It is not correct to say that police officers superior in rank to officers in charge of a police station may or may not record information which is given to them regarding the commission of a cognizable offence.

Section 154 — Note 6 (contd.)
AIR 1956 Mys 51 (Pr. 16) = ILR (1956) Mys 118 = 1956 Cri L Jour 904. (Non-recording of F. I. R. by D. S. P. — His non-examination — Accused being deprived of his right to cross-examine is seriously prejudiced — Adverse inference should be drawn against prosecution.)

(7) Two courses should suggest themselves to police officers superior in rank to an officer-in-charge of a police station when information regarding the commission of a cognizable offence is reported to them. When such information is conveyed, the police officer in question must, in cases where he is not inclined to record the information, make arrangements to cause the production of the informant before the police officer-in-charge of the police station so that the said officer may record the information as required under Section 154, Criminal P. C. The other course is to record the information himself in cases where he intends to take action on the first information. AIR 1956 Mys 51 (Pr. 16) = ILR (1956) Mys 118 = 1956 Cri L Jour 904.

(8) Information of the commission of a cognizable offence need not be given only to the officer in charge of a police-station who has territorial jurisdiction under Section 156 to investigate into the case. The officer in charge of any police-station can receive such an information, but the Code is silent as to the procedure to be adopted by the officer in such a case; evidently he has to receive such information and forward it to the officer of a station who will have jurisdiction to investigate into the offence. AIR 1915 Mad 312 (314) = 15 Cri L Jour 622 (DB).

[See AIR 1957 Mad 65 (Pr. 17) = 1957 Cri L Jour 205. (Complaint by Registrar of Joint Stock Companies by letter to Inspector General of Police of offences under Sections 406 and 409, Penal Code by officers of company which was eventually treated as complaint in writing to police officer within meaning of Section 154 (1) — There is nothing illegal under or prohibited by the Companies Act.)]

(9) Complaint sent to Chief Minister — Latter sending same to Additional Inspector General of Police — Investigation made by Deputy Superintendent of Police C. I. D. in view of status of accused — Procedure not illegal — There is no unfair discrimination. **AIR 1961 SC 1117 (1121) = (1961) 2 SCR 295.**

(10) First information report — Information given by informant first at the beat house and then at the police station — Beat house not declared to be a police station as required by Section 4 (s) — Investigating officer taking up investigation on the information given at police station and not at the beat house — Court can make use of the information given at the police station as the first information report although it is subsequent in point of time to the information given at the beat house. AIR 1960 Cal 519 (520) = 1960 Cri LJ 1078 (DB).

7. "Shall be entered in a book to be kept by such officer in such form as the State Government may prescribe."— (1) Substance of the information should be entered in book of reports or in general diary or station diary. Omission to enter in general diary or station diary does, however, vitiate the trial. But it would have important bearing on the case if the very substance on which the prosecution was founded was assailed and there were indications to point to the direction that the prosecution story was not an absolutely true story. 1957 All L Jour 963 (965).

(2) After recording the information when given orally to him, the officer in charge of the poilce station has again to write the substance of it in his general diary. Kept under Section 44 of the Police Act, 1861, (not the one mentioned in Section 172 of the Code.) According to the Madras Police Standing Order No. 696 when details of complaints and the names of all the accused in cognizable offences are already given in the first information book and the case diary, they need not be recorded in the general diary. AIR 1949 Mad 663 (Pr 22) = 50 Cri L Jour 950 (DB) ** AIR 1961 Tripura 4 (6) = 1961 (1) Cri LJ 160.

(3) The Station House Officer cannot refrain from entering the information in the station diary on the ground that he intends to launch only security proceedings. AIR 1957 Andh Pra 268 (Pr 5) = 1957 Cri L Jour 826.

(4) General diary entry is not the first information report. The entry has not to be signed by the person giving the information. But first information report has to be signed by the person giving it. AIR 1962 Cal 504 (509) = (1962) 2 Cri LJ 354 (DB).

(5) A missing information given by the accused at the police station and entered in the General Diary can be used as a circumstance proving conduct of accused where it destroys presumption of his innocence. AIR 1962 Cal 504 (509) = (1962) 2 Cri LJ 354 (DB).

(6) Police Officer in station recording complaint and getting it signed by the complainant — He later enters the entire complaint in the prescribed book — Entry is not a complaint reduced to writing under Section 154 — Entry cannot be used for corroborative evidence. AIR 1962 Guj 214 (215, 216) = 1962 (2) Cri LJ 55 = (1962) 2 Guj LR 107 (DB).

(7) Entries in the book prescribed under Section 154 may be relevant under Section 35 of Evidence Act, 1872. AIR 1962 Guj 214 (215, 216) = 1962 Cri LJ 55 = (1962) 2 Guj LR 107 (DB).

Section 154 — Note 7 (contd.)

(8) The admissibility of a first information report depends on the fact that a first information report given in writing or taken down by a police officer would be a part of the official record as the substance of such information is to be entered in a book kept by the station officer in the form prescribed as that may attract the operation of the provisions of Section 35, Evidence Act. AIR 1960 Bom 146 (148) = 61 Bom LR 1161 = 1960 Cri LJ 461 (DB).

8. Importance of first information. — (1) The importance of the first information lies in several reasons. It is a statement made soon after the occurrence; hence the memory of informant is fresh and it is also unlikely that he had opportunities of fabrication. AIR 1951 Assam 151 (Pr. 20) = ILR (1951) 3 Assam 439 = 52 Cri L Jour 1457 °° AIR 1958 Andh Pra 571 (Pr. 7) = 1958 Cri L Jour 1118 (DB) °° AIR 1961 Ker 99 (102) = 1961 (1) Cri LJ 505 = 1960 Ker LT 666 (FB).

[See also ILR (1964) 2 Mad 978 (980) °° (1968) 1 Andh WR 178 (187) = 1968 MLJ (Cr) 131 (DB). (F. I. R. is a valuable document containing the earliest version which can be compared with that told at the hearing.) °° AIR 1955 Bhopal 9 (11) = 1955 Cri L Jour 1033. (F. I. R. being the most immediate and first version of the incident has great value in assessing truth.)]

(2) Testimony of witnesses given in omnibus manner — Evidence has to be tested with reference to first information report. ILR (1964) 2 Mad 978 (981).

(3) The first information is the basis of the case: it puts the police in action; it represents the case set up by the informant at that time. AIR 1952 Ajmer 41 (1) (Pr. 4) = 1952 Cri L Jour 1372 °° AIR 1958 Tripura 1 (Prs. 45, 46) = 1958 Cri L Jour 97 °° **AIR 1960 SC 391 (395) = 1960 Cri LJ 532** °° (1961) 2 Andh WR 237 = 1967 Mad LJ (Cri) 715 (DB) °° AIR 1963 Andh Pra 252 (261) = (1963 (1) Cri LJ 735 = (1962) 2 Andh LT 368 (DB).

[See AIR 1958 Andh Pra 37 (Pr. 15) = 1958 Cri L Jour 18 (DB).]

(4) The first information report is not a condition precedent to the starting of criminal investigation. In truth the provisions as to an information report (commonly called a first information report) are enacted for other reasons. **AIR 1945 PC 18 (20) = 71 Ind App 203 = ILR (1945) Lah 1 = 46 Cri L Jour 413 = ILR (1945) Kar (PC) 89** °° AIR 1959 All 511 (Pr. 1) = 1959 Cri L Jour 936 °° AIR 1956 Mys 51 (Pr. 17) = ILR (1956) Mys 118 = 1956 Cri L Jour 904 °° (1967) 2 Andh WR 420 (421) °° 1962 Raj LW 448. (Object is that the investigation may be commenced into the offence reported.)

[See AIR 1958 Mad 368 (Prs. 22, 23) = 1958 Cri L Jour 906. (Its object is of setting the law in motion — Information contemplated must be in nature of complaints.) °° AIR 1961 Raj 24 (24) = 1960 Raj LW 565 = 1961 (1) Cri LJ 155 °° AIR 1962 Cal 641 (644) = 1963 All Cri R 11 = 1962 (2) Cri LJ 751 (DB).]

(5-6) If any information sought to be admitted in evidence as F. I. R. does satisfy the condition of Section 154 it would not be admissible as F. I. R. for the prosecution to corroborate the informant in Court while deposing but it may be used by the defence to contradict the informant in the witness box while deposing. AIR 1967 Cal 478 (488) = 1967 Cri LJ 1272 (DB).

(7) The first information has to be very carefully scrutinized. AIR 1943 All 216 (217) = 44 Cri L Jour 555 °° AIR 1924 Lah 413 (415) = 24 Cri L Jour 177.

(8) F. I. R. may in certain circumstances be evidence as to the cause of the informant's death or as part of the res gestae pointing to the informant's conduct. AIR 1967 Cal 478 (488) = 1967 Cri LJ 1272 (DB).

Delay in giving the information. — (9) The Courts have always viewed the information with grave suspicion when there has been delay in giving it. AIR 1952 Cal 621 (Pr. 13) = 1952 Cri L Jour 1427 (DB) °° AIR 1943 All 216 (217) = 44 Cri L Jour 555 °° AIR 1966 Mys 142 (147) = 1966 Cri LJ 672 = (1965) 1 Mys LJ 476.

(10) People very often try to foist crimes committed by some persons known or unknown on the personal enemies of the informants after consultation with other people and in many cases people charged with offences have been acquitted because of the suspicion arising from the delay in giving the information. AIR 1936 All 747 (750) = 37 Cri L Jour 1104 (DB) °° AIR 1958 Mad 135 (Pr. 8) = 1958 Cri L Jour 388 (DB) °° AIR 1926 Lah 496 (496) = 27 Cri L Jour 903 (DB) °° AIR 1924 Cal 975 (976) = 26 Cri L Jour 15 (DB).

[See AIR 1956 Mys 51 (Pr. 17) = ILR (1956) Mys 118 = 1956 Cri L Jour 904.]

(11) One of the essential requisites to ensure a fair trial is that the first information report in respect of a cognisable offence should be lodged as soon as possible. Where the lodging of the report is delayed, it not only gets bereft of its spontaneity, danger also creeps in of the introduction of coloured versions throughout stories and twists to actual facts. ('63) 65 Pun LR 409 (412).

(12) Where all the safeguards, which may go to show that the facts about the occurrence were disclosed at the earliest time, and the first information report was recorded at the time at which it purports to have been done are lacking in the case and it was not a matter of mere coincidence, it may be inferred that the first information report was prepared after great delay and the facts of the occurrence were not disclosed promptly. (1963) 65 Punj LR 409 (414).

Section 154 — Note 8 (contd.)

(13) Not every piece of information however, vague, intangible and indefinite need be recorded as first information report under Section 154, Cr. P. C. to start an investigation. But to permit a preliminary enquiry before recording the first information report even after definite information as to the commission of an offence is received would be to destroy the value of the first information report and equally to provide room for fabrication of cases. AIR 1968 Mad 117 (127) = 1968 Cri LJ 493 = (1968) 1 Mad LJ 480 (DB).

(14) Delay cannot, by itself, be held to be a reason for rejecting evidence which is otherwise fully entitled to credit. It is only a circumstance which puts the Court on its guard. AIR 1942 Bom 71 (78) = 43 Cri L Jour 529 (FB) °° AIR 1938 Lah 714 (717) = 40 Cri L Jour 261 (DB) °° AIR 1924 Cal 975 (976) = 26 Cri L Jour 15 (DB) °° (1959) 1 OJD 460 = 25 Cut LT 433.

(15) Where there is no satisfactory explanation for such delay, it is fatal to the prosecution. AIR 1916 Cal 98 (99) = 16 Cri L Jour 411 (DB).

[See also **AIR 1953 SC 364 (367) = 1953 Cri L Jour 1465 = 1954 SCR 145.**]

(15a) First information report forms very important document — Time given in that report cannot be lightly ignored. ILR (1969) 19 Raj 145.

(16) When the explanation for delay in giving the first information report is satisfactory, the delay is not of material significance. ILR (1952) 2 Raj 887 (890) (DB). °° 1969 Cri LJ 1282 (1286) (Delhi) °° AIR 1968 Manipur 7 (10) = 1968 Cri LJ 64 (2) °° AIR 1965 Orissa 205 (207) = 32 Cut LT 456 = 1965 (2) Cri LJ 661 (DB). (Murder on night of 16-9-1963 — F. I. R. lodged on 18-9-1963 at 8 A. M. Held, in view of difficulty of communication, between place of occurrence and police station there was no delay in lodging information.) °° (1960) 62 Punj LR 123 (125). (Delay in lodging F. I. R. in sexual offences.)

[See also (1969) 71 Punj LR 73 (79, 80) (DB).]

Non-mention of names of accused.— (17) Where the complainant who has been injured or any other eye-witness having had opportunities to see the offenders who are known to the complainant or witness, gives the first information and in doing so omits the names of certain persons who are later on placed on their trial by the police before the Courts, such omission will be a circumstance in favour of the accused. **AIR 1953 SC 122 (Pr. 5) = ILR (1953) 1 All 189 = 1953 Cri L Jour 662** °° AIR 1929 Nag 222 (222, 223) = 30 Cri L Jour 331 °° AIR 1928 Oudh 417 (418) = 29 Cri L Jour 989 °° AIR 1929 Pat 705 (707) = 31 Cri L Jour 468 (DB) °° (1960) 62 Pun LR 25 (27).

(18) Value to be attached to first information report has to be judged in light of various circumstances including nature of crime, position of informant and opportunity which he had to witness part which each accused played. (1967) 69 Pun LR 40 (42).

(19) The absence of the name of the accused by itself is not sufficient proof of his innocence. AIR 1941 Pat 395 (396) = 42 Cri L Jour 504 °° AIR 1958 Mad 127 (Pr. 8) = 1958 Cri L Jour 385 °° AIR 1958 Tripura 1 (Prs. 45, 46) = 1958 Cri L Jour 97 °° AIR 1932 Oudh 99 (101, 102) = 33 Cri L Jour 381 (DB) °° AIR 1926 Lah 369 (369) = 27 Cri L Jour 573 (DB) °° 1964 (1) Cri LJ 455 (456, 457) = 1964 MPLJ 797 (DB). (Omission of clear accusation against accused is a circumstance in his favour. **AIR 1953 SC 122, Rel. on.**)

[See also (1967) 69 Punj LR 40 (42) °° **AIR 1955 SC 216 (219, 220) = 1955 Cri L Jour 572 = 1955 SCR 1083.**]

[But see 1961 (1) Cri LJ 661 (662) = 1960 Ker LT 948).]

(20) The mere fact that the name of the accused finds a place in the first information is not a presumptive proof of his guilt. AIR 1916 Lah 215 (216) = 17 Cri L Jour 450 (450).

[See also (1967) 69 Punj LR 40 (42).]

(21) In cases of dacoity, a first information report is not often of value because of the victim's inability to identify the raiders. AIR 1951 Nag 237 (Pr. 13) = ILR (1951) Nag 349.

[See AIR 1958 Tripura 40 (Prs. 10, 11) = 1958 Cri L Jour 1549.]

(22) Where the name of the offender is not mentioned in the first information report and the prosecution contends that he was not known to the persons who witnessed the occurrence, it is necessary for the prosecution to make out what led to the identity and the arrest of the offender. AIR 1952 Pepsu 103 (104) = ILR (1952) Patiala 273 = 1952 Cri L Jour 1049.

(23) Case of assault by more than one accused — First Information lodged soon after occurrence but omitting name of accused and including names of persons not sent up for trial — No particular importance can be attached to contents of FIR except when it is corroborated by some trustworthy and reliable evidence. ('60) 62 Punj LR 25 (26, 27). (**AIR 1953 SC 122 and AIR 1953 SC 468, Rel. on.**)

Non-mention of the names of witnesses. — (24) The first information need not contain the names of witnesses. AIR 1958 Andh Pra 37 (Pr. 15) = 1958 Cri L Jour 18 (DB) °° AIR 1958 Mad 127 (Pr. 8) = 1958 Cri L Jour 385 °° AIR 1958 Tripura 1 (Prs. 45, 46) = 1958 Cri L Jour 97 °° AIR 1957 Madh Pra 153 (Pr. 11) = 1957 Cri L Jour 1138 (DB).

[But see AIR 1967 Manipur 30 (31) = 1967 Cri LJ 1347.]

Section 154 — Note 8 (contd.)

(25) F. I. R. mentioning name of person present at the time of occurrence — Informant not examined as witness — Statement of person recording F. I. R. not admissible to prove that informant had mentioned eye-witness. AIR 1961 Madh Pra 45 (45) = 1961 (1) Cri LJ 270 = 1961 Jab LJ 321.

(26) The fact that no eye-witness is mentioned in the first information and that many of such witnesses are brought forward later on, as having witnessed the occurrence, is a suspicious circumstance against the prosecution, especially when the informant was aware of the presence of these eye-witnesses and also knew their names. AIR 1918 Lah 69 (70) = 19 Cri L Jour 513 (DB) °° AIR 1954 Him Pra 61 (62) = 1954 Cri L Jour 1230 °° AIR 1923 Lah 391 (392) = 25 Cri L Jour 264 (DB) °° AIR 1934 Oudh 315 (317, 318) = 35 Cri L Jour 836 (DB). °° AIR 1969 Goa 116 (120) = 1969 Cri LJ 1393. (Omission has to be proved satisfactorily.) °° AIR 1967 Manipur 30 (31) = 1967 Cri LJ 1347.

[But see AIR 1928 Lah 657 (659) = 29 Cri L Jour 378.]

(27) When there is independent and reliable testimony that a witness not named in the information was present during the occurrence, there is no reason to reject it on the sole ground that the witness's name was not so mentioned. AIR 1928 Lah 507 (509) = 29 Cri L Jour 343 (DB) °° AIR 1957 Andh Pra 231 (Pr. 10) = 1957 Cri L Jour 815 (DB) °° AIR 1946 Pat 239 (240) = 24 Pat 715 = 48 Cri L Jour 178 (DB) °° AIR 1933 Lah 1005 (1006) = 35 Cri L Jour 420 (DB) °° AIR 1963 Andh Pra 252 (261) = 1963 (1) Cri LJ 735 = (1962) 2 Andh LT 368 (DB).

[See AIR 1958 All 214 (Pr. 57) = 1958 Cri L Jour 324 (DB). (Mere non-mention of name of witness in F. I. R. is not by itself enough to hold that the witness did not see the occurrence.)]

(28) Where the first information report merely says that the whole village had witnessed the occurrence, the evidence of certain independent eye-witnesses cannot be lookd upon with suspicion on the sole ground that they were not named in the report. ILR (1951) 1 Raj 712 (717) (DB).

(29) Where the accused names a larger number of witnesses at the trial than the number named in the first information report, it does not make the entire prosecution case false. Each case must depend not only on all the circumstances of the case but also on all the probabilities of the matter. AIR 1958 All 214 (Pr. 75) = 1958 Cri L Jour 324 (DB).

(30) The fact that witnesses are mentioned in the first information but are not examined at the trial on behalf of the prosecution does not of itself give rise to a presumption under Section 114, illus. (g) of the Evidence Act against the prosecution. AIR 1932 Cal 118 (119, 120) = 33 Cri L Jour 135 (DB) °° AIR 1958 All 214 (Pr. 81) = 1958 Cri L Jour 324 (DB). (Prosecution giving satisfactory reasons for not examining witnesses — No presumption under Section 114 can be drawn).

(31) The presumption will under S. 114, illus. (g), Evidence Act arise where it is clear that the person mentioned in the F. I. R. knew the facts, was willing and able to give relevant evidence but has been kept back by the prosecution. AIR 1915 Cal 545 (547) = 16 Cri L Jour 170 (DB) °° AIR 1926 Cal 728 (729, 730) = 27 Cri L Jour 398 (DB) °° AIR 1922 Lah 28 (29) °° AIR 1967 Cal 478 (489) = 1967 Cri LJ 1272 (DB).

Difference between the statements in the information and in the evidence given in Court. — (32) The object of the first information is to make known what the case of the informant is against the alleged offenders at the earliest opportunity, when the occurrence took place; so, if at the trial a story is given against the alleged offenders which differs in material particulars from the one given in the information, it has always been viewed with grave suspicion and the accused have been given the benefit of doubt arising from such contradictions and discrepancies. AIR 1952 Mad 821 (Pr. 14) = 1953 Cri L Jour 29 °° ILR (1951) 1 Raj 806 (812) (DB) °° AIR 1950 Raj 5 (Pr. 5) = 51 Cri L Jour 739 (DB) °° (1968)-1 Andh WR 178 (187) (DB) °° (1965) 2 Law Rep 699 (705, 706) (Mys) (DB) °° (1959) 25 Cut LT 107 (115). (14 Cut LT 215, Rel. on.)

[See also 1962 Raj LW 448 (452) (DB).]

(33) Where the contradictions are contradictions by omission, it must be established that the omission was so material as to amount to contradiction. AIR 1958 All 746 (Pr. 18) = 1958 Cri L Jour 1266 (DB) °° AIR 1968 Orissa 167 (168) = 1968 Cri LJ 1190.

(34) The Magistrate and the Judges while considering omissions in the First Information Report should not derive inference from them like mathematical formulas, but should try to appraise them and find out their true effect in the light of all the circumstances of the case and the materials on record. AIR 1961 Raj 24 (26) = 1960 Raj LW 565 = 1961 (1) Cri LJ 155.

(35) Each case depends upon its own facts and it is for the Court to determine to what extent a particular omission in the first information report fatally affects the prosecution story. 1962 Raj LW 55.

(36) Omission in the F. I. R. will, other things being the same, deprive the prosecution of the most valuable corroboration and thereby make the story suspicious. AIR 1958 Madh Pra 380 (Pr. 13) = 1958 Cri L Jour 1402 (DB).

Section 154 — Note 8 (contd.)

(37-38) In the case of material discrepancy between the F. I. R. and the prosecution story presented in Court, the testimony may be disregarded and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which the Court may apply in a given set of circumstances, but it is not a mandatory rule of evidence. 1963 (1) Cri LJ 377 (380, 381) = 28 Cut LT 398 (DB).

(39) The inconsistency between the statement in the first information report and the evidence of the informant at the trial would discredit the evidence of the informant to that extent but does not make the statement in the first information report the evidence upon the matter in the case. AIR 1953 Hyd 161 (Pr. 4) = ILR (1953) Hyd 32 = 1953 Cri L Jour 935 (DB) °° AIR 1955 All 138 (153) = 1955 Cri L Jour 394 = ILR (1955) 2 All 97 (DB) °° AIR 1967 Cal 478 (488) = 1967 Cri LJ 1272 (DB).

(40) The inconsistency between the first information report and the evidence of the informant at the trial is a matter for the prosecution to explain in the examination-in-chief and no great weight can be attached to the failure of the defence to cross-examine the informant on the point. AIR 1947 Pat 23 (25) = 25 Pat 298 = 48 Cri L Jour 222 (DB).

(41) When the first information report is not made by an eye-witness but is based on information received, minor discrepancies between the statement of the case as given in the first information report and that appearing in the evidence of the eye-witnesses are immaterial and of no consequence. AIR 1943 Lah 89 (92) = 44 Cri L Jour 552 (DB) °° AIR 1948 All 103 (104) = 49 Cri L Jour 62 (DB) °° AIR 1969 Goa 116 (121) = 1969 Cri LJ 1393.

[See also ILR (1952) 2 Raj 887 (891) (DB).]

(42) The first information need not contain minute details. AIR 1951 Orissa 71 (Pr. 6) (DB) °° AIR 1957 Madh Pra 153 (Pr. 11) = 1957 Cri L Jour 1138 (DB) °° AIR 1954 All 684 (685) = 1954 Cri L Jour 1439 °° AIR 1953 Bilaspur 27 (30) = 1953 Cri L Jour 1361 °° ILR (1962) 1 All 451 (503). (It is not analogous to a plaint in a civil case.)

(43) The first information report is not the last word in the prosecution case. AIR 1924 Lah 591 (591) = 25 Cri L Jour 465 °° AIR 1958 Mad 127 (Pr. 8) = 1958 Cri L Jour 385.

(44) First information report reciting that accused was responsible for the occurrence and the occurrence took place in the manner alleged by the prosecution — Omission to mention about the extra judicial confession is not fatal to the prosecution story which is otherwise fully borne out by reliable material on record. 1962 Raj LW 55.

(45) The terms of the first information which is perhaps given under circumstances of haste and without knowledge of the true facts ought not to be viewed too narrowly. (1905) 9 Cal WN 474 (475) = 2 Cri L Jour 255 (DB) °° AIR 1958 All 746 (Pr. 18) = 1958 Cri L Jour 1266 (DB). (Minor omissions due to haste and hurry in lodging information.)

(46) Though the first information report is not as full as it could be, it cannot be ignored altogether. It can be used to corroborate the statements of the eye-witnesses. AIR 1954 SC 31 (36) = 1954 Cri L Jour 323 °° (1959) 25 Cut LT 216 (227) (DB) **(AIR 1954 SC 31, Foll.)**

(47) Where the first information report was prepared by an experienced police officer who had personal knowledge of all the facts and who immediately after drafting the report was to take up the investigation of the crime, in such a case the prosecution cannot take shelter behind the plea of confusion or forgetfulness or lack of intelligence. AIR 1958 All 255 (Pr. 74) = 1958 Cri L Jour 424 (DB).

Value of first information report. — (48) The value of the first information report will vary according as it is laid by the complainant or prosecutrix or eye-witnesses to the crime or a mere stranger used for the purpose of laying the information. AIR 1950 Him Pra 18 (Pr 24) = 51 Cri L Jour 786.

(49) When it comes from a person who was not fully present on the scene but who actually took part in the incident, the report has the greatest value and must be held to militate against any contrary or varied subsequent version. AIR 1955 Bhopal 9 (11) = 1955 Cri L Jour 1033.

(50) Where it was clear from the evidence that the informer tried to rope in as many persons as he could who belonged to the family of the accused and others who were not on good terms with him, much reliance cannot be placed on the first information report. AIR 1956 Raj 196 (Pr 17) = ILR (1956) 6 Raj 762 = 1956 Cri L Jour 1432 (DB).

[See AIR 1958 Cal 263 (Pr 5) = 1958 Cri L Jour 718. (Complainant naming 20 persons but only six in Court — Whole story given in F. I. R. held could not be rejected.)]

Absence of first information report. — (51) The absence of first information report deprives the accused of his right to cross-examine the first informant on its basis. ILR (1952) 2 Raj 1031 (1037) (DB) °° AIR 1956 Mys 51 (Pr 17) = ILR (1956) Mys 118 = 1956 Cri L Jour 904.

(52) First information not reduced to writing or signed — No entry can be made in General Diary — If made it is not in accordance with provisions of Section 154

Section 154 — Note 8 (contd.)
and cannot be introduced in evidence against accused. AIR 1961 Tripura 4 (6) = 1961 (2) Cri LJ 160.

(53) Generally the absence of such report casts a cloud of suspicion and tends to weaken the prosecution case. ILR (1952) 2 Raj 1031 (1037) (DB).

(54) Information regarding committal of cognizable offence by petitioners, a police officer, not recorded under Section 154 — Enquiry by Circle Inspector on orders of Superintendent of Police — No information laid before Magistrate — Departmental enquiry and not regular judicial trial held — Petitioners held prejudiced. AIR 1961 All 169 (171, 172, 173).

(55) However important a document a first information report is, it can never be treated as a piece of substantive evidence and the fact that no first information report was made is not in itself a ground for throwing out a case. AIR 1943 Oudh 451 (452) = 45 Cri L Jour 75 °° AIR 1959 All 511 (Pr. 1) = 1959 Cri L Jour 936 °° 1969 BLJR 897.

(56) If the complainant chose to go to court direct and file the complaint and not to take resort to prosecution through the Police, it was open to the complainant to adopt such a course in law and no adverse comments could be made on this score. (1963) 5 Ori JD 34 = 30 Cut LT 124 (131).

(57) Even if the first information report is not proved in the case it would not vitiate the conviction. AIR 1959 All 511 (Pr. 1) = 1959 Cri L Jour 936.

Want of sanction under S. 197. — (58) A Magistrate has no power to cancel the first information report for want of sanction under Section 197 in cases of offences requiring such sanction. AIR 1945 Cal 385 (387) = ILR (1944) 2 Cal 183 = 47 Cri L Jour 142 (DB).

9. How to use first information report. — (1) The first information report cannot be used as a substantive or primary evidence of the truth of its contents. **AIR 1957 SC 366 (Pr. 2) = 1957 SCR 657 = ILR (1957) 1 All 361 = 1957 Cri L Jour 550 (DB)** °° AIR 1958 Andh Pra 571 (Pr. 7) = 1958 Cri L Jour 1118 (DB). (It cannot be used as basis of conviction.) °° AIR 1950 Him Pra 18 (Pr 23) = 51 Cri L Jour 786. (FIR cannot be treated as conclusive evidence against accused — It can be used for testing truth of prosecution story.) °° **AIR 1966 SC 119 (123) = 1966 Cr LJ 100 = (1966) 1 SCR 134** °° **AIR 1960 SC 391 (395) = 1960 Cri LJ 532** °° (1969) 35 Cut LT 278 (283) (DB) °° (1968) 1 Andh WR 178 (187) = 1968 Mad LJ (Cri) 131 (DB) °° AIR 1968 Orissa 167 (168) = 1968 Cri LJ 1190 °° ILR (1968) 18 Raj 882 (910) (DB) °° (1967) 2 Andh WR 237 (241) (DB) °° 1966 Cri LJ 483 (490) = (1965) 4 Law Rep 593 (Mys) (DB) °° (1965) 2 Law Rep 699 (705, 706) (Mys) (DB) °° AIR 1965 Orissa 99 (100) = 1965 (1) Cri LJ 744 (DB). (Statement in F. I. R. that a certain person was an assailant is not substantive evidence.) °° AIR 1964 Guj 261 (262) = (1964) 5 Guj LR 255 = 1964 (2) Cri LJ 676 (DB) °° 1964 (1) Cri LJ 241 (241, 242) = (1963) 2 Mad LJ 473 °° AIR 1964 Orissa 262 (268) = 1964 (2) Cri LJ 696 (DB) °° AIR 1965 Punj 508 (510) = 67 Pun LR 5 = 1964 (2) Cri LJ 718 (DB) °° AIR 1963 Madh Pra 97 (98) = 1963 (1) Cri LJ 292 °° 1963 (1) Cri LJ 377 (381) = 28 Cut LT 398 (DB) °° AIR 1962 Cal 641 (645) = 1963 All Cri R 11 = (1963) 2 Cri LJ 751 (DB) °° 28 Cut LT 398 (406) = ILR 1962 Cut 582 (DB) °° 1962 Raj LW 448 (452) = ILR (1962) 12 Raj 383 °° AIR 1961 Madh Pra 45 (45) = 1961 (1) Cri LJ 270 = 1961 Jab LJ 321.

(2) Where the first information report is also a dying declaration, it can be used as a substantive or primary evidence as a dying declaration. AIR 1952 Trav-Co 70 (71) = 1952 Cri L Jour 386 (DB) °° AIR 1953 Madh B 249 (252) = 1953 Cri L Jour 1764 = ILR (1953) Madh B 343 (DB) °° AIR 1930 Lah 450 (452) = 31 Cri L Jour 475 (DB) °° (1902) 5 Oudh Cas 246 (249) (DB) °° AIR 1943 Cal 74 (74) = 44 Cri L Jour 322 (DB).

(3) The first information report cannot be substituted for evidence given on oath and when there is no other evidence, the facts mentioned in the information alone cannot be relied upon to convict the accused. AIR 1953 Mys 41 (Prs. 7, 9) = ILR (1953) Mys 69 = 1953 Cri L Jour 1001 (DB) °° (1902) 26 Mad 191 (192) = 2 Weir 820 (DB) °° AIR 1929 All 916 (917) = 31 Cri L Jour 7 °° AIR 1933 Pesh 94 (95) = 35 Cri L Jour 476 (DB) °° 1962 Raj LW 448 (452) = ILR (1962) 12 Raj 383 °° AIR 1960 Ker 142 (143) = 1959 Ker LT 1101 = 1960 Cri LJ 589 (DB).

(4) Statement of witnesses in F. I. R. and before police and identification before Magistrate who held test of identification parade is not substantive evidence and no conviction could be based on such evidence. — See Evidence Act (1872), S. 3. 1969 Pat LJR 21 (22).

(5) It is misdirection on the part of a Judge to ask the jury to accept the statement in the first information in preference to the evidence in the case. AIR 1938 Cal 460 (462) = 39 Cri L Jour 674 (DB) °° (1910) 11 Cri L Jour 557 (557) (DB) (Cal) °° **AIR 1960 SC 391 (395) = 1960 Cri LJ 532.**

(6) If a witness in a sessions trial makes a statement different to that attributed to the witness in the first information report, that discredits the evidence of the witness to that extent in the Sessions Court but does not make the statement in the first information report the evidence upon that matter in the case. AIR 1930 Mad 632

Section 154 — Note 9 (contd.)
(634) = 31 Cri L Jour 712 (DB) °° (1967) 2 Andh WR 237 (241) (DB).

(7) The first information can be used only to corroborate or contradict the evidence under Sections 157 and 145 of the Evidence Act. AIR 1957 SC 366 (Pr. 2) = 1957 SCR 657 = ILR (1957) 1 All 361 = 1957 Cri L Jour 550 °° AIR 1966 SC 119 (123) = 1966 Cri LJ 100 = (1966) 1 SCR 134 °° AIR 1960 SC 391 (395) = 1960 Cri LJ 532 °° (1969) 35 Cut LT 278 (283) (DB) °° (1967) 2 Andh WR 237 (241) (DB) °° AIR 1967 Cal 478 (488) = 1967 Cri LJ 1272 (DB) °° (1965) 2 Law Rep 699 (705, 706) (Mys) (DB) °° AIR 1964 Guj 261 (264) = 1964 (2) Cri LJ 676 = (1964) 5 Guj LR 255 (DB). (But his attention must first have been drawn to those parts of his statements by which it is proposed to contradict him.) °° AIR 1964 Guj 261 (265) = (1964) 5 Guj LR 255 = 1964 (2) Cri LJ 676 (DB) °° AIR 1964 Orissa 262 (268) = 1964 (2) Cri LJ 696 (DB) °° AIR 1964 Punj 508 (510) = 1964 (2) Cri LJ 718 = 67 Pun LR 5 (DB) °° AIR 1962 Cal 641 (645) = 1963 All Cri R. 11 = (1963) 2 Cri LJ 751 (DB).

(8) If the mere fact that reports were made to the police before the investigation is relevant, such fact may be proved, or, if the contents of the report are relevant, they may be proved, apart from the truth thereof or from the purpose of corroboration or contradiction. AIR 1935 Pesh 165 (168) = 37 Cri L Jour 225 (DB) °° AIR 1965 Orissa 99 (100) = 1965 (1) Cri LJ 744 (DB).

(9) The usual course is for the prosecution to call the informant and tender the first information as corroboration under S. 157 of the Evidence Act; but it can also be tendered in a proper case under other sections of the Evidence Act, e. g., under S. 32 (1) as a declaration as to the cause of the informant's death, or as part of the informant's conduct (of the res gestae). AIR 1952 Cal 621 (Pr. 13) = 1952 Cri L Jour 1427 (DB) °° AIR 1958 Mad 368 (Pr. 24) = 1958 Cri L Jour 906 °° AIR 1956 Trav Co 207 (Pr. 5) = ILR (1956) Trav-Co 311 = 1956 Cri L Jour 1099 (DB) °° AIR 1954 Mad 442 (446) = 1954 Cri L Jour 610 °° AIR 1952 Cal 534 (Pr. 16) = 1952 Cri L Jour 1154 (DB) °° AIR 1931 Lah 38 (40) = 32 Cri L Jour 522.

(10) In using the F. I. R. as evidence provisions of the Evidence Act, other than Section 157, the Courts should be clear about the relevancy of the statements before they use such reports. AIR 1943 Cal 647 (648) = 41 Cri L Jour 210 (DB) °° AIR 1943 Cal 74 (74) = 44 Cri L Jour 322 (DB) °° AIR 1939 All 242 (242) = 40 Cri L Jour 559.

(11) Theoretically, the defence can prove the information to impeach the informant's credit under Section 155 or to contradict him under Section 145. AIR 1950 Cal 412 (Pr.4) = 51 Cri L Jour 1507 (DB) °° AIR 1939 All 242 (244) = 40 Cri L Jour 559 °° AIR 1927 Cal 17 (19) = 28 Cri L Jour 99 (DB) °° AIR 1967 Cal 478 (488) = 1967 Cri LJ 1272 (DB).

[See AIR 1956 Cal 368 (Pr. 10) = 1956 Cri L Jour 883 (DB).]
[See also AIR 1965 Guj 143 (145) = (1964) 5 Guj LR 834 = 1965 (1) Cri LJ 696 (DB).]

(12) The first information report can be used to corroborate or discredit the informant only and not witnesses other than the informant. AIR 1952 Cal 618 (Pr. 13) = 1952 Cri L Jour 1343 (DB) °° AIR 1957 SC 366 (Pr. 2) = 1957 SCR 657 = ILR (1957) 1 All 361 = 1957 Cri L Jour 550 (DB) °° AIR 1954 Sau 55 (60) = 1954 Cri L Jour 678 (DB) °° AIR 1952 Cal 534 (Pr. 16) = 1952 Cri L Jour 1154 °° AIR 1951 Madh B 72 (Pr. 8) = 52 Cri L Jour 278 (DB) °° AIR 1950 Cal 412 (Pr. 4) = 51 Cri L Jour 1507 (DB) °° AIR 1944 Cal 323 (324) (DB) °° (1968) 1 Andh WR 178 (187) (DB) °° AIR 1968 Orissa 167 (168) =1968 Cri LJ 1190 °° AIR 1965 Orissa 99 (100) = 1965 (1) Cri LJ 744 (DB) °° AIR 1963 Madh Pra 97 (98) = 1963 (1) Cri LJ 292 °° 1963 (1) Cri LJ 377 (381) = 28 Cut LT 398 (DB) °° AIR 1962 Cal 85 (86) = 65 Cal WN 808 = 1962 (1) Cri LJ 137 (DB) °° 28 Cut LT 398 (406) = ILR (1962) Cut 582 (DB).

(13) Before placing a first information report before the jury, the Judge should see whether it is admissible under the provisions of the Evidence Act. The jury should not be asked to attribuate any importance to it merely because it is the fabric on which the whole prosecution case depends. AIR 1943 Cal 74 (74,75) = 44 Cri LJour 322 (DB).

(14) The first information report should be placed before the jury with proper direction. AIR 1952 Cal 621 (Pr 13) = 1952 Cri L Jour 1427 (DB) °° AIR 1955 Cal 146 (151) = 1955 Cri L Jour 485 (DB) °°AIR 1953 Cal 602 (606) = 1953 Cri L Jour 1377 (DB) °° AIR 1952 Cal 618 (Pr 13) = 1952 Cri L Jour 1343 (DB) °° AIR 1943 Cal 74 (75) = 44 Cri L Jour 322 (DB) °° AIR 1967 Cal 478 (488) = 1967 Cri LJ 1272 (DB).

(15) Where the Judge in summing up the evidence against each accused, put the fact of naming of accused in the first information report in the forefront of the evidence, it was held that this amounted to treating the report as a piece of substantive evidence and that therefore it amounted to a serious misdirection. AIR 1952 Cal 621 (Pr 13) = 1952 Cri L Jour 1427 (DB).

(16) That the first information report is not a substantive evidence and that it can only be used for corroboration under Section 157, Evidence Act or for contradiction

Section 154 — Note 9 (contd.)
under Section 145 of the Evidence Act, should be laid before the jury. 1957 All L Jour 963 (965).

(17) The presumption with reference to the first information report is that it represents the actual information given to the police and taken down by them. The defence should not be denied the right to use this document because of the failure of the prosecution to formally prove it. If the prosecution suggests that it is garbled. it should give evidence to that effect. (1838) 39 Cri L Jour 917 (922) = ILR (1938) Nag 442 (DB).

(18) Failure by the police to observe the procedure laid down in this section does not make the first information report inadmissible in evidence. It merely renders it more difficult to prove that it was actually made by the person said to have made it and thereby renders it a less certain means of corroborating or contradicting his evidence in the Court. 1951 Raj LW 105 (108) •• AIR 1935 Pesh 165 (168) = 37 Cri L Jour 225 (DB).

(19) Unless the informant is examined, the information cannot be put in evidence. AIR 1953 Raj 68 (Pr. 4) = ILR (1952) 2 Raj 910 = 1953 Cri L Jour 577 (DB) •• AIR 1941 Bom 146 (147) = 42 Cri L Jour 519 (DB) •• AIR 1920 Cal 988 (989) = 22 Cri L Jour 410 (DB) •• (1899) 1 Bom LR 433 (435) (DB).

[See AIR 1945 PC 18 (20) = 71 Ind App 203 = ILR (1945) Lah 1 = 46 Cri L Jour 413 = ILR (1945) Kar (PC) 89.]

[But see 1962 Raj LW 448 (452) = ILR (1962) 12 Raj 383 (DB).]

(20) An information which is based entirely upon hearsay cannot be tendered in evidence by the prosecution. AIR 1925 Lah 418 (419) = 26 Cri L Jour 1489 (DB) •• (1904) 1 Cri L Jour 62 (65) (DB) (Cal).

[See also AIR 1941 Bom 146 (147) = 42 Cri L Jour 519 (DB).]

[See however AIR 1941 Rang 209 (211) = 43 Cri L Jour 157 (DB).]

(21) Informant not an eye-witness — His evidence discarded on strength of first information report — The report cannot further be used to discredit direct testimony of an eye-witness. AIR 1963 Madh Pra 97 (98) = 1963 (1) Cri LJ 292.

(22) Informant not an eye-witness, found to be an untruthful witness — His previous statement as contained in the first information report, cannot be treated as substantive evidence in the case for convicting the accused. AIR 1963 Madh Pra 97 (98) = 1963 (1) Cri LJ 292.

(23) In a case where the accused are tried under Section 401 of the Penal Code as belonging to a gang of cattle-lifters, the police-officers cannot be allowed to prove that reports were made to them on prior occasions against some of the accused of their having stolen cattle. AIR 1930 Sind 211 (215) = 31 Cri L Jour 1046 (DB).

(24) A map prepared by the police on information is inadmissible in evidence. AIR 1925 Cal 959 (960) = 26 Cri L Jour 759 (DB).

(25) Care should be taken to see that only "first information" is used in evidence. The real first information should be found and that alone is admissible as evidence. AIR 1920 Cal 988 (989) = 22 Cri L Jour 410 (411) (DB).

(26) An information recorded under this section is a public document and a certified copy of it is admissible in evidence. ('93-96) I Upp Bur Rul 24 (25). (Dissenting from 1872-1892 Low Bur Rul 572.)

[See AIR 1930 Lah 1067 (1068).]

[But see 1872-1892 Low Bur Rul 572 (572).]

(27) First information report — Natural death of informant long after occurrence but before commitment proceedings — F. I. R. not admissible either under Section 32 (1) or Section 8, Evidence Act. AIR 1964 Orissa 262 (268) = 1964 (2) Cri LJ 696 (DB).

[See also AIR 1961 Madh Pra 45 (45, 46) = 1961 (1) Cri LJ 270 = 1961 Jab LJ 321. (Informant belaboured by accused dying natural death before examination as witness — Statement in F. I. R. admissible under Section 8 of the Evidence Act — Doubt regarding name of prosecution witness can be removed by looking into F. I. R.)]

(28) Information under Section 154, Criminal P. C. lodged against Government servant — Investigation by police pending — No legal bar to Government ordering departmental enquiry. 1964 (1) Cri LJ 224 (228) = (1964) 4 SCR 204.

(29) The practice of the Presiding Judges and Magistrates to discourage question seeking to contradict the maker of the first information report, with reference to the statement set out in the first information report itself is deprecated. AIR 1964 Guj 261 (264) = (1964) 5 Guj LR 255 = 1964 (2) Cri LJ 676 (DB).

10. First information by accused. — (1) Where persons after committing an offence proceed to the police-station and there report the matter to the officers concerned, who take down such statements as the first information under this section, by reason of the provisions contained in Section 25 of the Evidence Act, such statements are inadmissible in evidence against the accused if they are in the nature of confessions. AIR 1957 SC 366 (Pr. 2) = 1957 SCR 657 = ILR (1957) 1 All 361 = 1957 Cri L Jour 550 (DB) •• AIR 1966 SC 119 (123, 125) = 1966 Cri LJ 100 = (1966) I SCR 134 •• 1967 MPLJ 680 (681) (DB) •• 1963 (1) Cri LJ 120 (122) (Him. Pra.). (Report given at police outpost.) •• AIR 1962 Raj 3 (9) = 1961 Raj LW 441 =

Section 154 — Note 10 (contd.)
1962 (1) Cri LJ 82 (DB) °° 1960 Mad WN 528 (531) (DB).

(2) Containing facts relating to motive, preparation and opportunity to commit the crime, which is self inculpatory, must be treated as a confession made to a police officer and would be hit by Section 25 of Evidence Act (1872). AIR 1964 All 447 (449, 450) = 1964 (2) Cri LJ 372 = 1964 All LJ 285.

(3) If the statement made by the accused in the information does not amount to a confession, it is admissible. AIR 1952 Him Pra 81 (Pr. 16) = 1952 Cri L Jour 1720 °° AIR 1958 All 90 (Pr. 13) = 1958 Cri L Jour 129 (DB). (It can be admitted as admission.) °° AIR 1952 Pepsu 98 (Pr. 2) = ILR (1952) Pepsu 186 = 1952 Cri L Jour 1090 °° ILR (1952) 2 Raj 93 (103, 104) (DB) °° AIR 1950 Ajmer 75 (Prs. 2, 6) °° AIR 1948 All 223 (225) = 49 Cri L Jour 436 °° AIR 1948 Lah 19 (21) = 49 Cri L Jour 961 (DB) °° **AIR 1966 SC 119 (123) = 1966 Cri LJ 100 = (1966) 1 SCR 134** °° 1969 Cri LJ 83 (84) = (1968) 1 Mad LJ 304 °° 1964 Raj LW 279 (282). (Whole of F. I. R. exculpatory in character.) °° AIR 1962 Raj 3 (9) = 1961 Raj LW 441 = 1962 (1) Cri LJ 82 (DB) °° 1960 Mad WN 528 (531) (DB).

(4) An old man of fifty murdered his young wife aged sixteen, suspecting her of infidelity and reported the matter to the police after the occurrence. In his report he gave a history of the facts previous to the date of occurrence and which prompted him to do the deed. It was held that the preliminary narrative was admissible against the accused if proved. AIR 1921 Cal 111 (112) = 22 Cri L Jour 562 (DB).

[See also AIR 1941 Nag 86 (89) = ILR (1940) Nag 679 = 42 Cri L Jour 390 (DB) °° AIR 1923 Lah 232 (235) = 25 Cri L Jour 811 (DB).]

(5) A report made by A to the police that B has beaten him is not a confession and is admissible against A in his trial for having murdered B's wife the same day a short time before. **AIR 1917 PC 25 (27) = 18 Cri L Jour 471.**

(6) Where the question is whether the accused exercised a right of defence of property which was in his possession, his statement in the first information report that the opposite party in the fight were in peaceful possession of the property since two or three weeks before the fight, is admissible as his own admission to show that the accused was not in possession and therefore he was only the aggressor. 1959 All L Jour 340 (342) (DB).

(7) Information by the accused to the police officer that the deceased was surprised when he was in the act of committing theft and that when he was about to attack the accused with deadly weapons, the accused in exercise of his right of defence of property and person used his gun and wounded the deceased, it was held that the statement did not amount to confession. AIR 1957 Cal 372 (Pr. 14) = 1957 Cri L Jour 707 °° 1962 Raj LW 448 (452) = ILR (1962) 12 Raj 383.

(8) Where an occurrence forms the subject of two cross cases it has been held that the first information given by the complainant in one case is admissible against him in the counter case in which he stands his trial as an accused person, though of course the entire statement may not be admissible in every case. AIR 1950 Trav Co 9 (Pr. 4) = 51 Cri L Jour 648 (DB). **(AIR 1917 PC 25 = 18 Cri L Jour 471, Rel. on.)** °° AIR 1965 Tripura 17 (19) = 1965 (1) Cri LJ 600.

(9) The test of severability namely that if a part of the report is properly severable from the strict confessional part, then the severable part could be tendered in evidence is misleading and the entire confessional statement is hit by Section 25 and save and except as provided by Section 27 and save and except the formal part identifying the accused as the maker of the report, no part of it could be tendered in evidence. **AIR 1966 SC 119 (123, 125) = 1966 Cri LJ 100 = (1966) 1 SCR 134.** (AIR 1964 Pat 210 and ILR (1952) 2 Raj 93, **Overruled**; AIR 1960 Raj 101 and AIR 1962 Raj 3, **Impliedly overruled.**) °° 1969 Cri LJ 83 (84) = (1968) 1 Mad LJ 304 °° AIR 1935 Bom 26 (28) = 36 Cri L Jour 539 (DB).

[See AIR 1958 All 90 (Pr. 13) = 1958 Cri L Jour 129 (DB). (If it is used as admission, it must be used as whole.)]

(10) Although the first information report given by the accused cannot be admitted in evidence against him if it amounts to a confession, there is nothing to preclude its being admitted in his favour. AIR 1952 Mad 586 (Prs. 5, 8, 9) = 1952 Cri L Jour 1240 °° AIR 1948 Lah 43 (44, 47) = 48 Cri L Jour 977 (DB) °° 1960 Mad WN 528 (531) (DB).

(11) Even where the report does not amount to a confession it cannot be treated as evidence against any co-accused, since the maker is an accused person and not a witness. AIR 1948 Lah 19 (21) = 49 Cri L Jour 961 (DB).

(12) Person lodging first information report subsequently accused of the offence and tried — Report not a confessional one but containing admission of facts by accused — Admission can be proved against him. AIR 1964 SC 1850 (1852, 1853) = 1964 (2) Cri LJ 744 °° AIR 1957 SC 366 (Pr. 2) = 1957 SCR 657 = 1957 Cri LJ 550 °° 1964 (1) Cri LJ 241 (241, 242) = (1963) 2 Mad LJ 473 °° AIR 1962 Cal 641 (645) = (1962) 2 Cri LJ 751 = 1963 All Cri R 11 (DB) °° (1961) (2) Cr LJ 253 (255) = 39 Mys LJ 253 (DB).

[See also ILR (1959) Andh Pra 797 (811) (DB) °° AIR 1964 Guj 261 (265) =

Section 154 — Note 10 (contd.)
(1964) 5 Guj LR 255 = 1964 (2) Cri LJ 676 (DB).]

(13) First information report being neither a confession nor statement made to police officer during course of investigation its admissibility is not barred either by Section 162 of Cri. P. C. or Section 25 of the Evidence Act 1872. **AIR 1964 SC 1850 (1852) = 1964 (2) Cri LJ 744.**

(14) It is objectionable for a police-officer who has recorded first information report from the accused and is proceeding to act on that information to get him to repeat that information in the presence of witnesses. AIR 1941 Nag 86 (91) = 42 Cri L Jour 390 (DB).

(15) When an informant goes to the Police Station and lodges a report against himself he voluntarily puts himself into the custody of the police and, therefore, any information given by him is one given by an accused in custody. Where discovery follows such information, the information is admissible under Section 27, Evidence Act, to the extent to which it can be connected with the actual discovery. 1960 All WR (HC) 556 = 1960 All LJ 721 (723) (DB).

(16) Where in a case of riot the accused also makes an information report, then unless this second information report itself amounts to a confession of an offence reported in the F. I. R. or in response to questions put by the investigation officer in course of investigation of the offence in the F. I. R. or is otherwise inadmissible under any other provision of law, the second information report is not inadmissible merely because it has been filed later in point of time. (1962) 4 Orissa JD 323 (332).

(17) Where accused himself gives the first information, the fact of his giving the information is admissible against him as evidence of his conduct under Section 8 of Evidence Act. **AIR 1966 SC 119 (123) = 1966 Cri LJ 100 = (1966) 1 SCR 134** •• AIR 1962 Raj 3 (9) = 1961 Raj LW 441 = 1962 (1) Cri LJ 82 (DB) •• 1960 Mad WN 528 (DB).

(18) The confession of the accused in the first information report includes not only the admission of the offence but all other admissions of incriminating facts related to the offence in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of Section 25 is lifted by Section 27 of the Evidence Act. **AIR 1966 SC 119 (125) = 1966 Cri LJ 100 = (1966) 1 SCR 134** •• AIR 1968 All 37 (39, 40) = 1968 Cri LJ 15 (DB).

(19) An accused, who admits the incident and pleads to have done it in self defence to avoid injury on him, is entitled to lodge a first information before the police. ILR (1967) 1 Ker 640 (659, 660) (DB).

(20) Information supplied to police — Use at trial of information for murder — Person, accused of murdering his father, lodging information at police station, on the day of the murder, alleging beating given to him by his father and another without any intention of the murder — The investigation in the murder case did not commence on the basis of that information.

Held that the statement in the information was not hit by Section 24 of the Evidence Act nor could it be brought under Section 154, Criminal P. C., for the purpose of the murder case. It could be admitted in evidence to show the conduct of the accused. 1961 (2) Cri LJ 253 (255) = 39 Mys LJ 253 (DB).

10A. Commencement of investigation. — (1) Court should be satisfied from the evidence of the person whose statement is recorded as first information report and the evidence of the investigating officer that investigation was not started when the alleged first information report was recorded. AIR 1965 Guj 143 (144) = (1964) 5 Guj LR 834 = 1965 (1) Cri LJ 696 (DB).

(2) Question whether investigation has commenced or not is a question of fact and it does not depend upon any irregularity committed in the matter of recording the first information report by the concerned police officer. **AIR 1962 SC 605 (625) = 1962 (1) Cri LJ 521 = 1962 Supp (1) SCR 567.**

(3) Enquiry may start with shadowy beginnings and vague rumours. But once a police officer forms a definite opinion that there are grounds for investigating a crime, an investigation under the Code has started. AIR 1968 Mad 117 (126) = 1968 Cri LJ 493 = (1968) Mad LJ 480 (DB).

(4) Scope of — First information report about offence under Section 5 (1) (a), Prevention of Corruption Act — Commencement of investigation without registration of F. I. R. and permission of Magistrate — Statements recorded during investigation are hit by Section 162 — Subsequent registration permission does not affect the question — Prevention of Corruption Act (1947), S. 5-A. AIR 1961 Andh Pra 3 (6) = 1961 (1) Cri LJ 33 = (1960) 2 Andh WR 73.

(5) Offence under Madras Prohibition Act Section 4 (1) (b) — Police Officer can investigate — He does so under provisions of Criminal P. C. 1960 Mad WN 317 = (1962) 1 Mad LJ 434 (437) (DB).

11. Duty of the prosecution to tender first information report in evidence. — (1) The prosecution is bound by practice to produce in Court the first information given to the police and recorded by them. AIR 1924 Lah 591 (591) = 25 Cri L Jour 465 •• AIR 1957 Ker 153 (Pr. 4) = 1957 Cri L Jour 1132 (DB) •• (1903) 7 Cal WN

Section 154 — Note 11 (contd.)
345 (346, 347) (DB) °° AIR 1928 Pat 359 (361) = 29 Cri L Jour 374.

[See also AIR 1952 Ajmer 41 (1) (Pr. 4) = 1952 Cri L Jour 1372.]

(2) Being the earliest version of the occurrence, it has always to be placed before the Judge and the jury in order to judge the truth or falsity of the case. AIR 1926 Cal 139 (144) = 27 Cri L Jour 266 (DB) °° AIR 1957 Ker 153 (Pr. 4) = 1957 Cri L Jour 1132 (DB) °° AIR 1934 Nag 94 (95, 96) = 35 Cri L Jour 957.

(3) The failure to record the first information report or the non-production of the information has very serious consequences as it prejudices the accused and deprives him of the right of cross-examination. AIR 1922 Pat 535 (539) = 24 Cri L Jour 129 (DB) °° AIR 1956 Mys 51 (Pr. 17) = ILR (1956) Mys 118 = 1956 Cri L Jour 904. (Non-recording of F. I. R. by D. S. P. and his non-examination — Adverse inference has to be drawn against prosecution.)

[See however AIR 1943 Oudh 451 (452) = 45 Cri L Jour 75.]

(4) The prosecution is not strictly bound down to the case in the first information. It is never per se a settlement of the case for the prosecution. AIR 1932 Oudh 99 (102) = 33 Cri L Jour 381 (DB).

(5) The police can show that the first information is not accurate. (1938) 39 Cri L Jour 917 (922) = ILR (1938) Nag 442 (DB) °° AIR 1924 Lah 591 (591) = 25 Cri L Jour 465.

(6) It is not necessary for the prosecution to examine all the witnesses mentioned in the first information report. AIR 1942 Oudh 60 (66) = 43 Cri L Jour 115 °° AIR 1962 Raj 3 (9) = 1961 Raj LW 441 = 1962 (1) Cri LJ 82 (DB).

(7) The inordinate delay in sending the First Information Report to the Magistrate will ordinarily rouse suspicion unless the prosecution have given a satisfactory explanation for the same. (1964) 1 Mys LJ 393 (DB).

(8) F. I. R. lodged immediately next day of commission of dacoity — Delay in sending the F. I. R. to S. D. M.'s Court by Investigating Officer — Delay held not fatal to prosecution. 1968 Cri LJ 1263 (1265) (Tripura).

(9) Duty of prosecution — Examination of informant as witness is not compulsory in every case. AIR 1967 Mys 47 (50) = 1967 Cri LJ 553 = (1965) 3 Law Rep 193 (DB).

12. Grant of copies of first information. — (1) The accused is entitled to have a copy of the information. AIR 1942 Bom 121 (122) = 43 Cri L Jour 621 (FB) °° AIR 1937 Sind 303 (303) = 39 Cri L Jour 57 (DB).

(2) A copy of the information can only be given under the orders of a Court of competent jurisdiction or an officer superior to the one in charge of police station. The officer in charge of a police-station is prohibited from giving such copies or any other private information of such report to any private individual. A violation of this rule is punishable. See Police Act (5 of 1861), S. 29.

(3) A head-constable was tried for giving a copy of the information to a private individual, and was convicted for six weeks for offences under Section 409 or in the alternative under Section 379 of the Penal Code and under Section 29 of Act 5 of 1861. The High Court set aside the conviction under Section 409 or under Section 379 but upheld the conviction under Section 29 of Police Act 5 of 1861 and reduced the sentence. AIR 1917 Pat 625 (626) = 18 Cri L Jour 982.

13. Effect of giving false information under this section. — (a) Criminal liability —(1) A person giving information to an officer in charge of a police-station under this section can be prosecuted for an offence punishable under Section 182 or Section 211 of the Penal Code if such information is found to be false. (1906) 4 Cri L Jour 68 (69) (DB) (Cal) °° AIR 1919 All 159 (159) = 20 Cri L Jour 114 °° (1905) 2 Cri L Jour 171 (175) = 32 Cal 180 (DB).

[See AIR 1936 Sind 94 (97) = 37 Cri L Jour 870 (DB).]

(2) A false charge to the police does not fall under the second part of Section 211 of the Penal Code. (1882) 5 All 215 (217) °° (1883) 5 All 598 (598) °° (1894) 16 All 124 (126) (DB) °° (1910) 11 Cri L Jour 54 (54) (All) °° AIR 1931 Nag 134 (136) = 32 Cri L Jour 1009 (FB). (Overruling 2 Nag LR 119.)

[But see (1966) 5 Suth WR (Cr) 32 (32) (DB) °° (1890) 17 Cal 574 (579) (FB). (Overruling 14 Cal 633.) °° (1912) 13 Cri L Jour 826 (826, 827) = 40 Cal 360 (DB) °° AIR 1930 Cal 711 (712) = 32 Cri L Jour 110 (DB) °° 1884 Pun Re (Cr) No. 17 p. 27 (27, 28) (DB) °° (1862-63) 1 Mad HCR 30 (30, 31) (DB) °° (1896) 20 Mad 79 (81) (DB) °° (1903) 26 Mad 640 (643, 644) (DB) °° (1909) 9 Cri L Jour 170 (171, 172) = 32 Mad 258 (FB) °° AIR 1918 Mad 731 (732) = 19 Cri L Jour 38 (DB) °° AIR 1931 All 269 (271) = 33 Cri L Jour 256 (DB) °° (1881) 8 Cal L Rep 233 (235) (SB).]

(3) A gives an information to the police. It is referred as false. A presses his case before the Magistrate. A cannot be prosecuted under Section 182 or Section 211 before the Magistrate disposes of his case. (1871) 16 Suth WR (Cr) 77 (77) (DB) °° (1887) 14 Cal 707 (712) (FB) °° AIR 1932 Cal 550 (551) = 33 Cri L Jour 724 (DB) °° AIR 1933 Cal 614 (615) = 34 Cri L Jour 1077.

[But see AIR 1931 Cal 634 (635) = 32

155. Information of non-cognizable cases.—(1) When information is given to an officer* in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as

Section 154 — Note 13 (contd.)
Cri L Jour 1241 °° (1884) 7 Mad 292 (292, 295) (DB).]

(4) Before the Magistrate disposes of the complaint in a legal way steps should not be taken under Section 182 or Sec. 211. A mere expression of suspicion without any definite charge will not make a person liable to prosecution. (1912) 13 Cri L Jour 303 (304) (Mad) °° AIR 1919 Cal 501 (502) = 19 Cri L Jour 336 (DB) °° AIR 1920 All 196 (197) = 21 Cri L Jour 576.

(5) A person can be charged for abetment if he instigates another to give false information. (1903) 7 Cal WN 556 (558) (DB).

(6) If the false information is given to the police to screen an offender, the informant is liable to be punished not only under Section 201 and Section 203 but also under Section 211 of the Penal Code. But the informant is not liable to be prosecuted under Section 193 of the Penal Code. AIR 1919 Cal 679 (680) = 19 Cri L Jour 903 (DB) °° (1913) 14 Cri L Jour 56 (56) = 35 All 102 °° (1895) 17 All 436 (437) (DB).

(7) If a person is defamed by the information given to the police, such person can prosecute the informant under Section 500 of the Penal Code as well. AIR 1917 Mad 600 (602) = 17 Cri L Jour 381 (382) (DB) °° AIR 1926 Lah 278 (278) = 27 Cri L Jour 899 °° AIR 1924 All 535 (536) (FB).

(b) Civil liability. — (8) A suit for damages for malicious prosecution will lie against the informant to the police. AIR 1920 Pat 489 (490) (DB) °° AIR 1920 Mad 789 (790) (DB) °° AIR 1914 Lah 531 (533) °° (1909) 1 Ind Cas 970 (970) = 36 Cal 278 (DB) °° AIR 1915 All 51 (53).

(9) If the informant merely left it to the police to take what action they chose, after expressing to the police his honest opinion, he is not liable to pay any damages. AIR 1920 Mad 712 (713) (DB).

(c) Award of compensation. — (10) The informant can be ordered to pay compensation to the accused under Section 250. AIR 1920 Sind 73 (74) = 21 Cri L Jour 49 (DB).

(10a) Nothing is more reprehensible than to cook up a story for recording an F. I. R. and attempt to improve the cooking of the story at the trial stage in any case — It is more so when it is done, to foist a charge of murder. AIR 1969 Cal 321 (333) (DB).

(11) Defamatory statement in first information report of cognizable offence is absolutely privileged. AIR 1962 Pat 229 (233) = 1962 (1) Cri LJ 737 = ILR 41 Pat 816 (DB).

14. Effect of the police-officer in charge recording first information falsely.— (1) The police-officer has an obligation laid on him to record the F. I. R. correctly and truthfully. If he fails to do so he is liable to be punished under Sections 177 and 218 of the Penal Code. (1897) 20 All 151 (153, 154) (DB) °° (1899) 27 Cal 144 (150, 151) (DB) °° AIR 1931 Pat 150 (152) = 32 Cri L Jour 638 (DB).

[See AIR 1934 Sind 6 (9, 10) = 35 Cri L Jour 736 (DB).]

(2) If the police-officer in his false report makes any defamatory statements, the aggrieved person can also prosecute him under Section 500 of the Penal Code. AIR 1930 Lah 159 (163) = 13 Cri L Jour 584.

(3) There is no presumption that if the police has requisite opportunity of noting down time of registration of first information report they will abuse or misuse it. The presumption is the very opposite of it. AIR 1957 All 809 (Pr 14) = 1957 Cri L Jour 1378 (DB).

(4) Where the officer in charge of police station recorded in the F. I. R. that the deceased was assaulted by only one person and while deposing as a prosecution witness stated that he was informed that the deceased was beaten by five persons.

Held, that the police officer had failed to reach the required standard while recording the F. I. R. AIR 1968 Goa 72 (75) = 1968 Cri LJ 929.

(5) First Information Report disclosing a cognisable case against 6 persons — Police filing charge-sheet against one of them only — No summary regarding others submitted — Non-inclusion of certain eye-witnesses in the charge-sheet — **Held** provisions contravened. (1967) 8 Guj LR 350 (352, 353, 354) (DB).

15. Power of High Court to interfere under Section 561-A. — (1) The exercise by the police of the statutory right of investigation under Section 154 and Section 156 cannot be interfered with by the High Court under Section 561-A. AIR 1945 PC 18 (22) = 71 Ind App 203 = ILR (1945) Lah 1 = 46 Cri L Jour 413 = ILR (1945) Kar (PC) 89 °° AIR 1957 Cal 379 (Pr 12) = 1957 Cri L Jour 713 °° AIR 1956 Pat 528 (Pr 27) = 1956 Cri L Jour 1425 (DB) °° 1968 Cur LJ 798 (Punjab) °° 1962 (2) Cri LJ 655 (656) (Cal).

[See also AIR 1963 SC 447 (448) = 1963 (1) Cri LJ 341 = (1963) 2 SCR 52. (Investigation into cognizable offence cannot be interfered with by the exercise of power under Section 439 or under the inherent power of the Court under Sec. 561-A, when there was no case pending at the time excepting that the person against whom the investigation has started had appeared before the Court, had surrendered and had been admitted to bail.)]

SECTION 155 — SYNOPSIS

1. Applicability to presidency towns.
2. Procedure when information is given.

aforesaid the substance of such information and refer the informant to the Magistrate.

(2) **Investigation into non-cognizable cases.**—No police officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial, or of a Presidency Magistrate.†

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

[1882—S. 155; 1872—Ss. 110, 111, 113; 1861—Ss. 133, 134.]

[°] By its Notification No. 577J dated 25-1-1956 as amended by Notification No. 1384J dated 24-2-1958 issued under Section 1 (2) of this Code, the State Government of West Bengal has extended Section 155 to the Commissioner of Police and the police in the town of Calcutta—See Cal. Gaz., 9-2-1956, Pt. I, p. 463 and ibid, 6-3-1958, Pt. I, page 640.

[†] Magistrates in the City of Ahmedabad have the powers and exercise the jurisdiction and perform the functions of a Presidency Magistrate—See Guj. Act XIX of 1961 Section 14 (3) (4-11-1961).

Section 155 — Synopsis (contd.)

3. **Who can order an investigation — Sub-section (2).**
4. **Order for investigation.**
5. **Powers and duties of the police under sub-section (3).**

1. Applicability to presidency towns.—(1) The use of the words "Presidency Magistrate" in sub-sec. (2) of this section has been held to be a "specific provision to the contrary" referred to in Section 1 of the Code and consequently this section would apply to the police in the town of Calcutta. (1888) 15 Cal 595 (606) (FB) °° AIR 1925 Cal 587 (589) = 26 Cri L Jour 782.

2. Procedure when information is given.—(1) When information is given to an officer incharge of a police-station of the commission, within the limits of such station, of an offence whether cognizable or non-cognizable, it is the duty of such officer to enter the substance of such information in the book kept for that purpose. (1897) 20 All 151 (153, 154) (DB) °° AIR 1957 Andh Pra 268 (270) = 1957 Cri L Jour 826 °° AIR 1930 Lah 159 (162) = 31 Cri L Jour 584.

(2) Dismissed worker refusing to leave premises — It is offence of criminal trespass — Police has power to take action under the Code of Mysore Police Act. AIR 1969 Mys 51 (55) = (1967) 1 Mys LJ 586 = 1969 Cri LJ 221 (DB) °° AIR 1967 Pat 416 (421) = 1967 Cri LJ 1677 = 1967 BLJR 411. (The provisions contained in Cr. P. C. in respect of police investigation are neither affected nor modified by Sections 7, 12 or 46 of the Police Act (1861).)

(3) Failure to enter or entering such information falsely is an offence punishable under Section 177, I. P. C. (1897) 20 All 151 (154) (DB). (Entry of false information suppressing real report) °° AIR 1930 Lah 159 (162, 163) = 31 Cri L Jour 584.

(4) The object of the station is to inform the Magistrate of the district and the District Superintendent of Police of the offences which have been reported at the police-station. (1897) 20 All 151 (154) (DB).

(5) Information given in respect of a non-cognizable offence does not amount to an institution of criminal proceedings within Section 211, Penal Code. AIR 1932 Cal 511 (511, 512) = 33 Cri L Jour 631 (DB).

(6) No charge under Section 182 of the Penal Code be brought against the informant on the ground that such information was false. AIR 1932 Pat 170 (170) = 33 Cri L Jour 314 °° AIR 1933 Oudh 374 (375) = 34 Cri L Jour 1149.

[But see AIR 1940 Oudh 413 (414) = 41 Cri L Jour 778 (DB). (Giving false information regarding non-cognizable offence is an offence under Section 182, Penal Code. AIR 1933 Oudh 374 = 34 Cri L Jour 1149, **Disapproved.**)]

3. Who can order an investigation — Sub-section (2). — (1) District Magistrate can order an investigation into a case under Section 294A, Penal Code, even though such offence cannot be tried without a complaint from the Provincial Government or an officer empowered by the Government in this behalf. AIR 1932 Lah 581 (581) = 33 Cri L Jour 678.

(2) The Magistrate ordering investigation under this section must be one who has both territorial jurisdiction and a power to try the case. A Magistrate in any part of India cannot accord leave to investigate a non-cognizable offence committed in another part of the country. AIR 1959 Cal 286 (286) = 1959 Cri L Jour 582 (DB).

(3) The legislature has conferred power under Section 5-A, Prevention of Corruption Act in general terms upon the Magistrate of the first class in general as a substitute for Section 155 (2). 1968 Cri LJ 256 (260) = 1967 Mad LJ (Cri) 35.

(4) A City Magistrate of a district is a Magistrate empowered to try all the criminal cases of a police station within that

STATE AMENDMENTS

Maharashtra:

Section 155, so far as it applied to the town of Bombay, was repealed by the City of Bombay Police Act (IV of 1902). The said Bom. Act IV of 1902 has now been repealed by the Bombay Police Act, 1951 (XXII of 1951), Section 167 (1) and Sch. I. By Section 167 (3) read with Schedule III of this Act, which applies to whole State of Bombay from 1-8-1951, Section 1 (2) of Criminal Procedure Code, 1898, is so amended as to make the Code applicable to the town of Bombay as well.

Punjab: Haryana: Chandigarh:

In its application to the States of Punjab and Haryana and the Union territory of Chandigarh, in sub-sec. (1) of Section 155, at the end, add the words "having power to try such case or commit the same, for trial".—Punj. Act XXV of 1964, Section 2 and Sch., Pt. I, item (38) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Union Territories (except Chandigarh):

In its application to the Union territories, in sub-section (1) of Section 155, insert the words "having power to try such case or commit the same for trial", at the end.—Act 19 of 1969, Section 3 and Schedule, Item 39 (in Delhi, on 2-10-1969).

West Bengal

In its application to the State of West Bengal :

(1) In sub-section (1), for the words 'the Magistrate', the words, 'the Judicial Magistrate having power to try or inquire into the offence' are substituted.

(2) In sub-section (2), for the words 'a Magistrate' the words 'a Judicial Magistrate' are substituted.—W. B. Act 8 of 1970 Section 2 and Sch, Item 56.

Section 155 — Note 3 (contd.)
district and he could grant the permission for the investigation of a non-cognizable offence as contemplated by Section 155 (2). Even if it be assumed that the City Magistrate is not a Magistrate contemplated by Section 155 (2), the irregularity would be curable under Section 529 (b). 1964 All LJ 304 (306) = 1964 All WR (HC) 660.

(5) Raid by police with intention to detect cognizable offence under Rule 131-B of Defence of India Rules — Submission of report by police for offence under Section 134, Customs Act — Permission under Section 137, Customs Act obtained — Magistrate can take cognizance — No evasion of Section 155 (2). AIR 1970 Bom 225 (232).

4. Order for investigation. — (1) It is open to the Magistrate to order an investigation under this section when he receives a police report in a non-cognizable case and if he does so the police-officer is bound to make the investigation. (1868) 10 Suth WR (Cr) 49 (49, 50) = 2 Beng LR (SN) 6 (DB). (Per Glover, J. — Loch J., dissenting.) °° AIR 1914 Upp Bur 31 (33) = 16 Cri L Jour 97. (Even if he has reason to doubt correctness of information.) °° 1868 Pun Re (Cr) No. 21 p. 51 (DB) °° 1969 MPWR 707 (708, 709) = 1969 MPLJ 710 °° 1968 All LJ 765 (768) = 1968 All Cri R 368 (DB). (1965 All LJ 68 and AIR 1961 All 377, Overruled.)

(2) An order for investigation cannot be passed in the belief that an offence is likely to be committed in future. Such an anticipatory order to investigate is not valid. AIR 1949 All 483 (Prs 14, 15) = ILR (1951) All 12 = 50 Cri L Jour 719 (FB) °° AIR 1955 Sau 42 (44) = 1955 Cri L Jour 839 (DB).

(3) It is only under the orders of a Magistrate that the police can investigate into a non-cognizable offence. AIR 1952 Him Pra 74 (Pr 20) = 1952 Cri L Jour 1712 °° AIR 1945 PC 18 (19) = 46 Cri L Jour 413 = 71 Ind App 203 = ILR (1945) Lah 1 = ILR (1945) Kar (PC) 89 °° AIR 1943 Lah 28 (30) = 44 Cri L Jour 301 (DB) °° AIR 1942 Cal 593 (597) = 44 Cri L Jour 145 (DB) °° AIR 1941 Pat 395 (397) = 42 Cri L Jour 504 °° AIR 1965 Andh Pra 372 (377) = 1965 (2) Cri LJ 585 = (1965) 2 Andh WR 44. (It cannot however be said that if a case cannot be investigated without the order of a specified Magistrate then it is a non-cognisable case. Section 155 (2) applies to every non-cognizable case and not to every non-cognisable offence.)

(4) Investigation without permission under Section 155 (2) is illegal as the section is mandatory. But invalidity of investigation does not affect competence of Court and unless there is miscarriage of justice, trial is not vitiated. AIR 1959 Raj 191 (193) = ILR (1959) 9 Raj 86 = 1959 Cri L Jour 1112. (AIR 1955 SC 196, Rel. on.) °° AIR 1962 Bom 263 (265, 266, 267) = 1962 (2) Cri LJ 598 = 64 Bom LR 274 (DB).

(5) A sanction to investigate given by a Magistrate to the police under the provisions of Section 155 (2), Criminal P. C. does not stand on the same footing as a

Section 155 — Note 4 (contd.)
sanction which is required before a prosecution for certain offences could be initiated. AIR 1960 All 509 (510) = 1960 Cri LJ 1059.

(6) If a non-cognizable case is investigated by the police without such orders, it may be tried by the Magistrate. AIR 1939 Rang 273 (274) = 40 Cri L Jour 799 °° AIR 1958 Andh Pra 392 (393) = ILR (1958) Andh Pra 137 = 1958 Cri L Jour 737 (DB). (Offence under Section 12 of Madras Act 3 of 1930 — Investigation without order — Charge sheet filed — Charge-sheet amounts to complaint — Acquittal under Section 247, Cr. P. C. is legal.) °° AIR 1958 Ker 194 (194) = 1958 Cri L Jour 895 (DB). (Trial not vitiated unless there is miscarriage of justice — **AIR 1955 SC 196, Foll.**) °° AIR 1956 Sau 116 (118) = 1956 Cri L Jour 1442 (DB). (Trial not vitiated if no prejudice or miscarriage of justice — **AIR 1955 SC 196, Foll.**) °° (1968) 70 Bom LR 757 (764) = 1969 Mah LJ 199. (The charge-sheet filed by the police under Section 135, Customs Act for a non-cognizable offence after obtaining Collector's sanction under Section 137 of the Act can be treated as a complaint in respect of non-cognizable offence.) °° 1965 All LJ 68 (70) = 1965 All WR (HC) 115. (Offences under Secs. 3 and 4 of U. P Public Gambling Act — Investigation by police without order of Magistrate — Charge-sheet should be treated as complaint.)

[But see AIR 1955 Sau 42 (44, 45) = 1955 Cri L Jour 839 (DB). (Investigation of non-cognizable offence without valid order — Magistrate cannot take cognizance on report — Entire trial vitiated as without jurisdiction.) °° AIR 1964 Punj 407 (407) = 66 Punj LR 580 = 1964 (2) Cri LJ 447 °° 1964 (2) Cri LJ 115 (116, 117) = 66 Punj LR 68 °° 1962 (2) Cri LJ 719 (722) = (1962) 1 Andh WR 195 °° 1962 (1) Cri LJ 339 (340) = 1961 Ker LT 698.

(6a) Where cognizance of the case has in fact been taken by the Court and the trial has come to a termination, the invalidity of the investigation that preceded the filing of the report does not vitiate the result unless miscarriage of justice has been caused thereby. (1970) 1 Mad LJ 488.

(7) Where an objection to the jurisdiction of Court on account of absence of such order for investigation is taken at an early date, the practice is to order the necessary authority to be supplied in writing by a Magistrate followed by a formal rechecking of investigation. AIR 1958 Punj 172 (174) = ILR (1957) Punj 2021 = 1958 Cri L Jour 683.

(8) Order by District Magistrate to a C. I. D. officer to make a confidential enquiry for the purpose of ascertaining whether any grounds exist for instituting criminal proceedings is not an order for investigation under this section. AIR 1927 Bom 501 (509) = 28 Cri L Jour 1012 (DB).

(9) An order for investigation in a particular non-cognizable case cannot be used to investigate a separate non-cognizable case. AIR 1943 Lah 28 (30) = 44 Cri L Jour 301 (DB).

(10) Where a Magistrate has power to grant permission for investigating an offence, the permission is not invalidated by reason of a reference to an erroneous provision of law. At the most it would be a mere irregularity not affecting jurisdiction. AIR 1954 Madh B 101 (106) = 1954 Cri L Jour 966.

(11) The Magistrate's function in this matter is not only supplementary, at a higher level, to that of the executive, but is intended to prevent abuse. **AIR 1957 SC 389 (393) = 1957 SCR 279 = 36 Pat 513 = 1957 Cri L Jour 567** °° AIR 1960 All 509 (509) = 1960 Cri LJ 1059. (Magistrate must see whether there are reasonable grounds for believing that an offence has been committed.)

(12) The provisions of Section 155 (1) are applicable only to those cases where information given to police relates solely to non-cognizable offence. AIR 1958 Punj 172 (173) = ILR (1957) Punj 2021 = 1958 Cri L Jour 683 °° (1967) 2 Andh WR 420 = (1967) Mad LJ (Cr.) 859 (860) °° AIR 1966 Punj 465 (466) = 1966 Cri LJ 1324 = 1966 Cur LJ 108 °° 1963 Raj LW 212 (213) °° ILR (1963) 13 Raj 693 = 1963 Raj LW 206 (207) °° AIR 1961 Andh Pra 448 (453) = 1961 (2) Cri LJ 605 = (1961) 1 An WR 153.

(13) Where on the same set of facts, both a cognizable and a non-cognizable offence would appear to be involved, the police investigating the cognisable offence can also investigate the non-cognizable offence and take action thereon. Section 155 (2) cannot operate as a bar to it. AIR 1967 Mad 4 (5) = 1967 Cri LJ 84 = (1966) 1 Mad LJ 331.

(14) Report by police after investigating into a non-cognizable offence without obtaining permission under Section 155 (2) is not a report under Section 173 but a Magistrate can take cognizance of the offence on it under Section 190 (1) (b) and the procedure applicable would be the old procedure contained in Section 252 and not that in Section 251-A. AIR 1959 Cal 640 (642) = 1959 Cri L Jour 1163. (Acceptance of copies by accused under new procedure does not operate as waiver.) °° 1968 All LJ 765 (767) = 1968 All Cri R 368 °° AIR 1967 Mad 390 (391) = 1967 Cri LJ 1525 = (1967) 1 Mad LJ 108.

[See also AIR 1959 Raj 191 (193) = ILR (1959) 9 Raj 86 = 1959 Cri L Jour 1112. (Investigation without permission — Police report not one under Section 173 — Cognizance can be taken under Section 190 (1) (b).)]

156. Investigation into cognizable cases.—(1) Any officer* in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned.

[1882—S. 156; 1872—Ss. 109, 114, paras. 2 and 3; 1861—Nil.]

[*] By its Notification No. 577J dated 25-1-1956 as amended by Notification No. 1384J dated 24-2-1958 issued under S. 1 (2) of this Code, the State Government of West Bengal has extended Section 156 to the Commissioner of Police and the police in the town of Calcutta—See Cal. Gaz., 9-2-1956, Pt. I, p. 463 and ibid, 6-3-1958, Pt. I, p. 640.

Section 155 — Note 4 (contd.)

(15) Provisions of Section 155 (2) cannot be rendered nugatory by regarding police report as a valid report under Section 190 (1) (b). AIR 1961 Cal 257 (258) = 1961 (1) Cri LJ 496 (1) = 64 Cal WN 1026.

(16) Complaint about a non-cognizable offence against persons the complainant cannot trace — Magistrate bound to cause an inquiry to be made by the Police before he can dismiss complaint under Section 203. AIR 1969 Guj 14 (15) = 1969 Cri LJ 63 = 9 Guj LR 925.

5. Powers and duties of the police under sub-section (3). — (1) Investigation under Chapter XIV includes investigation under sub-section (3) of this section. AIR 1942 Cal 593 (597) = 44 Cri L Jour 145 (DB) °° AIR 1931 All 263 (264) = 32 Cri L Jour 465.

(2) To attract the provisions of Chapter XIV to an investigation in a non-cognizable case, there must be an order of a competent Magistrate under sub-section (2). If a police officer is otherwise authorised to investigate non-cognizable cases, such as under the provisions of the Opium Act, the investigation is not one under Chapter XIV. AIR 1942 Cal 593 (597) = 44 Cri L Jour 145 (DB).

[See also 1957 BLJR 342 (344). (Offence under Section 47 (a), Bihar Excise Act — Investigation not under Cr. P. C. — Permission under Section 155 (2) not necessary.)]

(3) A police officer empowered under this sub-section to investigate can exercise the powers conferred by Section 161, record statements under Section 162, make a search under Section 165, and send up a charge sheet or report that the evidence is insufficient, (1883) 8 Bom 216 (219) (DB) °° AIR 1956 Bom 414 (415) = 1956 Cri L Jour 721 (DB). (Held on facts that report was not a complaint and Magistrate could not acquit accused under Section 247, Cr. P. C.) °° AIR 1953 Hyd 273 (273) = 1953 Cri L Jour 1841 = ILR (1953) Hyd 380 (DB) °° AIR 1919 All 276 (277) = 20 Cri L Jour 231 °° AIR 1932 Lah 581 (582) = 33 Cri L Jour 678 °° (1912) 13 Cri L Jour 691 (692) (DB) (Cal) °° AIR 1963 Guj 188 (191, 192) = 1963 (2) Cri LJ 141 = (1963) 4 Guj LR 253.

(4) After the investigation he should send in a report of the investigation under Section 173, even if the order of the Magistrate is silent as to such report. AIR 1915 Bom 80 (80) = 16 Cri L Jour 161 (DB) °° (1913) 14 Cri L Jour 218 (218, 219) (All) °° AIR 1960 Raj 150 (151) = 1960 Raj LW 42 = 1960 Cri LJ 853. (A report made by him would be a police report and not a private complaint.)

(5) The power to arrest without warrant is expressly taken away by this section. If he arrests without a warrant it will be illegal. ('97-01) 1 Upp Bur Rul 31 (33) °° (1883) 1 Weir 343 (343).

(6) Report under this section is a public document and admissible in evidence as such. AIR 1930 Lah 1067 (1068).

(7) The powers under this sub-section can be exercised by any police officer who has received an order for investigation from a competent Magistrate. It is not necesssary that he should be an officer in charge of a police-station. AIR 1943 Lah 28 (31) = 44 Cri L Jour 301 °° (1966) 2 An WR 89 = 1966 Mad LJ (Cr) 554 (557).

[See also AIR 1959 All 337 (339) = 1959 Cri L Jour 668. (Investigation by Inspector of Police in C. I. D. with permission held legal.)]

(8) Investigation should be promptly carried on, for protracted investigations do cause mischief and harassment. 1962 (1) Cri LJ 666 (669) = 1961 Raj LW 376 (DB).

SECTION 156 — SYNOPSIS

1. **"Cognizable case."**
2. **"Officer in charge of a police-station."** (See also notes to Section 551).
3. **Territorial limits to the power of investigation.**
4. **Offences requiring sanction.**

Section 156 — Synopsis (contd.)

- 4.-A. Investigation — What constitutes.
- 5. Irregularities in investigation — Sub-section (2).
- 6. Order for investigation — Sub-sec. (3).
- 7. Sessions Judge — Power to order investigation.
- 8. Powers and duties of the police in investigation.

1. "Cognizable case." — (1) The power to investigate under this section is not limited to offences only. 1893 All WN 124 (124) (DB).

(2) The power is not limited by any condition that the police-officer should have something written before he can take action in respect of an offence of which he can take cognizance without the order of a Magistrate. AIR 1945 PC 18 (20) = 46 Cri L Jour 413 = 71 Ind App 203 = ILR (1945) Lah 1 = ILR (1945) Kar (PC) 89 °° (1909) 2 Ind Cas 436 (448) = 36 Cal 433 (SB).

(3) The police officer is entitled to investigate into non-cognizable offence which may arise out of the facts in the course of investigation of cognizable offence. (1967) 2 Andh WR 420 (421) °° 1963 Raj LW 212 (213).

(4) When a complaint of a cognizable offence is made to police they can take preventive action under this section. AIR 1969 Mys 51 (59) = (1967) 1 Mys LJ 686 = 1969 Cri LJ 221 (DB).

2. "Officer in charge of a police station."— (1) An Inspector of the provincial criminal investigation department is an officer superior in rank to an officer in charge of a police-station and can make an investigation under this section. (1912) 13 Cri L Jour 305 (316, 317) = 35 Mad 247 (SB) °° AIR 1959 All 337 (Pr 5) = 1959 Cri L Jour 668 °° (1912) 13 Cri L Jour 352 (362, 368) = 35 Mad 397 (FB).

[See Section 551.]

[See also AIR 1919 Mad 487 (491) = 20 Cri L Jour 354 (DB).]

(2) If the officer in charge of the police-station is ill, the next in rank, who is in charge of the station then, can investigate, even though he is not generally empowered to investigate cognizable cases. AIR 1923 Pat 547 (549) = 24 Cri L Jour 375 °° (1969) 35 Cut LT 291 (299) (DB).

(3) In serious cases, it is desirable that investigation is made by a senior police officer. AIR 1933 Lah 871 (876) = 35 Cri LJ 137.

(4) Neither Section 242 (1) nor Section 630 of the Companies Act, 1956, divests a police-officer of the jurisdiction conferred upon him by this section to investigate into commission of cognizable offences under Sections 406 and 409 of the Penal Code, committed in relation to the affairs of a company. AIR 1957 Mad 65 (Prs 15, 16) = 1957 Cri L Jour 205.

(5) The investigation made by P. S. Inspector of the Anti-corruption Department who is not superior in rank to the Police Sub-Inspector would be contrary to the provisions of Sec. 156 of the Criminal P. C. notwithstanding that he has taken the sanction of the Magistrate under Section 5-A of the Prevention of Corruption Act. 1962 (1) Cri LJ 142 (144, 145) = (1961) 2 Guj LR 664 (DB).

(6) An outpost is not a police station. (1969) 35 Cut LT 291 (299) (DB).

3. Territorial limits to the power of investigation. — (1) Where a girl is taken away from her husband's house in district M and is brought to district D, a Magistrate at D will have jurisdiction under Section 181 to inquire into the offence (kidnapping). Hence, the police at D can investigate into the crime under this section. AIR 1933 All 665 (666) = 34 Cri L Jour 1215.

(2) There is nothing in sub-section nor any other provision in the Code that in respect of the same area, there cannot be two police stations having concurrent jurisdiction. 1969 Cri LJ 339 (341) = 34 Cur LT 811 °° ILR (1968) Cuttack 418 (421).

4. Offences requiring sanction.— (1) The police have a statutory right to investigate a cognizable offence without the sanction of any Court. AIR 1945 PC 18 (21, 22) = 71 Ind App 203 = ILR (1945) Lah 1 = 46 Cri L Jour 413 = ILR (1945) Kar (PC) 89.

(2) In cases of offences requiring sanction under Section 197 of the Code the police can investigate into the conduct of a public servant for alleged offences even before such sanction is obtained. AIR 1945 Cal 385 (386, 387) = ILR (1944) 2 Cal 183 = 47 Cri L Jour 142 (DB).

(3) The High Court has no power to quash the investigation in cases requiring sanction under Section 197, in the exercise of its inherent powers under Section 561-A, where the investigation is made before obtaining the sanction. AIR 1945 PC 18 (21, 22) = 71 Ind App 203 = ILR (1945) Lah 1 = 46 Cri L Jour 413 = ILR (1945) Kar (PC) 89.

4A. Investigation — What constitutes — (1) 'Investigation' consists of several steps such as proceeding to the spot, investigating facts and circumstances, taking measures for discovery and arrest of the alleged offender, examining persons acquainted with the circumstances of the case, searching and seizing any material and ultimately submitting a report if in the opinion of the investigating officer the accused should be tried. The steps to be taken generally in the course of the investigation into a cognisable offence are not exhaustive. 1969 Mad LW (Cri) 90 (97).

5. Irregularities in investigation — Sub-section (2).— (1) A conviction or acquittal does not depend upon the question what

Section 156 — Note 5 (contd.)

particular officer actually conducts the investigation which results in the trial. That is determined mainly by the evidence that is given at the trial. AIR 1928 Bom 162 (165) = 29 Cri L Jour 551 (DB).

[See also AIR 1955 Nag 97 (98) = 1955 Cri L Jour 728 = ILR (1955) Nag 23 (DB).]

(2) In view of the provisions of sub-section (2), a Magistrate will not be disentitled from proceedings to try a case brought before him on a report made in that behalf by a police-officer not authorised to investigate under this section. AIR 1948 Bom 163 (166) = ILR (1948) Bom 66 = 49 Cri L Jour 196 (DB).

(3) Section 156 empowers an officer in charge of a Police Station to investigate a cognizable case without the order of a Magistrate and delimits his power to the investigation of such cases within a certain local jurisdiction. It is the violation of this provision that is cured under Sec. 537 (2). AIR 1969 Andh Pra 41 (44) = 1969 Cri LJ 145. **(AIR 1955 SC 196, Rel. on.)**

(4) Sub-section (2) is very wide and covers all cases of irregular investigation made under sub-section (1). (1969) 35 Cut LT 291 (300) (DB).

(5) The failure properly to investigate cannot vitiate the trial. **AIR 1955 SC 196 (203) = 1955 Cri L Jour 526 = ILR (1955) Punj 135 = 1955 SCR 1150** °° AIR 1953 J & K 3 (Pr 8) = 9 J and K LR 18 = 1953 Cri L Jour 296 °° AIR 1931 Pat 150 (152) = 32 Cri L Jour 638 (DB) °° AIR 1969 Andh Pra 99 (102) = 1969 Cri LJ 368 = (1968) 2 Andh LT 388 °° (1968) 9 Guj LR 278 (291) = ILR (1967) Guj 1046 °° AIR 1967 Raj 224 (228) = 1967 Cri LJ 1365 °° 1967 Cri LJ 1450 (1453) = 1966 Raj LW 122 °° (1964) 1 Mys LJ 393 (397) (DB) °° AIR 1963 Raj 48 (50) = 1963 (1) Cri LJ 318 = 1962 Raj LW 539 °° AIR 1962 Bom 202 (204) = 1962 (2) Cri LJ 323 = 64 Bom LR 127 (DB) °° 1962 Raj LW 397 (397) = ILR (1962) 12 Raj 515 (DB) °° AIR 1960 Tripura 44 (48) = 1960 Cri LJ 1666 °° AIR 1968 Mys 210 (211).

Also see Section 537.

Prevention of Corruption Act, 1947. — (6) The provisions of sub-section (2) of this section could not cure the violation of the provisions of the Prevention of Corruption Act prohibiting investigation by an officer of a lower rank than a Deputy Superintendent of Police and it was not permissible to read the emphatic negative language of Section 5 (4) or the proviso to Section 3 of that Act (as it stood prior to its amendment by Act 59 of 1952 and corresponding to Section 5A as inserted by the same amendment) as being merely in the nature of an amendment of or a proviso to sub-section (1) of this section. Section 5 (4) and proviso to Section 3 corresponding to Section 5A introduced by the amendment are mandatory. It is not permissible to read Section 5 (4) or the proviso to Section 3 of the Prevention of Corruption Act as it stood before its amendment by the Act of 1952, which corresponds with Sec. 5A which was introduced by the Amending Act, as being a proviso to Section 156 (1) of the Code. **AIR 1955 SC 196 (203, 204) = 1955 Cri L Jour 526 = ILR (1955) Punj 135 = 1955 SCR 1150** °° AIR 1969 All 503 (504) = 1969 Cri LJ 1217 = 1968 All WR (HC) 575 °° AIR 1962 Bom 263 (267) = 1962 (2) Cri L Jour 598 = 64 Bom LR 274 (DB) °° AIR 1962 Bom 205 (211, 212) = 1962 (2) Cri LJ 326 = 64 Bom LR 188 (DB).

[See also AIR 1956 Bom 287 (297) = 1956 Cri L Jour 585 = ILR (1956) Bom 343 (DB). **(AIR 1955 SC 196 = 1955 Cri L Jour 526 = 1955 SCR 1150 = ILR (1955) Punj 135, Foll.)** °° AIR 1955 Punj 151 (155) = 1955 Cri L Jour 1101 = ILR (1955) Punj 226 (FB) °° AIR 1954 Punj 42 (44) = 1954 Cri L Jour 310 = ILR (1954) Punj 682 °° AIR 1955 Nag 204 (206) = 1955 Cri L Jour 1201 = ILR (1955) Nag 882 (DB).]

(7) Per Subba Rao and Raghubar Dayal, JJ.: (Mudholkar, J. contra.) Detailed information of offences received — Sub-inspector proceeding to spot of offence and ascertaining relevant facts by going through records — Sub-inspector submitting report of all these acts — Acts constitute investigation — Subsequent investigation with the permission of the Magistrate. **Held** the defect in the investigation was cured and the provisions of Section 5A of the Prevention of Corruption Act were complied with. **AIR 1964 SC 221 (226) = 1964 (1) Cri LJ 140 = 1963 SCD 863.**

(8) Irregularity in investigation — Objection as to — Must be raised at an early stage of trial. AIR 1969 Andh Pra 99(104) = 1969 Cri LJ 368 = (1968) 2 Andh LT 388.

(9) There is no limitation under the Prevention of Corruption Act that the requisite permission under Section 5A of the Act should be obtained only from Magistrate who will have competency or jurisdiction to try the offender. 1968 Cri LJ 256 (260) = 1967 Mad LW (Cri) 35.

6. Order for investigation — Sub-section (3). — (1) Where no complaint has been made to a Magistrate, but the latter gets information in respect of any cognizable case, he may under the provisions of sub-section (3) of this section order the police to investigate it. (1906) 4 Cri L Jour 183 (190, 191, 192) (DB) (Bom) °° AIR 1957 Andh Pra 864 (Pr 3) = 1957 Cri L Jour 1212 (2) °° AIR 1956 Cal 76 (Pr. 15) = 1956 Cri L Jour 505 (2) (DB) °° AIR 1926 Cal 586 (587) = 27 Cri L Jour 602 (DB) °° AIR 1969 Mys 184 (185) = 1969 Cri LJ 754 °° 1968 All Cri R 483 (488) = 1968 All WR (HC) 783 °° AIR 1967 Orissa 62 (64) = 1967 Cri LJ 637 = 33 Cut LT 38.

Section 156 — Note 6 (contd.)

[See AIR 1957 Andh Pra 472 (Pr. 6) = 1957 Cri L Jour 937 °° AIR 1957 Cal 393 (Pr. 2) = 1957 Cri L Jour 720.]

(2) Where the Magistrate takes cognizance of the offence on a complaint made to him and considers, before the issue of process to the accused, that the matter should be investigated, he should order such investigation under the provisions of Section 202, and not under this sub-section. AIR 1953 Assam 1 (Prs. 16, 17) = ILR (1952) 4 Assam 458 = 1953 Cri L Jour 168 (DB) = AIR 1950 Cal 340 (Pr. 4) = 51 Cri L Jour 1290 °° AIR 1950 Cal 99 (100) = 51 Cri L Jour 457 (DB) °° (1949) 53 Cal WN 653 (660, 661) (DB) °° AIR 1940 Sind 215 (216) = 42 Cri L Jour 162 (DB) °° AIR 1929 Bom 72 (73, 74) = 30 Cri L Jour 781 (DB) °° **AIR 1964 SC 1541 (1544) = (1964) 2 SCJ 439 = 1964 (2) Cri LJ 468** °° AIR 1969 Mys 184 (185) = (1968) 2 Mys LJ 604 = 1969 Cri LJ 754. (Observation in AIR 1964 Mys 129 on another point held no longer good law in view of **AIR 1964 SC 1541.**) °° (1969) Cri LJ 1458 (1459) = 1969 Mad LW (Cri) 86 °° AIR 1967 Orissa 62 (64) = 1967 Cri LJ 637 = 33 Cut LT 38 °° (1966) 2 Mys LJ 89 = (1966) 7 Law Rep 738 °° (1965) 1 Law Rep 651 (652) (Mys.) °° (1963) 65 Punj LR 667 (671).

[See AIR 1957 Andh Pra 472 (Pr. 6) = 1957 Cri L Jour 937.]

(3) This sub-section does not provide an alternative procedure to that laid down in Section 202. AIR 1949 Cal 197 (Prs. 4, 5) = 50 Cri L Jour 368 °° (1911) 12 Cri L Jour 463 (463) (DB) (Mad) °° AIR 1928 Mad 1268 (1269) = 30 Cri L Jour 326 °° AIR 1928 Cal 24 (25) = 28 Cri L Jour 577 (DB) °° (1887) 12 Bom 161 (163) (DB).

[See AIR 1957 Andh Pra 472 (Pr. 6) = 1957 Cri L Jour 937.]

[See however the observation in AIR 1933 Sind 136 (137, 138) = 34 Cri L Jour 763 (DB).]

(4) A Magistrate has no power to order an investigation under this sub-section after the issue of process to the accused. AIR 1942 Lah 256 (256, 257) = 43 Cri L Jour 865 (DB).

(5) When a complaint is filed before a Magistrate he may either proceed under Chapter 16 or he may simply direct an investigation by the police under sub-section (3) of this section. AIR 1956 Cal 76 (77) = 1956 Cri L Jour 505 (2) (DB).

(5a) Complaint filed — Magistrate not applying mind to take action under provisions of Chapter 15 but for taking action under the section — No cognizance of complaint. 1970 Cri LJ 922 (926) (Madh Pra.)

(6) When a private complaint filed before a Magistrate is sent by him to the police and a police report is received, it does not change the nature of proceedings. 1968 Ker LT 57 (60).

(7) Where the Additional District Magistrate before whom the complaint is filed transfers the same to another First Class Magistrate for necessary action and there is nothing in the order that he applied his mind to the contents of the petition, much less with a view to take action under Chapter 16, it cannot be said that he had taken cognizance of the case, so as to deprive the Magistrate to whom the petition was transferred of his jurisdiction to act under sub-section (3) of this section and refer the matter to the police for investigation and submitting a charge-sheet. AIR 1959 Assam 231 (Pr. 11) = 1959 Cri L Jour 1408.

(8) After taking cognizance of an offence if the Magistrate directs an investigation it would in the nature of preliminary enquiry and he should proceed under Section 252. 1966-2 Mys LJ 74 (75) = (1966) 7 Law Rep 236 °° AIR 1969 Mys 184 (185) = (1968) 2 Mys LJ 604 = 1969 Cri LJ 754. (Observation to the contrary in AIR 1964 Mys 129 held no longer good law in view of **AIR 1964 SC 1541.**)

[But see AIR 1964 Mys 129 (129) = 1964 2 Cri LJ 41. (Held no longer good law in AIR 1969 Mys 184 in view of **AIR 1964 SC 1541.**]

7. Sessions Judge — Power to order investigation. — (1) A Sessions Judge is not a Magistrate empowered under Section 190 and cannot direct the police under sub-section (3) to make an investigation. (1910) 11 Cri L Jour 330 (330, 331) = 1910 Pun Re (Cri) No. 11 (DB).

8. Powers and duties of the police in investigation. — (1) The investigating police are primarily the guardians of the liberty of innocent persons and a heavy responsibility devolves on them of seeing that innocent persons are not charged on irresponsible and false implication. 1951-2 Mad L Jour 635 (636) (DB).

(2) Duty of Police Officers investigating crime — Inordinate delay in submitting police report under Section 173 condemned — Investigation into criminal offences must always be free from any objectionable features or infirmities which may lead to grievance of accused that investigation was unfair or carried with ulterior motive. **AIR 1960 SC 866 (870) = (1960) 3 SCR 882 = 1960 Cri LJ 1239.**

(3) Where from the information the police officer suspected the commission of a cognizable offence the proper provision for taking action is under Sections 156 and 157 and not under Section 150 Cr. P. C. AIR 1966 All 222 (224) = ILR (1965) 1 All 298 = 1966 Cri LJ 498.

(4) When investigation of cognisable offence has been started by police, Magistrate has no power to stop it and direct magisterial enquiry. In case of mala fide exercise of power of investigation by police

Section 156 — Note 8 (contd.)
remedy is to invoke writ jurisdiction. **AIR 1970 SC 786 (787).**

(5) It is the duty of the police in making an investigation to discover the truth and not simply to obtain evidence for the purpose of securing a conviction, or to extract admissions from the suspect. AIR 1933 All 314 (317) = 34 Cri L Jour 689 (DB) °° AIR 1940 Nag 186 (191) =41 Cri L Jour 757 °° AIR 1964 Tripura 45 (48) = 1964 (2) Cri LJ 213 °° AIR 1960 Cal 183 (187) = 1960 Cri LJ 338 (DB).

(6) Torturing suspects with a view to extorting information from them is a crude, barbarous and reprehensible method of investigating and detecting crime. AIR 1964 Andh Pra 548 (555) = (1964) 2 Andh WR 43 = 1964 (2) Cri LJ 636 (DB).

(7) The power conferred must be used with caution. AIR 1934 Lah 692 (693) = 36 Cri L Jour 679 °° AIR 1933 Lah 871 (876) = 35 Cri L Jour 137 °° **AIR 1969 SC 951 (952) = 1969 Cri LJ 1428 = (1969) 2 SCJ 523** °° 1962 (1) Cri LJ 666 (669) = 1961 Raj LW 376 (DB) °° (1959) 25 Cut LT 107.

(8) Per Mudholkar, J.: Duties of investigating officer — Object of investigation is to bring home the offence to offender — Investigating officer apart from arresting offender, should collect all material necessary for establishing the accusation against offender. **AIR 1964 SC 221 (227) = 1964 (1) Cri LJ 140 = 1963 SCD 863** °° AIR 1966 Andh Pra 377 (384) = 1966 Cri LJ 1377 = (1966) 1 Andh WR 76 (DB).

(9) Scope — Specimen of handwriting — A police officer has no power to compel an accused to give specimen of his hand-writing. (1964) 1 Cri LJ 94 (94, 95) = (1964) 5 Guj LR 298.

(10) A general power to enter house, indiscriminately in the neighbourhood of the place where a cognizable offence may have been committed is not contemplated by this section AIR 1928 All 185 (186) = 29 Cri L Jour 272.

(11) The number of investigations into a crime is not limited by law, and where one has been completed another may be begun on fresh information received. AIR 1952 Orissa 350 (Pr. 3) = ILR (1952) Cut 104 = 1952 Cri L Jour 1635 °° AIR 1919 Mad 751 (752) = 19 Cri L Jour 901 (DB) °° (1947) 48 Cri L Jour 774 (776) (DB) (Lah).

[But see AIR 1951 Raj 131 (Pr. 4) = 52 Cri L Jour 964 °° AIR 1932 Lah 611 (612, 613) = 33 Cri L Jour 912).]

(12) Investigation is a continuous process which begins with the collection of evidence under Section 156 and ends with a report under Section 173. It cannot be piecemeal. AIR 1961 Cal 181 (182) = (1961) (1) Cri LJ 374 = ILR (1960) 1 Cal 676 (DB).

(13) The investigating officer is a material witness for the prosecution and his non-production is a serious omission which cannot but throw suspicion on the whole prosecution case. AIR 1922 Pat 582 (584, 585) = 24 Cri L Jour 91 (DB) °° AIR 1956 Mys 51 (Pr. 18) = ILR (1956) Mys 118 = 1956 Cri L Jour 904 °° AIR 1964 All 572 (576) = 1964 (2) Cri LJ 632 °° (1960) 26 Cut LT 556 (558).

(14) Motive cannot affect validity of investigation and prosecution if it is otherwise regular. AIR 1968 Mad 117 (125) = 1968 Cri LJ 493 = (1968) 1 Mad LJ 480 (DB).

(15) The investigating officer cannot be regarded as unbiassed, and it is desirable that the investigating officer corroborates the result of his investigation by independent evidence. AIR 1917 All 224 (228) = 18 Cri L Jour 1028 (1032) (DB).

(16) Complaints Officer to be examined at the trial as a principal witness conversant with the facts of case — Investigation by Complaints Officer himself is extremely improper — It does not, however, vitiate the trial. AIR 1964 All 481 (484) = 1964 (2) Cri LJ 497.

(17) Investigating officer is required not only to collect evidence for successful prosecution of case but also to exercise his discretion in arriving at a decision as to whether the case is fit for trial. AIR 1964 All 481 (484) = 1964 (2) Cri LJ 497.

(18) It is, of the utmost importance, from the point of view of law and order and administration of justice, that people entrusted with the investigation of crimes must be scrupulously honest and efficient (1960) 62 Punj LR 25 (29).

(19) The practice of engineering an offence, by an investigating officer, in order to find out whether a person when tempted will commit an offence is to be strongly deprecated. AIR 1916 All 242 (243) = 17 Cri L Jour 139 (140).

(20) A police officer laying a trap is not debarred from investing the same offence subsequently. (1959) 2 Andh WR 317 (320).

(21) In the exercise of their powers to investigate a cognizable case the police should receive no interference from the judiciary. AIR 1949 Lah 204 (Prs. 9, 11) = Pak LR (1949) Lah 48 = 50 Cri L Jour 965 (DB). **(AIR 1945 PC 18 = ILR (1945) Lah 1 = 46 Cri L Jour 413, Rel. on.)** °° AIR 1967 Pat 416 (421) = 1967 Cri LJ 1677 = 1967 BLJR 411 °° (1964) 30 Cut LT 332 (334) = ILR (1964) Cut 392.

(22) Police alone have full control over the investigation and neither the Magistrate nor even the High Court has power to interfere with such proceedings. AIR 1957 Cal 379 (Pr. 12) = 1957 Cri L Jour 713 °° AIR 1956 Pat 528 (Pr. 27) = 1956 Cri L Jour 1425 (DB) °° **AIR 1963 SC 447 (448) = (1963) 1 Cri LJ 341 = (1963) 2 SCR 52.**

157. Procedure where cognizable offence suspected.—(1) If, from information received or otherwise, an officer in charge of a police-station has reason to suspect the commission of an offence which he is empowered under Sec. 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police-report, and shall proceed in person, or shall depute one of his subordinate officers *[not being below such rank as the †[State Government] may, by general or special order, prescribe in this behalf] to proceed, to the spot, to investigate the facts and circumstances of the case, ‡[and, if necessary, to take measures] for the discovery and arrest of the offender :

Provided as follows :—

(a) **Where local investigation dispensed with.**—When any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

Section 156 — Note 8 (contd.)

(23) Police submitting report under Section 169 that no case made out for sending up accused for trial — Magistrate has no power to call upon police to submit a charge-sheet but he may order further investigation under this section. **AIR 1968 SC 117 (124) = 1968 Cri LJ 97 = (1967) 3 SCR 668** °° AIR 1969 Orissa 149 (150) = 34 Cut LT 1237 = 1969 Cri LJ 926 °° 1969 Cr LJ 831 (832) = 1969 Raj LW 213.

[See also 1968 All Cri Rep 483 (488) = 1968 All WR (HC) 783.]

(24) Taking cognizance — Complaint to Magistrate — Magistrate forwarding it to police for investigation and report under Section 156 (3) — Action is not illegal as no cognizance is taken. AIR 1962 Mad 495 (496) = 1962 (2) Cri LJ 762 = (1962) 2 Mad LJ 91.

[See also AIR 1969 Ker 97 (98) = 1968 Ker LT 547 = 1969 Cri LJ 482. (AIR 1967 All 468 and 1968 Ker LT 57, **Held** no longer good law on another point in view of **AIR 1964 SC 1541**.)]

(25) No writ of prohibition can issue against Inspector of Police, C. I. D. having jurisdiction to investigate charges against the accused. AIR 1957 Mad 65 (Pr. 10) = 1957 Cri L Jour 205.

(26) In all serious offences where the location of the place is material for the purpose of knowing and understanding the evidence of the witnesses with reference to the prosecution or the defence case as to the details of the incident which is the subject of the charge, a map of the scene of the offence and the surroundings showing all relevant and material details should always be prepared and produced in the case by the person in charge of the investigation. (1955) 8 Sau LR 301 (303) (DB).

(27) Where the State Government extended Sections 154, 161, 162, 163, 172 and 173 of the Code to the Calcutta Police and where Sections 165 and 167 had already been extended but the remaining sections of Chapter 14 remained unextended, the Calcutta Police would find that in the absence of an extension of Section 156 the extension of Sections 161, 162 and 172 had been useless and since their powers under the Calcutta Police Act had not been taken away they would have to continue to make their investigations into cognizable offences under that Act. The investigation cannot be said to be under Chapter 14 of the Code. AIR 1958 Cal 341 (Prs. 9, 10) = 1958 Cri L Jour 881 (DB) °° AIR 1958 Cal 324 (Pr. 15) = 1958 Cri L Jour 865 (DB).

(28) Failure to make an investigation or its continuation in respect of the complaint that the accused himself had made is not always destructive of the prosecution case, although in a proper case such inaction might have the effect of rendering the prosecution story untrustworthy and envelope it in suspicion. (1965) 2 Law Rep 205 (214) (Mys) °° AIR 1965 Orissa 175 (180) = 1965 (2) Cri LJ 520 (DB).

SECTION 157 — SYNOPSIS

1. Scope.
2. "From information received."
3. "Or otherwise."
4. "He shall forthwith send a report ...... to a Magistrate."
5. Effect of not sending the occurrence report.
6. "To investigate the facts and circumstances of the case."
7. Object of investigation.
8. Proviso (b).
9. Who can investigate under this section.
10. Whether the occurreuce report is a public document.
11. Search without warrant by a subordinate officer deputed under sub-section (1).
12. Delay in investigation and duty of Court.
13. Offences under Prevention of Corruption Act.

(b) Where police-officer in charge sees no sufficient ground for investigation.—If it appears to the officer in charge of a police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police-station shall state in his said report his reasons for not fully complying with the requirements of that sub-section, *[and, in the case mentioned in clause (b), such officer shall also forthwith notify to the informant, if any, in such manner as may be precribed by the †[State Government], the fact that he will not investigate the case or cause it to be investigated.]

[1882 — S. 157; 1872 — S. 114, Para. 1, Ss. 116, 117; 1861 — Ss. 135, 136, 137.]

[*] Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 32.

[†] Substituted for 'Provincial Government' by A. L. O., 1950.

[‡] Substituted for the words "and to take such measures as may be necessary", ibid.

Section 157 (contd.)

1. Scope. — (1) The section provides the manner in which investigation is to be conducted where the commission of a cognizable offence is suspected and authorizes an officer in charge of a police-station not to investigate if he considers that there is no sufficient ground for such investigation and regulates his procedure in such cases. AIR 1932 Lah 611 (612) = 33 Cri L Jour 912.

(2) This section does not apply to the police in the town of Calcutta. AIR 1940 Cal 97 (103) = 41 Cri L Jour 329 (DB) ** (1888) 15 Cal 595 (606) (FB).

[See also AIR 1958 Cal 324 (Pr. 15) = 1958 Cri L Jour 865 (DB) ** AIR 1958 Cal 341 (Prs. 9, 10) = 1958 Cri L Jour 881 (DB).]

Also see S. 1 (2).

(3) By itself Section 242 (1) of the Companies Act, 1956, does not divest a police officer of the jurisdiction conferred upon him by this section, to make investigation into a complaint of the commission of cognizable offences punishable under Ss. 406 and 409 of the Penal Code. AIR 1957 Mad 65 (Pr. 16) = 1957 Cri L Jour 205.

(4) Once the investigation is started by Police, Magistrate has no power to stop it and direct magisterial enquiry. AIR 1970 SC 786 (788).

2. "From information received." — (1) The words "from information received" refer to the information furnished and recorded under Section 154. (1910) 11 Cri L Jour 201 (201) (DB) (Cal).

[See AIR 1958 Andh Pra 37 (Pr. 15) = 1958 Cri L Jour 18 (DB).]

(2) Even, where the Registrar of Joint Stock Companies acts in contravention of any statutory provisions in preferring a complaint to the police, that will not affect the jurisdiction of the police officer to investigate into a complaint of the commission of cognizable offence. AIR 1957 Mad 65 (Pr. 10) = 1957 Cri L Jour 205.

(3) Where on receiving information, a police officer suspects the commission of a cognizable offence the proper provision for taking action is under S. 156 or Section 157. As both the sections are in Chap. XIV an investigation thereunder would be covered by Section 172. AIR 1966 All 222 (224) = 1966 Cri LJ 498 = 1964 All WR (HC) 579.

3. "Or otherwise." — (1) Though ordinary investigation is undertaken on information received by a police officer, the receipt of information is not a condition precedent for investigation. It is clear from S. 157 that an officer-in-charge of a police station can start investigation either on information or otherwise. AIR 1964 SC 221 (223, 224) = 1964 (1) Cri LJ 140 = (1964) 3 SCR 71.

(2) The words "or otherwise" are wide enough to include every source of information other than that furnished and recorded under Section 154. AIR 1915 Mad 312 (313) = 15 Cri L Jour 622 (624) (DB).

(3) Investigation may be commenced even when police are led to believe through their own knowledge or by means of credible though informal intelligence that a cognizable offence has been committed. AIR 1945 PC 18 (20) = 46 Cri L Jour 413 = 71 Ind App 203 = ILR (1945) Lah 1 = ILR (1945) Kar (PC) 89.

(4) Where the police came to know of a complaint which had been made to a Magistrate, such knowledge is sufficient on which they could proceed to investigate. AIR 1923 Pat 547 (549) = 24 Cri L Jour 375.

(5) See also the following case. AIR 1926 All 562 (562) = 27 Cri L Jour 845.

4. "He shall forthwith send a report.... to a Magistrate." — (1) This section provides for the making of a report by the police to the Magistrate before investigation. This is called an "occurrence report." 1899 All WN 87 (89).

(2) Under Section 157 it is obligatory on the police officer in charge of the police

Section 157 — Note 4 (contd.)

station to send forthwith a report of the Commission of the offence to the Magistrate concerned. (1967) 8 Guj LR 350 (352) (DB).

(3) The object of the report under this section is to enable a Magistrate to have early information of every serious crime so that he may be in a position to act if necessary under Section 159. AIR 1931 Pat 150 (151) = 32 Cri L Jour 638 (DB).

(4) Report made to Magistrate as prescribed under Section 157 — Not relevant under Section 35, Evidence Act — Evidence Act (1872), Sections 35, 67, 91 and 157. AIR 1962 Guj 214 (217) = 1962 (2) Cri LJ 55 = (1962) 3 Guj LR 107 (DB).

(5) Police officer delaying sending report to the Magistrate and proceeding upon a more detailed enquiry — Statements recorded during such enquiry are statements recorded during investigation and are hit by Section 162, Cr. P. C. AIR 1968 Mad 117 (127, 128) = 1968 Cri LJ 493 = (1968) 1 Mad LJ 480 (DB).

(6) The provision of reporting the matter to the Magistrate forthwith makes it clear that in the case of cognizable offences there should be no time lag between the reception of the information about the commission of the offence and the recording of such information. AIR 1961 Ker 99 (103) = 1960 Ker LJ 821 = (1961) 1 Cri LJ 505.

(7) The averment that the officer in charge of a police station did not make a report to the Magistrate as required by S. 157 is one of fact and cannot appropriately be sworn from legal advice in an application under Art. 226 of the Constitution. AIR 1968 All 338 (340) = 1968 Cri LJ 1325.

(8) The duty enjoined on the police to report to Magistrate any information of cognizable offence is absolute. AIR 1968 Cal 407 (466) = 72 Cal WN 441 (SB).

(9) The sending of a report to a concerned Magistrate is not a necessary condition which ought to precede the starting of an investigation by a police officer. (1962) (1) Cri LJ 803 (806) (AP).

(10) Section 157 requires that the officer in charge of a Police Station should record the definite information he received about a cognizable offence committed by the accused then and there from the informant and send a report to the Magistrate. AIR 1965 Ker 196 (198) = 1965 (2) Cri LJ 215 = 1965 Ker LT 20.

5. Effect of not sending the occurrence report. — (1) The section is mandatory and the sending of the occurrence report is a step which is an essential preliminary to an investigation. The failure to send such report is a serious neglect of duty and is likely to result in failure of justice, as it lays the police open to the suspicion of concocting false evidence. AIR 1953 J and K 3 (Pr. 9) = 9 J and K LR 18 = 1953 Cri L Jour 296. (AIR 1931 Pat 150 = 32 Cri L Jour 638, Rel. on.) °° AIR 1931 Pat 150 (151, 152) = 32 Cri L Jour 638 (DB).

[See also AIR 1958 All 584 (Pr. 4) = ILR (1958) 1 All 187 = 1958 Cri L Jour 994 (DB).]

(2) The omission to send a report under this section does not render the Magistrate's act of taking cognizance of that offence under Section 190 (1) (b) illegal. AIR 1950 Kutch 59 (Pr. 5) = 51 Cri L Jour 1319.

6. "To investigate the facts and circumstances of the case." — (1) Police-officers very frequently hear from village gossip or receive anonymous petitions and deem it well to make a few preliminary enquiries as to whether there is anything in what they have heard to render a formal investigation desirable. Such inquiries are not "investigations" under this section. AIR 1915 Mad 312 (314) = 15 Cri L Jour 622 (624) (DB).

(2) Receipt of every information does not start investigation — It commences only if some material step is taken in that direction. AIR 1967 Mys 71 (76) = 1967 Cri LJ 565 = 4 Law Rep 528 (DB).

(3) It is only after sending a report under this section to the Magistrate that the investigation starts and not till then. AIR 1958 Bom 125 (Pr. 11) = ILR (1958) Bom 96 = 1958 Cri L Jour 481 (DB).

(4) Locking the door of the house of the accused and keeping guard over the house are within the powers of the police in investigation under this section. AIR 1915 Lah 376 (377) = 16 Cri L Jour 551 (552).

(5) The section lays down some of the duties and none of the rights of an officer in charge of the police station. The Code does not grant to investigating officers a general overriding power to act in curtailment of the rights and liberties of the subjects for the purposes of investigation. AIR 1959 Bom 284 (Prs. 6, 18) = ILR (1959) Bom 852 = 1959 Cri L Jour 825 (DB).

(6) Police starting investigation in cases not covered by provisos (a) and (b) to Section 157(1) — Magistrate cannot under Section 159 suspend the police investigation and direct a Magisterial inquiry. AIR 1967 Pat 416 (420) = 1967 Cri LJ 1677 = 1967 BLJR 411 (DB).

(7) Under this section it is the duty of the police officer in charge of a police station to start investigation forthwith if from information or otherwise he has reason to suspect — The commission of an cognizable offence and submit a charge-sheet as soon as it is brought to their knowledge that a cognizable offence has been committed. ILR (1959) 9 Raj 671 (672).

7. Object of investigation.— (1) The object of investigation is to search for the truth and not to collect evidence to secure

158. Reports under Section 157 how submitted.—(1) Every report sent to a Magistrate under Section 157 shall, if the °[State Government] so directs, be submitted through such superior officer of police as the °[State Government], by general or special order, appoints in that behalf.

Section 157 — Note 7 (contd.)

a conviction. AIR 1933 All 314 (317) = 34 Cri L Jour 689 (DB).

8. Proviso (b).— (1) The officer in charge of the police-station is given full discretion whether or not to investigate the case; he is not bound to act on the information. AIR 1924 All 535 (535) (FB) °° (1871) 16 Suth WR (Cr Cir) 7.

(2) Power to refuse to make investigation does not authorise the officer in charge of the police-station to refrain from entering the information in the station diary on the ground that he intends to launch only security proceedings. AIR 1957 Andh Pra 268 (Pr. 5) = 1957 Cri L Jour 826.

(3) Under proviso (b) the police is given the power to refuse to investigate only those cases where no prima facie case has been made out. AIR 1961 All 169 (171) °° AIR 1962 Punj 487 (490) = 1962 (2) Cri LJ 633 = 64 Pun LR 396. (Investigation complete — Undue and unexplained delay in putting up challan — Impression on mind of accused that object is to punish him before decision is possible.)

(4) The practice of investigation being conducted by the same officer, who happens to be an ocular witness, is looked with disfavour. AIR 1968 All 290 (291) = 1968 Cri LJ 1028.

9. Who can investigate under this section.— (1) Three classes of officers can make an investigation of a crime—

(1) the officer in charge of a police station;

(2) an officer below the rank of such officer as the State Government may prescribe in this behalf under this section; and

(3) Officers superior to an officer in charge of a police-station by virtue of Section 551. (1912) 13 Cri L Jour 305 (316, 317) = 35 Mad 247 (SB).

(2) No writ of prohibition can issue against Inspector of Police C. I. D. having jurisdiction to investigate charges against accused. AIR 1957 Mad 65 (Pr 10) = 1957 Cri L Jour 205.

(3) Section 157 empowers the officer-in-charge of a police-station to delegate his own powers of investigation to one of his subordinate officers. 1969 Cri LJ 808 (809, 810) (Cal).

(4) Investigation in prohibition case — It starts with seizure of implements or arrest of accused — In such a case the arrest or seizure is not one in pursuance of the powers conferred under Section 54 or Section 550, Criminal P. C. — Police officer taking part in such seizure or arrest — He is disqualified by Section 495 (4) in prosecuting accused so arrested — Where a Circle Inspector who has taken part in the investigation of the offence under the Prohibition Act conducts the prosecution, the trial is vitiated. 1962 (1) Cri LJ 803 (807) = (1962) 1 Andh WR 104.

10. Whether the occurrence report is a public document.— (1) The occurrence report is not an act or record of acts of a public officer and is, therefore, not a public document. (1897) 20 Mad 189 (196, 205) (FB) °° AIR 1931 Pat 150 (151) = 32 Cri L Jour 638 (DB).

11. Search without warrant by a subordinate officer deputed under sub-section (1). — (1) It was held under the Code of 1861 that a police constable, deputed under the provisions corresponding to this section is not empowered to enter, without warrant, a house in search of property though he might do so in search of the person who is charged with a cognizable offence. (1870) 7 Bom HCR (Cr) 50 (52) (DB).

12. Delay in investigation and duty of Court. — (1) Delay in investigation causes serious prejudice to an accused person. It gives time to witnesses, even those who may not be dishonest to bring their evidence into harmony with that of the others. It may also interfere with the preparation of the defence in that an accused may feel difficulty in recalling what he was doing at the time of the offence. AIR 1932 Lah 345 (347) = 33 Cri L Jour 220 (DB).

(2) When there is any delay in investigation, it is the duty of a Court to enquire fully into the circumstances of the delay and consider its bearing upon the case. (1900) 2 Bom LR 1092 (1094) (DB).

13. Offences under Prevention of Corruption Act. — (1) Provisions as to registration and investigation of offences do govern also offences under the Prevention of Corruption Act. AIR 1968 Mad 117 (127) = 1968 Cri LJ 493 = (1968) 1 Mad LJ 480 (DB).

Section 158 — Note 1

(1) This section does not apply to the police of Calcutta. AIR 1940 Cal 97 (103) = 41 Cri L Jour 329 (DB) °° (1888) 15 Cal 595 (606) (FB).

(2) Provisions of the Code relating to registration and investigation of an offence do govern also an offence under the Prevention of Corruption Act. AIR 1968 Mad 117 (127) = 1968 Cri LJ 493 = (1968) 1 Mad LJ 480 (DB).

(2) Such superior officer may give such instructions to the officer in charge of the police station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

[1882 — S. 158; 1872 — S. 117, Para. 2; 1861 — Nil.]

[°] Substituted for 'Provincial Government' by A. L. O., 1950.

159. Power to hold investigation or preliminary inquiry.—Such Magistrate, on receiving such report, may direct an investigation or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

[1882 — S. 159; 1872 — S. 115; 1861 — S. 135.]

160. Police officer's power to require attendance of witnesses.—Any police-officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, ap-

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SECTION 159 — SYNOPSIS

1. On receiving such report."
2. Offence that can be investigated or inquired into.
3. "If he thinks fit."
4. Depute any Magistrate subordinate to him to proceed to hold a preliminary inquiry."
5. "Preliminary inquiry."

1. "On receiving such report." — (1) The words "such report" mean the first information report submitted under Sec. 157, before investigation. They do not include the final report under Section 173 or the report submitted under Section 202. (1900) 4 Cal WN 351 (352) (DB) °° (1909) 10 Cri L Jour 424 (426) (DB) °° AIR 1967 Pat 416 (419) (DB).

[See also (1913) 14 Cri L Jour 387 (388) (DB) (Cal) °° AIR 1917 Cal 593 (594) = 18 Cri L Jour 13 (DB).]

2. Offence that can be investigated or inquired into. — (1) Under this section the powers of the Magistrate are confined to inquiry and orders regarding the offence to which the report relates. (1904) 1 Cri L Jour 539 (540).

3. "If he thinks fit." — (1) A Magistrate having before him a police-report submitted to him under the provisions of Section 157, may determine, as he thinks fit, either to take no further steps, or to take cognizance of the offence under Section 190 (1) (b) or proceed under Section 203. (1878) 2 Weir 119 (119).

(2) This section does not empower a Magistrate to restrain police investigation and order magisterial enquiry when the investigation of a cognizable offence by the police is already proceeding. AIR 1949 Lah 204 (Prs 9, 11) (DB) °° AIR 1970 SC 786 (788-789) °° 1969 All WR (HC) 157 °° AIR 1967 Pat 416 (419, 420).

4. "Depute any Magistrate subordinate to him to proceed to hold a preliminary inquiry." — (1) A Magistrate who is deputed under the provisions of this section to hold a preliminary enquiry must do so in conformity with the directions under which he is empowered so to act. (1898) 2 Cal WN 702 (708) (DB).

(2) The mere fact that the inquiry was not held by a particular officer as suggested by the Magistrate in his order does not make the submission of the charge-sheet on the part of the investigating police illegal. AIR 1935 Cal 731 (732) = 37 Cri L Jour 139 (DB).

(3) Statements made by a witness to a Magistrate at a test identification parade may be treated as plain previous statements made to such Magistrate functioning in discharge of duties imposed upon him under Section 159 rather than treat those statements as having been made under S. 164. 1961 (2) Cri LJ 71 (75) (DB) (Cal).

(4) Where, because in a complaint the S. D. O. is involved, the Superintendent of Police reports the matter to the District Magistrate, the District Magistrate has under Section 159, jurisdiction to stop the investigation and direct an enquiry to be made by a senior officer above the rank of the S. D. O. ILR (1962) Cut 830 (833, 834) = 29 Cut LT 164.

[But see AIR 1970 Orissa 107 (108).]

5. "Preliminary inquiry". — (1) The expression "preliminary inquiry" used in this section refers to an enquiry that may be made just after the receipt of the Magistrate of the report under Section 157. AIR 1922 Mad 40 (41) (DB).

(2) On receipt of the report of a preliminary enquiry, the Magistrate should proceed in the same way as he would deal with a report received from a police officer. ('03) 30 Cal 923 (926) (DB).

SECTION 160 — SYNOPSIS

1. "Power to require attendance."
2. "Any police-officer making an investigation."
3. "By order in writing."
4. Who can be summoned under this section.
5. Service of order in writing.
6. Police cannot summon production of documents.

pears to be acquainted with the circumstances of the case; and such person shall attend as so required:

*[Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides.]

[1882 — S. 160; 1872 — S. 118; 1861 — S. 144.]

[*] Added by the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), S. 21 (1-1-1956).

Section 160 — Synopsis (contd.)

7. **"Before himself."**
8. **"Such person shall attend."**
9. **Effect of disobedience of summons.**
10. **Power of District Magistrate.**
11. **Proviso.**

1. Power to require attendance. — (1) This section aims at securing the attendance of persons who would supply the necessary information in regard to the commission of an offence and who would be examined as witnesses in the enquiry or trial to be held in regard to the said offence. AIR 1929 Nag 17 (20) = 30 Cri L Jour 258 (FB) °° (1881) 7 Cal 121 (126) (FB). °° (1968) 9 Guj LR 187 (190).

(2) The intention of the Legislature is to provide facility for the police to obtain evidence with regard to the crime which is being investigated. (1884) 7 Mad 274 (275) (FB) °° (1900) 27 Cal 295 (302) (DB).

(3) Section 160 has been introduced more in the interest of the police against whom allegations of mal-practices in respect of women and children of tender age are made. 1960 Ker LJ 563 = 1960 Ker LT 1 (10) (SC)

(4) This section does not apply to the police in Calcutta. AIR 1940 Cal 97 (103) = 41 Cri L Jour 329 (DB).

2. "Any police-officer making an investigation." — (1) If a Head Constable who is not making an investigation under this chapter summons a witness, the witness is not bound to obey the order and his disobedience will not be punishable. (1889) 16 Cal 349 (354, 355) (DB) °° 1885 All WN 43 (44).

3. "By order in writing." — (1) Disobedience of a mere verbal order is not punishable. AIR 1940 Nag 186 (189) = 41 Cri L Jour 757 °° 1896 Rat 850 (851) (DB).

(2) Where a constable without an order in writing made by the investigating officer asks a person to accompany him, he does not act in the discharge of his duty and an assault by such person on the constable is not an offence under Section 353 of the Penal Code. AIR 1918 Nag 137 (137) = 20 Cri L Jour 48.

(3) Absence of an order in writing, though no doubt an irregularity justifying the failure or refusal of the persons ordered to obey the order, will have no effect at all if such irregularity has been waived by them. AIR 1940 Nag 186 (189) = 41 Cri L Jour 757.

(4) 'Order in writing' contemplated by this section is an order addressed to a person whose presence is required. AIR 1954 Kutch 25 (26) = 1954 Cri L Jour 1060.

4. Who can be summoned under this section. — (1) The words "any person" must be given their plain meaning and includes a person, who may become the accused. AIR 1939 PC 47 (51) = 40 Cri L Jour 364 °° AIR 1940 Nag 186 (189) = 41 Cri L Jour 757.

(2) "Any person" includes also a suspect for he may appear to be as much acquainted with the circumstances of the case as a probable witness. AIR 1954 Kutch 25 (26) = 1954 Cri L Jour 1060.

(3) It is not necessary that the police should have summoned a person under this section in order to examine that person. Any one who is present at the time of investigation, if acquainted with the circumstances of the case, may be examined though not summoned. AIR 1930 Pat 510 (512) = 31 Cri L Jour 1123.

5. Service of order in writing. — (1) Section 72 applies only to summonses issued by a Court of justice and not to orders issued by the police-officers investigating under this chapter. AIR 1918 Mad 815 (816) = 18 Cri L Jour 733 (734).

6. Police cannot summon production of documents. — (1) This section does not authorize the police-officer to summon a person for the production of documents. (1902) 4 Bom LR 644 (645) (DB).

7. "Before himself." — (1) The order to attend must be to appear before the police-officer who is making the investigation. Thus, a police-officer cannot order a person to appear before a Magistrate so that the Magistrate may record that person's statement under Section 164. (1889) Rat 468 (469) (DB).

8. "Such person shall attend." — (1) Where an order in writing by the police-officer, requiring the attendance of a person, is disobeyed, the only course is to prosecute that person for such disobedience. There is no provision of law empowering the police to compel that person to attend. (1867) 7 Suth WR (Cr) 3 (5) (DB) °° (1902) 4 Bom LR 79 (80) (DB) °° 1896 Rat 850 (851) (DB).

(2) Even a District Magistrate cannot issue a warrant for his arrest and production before the investigating officer. (1897) 24 Cal 320 (323, 324) (DB).

161. Examination of witnesses by police.—(1) Any police-officer making an investigation under this Chapter *[or any police-officer not below such rank as the †[State Government] may, by general or special order, prescribe in this behalf, acting on the requisition of such officer] may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound*† to answer all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

Section 160 — Note 8 (contd.)

(3) The police-officer cannot himself arrest and detain him in custody. If he does so, he may become liable for an offence of wrongful confinement. (1886) 2 Weir 121 (121, 122) (DB).

(4) It will not amount to an offence of wrongful confinement if the person is merely taken to the police-station and asked to wait till the Sub-Inspector saw him. AIR 1930 Oudh 505 (506).

(5) The High Court of Calcutta has pointed out that where women have to be examined, the examination can be done at their residence and that it is not advisable to take them to the police-station. The proviso added to the section by the Amending Act 26 of 1955 gives effect to this view. (1905) 2 Cri L Jour 51 (53) (DB) (Cal).

9. Effect of disobedience of summons. — (1) A person who fails to attend on being served with an order under this section will be liable to be prosecuted under S. 174 of the Penal Code. But the following conditions under this section be fulfilled namely—

(1) that the police-officer should be investigating an offence, and

(2) that the order should be in writing. (1889) 16 Cal 349 (354, 355) (DB) ** (1885) All WN 43 (44) ** (1895) 1 Weir 86 (86).

(2) A summons which, although it specifies the place and the day at and on which the attendance of the person is required, omits any reference whatever to the time of the day at which the attendance is required cannot be the basis of prosecution under Section 174 of the Penal Code if it is not complied with. AIR 1948 All 137 (138) = ILR (1947) All 848 = 49 Cri L Jour 109.

(3) A person refusing to attend cannot be convicted under Section 186 of the Penal Code. 1896 Rat 850 (851) (DB).

(4) Section 177 of the Penal Code will not apply to statements made by persons to the police. (1869) 12 Suth WR (Cr) 23 (24) (DB).

(5) A refusal to receive a notice or subpoena under this section is not an offence punishable under Section 173 of the Penal Code. AIR 1926 All 304 (304) ** AIR 1918 All 409 (410) = 19 Cri L Jour 746.

(6) The powers of the police making an investigation under Ch. XIV to summon witnesses under Section 160, cannot be invoked for any investigation or enquiry in respect of a proceeding under Section 145, which is one of the sections in part IV dealing with prevention of offences. AIR 1968 Mad 225 (225) = 1968 Cri LJ 760 = 1967 Mad LW (Cri) 173.

10. Power of District Magistrate. — (1) A District Magistrate cannot interfere (except by way of suggestion and advice) with the exercise of discretion given to the police officer under this section to summon a witness to appear before him. 1878 Rat 133 (133,134) (DB).

11. Proviso. — (1) The proviso to Section 160 is obviously intended merely as a safeguard against the misuse of the powers of the Police Officers during the course of the investigation. The proviso can only be treated as directory and cannot be treated as mandatory. 1959 Ker LT 709 (752) (DB).

SECTION 161 — SYNOPSIS

1. **Scope and object.**
2. **"Any police-officer" — Sub-sec- (1).**
3. **"May examine orally."**
4. **Record of statements.**
5. **Statements.**
6. **"Any person supposed to be acquainted with the facts and circumstances of the case."**
7. **"Shall be bound to answer" — Sub-section (2).**
8. **Statements of witnesses under the section — Privilege.**
9. **Refusal to answer.**

1. Scope and object. — (1) The examination contemplated by this section is not of a judicial character and need not be in the presence of the accused or his agents. (1906) 4 Cri L Jour 79 (81) = 33 Cal 1023 (DB).

(2) The section applies only to investigations made under this chapter, i. e., relating to the commission of offences and not to merely threatened or contemplated offences. AIR 1926 Mad 521 (522, 523) (DB).

(3) The section must be read in its proper context along with the other provisions of this chapter including Section 167. Thus the section cannot be invoked for detaining a person in police custody without complying with the provisions of Section 167. AIR 1945 Nag 8 (17) = ILR (1945) Nag 6 (DB).

(4) It is doubtful whether an inquest report under Section 174 would fall under

‡[(3) The police-officer may reduce into writing any statement made to him in the course of an examination under this section, and if he does so he shall make a separate record of the statement, of each such person whose statement he records.]§

[1882 — S. 161; 1872 — Ss. 118, 119, Paras. 1, 2 and S. 121; 1861 — S. 145.]

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[*] These words were inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 33.

[†] Substituted for 'Provincial Government' by A. L. O., 1950.

[‡] Added by the Code of Criminal Procedure (Amendment) Act, 1945 (II of 1945), S. 2.

[§] By its Notification No. 577J dated 25-1-1956 as amended by Notifn. No. 1384J dated 24-2-1958 issued under S. 1 (2) of this Code, the State Government of West Bengal has extended S. 161 to the Commissioner of Police and the police in the town of Calcutta: see Cal. Gaz., 9-2-1956, Pt. I, page 463 and ibid, 6-3-1958, Pt. I, page 640.

[*†] See Article 20 (3) of Constitution of India, as well.

Section 161 — Note 1 (contd.)
this section. AIR 1933 Cal 861 (863) = 35 Cri L Jour 530 (DB).

(5) This section and the next Section (162) in effect contain legislative safeguards to protect an accused from over-zealous action of the police and so the non-compliance with their provisions cannot be lightly treated. AIR 1953 Bhopal 21 (23) = 1953 Cri L Jour 990.

(6) Whether the statement is a first information report or is one recorded under Section 161 after investigation and is therefore hit by Section 162 depends on the pure question of fact as to when the investigation started. AIR 1958 Mad 368 (Prs. 29, 32) = 1958 Cri L Jour 906 °° **AIR 1960 SC 391 (395) = 1960 Cri LJ 532.**

(7) Copies of the statements recorded under sub-section (3) and not the translations of the record, of all persons whom the prosecution proposes to examine as its witnesses must be furnished to the accused before the commencement of the inquiry itself. AIR 1957 Mad 508 (Prs. 4, 5, 7, 9) = ILR (1957) Mad 482 = 1957 Cri L Jour 866 (DB).

(8) Object of supplying copies of statements and reports to accused is to keep accused fully informed. 1970 Cri L Jour 558 (Raj).

2. "Any police-officer" — Sub-section (1). — (1) An inspector of the provincial criminal investigation department is, for the purposes of this section, a police-officer investigating within a local area extending over the whole province. (1912) 13 Cri L Jour 305 (316, 317) = 35 Mad 247 (SB). (See contra — Per Sankaran Nair, J.) °° (1912) 13 Cri L Jour 352 (362) = 35 Mad 397 (FB).

(2) Although investigation of offences under Section 5-A, Prevention of Corruption Act by Dy. S. P. is illegal, it does not render statement of witnesses recorded therein illegal and hence witnesses resiling from such statements can be cross-examined. **AIR 1968 SC 1323 (1325, 1326) = 1968 Cri LJ 1505 = (1969) 1 SCJ 300** °° AIR 1969 All 503 (504) = 1969 Cri LJ 1217 = 1968 All Cri R 357.

3. "May examine orally." — (1) The mere fact that a witness does not readily come forward immediately after the investigation begins is no reason to discredit his testimony. AIR 1931 Lah 529 (530) = 32 Cri L Jour 1032 (DB).

(2) The police-officer should not extract information by using force; such evidence is useless. AIR 1916 All 360 (360) = 17 Cri L Jour 351 (352) °° **AIR 1966 SC 1786 (1787) = (1967) 2 SCJ 94 = 1966 Cri LJ 1498** °° **AIR 1964 SC 33 (38) = 1964 (1) Cri LJ 16 = (1964) 3 SCR 742.**

(3) The section gives a discretion to the police-officer to examine a witness orally. But there is nothing in this section or any other section of the Code to indicate that a person not examined at all in the course of investigation cannot be cited as a witness for the prosecution at the trial. AIR 1952 Orissa 289 (300) = ILR (1952) Cut 109 = 1952 Cri L Jour 1533 (DB) °° AIR 1965 Guj 246 (246) = 1965 (2) Cri LJ 497 = (1964) 5 Guj LR 981 °° AIR 1960 Andh Pra 367 (368) = 1960 Cri LJ 887.

4. Record of statements. — (1) Police officer seizing documents written by accused and others in course of investigation — Documents cannot be said to be statements recorded under Section 161, and are not inadmissible in evidence. (1963) 2 Cri LJ 546 (549) = (1962) 1 Andh LT 57.

(2) A police-officer is not bound under sub-section (3) of this section to record the statements of witnesses examined by him during the course of investigation. The sub-section prohibits the recording of statements in a boiled form. The effect of the amendment is to abolish the practice of recording joint statements which are incap-

OBJECTS AND REASONS

"Clause 161—We have amended this clause by reverting to the law as it stood under the Codes of 1861 and 1872. Under those Codes a person examined by the Police-Officer was bound to answer all material questions, but was not liable to be prosecuted for giving false evidence in respect of his answers under S. 193 of the Indian Penal Code (see I L. R. 7 Cal 121 (FB) and 10 Cal 405). It seems to us unfair that a man should be liable to be convicted of giving false evidence on the strength or by the aid of a statement supposed to have been given to a Police-officer, but which is not given on oath, which has not been signed, and which he has had no opportunity of verifying. Such statements may be hurriedly taken down as rough notes, the police-officer is not trained in taking evidence, and the notes are often faired out by another officer. They bear no resemblance to depositions, and ought to have no weight as such attached to them. We are aware that there are inconveniences in abolishing the direct liability for giving false evidence to the police, but the balance of expediency seems us to be in favour of the old law. The provisions of Sections 202 and 203 of the Indian Penal Code appear to us to afford a sufficient safeguard against false information." — S. C. R. 1898.

Section 161 — Note 4 (contd.)

able of use as the statement of any individual witness. AIR 1950 Cal 565 (Pr. 2) (DB) °° AIR 1955 Mad 303 (303) = 1955 Cri L Jour 817 (2) °° AIR 1954 Mys 81 (86) = ILR (1953) Mys 625 = 1954 Cri L Jour 905 (DB) °° AIR 1950 Cal 363 (364) = 51 Cri L Jour 1307 (DB) °° AIR 1953 Bhopal 21 (23) = 1953 Cri L Jour 990 °° AIR 1953 Vindh Pra 38 (39) = 1953 Cri L Jour 1193 °° AIR 1952 Mad 821 (824) = 1953 Cri L Jour 29 °° (1951) 55 Cal WN 398 (399) (DB) °° AIR 1949 Nag 260 (261) = ILR (1949) Nag 379 = 50 Cri L Jour 669 (DB).

[But see 1964 All WR (HC) 307 = 1964 All Cr R 211.]

(3) Investigating officers should comply with the mandatory provisions of this sub-section. A failure to do so very often results in the earlier statements of these witnesses not being made available to the accused and the Court is not in a position to test the veracity of these witnesses. AIR 1952 Bhopal 8 (12) = 1953 Cri L Jour 692 °° 1951-1 Mad L Jour 430 (430, 431).

[See also AIR 1954 Orissa 49 (50) = ILR (1953) Cut 428 = 1954 Cri L Jour 306 (DB).]

(4) The failure to observe the mandatory provisions of Section 161 (3) would not ex hypothesi render the trial illegal, unless and until substantial prejudice is disclosed. The question whether it would vitiate the trial must depend on the facts of each case. AIR 1956 Andhra 199 (Pr. 10) = ILR (1956) Andhra 213 = 1956 Cri L Jour 1183 (DB) °° (1968) 1 Andh WR 94 = 1968 Mad LJ (Cri) 75 °° 1959 Ker LR 1288 = 1960 Ker LT 303 (305).

(5) The fact that the statements of the witnesses have been recorded in a boiled form will not make the evidence of these witnesses inadmissible at the trial, though it may become relevant for considering their credibility. AIR 1950 Cal 363 (364) = 51 Cri L Jour 1307 (DB) °° AIR 1956 SC 238 (240, 241) = 1956 Cri L Jour 441. (AIR 1946 Nag 173 = ILR (1946) Nag 126 = 47 Cri L Jour 851 and AIR 1936 Nag 249 = 38 Cri LJ 936, Overruled.) °° AIR 1954 Orissa 49 (50, 51) = ILR (1953) Cut 428 = 1954 Cri LJ 306 (DB).

[See also AIR 1955 Mad 512 (512) = 1955 Cri L Jour 1200. (AIR 1955 Mad 303 = 1955 Cri L Jour 817 (2), Dissented from.) °° AIR 1949 Nag 260 (262) = ILR (1949 Nag 379 = 50 Cri L Jour 669 (DB).]

[But see AIR 1955 Mad 303 (304) = 1955 Cri L Jour 817 (2).]

(6) The fact that the statements of some of the witnesses were recorded in English and not in the language of witnesses is not sufficient to vitiate the trial of the accused unless some prejudice is shown to have been caused to the accused by such irregularity. (1960) 2 Ker LR 329 (341) (DB).

(7) The non-observance of the provisions of this section will not make the trial irregular if the accused does not make any request for copies of statements to the police. AIR 1952 Cal 621 (626) = 1952 Cri L Jour 1427 (DB).

(8) If witnesses whose statements were not separately recorded during the investigation did not say anything that is quite material to the prosecution case and the exclusion of their testimony would not, in any way, affect the merits of the case, the breach of the provisions of Sec. 161 (3) would not lead to the quashing of the conviction, as it could not be said that the principles of natural justice were in any way violated. AIR 1956 Andh Pra 199 (Pr. 10) = ILR (1956) Andhra 213 = 1956 Cri L Jour 1183 (DB).

(9) For important criminal cases, it is the duty of the police, to reduce to writing the statements of eye-witnesses. AIR 1955 Manipur 21 (28) = 1955 Cri L Jour 705 °° AIR 1964 All 481 (484) = (1964) 2 Cri LJ 497 °° 1964 All WR (HC) 307 (307). (Irregularity caused by failure to record statement of important witnesses is curable under Section 537 in absence of prejudice to accused.) °° AIR 1960 Andh Pra 545 (550) = 1960 Cri LJ 1402. (It is true that

Section 161 — Note 4 (contd.)

this section gives the investigating officer discretion to record the statements of witnesses but this discretion is to be exercised soundly and not arbitrarily or capriciously.)

(10) The provisions of Sections 164 and 364 do not apply to the statements recorded under this section. (1892) 15 All 12 (13) (DB) °° 1896 Pun Re (Cr) No. 7, p. 18 (19) (DB).

(11) If the police-officer does reduce into writing any statement made under this section, he does so in his official capacity. ('97-01) 1 Upp Bur Rul 29 (30).

(12) Sub-section (3) is only intended to hit at the practice of writing against the names of certain witnesses after the first that they corroborated the statements of the earlier witness, and does not require that the investigating officer should record verbatim what the various witnesses tell him. AIR 1948 Mad 23 (25) = 48 Cri L Jour 973 = ILR (1948) Mad 57 (DB) °° AIR 1955 Mad 303 (303, 304) = 1955 Cri L Jour 817 (2) °° AIR 1954 Mys 81 (86) = ILR (1953) Mys 625 = 1954 Cri L Jour 905 (DB).

[But see AIR 1960 Andh Pra 160 (163, 164) = 1960 Cri LJ 311 = 1959 Andh LT 908 (DB).]

(13) There is no special rule or direction provided in the Code affording guidance for police officers in recording statements of witnesses and usually what is done is that when a succeeding witness gives practically an identical story as to what a previous witness has stated it is a matter of common knowledge that the words used by the police officer would be similar or identical. The evidentiary value of the record is not thereby affected. **AIR 1957 SC 623 (Pr. 7) = ILR (1957) Punj 1668 = 1957 Cri L Jour 1009.**

(14) Section 161 (3) does not prevent a Police Officer, from making just a few jottings for refreshing his memory. The mere fact that such jottings were destroyed will not vitiate a trial so long as it is not part of the statements reduced to writing at the police station, which alone will be relevant for purposes of Section 161 (3). AIR 1967 Mad 426 (427) = (1967) 1 Mad LJ 366 = 1967 Cri LJ 1644.

(15) So far as the record of statements elsewhere than in the case-diary are concerned, their contents may consist of rough notes or "scribblings" not intended to be a record but intended for the police officer's own information or they may consist of either any intelligible substance of the statements or the statements in full. 1956 Andh WR 406 (DB).

(16) Where the statements of witnesses have been recorded in contravention of the provisions of this sub-section, it is the duty of the judge to warn the jury as to the danger of accepting these witnesses as witnesses of truth. He should tell the jury that it is open to them if they thought proper, to disbelieve them on the assumption that their statements if properly recorded might have contradicted their evidence in Court. AIR 1952 Assam 169 (171) = 1952 Cri L Jour 1663 (DB) °° AIR 1956 Assam 125 (Pr 7) = ILR (1956) 8 Assam 76 = 1956 Cri L Jour 972 (DB) °° AIR 1955 Assam 226 (229) = 1955 Cri L Jour 1470 (DB) °° AIR 1951 Cal 212 (Pr 8) = 51 Cri L Jour 1581 (DB) °° AIR 1950 Cal 363 (365) = 51 Cri L Jour 1307 (DB).

(17) Where a person's name was not included in the police report submitted under Section 173, nor his statement furnished to the accused there is nothing in the law that prevents the prosecution from producing or the Court from examining such a person as a witness in the case. AIR 1959 Cal 176 (Pr 8) = 1959 Cri L Jour 318 (DB) °° AIR 1968 Andh Pra 236 (237, 238) = 1968 Cri LJ 1035 = (1967) 2 Andh WR 194. (AIR 1956 Mad 592, **Dissented** from.) °° AIR 1966 Orissa 102 (104) = 1966 Cri LJ 568.

(18) Omission by witness to mention particular fact in statement recorded under Section 161 is not a contradiction under Section 162 nor can it by implication be deemed a part of statement under Section 161 when he is not questioned about it. AIR 1962 All 582 (584) = 1966 (2) Cri LJ 722 = 1962 All LJ 639 (DB).

5. Statements. — (1) Statement made to police cannot be taken as substantive evidence. (1965) 69 Cal WN 764 (765) °° 1968 Cri LJ 996 (999) (Guj).

[But see 1964 All WR (HC) 523 (524) = 1965 All Cri R 383.]

(2) Recovery memo of personal search signed by witnesses does not amount to statement of police within the meaning of this Section. (1963) 65 Punj LR 745 (746) (DB).

(3) Police during investigation ought not to make witnesses sign their statements — Signing though improper does not make them inadmissible. 1961 MPLJ 1275 (1279) (DB).

(4) It is not illegal, though unnecessary, for a police-officer after recording a statement under this section to obtain the signatures of persons present at the time other than the person making the statement to authenticate his record of such statement as witnesses. (1892) 15 All 12 (14) (DB).

(5) Obtaining the signature of the person making the statement is expressly forbidden: See Section 162.

(6) Report made by deceased at police station — Being dying declaration can be made before investigation and used as substantive evidence hence it is not hit by the section. AIR 1968 All 83 (86) = 1968 Cri LJ 227 = 1967 All Cri R 242

Section 161 — Note 5 (contd.)
°° AIR 1960 Punj 310 (311) = 1960 Cri LJ 851.

(7) Committing Magistrate has jurisdiction to consider and use the statement, recorded under this section for committing or discharging the accused under Section 207-A Cr. P. C. AIR 1966 Him Pra 11 (12) = 1966 Cri LJ 20.

6. "Any person supposed to be acquainted with the facts and circumstances of the case." — (1) The words "any person" are quite general and would include accused persons also. AIR 1932 Mad 391 (399, 401) = 33 Cri L Jour 418 (FB) °° AIR 1939 PC 47 (51) = 40 Cri L Jour 364 °° AIR 1940 Nag 186 (189) = 41 Cri L Jour 757 °° AIR 1960 All 1 (18) = 1959 All LJ 651 = 1960 Cri LJ 1 (FB). (Reversed on another point in AIR 1960 SC 1125.)

(2) It is only a person believed to be acquainted with the facts and circumstances of the case that may be examined under this section. The purpose of examination under this section is to obtain evidence preliminary to arrest. If the police have sufficient evidence to arrest a person they should not proceed under this section. (1900) 27 Cal 295 (297, 302) (DB).

(3) A police-officer is not authorized to summon a person and ask his opinion as a "jury man;" the person so concerned is not bound to answer the question. 1875 Rat 92 (92) (DB).

(4) A person can be examined under this section only in respect of question relating to the case i.e., with regard to the offence investigated. 1875 Rat 92 (92) (DB).

(5) A person who stood as surety for an accused person whose appeal was pending in the High Court cannot be examined as to the whereabouts of the accused who absconded after the dismissal of the appeal. 1885 All WN 43 (44).

7. "Shall be bound to answer" — Sub-section (2). — (1) The words "shall be bound to answer all the questions" did not constitute an express provision of law to state the truth. ('81) 7 Cal 121 (126) (FB) °° 23 Mad 544n (546n) (DB) °° (1913) 14 Cri L Jour 302 (302) = 6 Sind LR 277 (DB) °° AIR 1917 Low Bur 12 (14) = 18 Cri L Jour 844 (846) °° AIR 1960 All 623 (625) = 1960 All LJ 109 = 1960 Cri LJ 1296.

(2) Though opening words of Sec. 161(2) do make it a compelling provision, the exception provided therein sufficiently safeguards position of persons answering questions put to them by investigating officer as they are not bound to give any answer which may have a tendency to expose them to criminal charges or to penalty or forfeiture. AIR 1960 All 1 (18) = 1959 All LJ 651 = 1960 Cri LJ 1 (FB). (Reversed on another point in AIR 1960 SC 1125).

(3) A person making a false statement in answer to questions under this section cannot be convicted of an offence under Section 193 of the Penal Code. (1908) 7 Cri L Jour 3 (4) (All) °° AIR 1917 Low Bur 82 (82) = 18 Cri L Jour 98 (98).
[See also AIR 1933 Rang 119 (119) = 34 Cri L Jour 781.]

(4) Person making a false statement cannot be convicted of an offence under Section 203 of that Code. (1910) 11 Cri L Jour 438 (438) (All).

(5) Person making a false statement cannot be convicted under Section 211 of the Penal Code. (1902) 1 Weir 193 (194) (DB) °° (1908) 31 Mad 506 (508) = 9 Cri L Jour 77 (DB) °° (1909) 9 Cri L Jour 170 (177) = 32 Mad 258 (FB) °° AIR 1932 Mad 24 (24) = 33 Cri L Jour 173.

(6) Section 177 of the Penal Code does not apply to the case as it alludes to information being bound to be given by landholders etc., and not to the case of any person who is examined by the police under this section. AIR 1935 Rang 97 (98) = 37 Cri L Jour 9 °° (1869) 12 Suth WR (Cr) 23 (24) (DB).

(7) A person making a false answer to a question under this section can be prosecuted under Section 182 of the Penal Code. AIR 1933 Pat 555 (555) = 34 Cri L Jour 1216 °° AIR 1929 Pat 4 (7) = 30 Cri L Jour 177 (DB) °° 1877 Rat 124 (126) (DB) °° AIR 1936 Sind 94 (97) = 37 Cri L Jour 870 (DB).
[See however AIR 1937 Rang 232 (233) = 38 Cri L Jour 980.]
[But see AIR 1914 Lah 360 (360) = 15 Cri L Jour 650 °° AIR 1935 Rang 97 (98) = 37 Cri L Jour 9.]

(8) A witness is not compelled to answer questions which would expose him to a charge of defamation. AIR 1948 Nag 243 (243) = ILR (1947) Nag 899 = 49 Cri L Jour 322.

8. Statements of witnesses under the section — Privilege. — (1) A statement made in answer to questions put by a police-officer under this section in the course of investigation is privileged and cannot be made the foundation of a charge for defamation. 1938-1 Mad L Jour 810 (812, 813) °° (1893) 16 Mad 235 (238).
[See however AIR 1948 Nag 243 (243) = ILR (1947) Nag 899 = 49 Cri L Jour 322 (DB).]
[But see AIR 1960 All 623 (624, 625) = 1960 Cri LJ 1296 = 1960 All LJ 109.]

(2) No action for damages lies against a person for what he states in answer to questions put to him under this section. (1901) 28 Cal 794 (797) (DB).
[See also AIR 1937 Sind 44 (47) (DB).]

9. Refusal to answer. — (1) A refusal to answer questions under this section

162. Statements to police not to be signed; use of such statements in evidence.—*[(1) No statement made by any person to a police-officer† in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872, and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

Section 161 — Note 9 (contd.)
is not an offence under Section 176, Section 179 or Section 187 of the Penal Code. 23 Mad 544 (546) (DB) °° 9 Cri L Jour 105 (106) = 1908 Pun Re (Cr) No. 27 (DB) °° AIR 1931 Rang 26 = 32 Cri L Jour 201 °° (1968) 9 Guj LR 187 (192).

SECTION 162 — SYNOPSIS

1. Scope and object.
2. "Statement," meaning of.
3. "Statement made to a police-officer."
4. Statements made by an accused to a police-officer.
5. Effect of this section on Section 27 of the Evidence Act.
6. Effect of this section on Section 8 of the Evidence Act.
7. Statements of approvers to the police.
8. "In the course of an investigation under this Chapter."
9. "If reduced into writing."
10. Statement not to be signed.
11. Proviso — Limited use of previous statements.
12. "Nor shall any such statement or any record thereof ...."
13. "At any inquiry or trial in respect of any offence under investigation at the time when such statement was made."
14. Application for copies — When to be made. (Omitted.)
15. Duty of Court to grant copies.
16. "On the request of the accused."
17. Contradicting witness under the section — Procedure.
18. Re-examination.
19. "Whether in a police-diary or otherwise."
20. Effect of admitting in evidence statements inadmissible under this section.
21. Effect of refusal to grant copies to accused.
22. Failure to observe provisions of this section — Effect.
23. "Dying declarations."

1. Scope and object. — (1) This section provides that no statement made by any person to a police-officer in the course of an investigation under this chapter shall be used for any purpose except by the accused and for the purpose of contradicting the witness as provided by Section 145 of the Evidence Act. AIR 1953 All 622 (654) = 1953 Cri L Jour 1400 (DB) °° AIR 1944 FC 38 (39) = 46 Cri L Jour 317 °° AIR 1926 Pat 20 (22) = 27 Cri L Jour 362 (DB) °° AIR 1935 All 717 (719) = 36 Cri L Jour 773 (DB) °° AIR 1934 Nag 198 (198) = 35 Cri L Jour 1463 °° (1969) 11 Orissa JD 71 (79).

(2) The application of Section 162 is not limited to the stage of investigation. AIR 1960 All 1 (18) = 1960 Cri LJ 1 = 1959 All LJ 651 (FB). (Reversed on another point in **AIR 1960 SC 1125.**)

(3) The statement must be made to a police-officer in the course of an investigation under Chapter XIV. AIR 1942 Cal 593 (596) = 44 Cri L Jour 145 (DB).

(4) The effect of the section is to limit considerably the provisions of the Evidence Act in regard to the matters covered by it. AIR 1951 Him Pra 28 (30) = 1952 Cri L Jour 267 °° AIR 1949 All 364 (366) = ILR (1949) All 697 = 50 Cri L Jour 561 (DB) °° AIR 1933 Pat 589 (592, 593) = 35 Cri L Jour 379 (DB) °° AIR 1926 Pat 232 (236, 237) = 27 Cri L Jour 484 (DB) °° (1910) 11 Cri L Jour 117 = 13 Oudh Cas 7 (DB) °° AIR 1927 Cal 372 (372) = 28 Cri L Jour 446 (DB) °° AIR 1927 Cal 17 (19) = 28 Cri L Jour 99 (DB) °° (1908) 32 Bom 111 (142) = 6 Cri L Jour 164 (FB) °° AIR 1944 Mad 385 (386) = 46 Cri L Jour 294 (DB) °° (1894) 16 All 207 (208) (DB) °° (1881) 7 Cal 121 (126) (FB) °° AIR 1933 Mad 372 (372) = 34 Cri L Jour 582.

(5) General provisions in Section 157, Evidence Act are controlled by this section which is a special provision. An information which may be used under Section 157, Evidence Act, would be admissible only for the limited purpose if it is

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of Section 32, clause (1) of the Indian Evidence Act, 1872, or to affect the provisions of Section 27 of that Act.]

[1882 — S. 162; 1872 — S. 119 Para. 3 and S. 121; 1861 — Ss. 145 and 147.]

[*] Substituted for the old S. 162 by the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), S. 22 (1-1-1956).

[†] By its Notifn. No. 577J dated 25-1-1956 as amended by Notifn. No. 1384J dated 24-2-1958 issued under S. 1 (2) of this Code, the State Government of West Bengal has extended Section 162 to the Commissioner of Police and the police in the town of Calcutta—see Cal. Gaz., 9-2-1956, Pt. I, page 463 and ibid, 6-3-1958, Pt. I, page 640.

OBJECTS AND REASONS

The Bill as originally introduced provided that Section 162 should be deleted. While substituting in 1955 a new Section 162 in place of the old one the Joint Committee observe: "The Committee feel that the deletion of this section will do away with the protection enjoyed at present by the accused against the prejudicial use of untruth-

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Section 162 — Note 1 (contd.)
hit by Section 162, Cr. P. C. AIR 1958 Mad 368 (371) = 1958 Cri L Jour 906 °° AIR 1960 Andh Pra 76 (78) = (1959) 1 Andh WR 419 = 1960 Cri LJ 208 (DB).

[See also AIR 1963 Guj 145 (147) = 4 Guj LR 5 = (1963) 2 Cri LJ 14 (DB).]

(6) The section protects persons from being pinned down to statements recorded by the police. AIR 1919 Mad 487 (498) = 20 Cri L Jour 354 (DB) °° AIR 1955 Pepsu 81 (86) = ILR (1954) Patiala 352 = 1955 Cri L Jour 983 (DB) °° AIR 1919 Upp Bur 38 (39) = 19 Cri L Jour 726 °° AIR 1968 Mad 117 (128, 129, 130) = 1968 Cri LJ 493 = (1968) 1 Mad LJ 480 (DB).

(7) This section and Section 161, in effect, contain legislative safeguards to protect an accused from over-zealous action of the police. The object of the section is to protect the accused from untruthful witnesses. AIR 1953 Bhopal 21 (Pr 11) = 1953 Cri L Jour 990 °° AIR 1959 SC 1012 (1020, 1021) = 1959 Cri L Jour 1231 °° AIR 1940 All 291 (299) = 41 Cri L Jour 647 (DB) °° AIR 1945 Nag 1 (5) = ILR (1945) Nag 151 = 46 Cri L Jour 448 (DB) °° AIR 1944 Pat 67 (70) = 45 Cri L Jour 624 (DB) °° AIR 1939 PC 47 (51) = 40 Cri LJ 364 °° AIR 1968 Mad 117 (129, 130) = (1968) 1 Mad LJ 480 = 1968 Cri LJ 493 °° AIR 1965 Bom 3 (4) = (1965) 1 Cri LJ 12 = 66 Bom LR 62.

(8) The section was conceived in an attempt to find a happy via media, namely, while it enacts an absolute bar against the statement made before a police-officer being used for any purpose whatsoever, it enables the accused to rely upon it for a limited purpose of contradicting a witness in the manner provided by Section 145 of the Evidence Act by drawing his attention to parts of the statement intended for contradiction. AIR 1959 SC 1012 (1023) = 1959 Cri L Jour 1231.

(9) Object of section is only to prevent misuse of proceedings and not to prevent disclosure of communications made to police — Question asked in cross-examination on matters in issue without making use of any statement made to police — Question cannot be disallowed on merely hypothetical ground that answer to it may result in divulging what witness may have told police. AIR 1967 All 373 (374, 375) = 1967 Cri LJ 978.

(10) The main intention of Section 162 is to bring out the contradiction in the statements made by the witnesses themselves before the Court and before the investigating officer. What the Police Officer's impression is about the statements is not really evidence, nor can it go to the record as such; only the statements of the witnesses recorded by him under Section 162, may be let in under the circumstances as described in that section. AIR 1956 Assam 187 (188) = 1956 Cri L Jour 1394 (DB).

(11) Section 162 refers to a statement made to a police officer. It must be made by any person who may ultimately be the accused. AIR 1965 Bom 3 (4) = (1965) 1 Cri LJ 12 = 66 Bom LR 62.

(12) The whole foundation of the procedure laid down in the first proviso to sub-section (1) of the section is the principle that a witness who makes inconsistent statements is unreliable. AIR 1947 Cal 192 (193) = ILR (1946) 2 Cal 339 = 47 Cri L Jour 814 (DB) °° 1970 Cri LJ 558 (561) (Raj).

(13) Object of section is only to prevent misuse of proceedings and not to prevent disclosure of communication made to police. AIR 1967 All 373 (375) = 1967 Cri LJ 978.

ful statements of witnesses recorded by over-zealous police officers. The effect of such an omission would be that the statements recorded by the police under sub-section (3) of Section 161 may be used by the prosecution both for the purpose of corroboration as well as of contradiction. They may be used for contradiction only and this right should be available both to the accused and the prosecution. As the prosecution is not entitled to cross-examine its own witnesses without the permission of the Court it has been specifically provided that the statement recorded by the police under sub-section (3) of Section 161 can be used by the prosecution for the purpose of contradiction with the permission of the Court......

"The restoration of Section 162 with the proviso that statements can never be used for the purpose of corroboration but for the purpose of contradiction ensures that the papers will be available both to the defence and to the prosecution. Normally, it is only the defence which is entitled to cross-examine. The prosecution can never cross-examine its witnesses without the permission of the Court and the permission is never given unless the witness is held to be hostile by the Court. Therefore, if the witness turns hostile the Court may permit him to be confronted with the statements that he made before the Court."—J. C. R., Gaz. Ind., 1954, Extra., Pt. II-Sec. 2, page 418.

Section 162 — Note 1 (contd.)

(14) The object of this section and Sections 173 (4) and 207-A (3) is to enable the accused to obtain a clear picture of the case against him. In other words it is to give him the fullest information in possession of the prosecution on which its case is based. 1970 Cri LJ 558 (561) (Raj).

(15) Violation of mandatory provisions of Sections 162 and 163 will not only impair the evidentiary value of statements recorded in contravention of the provisions but will also impair the evidence given on oath based an such statements. AIR 1968 Mad 117 (130) = 1968 Cri LJ 493 = (1968) Mad LJ 480.

(16) Statements made by prosecution witnesses before the investigating police officer being the earliest statements made by them with reference to the facts of occurrence are valuable material for testing the veracity of witnesses examined in Court. But if the police record becomes suspect or unreliable because of being deliberately perfunctory or dishonest it loses much of its value. **AIR 1956 SC 181 (187, 188) = 1956 Cri L Jour 345.**

(17) There is no inconsistency between the provisions of S. 207-A (6) and S. 162. Section 207-A (6) does not make the statements of witnesses recorded by police evidence in the case. The Magistrate only considers them for discharging or committing the accused. Secondly the prohibition in Section 162 with regard to these statements being qualified by the expression 'save as hereinafter provided', Section 207-A (6) may be taken as an exception in relation to Section 162. AIR 1956 Bom 695 (699) = ILR (1956) Bom 930 = 1956 Cri L Jour 1297 (DB) •• AIR 1958 Andh Pra 90 (93) = 1958 Cri L Jour 152.

[See also 1964 All WR (HC) 6 (8).]

(18) 'Evidence' in Section 207-A (6) and (7) does not include documents referred to in Section 173 — Magistrate can only question the accused with regard to circumstances disclosed against him in the documents — If Magistrate deems it necessary in the interests of justice, he can ask accused to explain circumstances appearing in documents referred to in Section 173 and record his statement — Such statement will be admissible under Section 287. AIR 1960 Bom 124 (125, 126) = 1960 Cri LJ 327 = 61 Bom LR 1173 (DB).

(19) Sections 161 and 162 do not conflict with Article 20 (3) of Constitution. AIR 1960 All 1 (18) = 1960 Cri LJ 1 = 1959 All WR (HC) 447 (FB). (Reversed on another point in **AIR 1960 SC 1125.**)

(20) A report of blood test submitted by the Chemical Examiner to a Police Officer does not become inadmissible in evidence by virtue of the provisions of Section 162 (1). Such a report can be proved under Section 510, by production of the document itself and the application of Section 162 (1) is expressly made subject to what is 'hereinafter provided' in the Code. The word "hereinafter" in Section 162 (1) is not restricted in its operation to Section 162 alone but applies to the body of the Code; to hold otherwise would be to introduce a patent inconsistency between Section 207-A and Section 162. **AIR 1963 SC 1531 (1542) = 1963 (2) Cri LJ 418 = (1964) 1 SCR 926.**

[See also AIR 1957 Andh Pra 286 (288) = 1957 Cri LJ 830.]

(21) Provisions of Section 162 do not require different interpretation with respect to provisions of Prevention of Corruption Act. AIR 1969 Andh Pra 271 (276) = 1969 Cri LJ 1016 = (1969) 2 Andh WR 281 (DB).

(22) In a case instituted on private complaint, and governed by Sections 252 to 259, Cr. P. C. the right given to accused

Section 162 — Note 1 (contd.)

under Section 162, Cr. P. C. is sufficient to safeguard interest of complainant. AIR 1970 SC 962 (966).

2. "Statement," meaning of. — (1) The word "statement" in this section means narration addressed to a police officer by some other person. AIR 1949 All 483 (488) = ILR (1951) 1 All 12 = 50 Cri L Jour 719 (FB) °° AIR 1958 Tripura 1 (8) = 1958 Cri L Jour 97. (Information recorded by police officer on basis of his own information — Not a statement.)

(2) The section applies only to a statement and if what is recorded does not amount to a statement of a witness, the record is privileged and the accused is not entitled to a copy thereof. AIR 1935 Sind 145 (175, 176) = 36 Cri L Jour 1161 (DB) °° AIR 1953 Cal 602 (604) = 1953 Cri L Jour 1377 (DB).

(3) The word "statement" in this section includes both oral and written statements. AIR 1938 Mad 893 (894) = 40 Cri L Jour 108 °° AIR 1928 Mad 1028 (1032) = 29 Cri L Jour 1098 (DB). (AIR 1925 Mad 579 = 26 Cri L Jour 721, **Overruled.**) °° AIR 1935 Sind 145 (172) = 36 Cri L Jour 1161 (DB).

(4) A statement, not only includes what is expressly stated therein but also what is necessarily implied therefrom. AIR 1959 SC 1012 (1023) = 1959 Cri L Jour 1231.

(5) Statement also includes signs and gestures. AIR 1943 Cal 644 (646) = 45 Cri L Jour 258 (DB) °° AIR 1926 Rang 112 (113) = 27 Cri L Jour 658.

(6) A list of stolen properties supplied to the police during investigation is a "statement" within the meaning of this section. AIR 1952 Pepsu 103 (104) = ILR (1952) Patiala 273 = 1952 Cri L Jour 1049 °° AIR 1952 Vind Pra 42 (48) = 1952 Cri L Jour 98 °° AIR 1951 Him Pra 1 (5) = 52 Cri L Jour 50 °° AIR 1949 East Punj 361 (364) = 51 Cri L Jour 177 °° AIR 1949 East Punj 315 (317) = 50 Cri L Jour 794 °° AIR 1929 Cal 448 (448) = 31 Cri L Jour 127 (DB) °° (1912) 13 Cri L Jour 244 (245) (DB) (Mad).

[See also AIR 1949 All 364 (366) = ILR (1949) All 697 = 50 Cri L Jour 561.]

[But see AIR 1943 All 216 (217) = 44 Cri L Jour 555.]

(7) English translations of Tamil statements are also 'statements' within this section. AIR 1957 Mad 505 (507) = 1957 Cri L Jour 863 (DB).

(8) 'Statement' will not include the record of a search made by the police or signatures taken on blank paper for the purpose of comparison. AIR 1925 Mad 574 (576) = 26 Cri L Jour 840 (DB) °° AIR 1959 Bom 408 (413) = ILR (1959) Bom 865 = 1959 Cri L Jour 1057 (DB) °° AIR 1959 Mys 185 (187) = 1959 Cri L Jour 881 (DB) °° AIR 1932 Bom 406 (409) = 33 Cri L Jour 666.

[See however AIR 1943 Cal 644 (645, 646) = 45 Cri L Jour 258 (DB).]

(9) In an investigation with regard to a charge of conspiracy to defraud the Government by misappropriating various sums, complaints made by various persons as to fresh instances of embezzlement are not statements coming under this section. AIR 1945 Mad 284 (286) = ILR (1946) Mad 219 = 47 Cri L Jour 149 (DB).

(10) Statement in Section 162 is the entirety of facts stated by a witness to the police officer during investigation. All these facts whenever and wherever stated go to constitute the statement. AIR 1958 Mys 138 (140) = ILR (1958) Mys 121 = 1958 Cri L Jour 1205 °° AIR 1967 Goa 60 (65) = 1967 Cri LJ 746 (DB).

(11) Identification of a person amounts to a statement within this section and, therefore, the fact of such identification is not admissible in evidence in the usual course. AIR 1921 All 215 (216) = 27 Cri L Jour 813 (DB) °° AIR 1940 Cal 182 (183) = 41 Cri L Jour 405 (DB) °° (1939) 43 Cal WN 1180 (1181) (DB) °° AIR 1935 Cal 311 (311, 312) = 36 Cri L Jour 1470 (DB) °° (1947) 48 Cri L Jour 804 (807) (DB) (Cal) °° AIR 1950 Mys 44 (50) = ILR (1951) Mys 1 = 51 Cri L Jour 1097 (FB).

[But see AIR 1939 Cal 176 (176) = 40 Cri L Jour 240 (DB). (AIR 1935 Cal 311 = 36 Cri L Jour 1470, **Dissented from.**) °° AIR 1941 Mad 675 (676) = 42 Cri L Jour 848 (DB) °° 1936 Mad WN 177 (179) (DB) °° AIR 1929 Nag 36 (38) = 29 Cri L Jour 963 °° AIR 1920 Pat 334 (343) = 21 Cri L Jour 257 (DB).]

(12) A distinction is to be made between the actual fact of identification which is mental act on the part of the identifying witness and the communication of the mental act of recognition to the police. The communication of mental act of identification is of course a statement and is hit by this section. But the mental act of identification cannot amount to a statement and the evidence in Court subsequently by the actual identifier himself is not inadmissible under this section. AIR 1952 All 59 (61) = 1952 Cri L Jour 265 (DB) °° AIR 1949 Cal 514 (516) = ILR (1945) 2 Cal 513 = 48 Cri L Jour 804 (DB).

[See also 1968 All WR (HC) 344 = 1968 All Cri R 224 (226).]

(13) The physical fact of identification has no separate existence apart from the statement involved in the very process of identification and in so far as a police officer seeks to prove the fact of such identification such evidence of his would attract the operation of Section 162 and would be inadmissible in evidence, the only exception being the evidence sought to be given by the identifier himself in

Section 162 — Note 2 (contd.)
regard to his mental act of identification which he would be entitled to give by way of corroboration of his identification of the accused at the trial. **AIR 1955 SC 104 (114) = 1955 SCR 903 = 1955 Cri L Jour 196.** (AIR 1943 Cal 644 = 45 Cri L Jour 258; AIR 1949 Cal 514 = ILR (1945) 2 Cal 513 = 48 Cri L Jour 804 = AIR 1952 All 59 = 1952 Cri L Jour 265, **Approved;** AIR 1941 Mad 675 = 42 Cri L Jour 848; 1936 Mad WN 177 and AIR 1929 Nag 36 = 29 Cri L Jour 963 **Not approved.**) °° AIR 1956 Mad 536 (540) = 1956 Cri L Jour 1202 (DB) °° 1937 AMLJ 18 (22, 23) °° AIR 1962 Raj 3 (8) = 1962 (1) Cri LJ 82 = 1961 Raj LW 441 (DB).

(14) If after arranging the parade Police leave the field and allow identification to be made under exclusive direction and supervision of panch witnesses, the statements of identifying witnesses would be outside the purview of this section. **AIR 1956 SC 526 (528)** = 1956 Cri **L Jour 930 °° AIR 1955 SC 104** (115) = **1955 SCR 903 = 1955 Cri L Jour** 196 °° AIR 1956 Mad 536 (540) = 1956 Cri L Jour 1202 (DB) °° (1965) 3 Law Rep 630 (644) (DB) °° AIR 1963 Madh Pra 106 (113) = (1963) 1 Cri LJ 433 = 1962 MPLJ 1064 (DB).

(15) Magistrate third class holding parade — Statements of identifying witnesses made to him are admissible — Section 164 is no bar. AIR 1965 Madh Pra 225 (230, 231) = 1967 MPLJ 69 = 1965 (2) Cri LJ 507 (DB). (Cri. A. No. 218 of 1963, D/- 17-1-1964 (MP) and Cr. A. No. 35 of 1964, D/- 10-7-1964 (MP), **Overruled.**)

(16) Identification of stolen property by a witness during the police investigation cannot be proved under this section. AIR 1943 Cal 644 (645) = 45 Cri L Jour 258 (DB).

[See (1967) Mys LJ (Crl) 278 = 10 Law Rep 303 (307).]

(17) A mediator's report containing the record of the proceedings at an identification parade is not admissible in evidence. AIR 1941 Mad 675 (676) = 42 Cri L Jour 848 (DB).

(18) A witness may say in Court what he saw or did during police investigation. AIR 1952 All 59 (61) = 1952 Cri L Jour 265 (DB) °° AIR 1940 Sind 168 (171, 172) = 41 Cri L Jour 924 (DB).

3. "Statement made to a police-officer."— (1) This section applies only to a statement made to a police officer. AIR 1944 Cal 243 (243) = 46 Cri L Jour 28 (DB) °° AIR 1958 Mad 31 (33) = ILR (1957) Mad 1259 = 1958 Cri L Jour 52 °° AIR 1957 Andh Pra 81 (82) = 1957 Cri L Jour 623 °° AIR 1948 Mad 39 (40) = 48 Cri L Jour 983 °° AIR 1946 Mad 430 (431) = 47 Cri L Jour 865 (DB) °° AIR **1939 PC 47 (52) = 40 Cri L Jour 364** °° AIR 1965 Guj 302 (306, 307) = (1964) 5 Guj LR 897 = 1965 (2) Cri LJ 753.

(2) It is incorrect to say that the expression 'statement made to a police officer', given their ordinary connotation, would only indicate that the statement must be addressed or directed to police officer and imply only an intention on the part of that person to communicate contents thereof to police officer and nothing further. AIR 1965 Guj 302 (307) = (1965) 2 Cri LJ 753 = (1964) 5 Guj LR 897.

(3) A statement is made to such person or persons only as are intended to be addressed, i.e., for whom the communication is meant and not to all those who may happen to overhear it. AIR 1949 All 483 (488) = ILR (1951) 1 All 12 = 50 Cri L Jour 719 (FB) °° **AIR 1968 SC 147 (150) = 1968 Cri LJ 103** = (1967) 2 **SCWR 934** = (1967) 3 SCR 720 °° AIR 1965 Bom 3 (4, 5, 6) = 1965 (1) Cri L Jour 12 = 66 Bom LR 62. (Offence under Sec. 165-A Penal Code — Trap laid — Use of tape recorder to record conversation between accused and complainant — Recorder kept in inner room — Police officer also in inner room — Mike kept hidden in outer room — Accused not aware of police officer or that his conversation was being tape-recorded — Conversation recorded by machine is not hit by Section 162.) °° AIR 1965 Guj 302 (307, 308, 309) = (1965) 2 Cri LJ 753 = 5 Guj LR 897 °° 1959 BLJR 494 (499).

(4) A statement made to a third person in the presence of a police-officer is not within this section. AIR 1944 Sind 38 (43) = 45 Cri L Jour 393 (DB) °° AIR 1944 Pat 67 (70) = 45 Cri L Jour 624 (DB).

(5) It is a question of fact in each case whether the statement is made to the police or to a third person. AIR 1940 Lah 129 (147) = 41 Cri L Jour 591 (FB) °° **AIR 1954 SC 322 (333, 334) = 1954 Cri L Jour 910 = 1954 SCR 1098.**

(6) Where a Magistrate was directed by the District Magistrate to witness a trap set up for catching a bribe-taker and to prepare a report of the case and to make it over to a police-officer who investigated the case, the report was held not to amount to a statement made to the police officer. AIR 1949 All 483 (489) = ILR (1951) 1 All 12 = 50 Cri L Jour 719 (FB).

(7) Prosecution for offence under Section 161 Penal Code and Section 5 (1) (d) read with Section 5 (2) of Prevention of Corruption Act — Explanatory statement, if any, made by accused to police after acceptance of money by accused from trap witness is hit by Section 162 and trial Judge should not allow any question with regard to furnishing or non-furnishing of explanation by accused to police and much less advert to it for purpose of arriving at inference adverse to accused. AIR 1969

Section 162 — Note 3 (contd.)

Andh Pra 271 (275) (DB) = 1969 Cri LJ 1016 = (1969) 2 Andh WR 281.

(8) A statement made not to a police-officer but to a person assisting the police in the investigation of a case does not come within this section. AIR 1940 Lah 129 (147) = 41 Cri L Jour 591 (FB).

(9) Statements recorded in the presence of Investigating officer by Assistant Sales-tax officer who was merely assisting investigation — Statements are hit by Sec. 162. (1960) 2 Orissa JD 285 (301, 302).

(10) A statement of a police-officer recorded by himself in his diary at the scene of occurrence is not a statement coming under this section. AIR 1944 Cal 243 (243) = 46 Cri L Jour 28 (DB) °° 1936 Mad WN 177 (179) (DB).

(11) Customs officials are not police-officers within the meaning of this section. AIR 1950 Sind 14 (15) = ILR (1948) Kar 135 = 51 Cri L Jour 901 °° **AIR 1970 SC 1065 (1070) = 70 Bom LR 231 = 1968 Cri LJ 1617** °° AIR 1968 Bom 433 (438) (DB).

[See also AIR 1952 Mad 299 (299) = 1952 Cri L Jour 640 °° 1952 Mad WN 364 (364).]

[But see AIR 1953 Cal 219 (221) = 1953 Cri L Jour 552 (DB).]

(12) If a draftsman, after ascertaining the distances from the witnesses, takes measurements and prepares a sketch map of the place of occurrence and further if the witnesses corroborate his statement that they showed him the places, it is legal evidence and is admissible. Even if the Court rules out under Section 162 what the witnesses told the police officers as inadmissible, there is no such bar to the evidence given by the draftsman. **AIR 1956 SC 526 (528) = 1956 Cri L Jour 930.** (Majority view — 57 Pun LR 379, **Reversed.**) °° (1964) 5 Guj LR 366 (368) = ILR 1964) Guj 428 (DB).

4. Statements made by an accused to a police-officer.— (1) The words of Sec. 162 are wide enough to include a confession made to police officer in the course of an investigation. **AIR 1966 SC 119 (123) = (1966) 1 SCR 134 = 1966 Cri L Jour 100** °° AIR 1969 Goa 68 (72) = 1969 Cri LJ 739 °° AIR 1965 Guj 302 (309) = (1965) 2 Cri LJ 753 = 5 Guj LR 897 (DB).

(2) Where a statement to a police-officer is a confession by an accused person, it is, independently of this section, inadmissible in evidence against the accused under Section 25, Evidence Act. AIR 1952 Mad 586 (588, 589) = 1952 Cri L Jour 1240 (DB) °° AIR 1954 All 127 (128) = 1954 Cri L Jour 228 °° AIR 1953 Mad 917 (920) = ILR (1954) Mad 57 = 1953 Cri L Jour 1693 (DB) °° AIR 1952 Pepsu 98 (99) = ILR (1952) Pepsu 186 = 1952 Cri L Jour 1090 (DB) °° AIR 1929 All 855 (856) = 30 Cri L Jour 867 (DB) °° AIR 1923 Bom 65 (65, 66) = 24 Cri L Jour 870 °° AIR 1919 Lah 466 (469) = 20 Cri L Jour 83 (DB)

[See also AIR 1953 All 110 (113) = 1953 Cri L Jour 340.]

(3) Judicial confession — Admissible without examining Magistrate before whom it was made. AIR 1969 Orissa 289 (292) = 1969 Cri LJ 1517 = 35 Cut LT 362 (DB).

(4) This section applies also to the statements of accused persons. **AIR 1939 PC 47 (51) = 40 Cri L Jour 364 °° AIR 1954 SC 322 (332) = 1954 Cri L Jour 910 = 1954 SCR 1098** °° AIR 1957 Orissa 39 (42) = ILR (1957) Cut 63 = 1957 Cri L Jour 384 (FB) °° AIR 1931 Bom 311 (312) = 32 Cri L Jour 1077 (DB) °° AIR 1932 Mad 391 (398) = 33 Cri L Jour 418 (FB) °° 1969 Cri L Jour 1172 (1173) = 35 Cut LT 94 (DB) °° AIR 1967 Goa 21 (27) = 1967 Cri LJ 357 (FB).

[See also **AIR 1949 PC 103 (104) = 50 Cri L Jour 340.**]

(5) Where an accused stated that he had thrown the murder weapon in the well near his shop and when the weapon was recovered, was stated to have admitted further that it was the same one which he had thrown in the well and a part of it was cut by him, on the question of admissibility of statement in evidence against accused, it was held that no clear inference as to guilt of accused could be drawn from fact of recovery of weapon. AIR 1966 All 142 (149) = 1966 Cri LJ 369 (DB).

(6) An incriminating statement not amounting to confession made by the accused to the police officer before the commencement of the investigation is not hit by this section and therefore is admissible in evidence. AIR 1956 Cal 82 (85) = 1956 Cri L Jour 509 (DB).

(7) A person proceeded against under Section 109 (security proceedings) is not accused of any offence and, hence, a statement made by such a person to the police is not inadmissible against him under this section. AIR 1950 All 134 (142) = ILR (1950) All 935 = 51 Cri L Jour 436.

(8) **Held:** the statement of an accused to police, in the instant case examined in the light of Sections 17, 25 and 27 of Evidence Act divided itself into three parts — First was introductory to relevant fact referring to motive, opportunity and description leading to crime, second part related to commission of actual crime and the third related to after events as to his conduct and his confessional statement leading to discovery of certain facts —

Section 162 — Note 4 (contd.)
Second part is inadmissible in evidence under Sec. 25 — Whole F. I. R. need not be excluded from consideration. AIR 1964 Pat 210 (213) = (1964) 1 Cri LJ 528 (DB).

5. Effect of this section on Section 27 of the Evidence Act. — (1) The effect of the amendment of sub-section (2) by the addition of words to the effect that this section shall not affect the provisions of Section 27 of the Evidence Act is that statements which come under both these sections may be proved as against the person making it subject to the limitations prescribed by Section 27 of the Evidence Act. AIR 1951 Him Pra 28 (29) = 1952 Cri L Jour 267 °° AIR 1954 All 687 (688) = 1954 Cri L Jour 1445 °° AIR 1945 Cal 137 (141) = 46 Cri L Jour 580 = ILR (1944) 2 Cal 76 (DB) °° AIR 1946 Nag 120 (125) = 47 Cri L Jour 441 = ILR (1945) Nag 931 (942) (DB) °° 1966 All LJ 1145 (1152) = 1967 All WR (HC) 41.

[See also AIR 1952 Him Pra 68 (71) = 1952 Cri L Jour 1495.]

(2) Provisions of Section 27, Evidence Act and those of Section 162 (2), in so far as they relate to Section 27, Evidence Act do not offend against Article 14 of the Constitution. **AIR 1960 SC 1125 (1132) = (1961) 1 SCR 14 = 1960 Cri LJ 1504.** (AIR 1960 All 1 (FB), Reversed.)

(3) In judging whether a statement made by an accused in F. I. R. amounts to a confession or not, it has, first, to be seen whether it is self-inculpatory as a whole or whether it contains some exculpatory matter relating to a fact which, if true, would establish his innocence. Secondly, it has to be considered whether the portion of the statement sought to be relied upon is severable from rest of statement which is self-inculpatory. AIR 1964 All 447 (449) = 1964 All LJ 285 = (1964) 2 Cri LJ 372 (DB).

(4) If the first information report made by an accused person contains facts relating to motive, preparation and opportunity to commit the crime with which he is charged, and facts stated therein are self-inculpatory in the sense that the narrative describing relations between accused and deceased gives motive for the crime with which accused is charged, the whole statement must be treated as a confession made to police officer and would be hit by Section 25, Evidence Act. AIR 1964 All 447 (449) = 1964 All LJ 285 = (1964) 2 Cri LJ 372.

(5) A narrative disclosing strained relations between accused and deceased and referring to an event that occurred several days before occurrence in F. I. R. given by accused, being a statement disclosing motive for crime is inadmissible under Section 25, Evidence Act. AIR 1964 All 447 (450) = (1964) 2 Cri LJ 372 = 1964 All LJ 285 (DB).

(6) A record of a confession which leads to the discovery of stolen properties would be admissible in evidence to the extent specified in Section 27 of the Evidence Act. AIR 1943 Mad 710 (710) = 45 Cri L Jour 171 °° (1946) 21 Luck 56 (88, 89) (DB) °° AIR 1965 Raj 238 (240) = 1965 (2) Cri LJ 805 = 1965 Raj LW 289.

(7) If a statement falling under this section does not come within the purview of Section 27, Evidence Act, it cannot be admitted in evidence by circumventing the provisions of this section. AIR 1951 Him Pra 28 (30) = 1952 Cri L Jour 267.

[See also AIR 1952 Mad 535 (537) = 1952 Cri L Jour 1150 (DB).]

(8) Where the accused stated that he had thrown the murder weapon in the well near his shop and when the weapon was recovered was stated to have admitted further that it was the same one which he had thrown in the well and a part of it was cut by him, on the question of admissibility of statement in evidence against accused, it was held that no clear inference as to guilt of accused could be drawn from facts of recovery of weapon as latter part of accused's statement as to identity of weapon and that he had cut part of that weapon was inadmissible in evidence as no statement subsequent to recovery was covered by Section 27 of Evidence Act. AIR 1966 All 142 (149) = 1966 Cri LJ 369 (DB).

(9) There can be no joint discovery and no joint statement. A statement can be made only by one person at a time. Similarly, discovery can be made only by one person at a time. ILR (1963) Guj 955 (955).

(10) Information given by two accused separately leading to discovery of stolen property — Subsequent discovery of stolen property must be taken to have been made in pursuance of statement of accused who gave information — Statement of second accused who gave information later is inadmissible in evidence under Section 162 as it does not come under Section 27, Evidence Act. AIR 1954 Kutch 22 (23) = 1954 Cri L Jour 801.

6. Effect of this section on Section 8 of the Evidence Act. — (1) The prohibition contained in this section extends even to statements which are admissible as evidence of conduct. AIR 1943 Mad 527 (528) = 44 Cri L Jour 766 °° AIR 1951 Him Pra 28 (30) = 1952 Cri L Jour 267.

[But see AIR 1932 Mad 391 (406) = 33 Cri L Jour 418 (FB) °° AIR 1935 Mad 479 (482) = 36 Cri L Jour 1107 (DB).]

(2) The conduct of the accused in disclosing the places where certain articles were concealed and producing such articles is admissible under Section 8, Evidence

Section 162 — Note 6 (contd.)
Act. AIR 1946 Nag 120 (125, 126) = 47 Cri L Jour 441 = ILR (1945) Nag 931 (942) (DB).

7. Statements of approvers to the police. — (1) A statement by an approver to a police-officer in the course of an investigation comes within the provisions of this section. AIR 1924 All 207 (208) = 25 Cri L Jour 490 °° AIR 1925 Cal 161 (163) = 26 Cri L Jour 307 (DB) °° AIR 1928 Lah 257 (257) = 29 Cri L Jour 348 (DB) °° AIR 1930 Pat 510 (512) = 31 Cri L Jour 1123.

(2) The discrepancies between the statements of a witness and the approver cannot be explained by referring to the evidence of the approver made before the police during investigation. AIR 1934 Lah 102 (103) = 35 Cri L Jour 517.

8. "In the course of an investigation under this Chapter." — (1) It is only a statement made in the course of an investigation that is prohibited from being used in evidence. **AIR 1939 PC 47 (52) = 40 Cri L Jour 364** °° AIR 1959 Cal 342 (347) = 1959 Cri L Jour 694 (DB) °° AIR 1939 Cal 330 (330) = 40 Cri L Jour 665 (DB) °° AIR 1939 Mad 780 (780) = 40 Cri L Jour 922 °° AIR 1937 Cal 309 (311) = 38 Cri L Jour 1067 (DB) °° AIR 1968 Mad 117 (127, 128) = 1968 Cri LJ 493 = (1968) 1 Mad LJ 480 (DB) °° 66 Punj LR 877 (880, 881) = 1965 Cri LJ 846 (848).

(2) A statement made to a police-officer before the investigation began or after the investigation has ended does not fall within this section. AIR 1952 Him Pra 81 (88) = 1952 Cri L Jour 1720 °° AIR 1959 Bom 534 (535) = ILR (1959) Bom 1244 = 1959 Cri L Jour 1419 (DB) °° AIR 1959 Mys 185 (187) = 1959 Cri L Jour 881 (DB) °° AIR 1958 Mad 368 (372) = 1958 Cri L Jour 906 °° AIR 1958 Tripura 1 (8) = 1958 Cri L Jour 97 °° AIR 1956 Cal 82 (85) = 1956 Cri L Jour 509 (DB) °° AIR 1919 All 483 (499) = ILR (1951) 1 All 12 = 50 Cri L Jour 719 (FB) °° AIR 1936 Rang 455 (456) = 37 Cri L Jour 1137 (DB) °° (1959) 25 Cut LT 436 (440) (DB) °° AIR 1965 Ker 248 (251) = 1965 (2) Cri LJ 647 = 1965 Ker LJ 412 (DB) °° 1964 Jab LJ 179 (182, 183) = ILR (1965) Madh Pra 657 (DB) °° AIR 1964 Pat 210 (212, 213) = (1964) 1 Cri LJ 528 (DB) °° 1959 BLJR 494 (499).

(3) The first information as to the commission of an offence is a statement made before the investigation begins and is admissible in evidence. ILR (1952) 2 Raj 590 (593) °° AIR 1952 Him Par 81 (88) = 1952 Cri L Jour 1720 °° AIR 1950 Pat 44 (46) = 28 Pat 762 = 51 Cri L Jour 331 °° AIR 1942 Oudh 60 (68) = 43 Cri L Jour 115 °° AIR 1948 Pat 62 (65) = 26 Pat 49 = 48 Cri L Jour 565 (DB) °° AIR 1939 Mad 66 (69) = 40 Cri L Jour 308 (DB) °° AIR 1936 Pat 11 (12) = 36 Cri L Jour 235 (DB) °° AIR 1935 Pesh 165 (167) = 37 Cri L Jour 225 (DB) °° AIR 1933 Bom 266 (269) = 34 Cri L Jour 870 (DB) °° AIR 1931 Oudh 83 (83) = 32 Cri L Jour 630 (DB) °° AIR 1931 Oudh 74 (75) = 31 Cri L Jour 1017 (DB) °° AIR 1928 Mad 791 (792) = 29 Cri L Jour 717 (DB) °° AIR 1965 Cal 89 (94) = 1965 (1) Cri LJ 160 (DB) °° AIR 1965 Cal 348 (351) = 1965 (2) Cri LJ 79 (DB) °° AIR 1964 Pat 210 (213) = (1964) 1 Cri LJ 28 (DB).

[See also AIR 1940 All 291 (299) = 41 Cri L Jour 647 (DB) °° AIR 1939 Cal 32 (33) = 40 Cri L Jour 290 (DB) °° AIR 1949 All 291 (300) = ILR (1949) All 658 = 50 Cri L Jour 498 (DB).]

(4) It is now well settled that the first information report is not substantive evidence in the case. It is never per se a statement of the case of the prosecution. (1967) 2 Andh WR 237 (241) = 1967 Mad LJ (Cri) 715 (DB).

(5) Statements in F. I. R. can only be used for purpose of contradicting or corroborating a witness and for no other purpose. (1967) 2 Andh WR 237 (241) = 1967 Mad LJ (Cri) 715 (DB).

(6) Informant giving two statements at police station at different times — Subsequent statement cannot be taken into account as F. I. R. to corroborate the evidence of informant — Subsequent statement was held to be recorded in the course of investigation as contemplated under Section 662. 1961 Pat LR 60 (66) (DB).

(7) A statement made to a police-officer while acting under Section 174 is one in the course of investigation and is inadmissible under this section. AIR 1952 Trav-Co. 300 (304) = ILR (1952) Trav-Co 261 = 1952 Cri L Jour 1290 (DB) °° AIR 1955 Trav-Co 6 (7) = ILR (1954) Trav-Co 1200 = 1955 Cri L Jour 122 (DB) °° AIR 1954 Trav-Co 282 (285) = ILR (1953) Trav-Co 841 = 1954 Cri L Jour 658 (DB) °° AIR 1950 Cal 165 (166) = 51 Cri L Jour 680 °° AIR 1950 Trav-Co 20 (Pr. 9) 51 Cri L Jour 833 (DB) °° AIR 1927 Mad 512 (512) = 28 Cri L Jour 463.

[But see AIR 1933 Cal 861 (863) = 35 Cri L Jour 530 (DB).]

(8) P. W. 5 reported the commission of a cognizable offence at the police outpost. It was Ext. 12. Ext. 14 was the report sent by the constable on the basis of that information which was entered in the station diary. Ext. 14 also showed that a cognizable offence was committed.

Held that Ext. 12 was a statement which came under Section 162, and was not admissible in evidence. ('59) 25 Cut LT 107 (115).

(9) The words 'in the course of an investigation' mean in the course of an investigation made after the police-officer decides

Section 162 — Note 8 (contd.)
to act under Section 156, his action under Ss. 154 and 155 including recording of questions and answers in elucidation of first information report is not 'in the course of an investigation.' AIR 1951 Assam 151 (159) = ILR (1951) 3 Assam 439 = 52 Cri L Jour 1457 (DB) °° AIR 1950 Pat 44 (45) = 28 Pat 762 = 51 Cri L Jour 331 (DB) °° AIR 1965 Guj 143 (144) = 1965 (1) Cri LJ 696 = (1964) 5 Guj LR 834 (DB).

(10) For a statement to come within the purview of Section 162, it must not merely be made during the period of investigation but also in the course of investigation. The two things, that is 'the period of investigation' and 'course of investigation' are not synonymous. Section 162 is aimed at statements recorded by a police officer while investigating into an offence. The statement sought to be excluded from evidence must be ascribable to the enquiry conducted by the investigating officer and not one which is de hors the enquiry. (1963) 2 SCR 433= 1964 (1) Cri LJ 564 (566) (SC).

(11) An investigation does not start by the mere lodging of a first information report. It commences only when a step in the ascertainment of the actual offence and of the culprits thereof is taken. AIR 1949 All 364 (366) = ILR (1949) All 697 = 50 Cri L Jour 561 (DB) °° AIR 1957 Madh B 33 (37) = 1957 Cri L Jour 179 °° 1957 Jab LJ 1074 (1076) °° AIR 1969 Goa 68 (72) = 1969 Cri LJ 739. (Statement made by complainant in investigation after F. I. R. was lodged under S. 154 — It is hit by S. 162.)

(12) The mere fact that an investigating officer starts from the police-station to the scene of occurrence is not commencement of the investigation. AIR 1952 Him Pra 81 (88) = 1952 Cri L Jour 1720 °° AIR 1959 J & K 105 (107) = 1959 Cri L Jour 1168 °° AIR 1957 Madh B 33 (37) = 1957 Cri L Jour 179 °° 1957 Jab LJ 1074 (1076) °° AIR 1949 All 364 (366) = ILR (1949) All 697 = 50 Cri L Jour 56.

(13) An investigation may commence even when Police officer who acquired information about an offence proceeds to the spot where offence is stated to have been committed with the purpose of collecting information and gathering evidence about occurrence. The real question is whether information transmitted to him is sufficiently full so as to justify inference that the purpose for which police officer goes there is to make an investigation. (1965) 3 Law Rep 630 (636, 637) (DB).

(14) If during the interval between the first information to the police and taking of some step in the nature of investigation some information (supplemental to the first information is lodged with the police, it need not necessarily be considered to be a statement made during the course of investigation. AIR 1949 All 364 (366) = ILR (1949) All 697 = 50 Cri L Jour 561 (DB) °° AIR 1959 J & K 105 (107) = 1959 Cri L Jour 1168 °° AIR 1957 Madh B 33 (37) = 1957 Cri L Jour 179 °° 1957 Jab LJ 1074 (1076) °° (1968) 34 Cut LT 1077 (1085) °° ILR (1959) 9 Raj 107 (116) = 1959 Raj LW 196 (DB).

[See also AIR 1951 Assam 151 (159) = ILR (1951) 3 Assam 439 = 52 Cri L Jour 1457 (DB).]

(15) If investigation has already commenced by the time the report comes to be recorded, then the statement even though referred to police authorities as first information report is nothing more than a statement recorded in course of investigation and would be governed by Section 162 Cri. P. C. It cannot be used for purpose of corroborating maker of that statement. AIR 1965 Guj 319 (320) = 1965 (2) Cri LJ 762 = (1964) 5 Guj LR 591 (DB).

(16) The words "in the course of" in the context of this section import that the statement must be made as a step in a pending investigation to be used in that investigation and do not refer to the period of time between beginning and end of investigation. AIR 1940 All 291 (300) = 41 Cri L Jour 647 (DB) °° AIR 1957 All 755 (758) = ILR (1957) 1 All 479 = 1957 Cri L Jour 1200 (DB). (AIR 1931 Cal 745, **Dissented from.**)

[See also AIR 1952 Him Pra 81 (88) = 1952 Cri L Jour 1720.]

(17) First information report is not substantive evidence — Judge cannot place such report before jury as substantive evidence — Report not being first complaint by informant — Same cannot be relied upon except to the extent permitted by proviso to Section 162 i. e., to contradict the informant with reference to any particular statement therein. **AIR 1960 SC 391** (395) = (1960) Cri LJ 532 °° AIR 1965 Orissa 31 (32) = 30 Cut LT 517 = 1965 (1) Cri LJ 315.

(18) The question whether a statement was recorded in the course of an investigation or not is a question of fact. AIR 1956 Andhra 103 (104) = 1956 Cri L Jour 578 °° AIR 1956 Trav-Co 83 (84) = 1956 Cri L Jour 274 (DB) °° AIR 1955 Cal 177 (181) = 1955 Cri L Jour 657 °° AIR 1958 Mad 368 (372) = 1958 Cri L Jour 906 °° ILR (1951) 1 Cal 539 (545) (DB) °° AIR 1965 Guj 143 (144) = 1965 (1) Cri LJ 696 = 5 Guj LR 834 (DB) °° 1962 Mad LJ (Cri) 345 (350, 351) (Mys) (DB) °° AIR 1969 Andh Pra 271 (275) = 1969 Cri LJ 1016 = (1969) 2 Andh WR 281 (DB) °° (1968) 1 Andh WR 94 (99) = 1968 Mad LJ (Cri) 75 °° AIR 1968 Mad 117 (126, 128) = 1968 Cri LJ 499 = (1968) 1 Mad LJ 480 °° AIR 1964 Tripura 45 (48) = 1964 (2) Cri LJ 213.

Section 162 — Note 8 (contd.)

[See also AIR 1951 Him Pra 1 (5) = 52 Cri L Jour 50 °° AIR 1942 Cal 593 (597) = 44 Cri L Jour 145 (DB) °° AIR 1941 Rang 209 (212) = 43 Cri L Jour 157 (DB) °° AIR 1945 Mad 284 (286) = ILR (1946) Mad 219 = 47 Cri L Jour 149 (DB) °° AIR 1945 Cal 159 (166) = 46 Cri L Jour 692 (DB).]

(19) Person lodging first information report subsequently accused of the offence and tried — Report not a confessional one but containing admission of facts by accused — It is not a statement made to police officer during the course of investigation — Admission can be proved against him. **AIR 1964 SC 1850 (1853) = 1964 (2) Cri LJ 744 = (1964) 6 SCR 312.**

(20) Recovery memo of the personal search signed by witnesses — The facts regarding the recovery recorded by Sub-Inspector of Police cannot be regarded as statements made by witnesses and recorded by him under Section 161 — Not rendered inadmissible in evidence under Section 162. 65 Punj LR 745 (746) = 1963 Cur LJ 349 (Punj) (DB).

(21) First information report based on statement of prosecution witness given subsequent to the complaint and dying declaration of deceased — Statements therein held were hit by Section 162. ILR (1959) Andh Pra 797 (818) (DB).

(22) In the case of a riot counter-complaints received even during investigation are not hit by Section 162. AIR 1954 Mad 442 (447) = 1954 Cri L Jour 610.

(23) Statements made to an officer of the criminal investigation department, who is investigating an offence of which he has received information, are statements made in the course of an investigation. AIR 1938 Mad 893 (894) = 40 Cri L Jour 108.

(24) In bribery cases when it is intended to trap the accused at the time when the bribe is paid, the system is for the police to move the District Magistrate for an order for investigation. AIR 1946 Cal 483 (487) = 47 Cri L Jour 564 (DB) °° AIR 1949 All 483 (488) = ILR (1951) 1 All 12 = 50 Cri L Jour 719 (FB) °° 1965 Cri LJ 846 (848) = (1964) 66 Pun LR 877.

(25) Offence under Section 161, Penal Code, is complete not only when illegal gratification is accepted by accused but also when there is attempt to obtain such gratification — Therefore statement made to police, even prior to acceptance of such gratification by accused, if it falls under category of statement made in course of investigation will be hit by Section 162, Criminal P. C. AIR 1969 Andh Pra 271 (275) = 1969 Cri LJ 1016 = (1969) 2 Andh WR 281 (DB). (AIR 1963 Guj 145, Dissent. from.)

(26) First information report about offence under Section 5 (1) (c), Prevention of Corruption Act, 1947 — Commencement of investigation without sanction of Magistrate and without registering F. I. R. — Statements recorded during course of such enquiry are hit by Section 162. **AIR 1961 Andh Pra 3 (5, 6, 7) = (1960) 2 Andh WR 73 = 1961 (1) Cri LJ 33.**

(27) Offence under Section 5-A, Prevention of Corruption Act — Illegal investigation does not render statements recorded therein by police officer illegal — Investigation made by Dy. S. P. — Fresh investigation by Superintendent of Police — Statements recorded earlier by Dy. S. P. are still statements recorded by police officer in course of investigation under Chapter XIV of Cr. P. C. — Witnesses resiling from such statements can be cross-examined. **AIR 1968 SC 1323 (1326) = 1968 Cri LJ 1505 = (1969) 1 SCJ 300.**

(28) F. I. R. — Investigation under Section 5-A of Prevention of Corruption Act (1947), by Circle Inspector, an officer below the rank of Deputy Superintendent of Police — Such enquiry does not have legal effect of an investigation, as C. I. is incompetent to investigate — C. I. taking down statements of witnesses and getting signatures thereto — **Held** that C. I. acted in contravention of Section 162. AIR 1961 Ker 99 (103, 104) = 1960 Ker LJ 821 = (1961) 1 Cri LJ 505 (FB)

(29) Statements recorded by inducement of assurances of immunity from prosecution to accomplices under Section 8 of Prevention of Corruption Act will be in violation of Section 162 and would vitiate the investigation. AIR 1968 Mad 117 (129) = 1968 Cri LJ 493 = (1968) 1 Mad LJ 480.

(30) Accused charged with bribery — Trap party recovering the currency notes in question — Recovery memo signed by the accused amounts to a confession by the accused while in police custody in view of presumption under Section 4 Prevention of Corruption Act — Memo cannot form the basis for conviction — However, it can be considered to test the regularity and propriety of the recovery proceedings. 1968 Cri LJ 391 (398) (All).

(31) The statement of an accused person at the time of his arrest comes within the purview of this section where the arrest is made in the course of the investigation. AIR 1935 Mad 479 (482) = 36 Cri L Jour 1107 (DB) °° 1962 (1) Cri LJ 142 (149, 150) = (1961) 2 Guj LR 664 (DB).

(32) The investigation must be one under this Chapter. AIR 1949 All 483 (490) = ILR (1951) 1 All 12 = 50 Cri L Jour 719 (FB) °° AIR 1969 Andh Pra 271 (274) = 1969 Cri LJ 1016 = (1969) 2 Andh WR 281 (DB).

Section 162 — Note 8 (contd.)

(33) Trial under Section 438, Portuguese Criminal Code — Statements of complainant and witnesses recorded during police investigation are admissible in evidence — Can be used both for contradicting and for corroborating — Under Section 162 of (Indian) Criminal P. C. such statements can be used only for contradicting the witness. AIR 1967 Goa 51 (58) = 1967 Cri LJ 473 (FB).

(34) An investigation under this Chapter will not cease to have that character merely because it has been undertaken without the necessary permission or on the strength of an invalid permission. AIR 1949 All 483 (491) = ILR (1951) 1 All 12 = 50 Cri L Jour 719 (FB).

(35) After the amendment of Sec. 1 (2) of the Code by the Bombay Police Act (22 of 1951), the Code is applicable to the Police in the City of Bombay. **AIR 1955 SC 104 (110) = 1955 SCR 903 = 1955 Cri L Jour 196.**

(36) Where the investigation is under the Calcutta Police Act this section will not apply. AIR 1940 Cal 167 (168) = 41 Cri L Jour 408 °° AIR 1955 Cal 138 (140) = 1955 Cri L Jour 441 (DB) °° AIR 1929 Cal 257 (257) = 30 Cri L Jour 557.
[See AIR 1950 Cal 165 (166) = 51 Cri L Jour 680.]

(37) Provisions contained in Criminal P. C. in respect of police investigation are neither affected nor modified by Sections 7, 12 or 46 of Police Act (1861). AIR 1967 Pat 416 (421) = 1967 Cri LJ 1677 = 1967 BLJR 411 (DB).

(38) An investigation under Chap. VIII (security proceedings) is not one under this chapter. AIR 1950 All 134 (142) = ILR (1950) All 935 = 51 Cri L Jour 436 °° AIR 1933 Mad 688 (689) = 34 Cri L Jour 951.

(39) Statement not relating to offence under investigation is not hit by Section 162 and is admissible in evidence in the trial of the offence charged. (1962) 2 Cri LJ 751 = (1963) All Cri R 11 = 1963 All WR (Sup) 7 °° AIR 1962 Cal 641 (644) (DB).

(40) A statement made by a person to an Excise Officer in the course of an investigation under the Opium Act is not within this section. AIR 1934 Cal 616 (617) = 35 Cri L Jour 1178 (DB).

(41) An investigation by an officer in charge of a police-station into an offence under Section 9 (a) of the Opium Act is an investigation under this chapter and this section applies to it. AIR 1942 Cal 593 (597) = 44 Cri L Jour 145 (DB) °° AIR 1953 Mad 917 (920) = ILR (1954) Mad 57 = 1953 Cri L Jour 1698 (DB).

(42) Panchnama made by Police officer in course of investigation for an offence under Sections 4 and 5 of Bombay Prevention of Gambling Act — Hit by Section 162, Cri. P. C. AIR 1963 Guj 188 (191, 192) = (1963) 4 Guj LR 253 = 1963 (2) Cri LJ 141.

(43) Bihar and Orissa Excise Act (2 of 1915), Sections 77 (2) and 78 — Inspector or Sub-Inspector of Excise empowered to investigate any offence punishable under — Confession recorded by such Inspector of Excise — **Held:** It is confession to Police Officer and hence not admissible in evidence — It is also inadmissible under Section 162, Criminal P. C. **AIR 1964 SC 828 (832, 833, 837) = 1964 (1) Cri LJ 705 = (1964) 2 SCR 752.** (AIR 1919 Cal 696; AIR 1927 Cal 527; AIR 1932 Cal 122; AIR 1932 Pat 293 (FB), **Overruled.**) °° AIR 1935 Cal 621 (622) = 36 Cri L Jour 1366 (DB) °° AIR 1945 Nag 217 (218) = 46 Cri L Jour 710 °° AIR 1963 Cal 431 (432, 433) (Prs 5, 6, 7) (DB).
[See however AIR 1939 Cal 623 (624) = 41 Cri L Jour 40 (DB) °° AIR 1967 Mad 263 (274, 275) = 1967 Cri LJ 1007 = (1967) 1 Mad LJ 408 (FB) °° AIR 1968 Bom 433 (439) = 70 Bom LR 231 = 1968 Cri LJ 1617 (DB) °° 1961 (2) Cri LJ 406 (413, 414) = ILR (1960) 10 Raj 1274.]

(44) A departmental inquiry is not an investigation under this chapter and statements made to a police-officer during such inquiry are not inadmissible in evidence under this section. AIR 1942 Oudh 163 (167) = 43 Cri L Jour 139 °° AIR 1914 Cal 396 (406) (SB) °° AIR 1920 Lah 349 (350) = 21 Cri L Jour 818 °° AIR 1927 Bom 501 (504, 505, 509) = 28 Cri L Jour 1012 (DB) °° AIR 1935 Sind 13 (14) = 36 Cri L Jour 581 (FB) °° 1960-2 Lab LJ 464 (467) (Andh Pra) (DB).
[See also AIR 1919 Mad 487 (492) = 20 Cri L Jour 354 (DB) °° AIR 1944 Pat 67 (70) = 45 Cri L Jour 624 (DB).]

(45) An inquiry made by the police on a petition referred to them under Section 145 of the Code is not an investigation under this chapter and a statement made to the police during such inquiry does not come within this section. AIR 1954 Mad 1019 (1020) = 1954 Cri L Jour 1565.

(46) Statements made in an investigation of a case other than those which result in a trial in which those statements are sought to be used — Section does not apply. AIR 1970 Pat 95 (96) (DB).

(47) Refusal of maintenance on ground of adultery — Evidence of adultery — Statement made in police enquiry with respect to theft case — Use of that statement in proceedings for maintenance not forbidden — That statement could be used under Section 21, Evidence Act also. AIR 1966 Mad 392 (392) = 1966 Cri LJ 1275 = (1966) 1 Mad LJ 540.

(48) Test identification is part of investigation. AIR 1958 All 746 (754) = 1958 Cri L Jour 1266 (DB) °° 1960 Ker LT 965 (977) (DB).

Section 162 — Note 8 (contd.)

(49) A witness should not be presumed to be false simply because he is examined some days after. 1957 Cri L Jour 240 (241) (Raj).

9. "If reduced into writing." — (1) A police-officer, to whom a statement is made by any person in the course of investigation, is not bound to reduce such statement into writing. But if he does so reduce it, he should record the statement of each witness separately as required by Section 161 (3). AIR 1953 Bhopal 21 (23) = 1953 Cri L Jour 990 °° ILR (1955) Andhra 700 (708) (DB) °° AIR 1953 Pepsu 66 (72) = 3 Pepsu LR 90 = 1953 Cri L Jour 884 (DB) °° AIR 1950 Cal 363 (364) = 51 Cri L Jour 1307 (DB) °° AIR 1949 Mad 668 (669) = 50 Cri L Jour 950 °° AIR 1945 Nag 1 (4) = 46 Cri L Jour 448 = ILR (1945) Nag 151 (DB) °° AIR 1944 Nag 318 (319) = 46 Cri L Jour 195 °° AIR 1921 Sind 16 (17) = 26 Cri L Jour 1137 (DB) °° AIR 1928 Bom 352 (361) = 30 Cri L Jour 278 (FB).

(2) He should record the statements correctly; otherwise he may become liable to be punished under Sections 167 and 218 of the Penal Code. AIR 1928 Bom 352 (361) = 30 Cri L Jour 278 (FB) °° ILR (1955) Andhra 700 (709) (DB).

[See **AIR 1933 PC 124 (132) = 34 Cri L Jour 322.**]

(3) The paper on which such statements are taken should be attached to the police-diary which should contain a narrative of events. AIR 1945 Nag 1 (4) = 46 Cri L Jour 448 = ILR (1945) Nag 151 (DB) °° AIR 1924 Nag 33 (33) = 25 Cri L Jour 141 (DB).

(4) Destruction of short notes of evidence of important eye-witnesses prepared at the time of inquest is a flagrant violation of the provisions of Section 162. AIR 1952 Mad 229 (230) = 1952 Cri L Jour 481.

(5) The writing of case diaries on loose sheets of paper must be deprecated and disapproved. AIR 1952 Vindh Pra 7 (7) = 1952 Cri L Jour 143.

(6) Statements recorded must be preserved — Accused cannot be deprived of their right to copies by destruction of record. AIR 1945 Nag 1 (4) = 46 Cri L Jour 448 = ILR (1945) Nag 151 (DB) °° AIR 1929 Rang 87 (88) = 30 Cri L Jour 538 °° (1966) 2 Mys LJ 136 (139) = (1966) 7 Law Rep. 321.

(7) All that an accused is entitled to demand is that when a written record is kept of the statement of the witness to an investigating officer he shall be entitled to a copy of that record. AIR 1949 Mad 668 (669) = 50 Cri L Jour 950 (DB).

(8) It is necessary that the police-officer should have taken down the statement in direct form, or in the very words used by the witnesses. AIR 1933 Nag 4 (4, 5) = 34 Cri L Jour 127 °° AIR 1935 Sind 145 (172) = 36 Cri L Jour 1161 (DB).

(9) Even where only the gist or memorandum of what the witness said is taken down, it is a "statement" within the meaning of this section. AIR 1944 Mad 385 (386) = 46 Cri L Jour 294 (DB) °° AIR 1948 Cal 278 (284) = ILR (1948) 2 Cal 364 = 49 Cri L Jour 469 (DB) °° AIR 1943 Cal 644 (645, 646) = 45 Cri L Jour 258 (DB) °° AIR 1933 Pat 589 (593) = 35 Cri L Jour 379 (DB) °° AIR 1931 All 262 (262, 263) = 32 Cri L Jour 562 °° AIR 1935 Sind 145 (172) = 36 Cri L Jour 1161 (DB).

(10) It is not necessary that a verbatim record of the statement of the accused should be made and it is sufficient compliance if a sufficiently detailed record is prepared on the basis of which the police officer can give not what his impression of the statement of the accused was, but what in fact the accused had stated. AIR 1956 Ajmer 57 (60) = 1956 Cri L Jour 1134. (Statement need not be in first person.)

(11) It is not proper for police-officers to record statements in the form, "A supported B" or "A corroborated B" without a clear indication of the substance of the statement of A which the recording officer regards as supporting or corroborating B. AIR 1950 Cal 363 (364) = 51 Cri L Jour 1307 (DB) °° AIR 1954 Orissa 49 (50) = ILR (1953) Cut 428 = 1954 Cri L Jour 306 (DB) °° AIR 1945 Pat 109 (112, 113) = 23 Pat 656 = 46 Cri L Jour 513 (DB) °° 1962 (2) Cri LJ 682 (685) = 1962 Jab LJ 901 (DB).

(12) A sketch map of the scene of the happening, especially if prepared early, is an invaluable piece of evidence, but it should show features and objects that are actually seen (and wherever possible measured) by the officer, and not a gist of the statements under Section 162, Criminal P. C. AIR 1958 Madh Pra 380 (385) = 1958 Cri L Jour 1402 (DB) °° AIR 1963 Ker 54 (56) = 1963 Ker LT 120 = 1963 (1) Cri LJ 175 (DB).

(13) Marks on the map based on the statements made by witnesses to the Sub-Inspector cannot be used to found any argument as to the improbability of the deceased being hit on that part of the body where he was actually injured, if he was standing at the spot marked on the sketch map. AIR 1962 SC 399 (401) = (1962) 1 Andh LT 511 = 1962 (1) Cri LJ 469.

(14) A map prepared by the investigating police-officer containing statements of witnesses is within the section. AIR 1944 Cal 339 (346, 364) = 45 Cri L Jour 771 (DB) °° AIR 1958 All 445 (446) = 1958 Cri L Jour 722 °° AIR 1958 All 746 (756) = 1958 Cri L Jour 1266 (DB) °°

Section 162 — Note 9 (contd.)

AIR 1926 Cal 550 (551) = 27 Cri L Jour 222 (DB).

(15) Once the police-officer records the statements or their substance, it is his duty to preserve them for the purpose of the limited use of them provided in this section. ILR (1955) Andhra 700 (708, 709) (DB).

(16) Information obtained during the course of the police investigation has to be kept confidential and police-officers are not entitled to give out the contents of confessional statements of accused persons or the contents of statements made by witnesses interviewed by them for the benefit of the public or the Press. ILR (1959) Ker 319 (463) (DB).

10. Statement not to be signed.—(1) The police-officer to whom the statement is made in the course of investigation should not require the witness to sign such statement. AIR 1955 Pepsu 81 (86) = ILR (1954) Patiala 352 = 1955 Cri L Jour 983 (DB) °° AIR 1954 Trav-Co 282 (285) = ILR (1953) Trav-Co 841 = 1954 Cri L Jour 658 °° 1959 Ker L Tim 872 (874) °° AIR 1955 Trav-Co 6 (7) = ILR (1954) Trav-Co 1200 = 1955 Cri L Jour 122 (DB). (Statements of witnesses at inquest not to be signed.) °° AIR 1952 Trav-Co 300 (304) = ILR (1952) Trav-Co 261 = 1952 Cri L Jour 1290 (DB °° AIR 1950 Cal 165 (166) = 51 Cri L Jour 680 °° (1887) 11 Bom 659 (661) (DB) °° AIR 1918 Mad 731 (732, 733) = 19 Cri L Jour 38 (DB) °° AIR 1931 Oudh 172 (175) = 32 Cri L Jour 860 °° AIR 1934 Sind 78 (83) = 35 Cri L Jour 1170 (DB).

[See also (1939) 40 Cri L Jour 19 (20) = 14 Luck 302 °° AIR 1940 Oudh 209 (210) = 42 Cri L Jour 483.]

(2) The fact that the signature of a witness was taken by the police is a circumstance to be taken into consideration in appraising the worth of his testimony. AIR 1955 Trav-Co 6 (7) = ILR (1954) Trav-Co 1200 = 1955 Cri L Jour 122 (DB) °° AIR 1968 Mad 117 (128, 129, 130) = (1968) 1 Mad LJ 480 = 1968 Cri LJ 493 (DB).

(3) Signed statements of witnesses taken during investigation, not made use of during trial. Only effect is that it would impair value of their evidence. AIR 1961 Ker 99 (104, 105) = 1960 Ker LT 666 = 1961 (1) Cri LJ 505 (FB).

(4) The mere fact that a statement made during the investigation is signed by the person making it, does not thereby render it an information under Section 154. AIR 1925 Mad 106 (109, 112) = 25 Cri L Jour 401 (DB) °° AIR 1961 Raj 35 (37) = 1961 (1) Cri LJ 310.

(5) Where a witness who had signed a statement to the police denied his signature at the trial and he was sought to be prosecuted under Section 193, I. P. C., it was held that the procedure contravened the policy of Sections 161 and 162 of the Code, and the order sanctioning prosecution was quashed. (1913) 14 Cri L Jour 302 (302) = 6 Sind LR 277 (DB).

(6) Panchanama prepared by the police the same day a murder was committed and was signed not only by the panchas but also by the accused persons. The document was a complete confession of the crime from beginning to end, by all the accused persons. The document was proved by the prosecution. It was held that this was highly irregular and contrary to the provisions of Evidence Act and Code of Criminal Procedure. AIR 1957 SC 737 (739) = 1958 SCR 283 = 1957 Cri L Jour 1320.

11. Proviso — Limited use of previous statements. — (1) The proviso to this section enacts that a previous statement falling within this section can be used for a limited purpose under the circumstances specified therein. AIR 1950 East Punj 23 (24) = 51 Cri L Jour 412 (DB) °° AIR 1938 All 571 (573) = 40 Cri L Jour 4 °° AIR 1937 Bom 60 (62) = 38 Cri L Jour 327 (DB) °° AIR 1968 All 345 (346) = 1968 Cri LJ 1332 = 1967 All LJ 695 °° AIR 1960 All 1 (18) = 1959 All WR (HC) 447 = 1960 Cri LJ 1 (FB). (The application of Section 162, Criminal P. C. Reversed on another point in AIR 1960 SC 1125.)

(2) The proviso to Section 162 applies on fulfilment of three conditions: (1) Statement must have been reduced to writing (2) the witness must have been called for the prosecution and (3) the written statement must be duly proved. AIR 1960 Andh Pra 76 (77) = (1959) 1 Andh WR 419 = 1960 Cri LJ 208 (DB).

(3) If the conditions in the Proviso are not fulfilled, a statement made to the police in the course of investigation cannot be proved even though the person who made the statement is dead, unless the statement comes within Section 32, clause (1) of the Evidence Act. AIR 1950 East Punjab 23 (24) = 51 Cri L Jour 412 (DB) °° (1938) 40 Pun LR 421 (421, 422).

(4) Where a witness is called by defence, his previous statement cannot be used either by the prosecution or by the defence for the purpose of contradicting or corroborating him under the provisions of the Evidence Act. AIR 1953 All 652 (654) = 1953 Cri L Jour 1400 (DB) °° 52 Cri L Jour 354 (355) (DB) (Pesh) °° AIR 1936 Bom 154 (160) = 37 Cri L Jour 688 (DB) °° 15 All 25 (27) °° AIR 1926 Lah 367 (368) = 27 Cri L Jour 803 (DB) °° AIR 1968 SC 1390 (1392) = 1968 Cri LJ 1647 = (1968) 3 SCR 685 °° ILR (1966) Guj 56 (59) = (1966) 7 Guj LR 227 (DB) °° 1963 (1) Cri LJ 370 (1) (370) = (1963) 1 Mad LJ 10.

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(5) Where a witness is called by the Court and not by the prosecution, the previous statement made by him to the police cannot be used either by the prosecution or by the accused for any purpose. (1940) 44 Cal WN 451 (452) (DB) °° 1959-1 Andh WR 419 (424) (DB) °° AIR 1927 Lah 713 (714) = 28 Cri L Jour 828 °° AIR 1967 Bom 378 (381) °° AIR 1960 Andh Pra 76 (78) = (1959) 1 Andh WR 419 = 1960 Cri LJ 208 (DB).

[See also AIR 1927 Cal 372 (372) = 28 Cri L Jour 446 (DB) °° AIR 1930 Lah 318 (320) = 31 Cri L Jour 343.]

(6) Witness needed and summoned by Court for just and fair disposal of case is a Court witness — Provisions of Section 162 (1) are not applicable to a Court witness. AIR 1967 Bom 378 (379) = 1967 Cri LJ 1376 = 60 Bom LR 530.

(7) Witnesses examined by the Court in the interests of justice cannot be said to be witnesses called for prosecution. The expression 'called for the prosecution' is express and explicit and there is no warrant for giving it a meaning which the words in their literal or ordinary sense do not convey. AIR 1960 Andh Pra 76 (77, 78) = 1959 Andh LT 857 = 1960 Cri LJ 208 (DB).

(8) Prosecution witness examined-in-chief — Cross-examined and discharged — Subsequent application by prosecution under Section 540 to recall him for putting to him his previous statement for contradicting him — Witness held continued to be one for prosecution and was not a Court-witness — Provisions of Proviso to Sec. 162 (1) were attracted. AIR 1967 Bom 378 (381, 382) = 69 Bom LR 530 = 1967 Cri LJ 1376.

(9) The essential change made by the Amending Act 26 of 1955 is that according to the proviso as it stands, it is open to the prosecution with the permission of the Court to use such a statement in order to contradict a witness in the manner provided by Section 145, Evidence Act. **AIR 1959 SC 1012 (1020) = 1959 Cri L Jour 1231 °° AIR 1957 SC 623 (627) = ILR (1957) Punj 1668 = 1957 Cri L Jour 1009** °° AIR 1958 Pat 412 (414) = 1958 Cri L Jour 929 °° **(1968) 1 SCWR 730 (735, 736) = 1968 SCD 790** °° 1962 Ker LJ 1094 (1097, 1098) °° (1962 (1) Cri LJ 657 (653) = 1961 Jab LJ 1221 °° AIR 1960 Raj 101 (103) = 1960 Cri LJ 520 (DB).

(10) Prosecution witness testifying about detail for first time in cross-examination — It does not amount to contradiction — He cannot be declared hostile and cross-examined with reference to his case-diary statement. (1964) Mad LJ (Cri) 39 = 1962 Ker LT 529 (531) (DB).

(11) A previous statement by a prosecution witness falling under this section can be used by the accused only for the limited purpose of contradicting such witness under Section 145 of the Evidence Act. AIR 1953 Hyd 133 (134) = ILR (1952) Hyd 512 = 1953 Cri L Jour 746 (DB) °° 1958-2 Andh WR 627 (630) (DB) °° AIR 1955 Assam 59 (61) = 1955 Cri L Jour 450 (DB) °° AIR 1952 All 289 (294) = 1952 Cri L Jour 600 (DB) °° AIR 1952 Madh B 79 (80) = 1952 Cri L Jour 700 (DB) °° AIR 1926 Rang 116 (116, 118) = 27 Cri L Jour 881 (FB) °° AIR 1967 Goa 21 (27) = 1967 Cri LJ 357 (FB) °° (1968) 1 Andh LT 249 (253) (DB) °° AIR 1967 Pat 63 (64) = 1967 Cri LJ 237 = 1966 BLJR 133 °° ILR (1966) Guj 56 (59) = 7 Guj LR 227 (DB) °° ILR (1960) Cut 659.

(12) A previous statement cannot be used for any other purpose, such as corroborating a prosecution witness or contradicting a defence witness. AIR 1952 Punj 186 (188) = ILR (1951) Punj 231 = 1952 Cri L Jour 775 (DB) °° AIR 1958 Pat 412 (414) = 1958 Cri L Jour 929 °° 1958-2 Andh WR 627 (630) (DB) °° AIR 1950 East Punj 23 (25) = 51 Cri L Jour 412 °° AIR 1949 East Punj 334 (335) = 50 Cri L Jour 840 (DB) °° AIR 1944 FC 38 (39) = 46 Cri L Jour 317 °° (1967) 69 Bom LR 421 (437) = ILR (1969) Bom 349 (DB) °° AIR 1966 Mys 248 (255, 256, 257) = 1966 Cri LJ 1155 = 3 Law Rep 725 (DB) °° AIR 1964 Madh Pra 30 (38, 39) = 1964 (1) Cri LJ 198 = 1967 MPLJ 849 (DB) °° AIR 1962 Cal 85 (86) = 65 Cal WN 808 = 1962 (1) Cri LJ 137 (138) (DB) °° ILR (1960) Cut 659 (669) (DB).

(13) Statement made before police can be used to cross-examine a person who made it and the result may be to show that the evidence of the witness is false but that does not establish that what he stated out of Court is true. 1961 All WR (Supp) 24 = 65 Cal WN 645 (648) (Cal (DB).

(14) Statement of confession of witness — Statement recorded by police and by Magistrate — Statement inadmissible except for corroboration or contradiction. AIR 1965 Orissa 38 (43, 44) = 1965 (1) Cri LJ 321 (DB).

(15) A previous statement cannot be used as substantive evidence in favour of or against the accused. AIR 1952 Madh Bha 79 (80) = 1952 Cri L Jour 700 (DB) °° AIR 1958 Pat 412 (414) = 1958 Cri L Jour 929 °° 1958-2 Andh WR 627 (630) (DB) °° AIR 1952 Trav-Co 300 (304) = ILR (1952) Trav-Co 261 = 1952 Cri L Jour 1290 (DB) °° AIR 1950 Him Pra 18 (Pr 48) = 51 Cri L Jour 786 °° 1969 Cur LJ 105 (108) (Punj) °° 1966 BLJR 786 (789) (DB) °° ILR (1960) Cut 659 (669) (DB) °° AIR 1967 Pat 63 (64) = 1966 BLJR 133 = 1967 Cri LJ 237 °° ILR (1966) Guj 500 = (1966) 7 Guj LR 662 (674) (DB) °° (1966) 32 Cut LT 695

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(706) (DB) °° AIR 1965 Orissa 38 (43) = 1965 (1) Cri LJ 321 (DB).

(16) A jointly recorded statement of two or more witnesses, cannot be legally used as statement of any particular prosecution witness for the purpose of contradicting that witness. AIR 1937 Oudh 201 (203, 204) = 38 Cri L Jour 165 (DB).

[See however 1948 Jaipur LR 379 (382) (DB) °° ILR 1963 Guj 955 (955).]

(17) Even if he could not be deemed to be an accomplice the evidence of a partisan witness could be acted upon only if the Court was confident that it could safely do so. 1959 Ker LT 872 (874) = 1959 Ker LJ 1143.

(18) Evidence as given before committing Magistrate can be used as substantive evidence provided attention of witness has been drawn to such statement and it is otherwise found to be reliable. ILR 42 Pat 454 (459) (DB).

(19) This section does not prevent a police-officer from explaining his conduct even though it may inferentially have reference to the statements made by witnesses. AIR 1929 Cal 298 (300) = 30 Cri L Jour 1015 (DB).

(20) Inferences drawn from statements made to police officer during investigation. Inferences cannot be used for convicting accused. AIR 1968 All 345 (346) = 1967 All WR (HC) 689 = 1968 Cri LJ 1332.

(21) Where a police officer states in the witness-box that no such case as is put forward by the defence before the Court was stated before him at the investigation, there is no use made of any previous statement of any witness to the police-officer and the evidence is not inadmissible. AIR 1930 Lah 484 (485) = 31 Cri L Jour 442 (DB) °° AIR 1931 Lah 177 (177) = 32 Cri L Jour 682 (DB).

(22) Statements made in depositions in Court inconsistent with earlier statements before police — **Held**, they were contradictions within Section 162 and no reliance could be placed on the evidence of the witnesses. **AIR 1964 SC 1563 (1571)** = 1964 (2) Cri LJ 472.

(23) As regards the question whether an omission in the statement to the police amounted to a contradiction, the following different views were held—

(a) Omission and contradiction can never be identical and a statement to a police-officer cannot always be used during an enquiry or trial in order to show that a witness is making statement in the witness-box which he did not make to the police. AIR 1944 Mad 385 (386, 387) = 46 Cri L Jour 294 (DB) °° AIR 1933 Mad 372 (373, 374) = 34 Cri L Jour 582.

(b) All omissions are not necessarily contradictions. It must be left to the Court in each particular case to decide whether the omission is a contradiction or not. If it amounts to a contradiction, the Court should allow cross-examination on that point. AIR 1928 Lah 257 (258) = 29 Cri L Jour 348 (DB) °° AIR 1932 Lah 103 (111) = 33 Cri L Jour 97 (DB) °° AIR 1965 Orissa 33 (35) = ILR (1964) Cut 752 = 1965 (1) Cri LJ 317 (DB) °° AIR 1963 Assam 151 (153, 154) = ILR 1963 15 Assam 189 = 1963 (2) Cri LJ 225 (DB) °° AIR 1962 All 582 (584) = 1962 (2) Cri LJ 722 = 1962 All LJ 639 (DB).

(c) An omission is not contradiction unless what is actually said contradicts what is omitted to be said. The test to find out whether an omission is a contradiction or not is to see whether one can point to any sentence or assertion in the statement under Section 162 which is irreconcilable with the deposition in Court. AIR 1952 All 289 (294, 295) = 1952 Cri L Jour 600 (DB) °° AIR 1959 Madh Pra 391 °° = 1959 Cri L Jour 1340 (DB) °° AIR 1958 Mys 138 (139) = ILR (1958) Mys 121 = 1958 Cri L Jour 1205 °° 1937 AM LJ 18 (23) °° AIR 1926 Pat 20 (22) = 27 Cri L Jour 362 (DB).

(d) The deposition of a witness to the effect that he did not make any statement to the police is not a statement within Section 162 of the Code. AIR 1927 Cal 257 (258) = 28 Cri L Jour 273 (DB).

(e) This section does not authorise the use of statements to the police for the purpose of showing that the witness omitted to state some fact to the police. AIR 1937 Nag 50 (53) = 38 Cri L Jour 330 (DB) (AIR 1936 Nag 136, **Dissented from.**)

(f) An omission may amount to contradiction if the matter omitted was one which the witness would have been expected to mention and the police officer to make note of in the ordinary course. AIR 1958 All 255 (271) = 1958 Cri L Jour 424 (DB) °° AIR 1958 Madh Pra 13 (14) = 1958 Cri L Jour 44 (DB) °° AIR 1957 All 239 (241) = 1958 Cri L Jour 1556 (DB) °° AIR 1938 Pat 579 (582) = 40 Cri L Jour 147 (DB).

(24) In the following case the Supreme Court referred to this conflict of views and held that the last mentioned view, i.e., (f), was not tenable. The Supreme Court stated the position as follows. (1) A statement in writing made by a witness before a police officer in the course of investigation can be used only to contradict his

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statement in the witness-box and for no other purpose; (2) statements not reduced to writing by the police officer cannot be used for contradiction; (3) though a particular statement is not expressly recorded, a statement that can be deemed to be part of that expressly recorded can be used for contradiction, not because it is an omission strictly so called but because it is deemed to form part of the recorded statement; (4) such a fiction is permissible by construction only in the following three cases: (i) when a recital is necessarily implied from the recital or recitals found in the statement: illustration; in the recorded statement before the police the witness states that he saw A stabbing B at a particular point of time, but in the witness box he says that he saw A and C stabbing B at the same point of time; in the statement before the police the word 'only' can be implied i.e., the witness saw A only stabbing B; (ii) a negative aspect of a positive recital in a statement: illustration: in the recorded statement before the police the witness says that a dark man stabbed B but in the witness-box he says that a fair man stabbed B; the earlier statement must be deemed to contain the recital not only that the culprit was a dark complexioned man but also that he was not of fair complexion; and (iii) when the statement before the police and that before the Court cannot stand together: illustration: the witness says in the recorded statement before the police that A after stabbing B ran away by a northern lane, but in the Court he says that immediately after stabbing he ran away towards the southern lane; as he could not have run away immediately after the stabbing i.e., at the same point of time, towards the northern lane as well as towards the southern lane, if one statement is true, the other must necessarily be false. AIR 1959 SC 1012 (1026) = 1959 Cri L Jour 1231 °° (1967) 8 Guj LR 25 (DB) °° AIR 1960 Mys 111 (123) = 38 Mys LJ 265 = 1960 Cri LJ 934 (DB).

(25) The contradiction under Section 162 should be between what a witness asserted in witness-box and what he had stated before police officer and not between what he said he had stated before police officer and what he actually stated before him. AIR 1962 All 582 (584) = (1962) 2 Cri LJ 722 = 1962 All LJ 639 (DB).

(26) Statements made before the police can be used only for the purpose of contradiction and no omission can be treated as contradiction unless it can be shown that the omission amounts to contradiction by implication. Where the witness who was one of the victims did not tell the police that he saw the accused leaving the room being chased by the deceased and that he heard the voice of the deceased saying 'Bachao, Bachao, I am being shot by Sarma' (accused):

Held, that such omissions were not contradictions and could not be used for discrediting the witness. ILR (1963) 15 Assam 552 (556) (DB).

(27) It is not open to the Sessions Judge to examine the statement made before the Police and come to his own conclusion whether the omissions in the evidence given by the witnesses were deliberately made or otherwise done. 1961 (2) Cri LJ 198 (199) (DB) (Assam).

(28) Omission is not relevant unless the same amounts to contradiction — Question in cross-examination seeking to elicit a mere omission in the statement of witness recorded by Police, was held not to be allowed, in view of the omission not amounting to contradiction. AIR 1968 Bom 127 (141) = 68 Bom LR 941 = 1967 Mah LJ 25 = (1968) Cri LJ 453 (DB).

(29) Ordinary omissions are not by themselves contradictions even if they are on material points unless they are irreconcilable. (1961) 3 Orissa JD 110 (117) (DB).

(30) Where prosecution witness deposes in Court that accused gave a blow to the victim but has failed to make such a statement before police, it is a material omission amounting to contradiction though every omission is not a contradiction. AIR 1968 Orissa 167 (168) = 1968 Cri LJ 1190.

(31) Contradiction, if any, brought out by proof of omissions, would rather discredit the statements recorded by the police in the instant case than cast any reflection on the probity of witnesses. AIR 1968 Orissa 172 (175) = 34 Cut LT 585 = 1968 Cri LJ 1192.

(32) The prosecution is not bound to produce in Court every person examined by the police. AIR 1934 All 908 (918) = 36 Cri L Jour 152 (DB).

(33) Public Prosecutor ought to inform the pleader for defence that information of value to the defence is found in the police papers so as to enable him to apply for the copies under this section. AIR 1933 Rang 378 (381) = 35 Cri L Jour 792.

(34) As to the use of mashirnamas or panchanamas prepared in the course of police investigations, for refreshing the memory of a witness, see the undermentioned cases. AIR 1939 Mad 766 = 40 Cri L Jour 925 °° AIR 1940 Sind 168 (171) = 41 Cri L Jour 924 (DB) °° AIR 1933 Sind 220 (222) = 34 Cri L Jour 848 (DB) °° 1966 Cri LJ 331 (332) (Guj) °° AIR 1963 Guj 145 (146, 147) = (1963) 4 Guj LR 5 = 1963 (2) Cri LJ 14 (DB) °° AIR 1963 Guj 188 (192, 193) = (1963) 4 Guj LR 253 = 1963 (2) Cri LJ 141 °° 1962 (1) Cri LJ 142 (147, 148, 149) = (1961) 2 Guj LR 664 (DB).

(35) Permitting the prosecuting counsel to refresh the witness's memory by reading out his statement recorded during investigation is wholly illegal and should

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never be permitted. 1963 (2) Cri LJ 198 (201) (DB) (All).

(36) Statement to police made by witness — Witness refreshing his memory by reading it before giving evidence in Court — Section 162 whether prohibits such use. AIR 1968 Guj 11 (13, 14) = 1968 Cri LJ 54 (DB).

(37) As to the presumption in favour of the accuracy of statements recorded by the police and the burden of proving that the recording is not accurate, see the following cases. AIR 1953 All 652 (654) = 1953 Cri L Jour 1400 (DB) °° AIR 1938 Lah 714 (717) = 40 Cri L Jour 261 (DB).

(38) For the applicability of Section 162 (1) proviso, witness recalled must continue to be one for prosecution. AIR 1967 Bom 378 (381) = 1967 Cri LJ 1376 = 69 Bom LR 530.

(39) No doubt Section 162 (1) limits the use of the statements recorded under Section 162 but it cannot be held that those statements cannot be made use of by a committing Magistrate under Section 207-A. AIR 1957 Mys 5 (7) = ILR (1956) Mys 255 = 1957 Cri L Jour 76 (DB) °° AIR 1966 Him Pra 11 (12) = 1966 Cri LJ 20.

(40) Statements of witnesses during police investigation are not available to prosecution for reliance in committal proceedings even when those witnesses were examined in committal proceedings. AIR 1965 Mys 302 (303) = 1965 (2) Cri LJ 656 = (1965) 1 Mys LJ 91 (DB).

(41) Statements of witnesses recorded by police officer during investigation of a crime can be used in civil litigation as their previous statement. AIR 1965 All 494 (495) = 1965 (2) Cri LJ 452 = 1964 All LJ 950 = (1965) 2 Cri LJ 452.

(42) The bar imposed by Section 162 applies to the enquiry or trial resulting from that investigation but not to an enquiry or trial of other offences. AIR 1965 All 494 (495) = 1965 (2) Cri LJ 452 = 1964 All LJ 950 = (1965) 2 Cri LJ 452.

(43) If during trial, witness makes a statement in excess of what was recorded under Section 161, accused should be given an opportunity to cross-examine him and thereafter, Court should determine whether any difference in the statements be treated as an improvement or as a mere omission. 1964 All WR (HC) 523 (524).

(44) The defamatory statement made by a person during investigation of a bribery charge against a Sub-Inspector, to the Deputy Superintendent cannot be used at any inquiry or trial in respect of the offence punishable under the Prevention of Corruption Act under investigation; its use in any other inquiry or trial is not barred. AIR 1960 All 623 (625) = 1960 All WR (HC) 141 = 1960 Cri LJ 1296.

(45) Statement of witness before Police — 'He saw accused going away after assaulting deceased' — In witness-box witness stating: 'He saw accused assaulting deceased and thereafter going away' — **Held,** compound form of sentence recorded by Police did mean what witness stated in witness box — **Held** further, statement reduced to writing under Section 162 could not be allowed for purpose of cross-examining witness within meaning of first part of Section 145, Evidence Act, but its cross-examination should be confined only to cross-examination by contradiction allowed by Proviso of Section 162, Criminal P. C. (1965) 31 Cut LT 357 (359) (DB).

(46) A missing information given by accused at police station and entered in General Diary can be used as a circumstance proving conduct of accused, where it destroys presumption of his innocnece. AIR 1962 Cal 504 (509) = 1962 (2) Cri LJ 354 (DB).

(47) Although statement made by accused before Police can be used for the purpose of an inquiry under Section 517, it cannot be used unless it is proved. 1963 (1) Cri LJ 531 (533) (Guj).

(48) Disposal of property seized — Inquiry for — Statement of accused made to police — Proof of statement necessary before use in the enquiry. (1962) 3 Guj LJ 796 (799).

(49) Provision does not permit user of the statements for finding whether the record is correctly maintained or not. (1967) 8 Guj LR 350 (357, 358) (DB).

(50) Unless the Court can find from materials before it that the record was deliberately perfunctory or dishonest or that the record maintained by police was vitiated by mala fide conduct of Investigating officer, it is not possible ordinarily for Court to disregard contradictions between deposition in Court and statements made to police as recorded by investigating officer. ILR (1966) Guj 56 (63) = (1966) 7 Guj LR 227 (DB).

(51) When an eye-witness gives the earliest report, it can be used for his corroboration and in certain respects for contradiction as well. But when there is no first information that can be used for corroboration on details as is inevitable whenever it is given by somebody other than an eye-witness, the case has to be considered on the evidence available without any bias. AIR 1964 Madh Pra 30 (37) = 1964 (1) Cri LJ 198 = 1967 MPLJ 849 (DB).

(52) Statements under — Court can look into, only to utilise result of comparison of such statements in elucidating facts necessary for determination. ILR (1959) Andh Pra 797 (819, 820) (DB).

Section 162 (contd.)

12. “Nor shall any such statement or any record thereof. .” — (1) The amendment of the section in 1923 by the insertion of the words “nor shall any such statement or any record thereof .... be used for any purpose” makes it clear that no oral evidence of the statement is now admissible. 53 Cal WN (1 DR) 66 (68) (DB) °° AIR 1928 Mad 1028 (1031) = 29 Cri L Jour 1098 (FB). (**Overruling AIR 1925 Mad 579 = 26 Cri L Jour 721.**)

[See also AIR 1946 Bom 189 (191) = 47 Cri L Jour 590.]

13. “At any inquiry or trial in respect of any offence under investigation at the time when such statement was made.” — (1) Under the present section it is clear that statements made during the course of investigation can be used in a subsequent case which was not under investigation when the witness made the statement. AIR 1942 Cal 277 (279) = 43 Cri L Jour 693 (DB) °° AIR 1959 Andh Pra 333 (340) = 1959 Cri L Jour 813 (DB) °° 1958-2 Andh WR 480 (486) °° AIR 1957 Raj 185 (188) = ILR (1957) 7 Raj 693 °° AIR 1938 Nag 110 (111) = 39 Cri L Jour 68 °° AIR 1962 Cal 641 (644) = (1962) 2 Cri LJ 751 = 1963 All Cri R 11 (DB).

[See however ('50) 85 Cal L Jour 337 (338) (DB).]

(2) Before an accused can claim copies of the statements of witnesses examined by the police, it is necessary that such witnesses must have been examined with respect to the investigation of the offence which is under trial. AIR 1957 Raj 185 (188) = ILR (1957) 7 Raj 693.

(3) A complaint made to police who, after investigation under Chapter XVI rejected it as false — Complainant then pressing the complaint before Court — In the trial taking place on such complaint, statement of witnesses to the police during investigation can be used only in accordance with Section 162. AIR 1951 Raj 145 (145) = ILR (1951) 1 Raj 178 = 52 Cri L Jour 1183 °° AIR 1927 Nag 24 (25) = 28 Cri L Jour 14.

(4) Dissatisfied complainant filing complaint in Court — Police investigation found unsatisfactory and perfunctory — Record of statements by police becomes suspicious — Evidence led before Court in complaint case cannot be attacked by comparison with statements recorded by police. AIR 1968 Orissa 172 (174) = 1968 Cri LJ 1192 = 34 Cut LT 585.

(5) The statements made during investigation can be used in proceedings under Secions 517 and 523 of the Code and also in a subsequent Civil suit. AIR 1943 Lah 312 (313) = 45 Cri L Jour 153 °° (1885) 9 Bom 131 (134 (DB) °° AIR 1920 Nag 219 (220) = 21 Cri L Jour 414 °° AIR 1932 Oudh 137 (138).

(6) As the section expressly applies both to enquiries and trials, commitment proceedings are within the ambit of the section. AIR 1934 Nag 138 (139).

(7) A person proceeded against under Section 109, (security proceeding) is not prosecuted for any offence and a statement made by such person to the police is not affected by this section. AIR 1950 All 134 (142) = ILR (1950) All 935 = 51 Cri L Jour 436.

(8) A proceeding under Section 145 is not an inquiry or trial in respect of any offence and, therefore, a statement made to the police during the course of the enquiry does not fall within the ban of this section. AIR 1954 Mad 1019 (1020) = 1954 Cri L Jour 1565.

(9) Sub-section (4) of Section 173 read with sub-section (3) of Section 207A makes ample provision for the defence to be in possession of all the statements and documents before the enquiry begins, but nowhere is it stated either in Section 173 (4) or Section 207A (3) that the statements in connected cases should be supplied to the accused. **AIR 1957 SC 623 (627) = ILR (1957) Punj 1668 = 1957 Cri L Jour 1009.**

(10) Statements made under Section 162 can be used in civil proceedings under Section 145, Evidence Act to contradict them. AIR 1964 Andh Pra 198 (199, 200, 201) = 1964 (1) Cri LJ 504 = (1963) 2 Andh WR 485.

14. Application for copies — When to be made. — (Omitted.)

15. Duty of Court to grant copies. — [Note. — The provision relating to grant of copies to the accused contained in the Second Proviso to this section has been deleted by the Amending Act 26 of 1955, but it has been re-enacted in the modified form as Section 173 (5). The case law given below is under the section before its amendment.]

(1) The grant of copies is not a matter of judicial discretion, under the present section. Court is bound to grant copies, unless it is of opinion— (1) that any part of such statement is not relevant to the subject-matter of the enquiry or trial, or, (2) that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests. AIR 1945 Cal 159 (167) = 46 Cri L Jour 692 (DB) °° AIR 1939 Pat 174 (176) = 40 Cri L Jour 509 (DB) °° AIR 1937 Mad 822 (823) = 39 Cri L Jour 54 °° AIR 1937 Pesh 10 (11) = 38 Cri L Jour 347 (DB) °° AIR 1935 Rang 370 (372) = 36 Cri L Jour 1487 (FB).

(2) The duty to form an opinion and exclude certain portions of statements from copies to be supplied to the accused rests on the Court itself and the Court cannot delegate it to anybody or to Public Prose-

Section 162 — Note 15 (contd.)

cutor. AIR 1951 Cal 212 (214) = 51 Cri L Jour 1581 (DB).

(3) A Court cannot refuse to grant copies on the ground that the statements had not been recorded in full and that all that was recorded was a memorandum of the same. AIR 1950 Cal 353 (353) = 51 Cri L Jour 1334 °° AIR 1945 Cal 159 (167) = 46 Cri L Jour 692 (DB) °° AIR 1931 All 262 (262) = 32 Cri L Jour 562.

(4) The Court cannot refuse copies on the ground that there was no contradiction between what the witness says in his evidence and his previous statement, or that the statements were of "no real value as evidence." AIR 1937 Mad 822 (823) = 39 Cri L Jour 54 °° AIR 1931 All 273 (274) = 32 Cri L Jour 370 °° AIR 1930 Sind 153 (153, 154, 156) = 31 Cri L Jour 592 (DB) °° AIR 1929 Pat 268 (270) = 30 Cri L Jour 858 (DB) °° AIR 1933 All 535 (539) = 35 Cri L Jour 360 (DB).

(5) Copies cannot be refused on the ground that the statements were signed by the witnesses contrary to the provisions of this section. AIR 1950 Cal 165 (166) = 51 Cri L Jour 680.

(6) The police cannot refuse to supply copies of statements on the ground that they are embodied in a special report. AIR 1951 Mad 685 (686) = 1952 Cri L Jour 509.

(7) The words "the Court shall refer to such writing" are used for the purpose of enabling the Court to see whether the statement or any part thereof is not relevant to the inquiry or whether its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests. AIR 1928 Pat 215 (217) = 29 Cri L Jour 297 (DB) °° AIR 1935 Rang 98 (100) = 36 Cri Jour 665 (DB).

(8) It is a condition precedent to the grant of copies that reference should be made by the Court to see whether any portion of the statement should be excluded under the second proviso and to satisfy itself that the document of which a copy is required is really a statement within the section. AIR 1945 Cal 159 (168) = 46 Cri L Jour 692 (DB).

(9) The Court is not at liberty to postpone referring to the statement till after the witness's evidence is concluded. AIR 1921 Lah 93 (94) = 22 Cri L Jour 578 (DB) °° AIR 1935 Rang 98 (100, 101) = 36 Cri L Jour 665 (DB).

(10) To obviate delay in the trial copies of statements made to police may be had in readiness at the commencement of the trial. AIR 1935 Rang 98 (100, 101) = 36 Cri L Jour 665 (DB).

(11) It would be sufficient compliance with the section to allow the defence pleader to see the statement of the witness to the police and to cross-examine thereon while the copy is being prepared. AIR 1942 Mad 451 (451) = 44 Cri L Jour 400 °° AIR 1935 Rang 98 (101) = 36 Cri L Jour 665 (DB).

(12) A Court would be justified in refusing the copy of an abstract of the statements of several witnesses prepared in such a way that it was not clear what each witness was supposed to have said. AIR 1945 Cal 159 (167) = 46 Cri L Jour 692 (DB).

(13) Statements of two or more witnesses recorded jointly — Such joint statement cannot be legally used as statement of any particular prosecution witness for the purpose of contradicting that witness. AIR 1937 Oudh 201 (203, 204) = 38 Cri L Jour 165 (DB) °° AIR 1930 Lah 457 (458, 459) = 31 Cri L Jour 444 (DB).

(14) Suppose, the police-officer examines a witness B and takes down his statement. Then he examines A who repeats the same story. The police-officer states "A corroborates B". In such circumstances, it would appear that the accused is entitled to copies of the statements of B and A and can use them as contemplated by the section. AIR 1932 Cal 375 (377) = 33 Cri L Jour 725 (DB) °° AIR 1927 Pat 325 (326) = 28 Cri L Jour 597 °° AIR 1933 Cal 1861 (1863) = 35 Cri L Jour 530 (DB).

(15) The trend of recent decisions of the Calcutta High Court is to the effect that even where statements of witnesses have been recorded in a condensed form contrary to Section 161 (3) the accused is entitled to copies. 55 Cal WN 398 (399) (DB) °° AIR 1950 Cal 363 (366) = 51 Cri L Jour 1307 (DB).

[See AIR 1952 Cal 621 (626) = 1952 Cri L Jour 1427 (DB).]

(16) Where a request is made for a copy of the previous statement of a witness, a copy of all the statements made by such witness during the investigation should be furnished. AIR 1929 Pat 268 (270) = 30 Cri L Jour 858 (DB).

(17) The accused is entitled to copy of the whole statement made by a witness excepting the portion that may be excluded under the second proviso to the section. AIR 1935 Rang 98 (100) = 36 Cri L Jour 665 (DB).

(18) Material portions omitted in copy of statement by oversight of the typist — Omission discovered only in appellate Court — Court should furnish the accused with correct copy and also give opportunity to recall the witness and cross-examine him. AIR 1920 Pat 378 (381) = 21 Cri L Jour 289 (DB).

(19) Copies of statements recorded by the police in the course of investigation under Chapter 14 cannot be refused on the ground that the case is being enquired into by the Court on a complaint and not challaned by the police as result of investigation. AIR 1951 Raj 145 (145) = ILR (1951) 1 Raj 178 = 52 Cri L Jour 1183.

Section 162 — Note 15 (contd.)

(20) An accused is not entitled to copies of statements recorded in the course of investigation of other cases. AIR 1952 Kutch 54 (55) = 1952 Cri L Jour 1037 °° AIR 1936 Lah 359 (361) = 38 Cri L Jour 246 °° AIR 1935 Nag 23 (24).

(21) An investigation made by a police officer under Section 202 not being an investigation under this chapter the statements of witnesses recorded by him during such investigation form part of the criminal case and therefore the Court is not entitled to refuse the grant of their copies. AIR 1942 Rang 51 (51) (DB).

(22) Statements recorded by a police-officer under Rule 254 (b), Police Regulation, Bengal, are not privileged as they are not recorded during the course of an investigation under this chapter and the accused is entitled to get copies of such statements. AIR 1950 Cal 165 (166) = 51 Cri L Jour 680.

(23) As soon as a defence pleader asks a witness a question concerning his statement to the police, it is the duty of the Court to ask the pleader whether or not he wishes to have a copy of that witness's statement to the police supplied to him. If the pleader does not desire a copy of the statement, then all questions concerning the witness's statement to the investigating officer should be disallowed. AIR 1935 Rang 299 (301) = 36 Cri L Jour 1380.

(24) As it is essential that the copy should be accurate, it is contemplated that such copies should be furnished under the direction of the Court. AIR 1945 Cal 159 (169) = 45 Cri L Jour 692 (DB).

(25) Notes of statement lost or destroyed by witness — Evidence of witness whether should be excluded, discussed — Evidence need not be expugned as inadmissible. AIR 1948 Cal 278 (280, 281) = ILR (1948) 2 Cal 364 = 49 Cri L Jour 469 (DB).

(26) The section does not impose a statutory obligation on an investigating officer to produce all his rough notes and jottings out of which he writes his case diary for the day. AIR 1949 Mad 663 (669) = 50 Cri L Jour 950 (DB).

[See also 1950 Ker L Tim 290 (294) (DB).]

(27) See also Notes under Section 173.

16. "On the request of the accused." — (1) Before the amendment of the section by Act 26 of 1955 the accused had to request the Court to refer to the statements made to the police officer and furnish him with a copy thereof, in order that the same may be used for contradicting the witness, but as it now stands, no such request is necessary because there is a provision to the effect that copies should be given earlier. **AIR 1957 SC 623 (627) = ILR (1957) Punj 1668 = 1957 Cri L Jour 1009.**

17. Contradicting witness under the section — Procedure. — (1) Section 145 of the Evidence Act indicates the manner in which contradiction is brought out. The cross-examining Counsel shall put the part or parts of the statement which affirms the contrary to what is stated in evidence. This indicates that there is something in writing which can be set against another statement made in evidence. **AIR 1959 SC 1012 (1024) = 1959 Cri L Jour 1231.**

(2) The only way in which the previous statement can be used is by contradicting the witness by such writing and this can be done only by drawing his attention to such parts of the recorded statement as are intended to be used for the purpose of contradiction and allowing him an opportunity to explain any contradiction. AIR 1952 All 289 (295) = 1952 Cri L Jour 600 (DB) °° AIR 1958 All 445 (446) = 1958 Cri L Jour 722. °° AIR 1950 Cal 363 (365, 366) = 1951 Cri LJ 1307 (DB) °° AIR 1945 Cal 159 (170) = 46 Cri L Jour 692 (DB) °° AIR 1943 All 49 (55) = 44 Cri L Jour 280 °° (1968) 2 Andh LT 202 (204) (SC) °° ILR (1960) Cut 659 (669) (DB).

(3) Those parts of the statement to the police which are used for contradicting the witness must be proved and brought on the record. AIR 1952 All 289 (295) = 1952 Cri L Jour 600 (DB) °° AIR 1935 Rang 98 (101) = 36 Cri L Jour 665 (DB).

(4) The proper method of contradicting witnesses with their statements under Section 162 is to ask the witnesses whether they had made before the police statements to such effect, quoting the actual words used. AIR 1958 Madh Pra 380 (386) = 1958 Cri LJ 1402 °° (1966) 7 Guj LR 662 (674) = ILR 1966 Guj 500 (DB) °° AIR 1963 Assam 151 (154) = 1963 (2) Cri LJ 255 = ILR (1963) 15 Assam 189 (DB) °° AIR 1965 Orissa 21 (23, 24) = 30 Cut LT 500 = 1965 (1) Cri LJ 191 °° 1962 (2) Cri LJ 523 (524, 525) (DB) (Andh Pra) °° AIR 1960 Andh Pra 141 (142, 143) = 1960 Cri LJ 303 = (1960) 1 Andh WR 313 (DB).

(5) The contradiction must be established by proving that the part of recorded statement used for contradicting a witness actually represents what was said by him to the police-officer. AIR 1950 Raj 16 (18) = 51 Cri L Jour 1077 (DB) °° AIR 1945 Cal 159 (169, 170) = 46 Cri L Jour 692 (DB).

(6) The statement may be proved by getting an admission from the witness that he made it, or by asking the police-officer in the witness box whether the witness made such statements to him and whether the record was made by him. AIR 1952 All 289 (295) = 1952 Cri L Jour 600 (DB) °° AIR 1958 Bom 225 (230)

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= ILR (1958) Bom 100 = 1958 Cri L Jour 749 (DB) °° AIR 1945 Cal 159 (170, 171) = 46 Cri L Jour 692 (DB) °° AIR 1943 All 49 (55) = 44 Cri L Jour 280 °° AIR 1935 Rang 98 (101) = 36 Cri L Jour 665 (DB) °° AIR 1932 Lah 103 (110) = 33 Cri L Jour 97 (DB) °° AIR 1950 Raj 16 (18) = 51 Cri L Jour 1077 (DB) °° AIR 1948 Cal 102 (103) = 48 Cri L Jour 561 (DB).

[See AIR 1938 All 571 (573) = 40 Cri L Jour 4 °° (1913) 14 Cri L Jour 437 (437) = 7 Sind LR 10 (DB) °° AIR 1928 Lah 507 (510) = 29 Cri L Jour 303 (DB).]

(7) If the officer is not available the statement may be proved by showing that the statement was written in the handwriting of the particular officer. AIR 1924 Bom 510 (511) = 26 Cri L Jour 223 (DB).

(8) While proving the statements of the witnesses the actual statements of the deponent must be accurately brought on record and when a police officer is giving evidence with reference to such statements his answers should be checked with what is written in the diaries. AIR 1947 Pat 398 (400) = 25 Pat 825 (DB).

(9) If necessary, in order to avoid delay, cross-examination may be allowed subject to subsequent proof of the statement. AIR 1939 Lah 268 (269) = 40 Cri L Jour 708 (DB) °° AIR 1938 Nag 110 (111) = 39 L Jour 68 °° (1949) Bur LR (HC) 154 (155).
[See also AIR 1937 Bom 60 (62) = 38 Cri L Jour 327 (327) (DB).]

[But see 1928 Bom 23 (25) = 29 Cri L Jour 221 (DB) °° AIR 1928 Rang 150 (151) = 29 Cri L Jour 701 (DB).]

(10) The non-examination of the investigating Police Officer, specially in a serious case, may very often cause material prejudice to an accused. AIR 1956 Orissa 212 (213) = ILR (1956) Cut 241 = 1956 Cri L Jour 1421.

(11) It is the duty of the defence to prove the statements of which they make use in cross-examination and where they have not done so, it is not open to them thereafter to object that such statements have been brought on the record without proof. AIR 1935 Rang 98 (101) = 36 Cri L Jour 655 (DB).

(12) If the witness's attention is not drawn to the written record, it cannot be used in evidence and the police-officer cannot be asked about it. AIR 1945 Cal 159 (170) = 46 Cri L Jour 692 (DB) °° AIR 1943 All 49 (55) = 44 Cri LJ 280 °° AIR 1926 Lah 54 (58, 59) = 26 Cri L Jour 1308 (DB) °° AIR 1933 Mad 283 (239) = 34 Cri L Jour 481 (DB).

(13) The cross-examination of the witness must be confined to the contradiction between his two statements. AIR 1935 Rang 98 (100) = 36 Cri L Jour 665 (DB).

(14) The word 'cross-examination' in the first proviso cannot be understood to mean the entire gamut of cross-examination without reference to the limited scope of the proviso. It should be confined only to the cross-examination by contradiction allowed by the proviso. **AIR 1959 SC 1012 (1024) = 1959 Cri L Jour 1231.**

(15) Only those portions of the statements as have been used to contradict the witness, will form part of the judicial record. AIR 1952 All 289 (295) = 1952 Cri L Jour 600 (DB) °° AIR 1942 Mad 58 (60) (DB) °° AIR 1937 Oudh 201 (203) = 38 Cri L Jour 165 (DB) °° AIR 1926 Pat 20 (22) = 27 Cri L Jour 362 (DB) °° AIR 1965 Orissa 205 (206, 207) = 32 Cut LT 456 = 1965 (2) Cri LJ 661.

(16) Subject to the power of Judge or Magistrate to disallow any question, it is for accused or his pleader to decide in what manner and to what extent he will use the statement for the purpose of cross-examination. AIR 1935 Rang 98 (100) = 36 Cri L Jour 665 (DB).

(17) The procedure laid down in this section applies whether the witness admits or denies the previous statement. AIR 1933 All 535 (539) = 35 Cri L Jour 360 (DB).

(18) As to the necessity of putting the writing to the witness before it can be used as evidence see the undermentioned cases. AIR 1937 Oudh 201 (203) = 38 Cri L Jour 165 (DB) °° AIR 1915 PC 7 (11) °° AIR 1920 Pat 291 (324) (DB) °° AIR 1917 Cal 79 (80) (DB) °° AIR 1961 Raj 35 (38) = 1960 Raj LW 411 = 1961 (1) Cri LJ 310.

(19) Dictum: It is unfortunate that Indian Law does not admit of cross-examination of defence witness in respect of his previous statements before police. **AIR 1968 SC 1390 (1392) = 1968 Cr LJ 1647 = (1968) 3 CR 685.**

(20) Written report made by witness to police narrating the incident, read out to him during his examination-in-chief before Sessions Judge — **Held,** Sessions Judge was not right in allowing report in its entirety to be read out to witness in course of his examination-in-chief — He overlooked the provisions of Section 162 (1). AIR 1965 Orissa 205 (206) = 32 Cut LT 456 = 1965 (2) Cri LJ 661 (DB) °° 63 Punj LR 546 = 1961 All WR (Sup) 32 (1962 (1) Cri LJ 843 (846) (Punj).

(21) Under present Section 162, prosecution is entitled, with permission of Court to contradict a witness in the manner provided by Section 14 Evidence Act, provided his statement made to police officer in the course of investigations has been reduced into writing. (1968) 1 SC **WR 730 (735, 736) = 1968 SCD 790.**

(22) It is not correct to say that the prosecution cannot be allowed to contradict the evidence given by its witness under the proviso to Section 162 (1) 'without declaring him hostile and save in his cross-

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examination'. Section 154 of the Evidence Act does not require that witness should be declared as hostile by the party calling him. AIR 1960 Guj 9 (9, 10) = 1960 Cri LJ 1330 = (1960) 1 Guj HCR 44 = (1960) 1 Guj LR 64.

(23) If from the materials on record the mala fide conduct of Investigating Officer can be reasonably inferred or held to have been established, then that mala fide conduct can be urged on behalf of State and Court can consider such mala fide conduct while considering the discrepancy between statement of prosecution witness recorded by police and his deposition in Court. ILR (1966) Guj 56 (60) = (1966) 7 Guj LR 227 (DB) °° (1967) 8 Guj LR 350 (358) (DB).

(24) Accused in murder case was defended by an inexperienced Standing Counsel Absolutely necessary for trial Judge to have looked into several statements made by witnesses and put several statements which are contradictory to these witnesses to elicit an explanation from them — Trial Judge has not pointed out the several contradictory statements of several witnesses to jury These non-directions amounted to misdirections. ILR (1960) Mys 311 (321) (DB).

18. **Re-examination.** — (1) Under the guise of re-examination, the statement before the police cannot be used to corroborate a prosecution witness. AIR 1929 Pat 268 (270) = 30 Cri L Jour 858 (DB).

(2) Where during the cross-examination of police-officer, he is asked whether a certain witness stated a certain fact to him during investigation and he answers the question in the negative, the matter as to what the witness actually stated to the police during the investigation must be cleared up in the re-examination of the investigating officer. AIR 1938 Pat 579 (585) = 40 Cri L Jour 147 (DB).

(3) Even if the Public Prosecutor fails to clear up matters in re-examination it is the duty of the Court to bring out facts which will clear up the negative answer. AIR 1958 Pat 579 (585) = 40 Cri L Jour 147 (DB).

19. **"Whether in a police-diary or otherwise."** — (1) The statements of witnesses during investigation, even though taken down in the special diary, can be used by the accused for the purposes specified in the proviso. AIR 1952 Madh B 79 (80) = 1952 Cri L Jour 700 (DB) °° AIR 1928 Cal 260 (261) = 29 Cri L Jour 531 (DB) °° AIR 1927 Oudh 321 (323) = 28 Cri L Jour 802 (DB) °° AIR 1933 Nag 4 (5) = 34 Cri L Jour 127.

[See also AIR 1929 Cal 257 (258) = 30 Cri L Jour 577 °° AIR 1931 Pat 150 (151) = 32 Cri L Jour 638 (DB).]

(2) The object of the amended section is that a police-officer should no longer claim privilege in respect of statement on the ground that is is recorded under Sec. 172. AIR 1927 Cal 644 (646) = 28 Cri L Jour 805 (DB) °° AIR 1935 Sind 145 (172) = 36 Cri L Jour 1161.

(3) If a police-diary does not contain any statement by any witness, but is only a brief record of what the investigating officer saw on the spot and of information ascertained as a result of questioning several people the accused is not entitled to use it in the manner provided by Section 162. AIR 1939 Cal 252 (253) = 40 Cri L Jour 386 (DB).

(4) Case diary containing statements or other allied matters. Such as document like site plant prepared during investigation, are not privileged. AIR 1965 All 494 (495, 496) = 1965 (2) Cri LJ 452 = 1964 All LJ 950.

(5) The statements recorded by the police, either in the case diary or separately, in the course of investigation, are not their private property but constitute an unpublished record relating to the affairs of the State. Keeping back of such statements is positively repugnant to spirit of this section. AIR 1953 Bhopal 21 (23) = 1953 Cri L Jour 990 °° AIR 1959 Andh Pra 325 (328) = 1959 Cri L Jour 808 (DB).

(6) Statements by witnesses made in the course of investigation cannot be considered to be made in official confidence within the meaning of Section 124, Evidence Act, and as such they are not privileged. AIR 1951 Mad 864 (864) = ILR (1952) Mad 170 = 52 Cri L Jour 984 (1).

(7) Court can order production of document under Section 162 witness has to produce the same subject to objections of other side — Court cannot inspect the document if an objection is made under Section 123 of the Evidence Act (1872) — Court must first decide whether document is privileged or not. AIR 1963 J and K 20 (22) = 1962 Kash LJ 185 = 1963 (1) Cri 356.

(8) Information obtained during the course of the police investigation has to be kept confidential and police officers are not entitled to give out the contents of confessional statements of accused persons or the contents of statements made by witnesses interviewed by them for the benefit of the public or the Press. 1959 Ker LT 167 (246) = 1959 Ker LJ 221 = ILR (1959) Ker 319 (DB).

(9) A Court is entitled to use police diary during the trial only for the purposes specified in Section 172. But it would not be justified in making use of it in his judgment and in seeking confirmation of his opinion on the question of appreciation of evidence from statements contained in the police diary. **AIR 1954 SC 51 (60) = 1954 SCR 475 = 1954 Cri L Jour 338.**

(10) Where the statements of the witnesses were not taken down when they

Section 162 — Note 19 (contd.)

were made but the police officer only made notes thereof and subsequently after copying the statements in the diary destroyed the original notes, there were material interpolations in the inquest report and the prosecution evidence was found to be unreliable, it was held that the accused were denied of a valuable right to cross-examine the prosecution witnesses with the aid of the earliest statements recorded under this section and this was sufficient, in the circumstances of the case, to vitiate the entire trial of the case. AIR 1956 Andhra 213 (216) = 1956 Cri L Jour 1279 (DB).

20. Effect of admitting in evidence statements inadmissible under this section. — (1) It is the duty of the trial Court to refuse to admit evidence which is not admissible according to law. AIR 1953 Hyd 133 (134) = ILR (1952) Hyd 512 = 1953 Cri L Jour 746 (DB) °° **AIR 1947 PC 75 (77) = ILR (1948) 1 Cal 179 = 74 Ind App 80 = 48 Cri L Jour 679.**

(2) Signed statements of Panch witnesses taken during investigation and incorporated in panchnama — Effect is to render evidence of such witnesses doubtful — Admissibility of evidence of such witnesses in trial doubtful — Its admissibility in trial Court not objected — Such evidence not excluded from consideration in appeal when there was nothing to show that witnesses had used those Panchnamas while giving evidence. 1962 (1) Cri LJ 55 (57, 58) = 39 Mys LJ 788 (DB) (Mys).

(3) Even the consent of parties will not transform such inadmissible evidence into admissible one. AIR 1923 Lah 630 (631) (DB) °° AIR 1926 Pat 211 (212, 213) = 27 Cri L Jour 753 (DB) °° AIR 1931 Pat 345 (345) = 32 Cri L Jour 1025.

(4) Illegality committed during investigation — Does not affect jurisdiction of Court for trial unless the same is discovered at an early stage of proceeding. AIR 1968 Mad 117 (133, 134) = (1968) 1 Mad LJ 480 = 1968 Cri LJ 493 (DB).

(5) The mere fact that inadmissible evidence has been received will not render trial void ab initio. It is only an error curable under Section 537. Where, therefore, the reception of evidence inadmissible under this section has not caused any prejudice to the accused and has not occasioned failure of justice, it will not render the trial void. AIR 1942 Cal 495 (496) = 43 Cri L Jour 797 (DB) °° **AIR 1939 PC 47 (53) = 40 Cri L Jour 864** °° AIR 1956 Mad 536 (540) = 1956 Cri L Jour 1202 (DB) °° ILR (1955) Andhra 700 (710) (DB) °° AIR 1953 Cal 602 (604) = 1953 Cri L Jour 1377 (DB).

[See also (1968) 1 SCWR 730 (735, 736) = 1968 SCD 790 °° AIR 1946 Pat 127 (DB) °° (1936) 37 Cri L Jour 1117 (1118) (DB) (Cal).]

Also see Notes under S. 537.

(6) Irregularities and illegalities during an investigation may not necessary vitiate the entire proceeding but may only affect the value of evidence. AIR 1968 Mad 117 (130) = 1968 Cri LJ 493 = (1968) 1 Mad LJ 480.

(7) When the record of the statements or of their substance is lost or destroyed, the prime consideration is whether it has resulted in denying the accused the benefit of Section 162 (1) in which event an almost irressistible inference of prejudice to the accused would arise. ILR (1955) Andhra 700 (710) (DB) °° AIR 1959 Andh Pra 325 (328) = 1959 Cri L Jour 808 (DB) °° AIR 1957 Mad 505 (508) = 1957 Cri L Jour 863 (DB).

[See also AIR 1954 Orissa 49 (50) = ILR (1953) Cut 428 = 1954 Cri L Jour 306 (DB).]

(8) If the Court of appeal or revision holds that inadmissible evidence has been received, it should wholly ignore such evidence and see if there is other evidence on record to justify the decision of the lower Court. (1878) I Cal 207 (217) (DB) °° AIR 1932 Sind 201 (205) = 34 Cri L Jour 147 (DB) °° AIR 1933 Bom 266 (270) = 34 Cri L Jour 870 (DB) °° (1910) 11 Cri L Jour 96 (97) (DB) (Cal) °° AIR 1926 Pat 20 (23) = 27 Cri L Jour 362 (DB) °° (1908) 32 Bom 111 (119, 120) = 6 Cri L Jour 164 (FB).

(9) The Privy Council will refuse to interfere on the mere ground of wrong reception of evidence. **AIR 1925 PC 52 (53) = 26 Cri L Jour 1020 °° AIR 1946 PC 1 (3) = ILR (1945) Kar (PC) 366 = 72 Ind App 270 = ILR (1945) Lah 451.**

[See also **AIR 1947 PC 75 (76) = ILR (1948) 1 Cal 179 = 74 Ind App 80 = 48 Cri L Jour 679.**]

(10) If evidence inadmissible under this section is used to demolish the most important portion of defence case, its admission would prejudice accused and the verdict of jury based on evidence cannot be upheld. AIR 1944 Cal 339 (346, 365) = 45 Cri L Jour 771 (DB) °° AIR 1939 Cal 330 = 40 Cri L Jour 665 (DB) °° **AIR 1962 SC 605 (625) = 1962 (1) Cri LJ 521 = (1962) Supp 1 SCR 567.**

(11) The evidence of 'agent provocateur' has to be scanned very carefully. Prudence requires that there must be corroboration of evidence of witness who must have been acting as 'agent provocateur'. 1959 Ker LT 872 (875) = 1959 Ker LJ 1143.

(12) When P. W. 2 was asked in cross-examination whether the deceased caught hold of the accused by neck he gave the evasive answer that he saw deceased catching hold of the accused, but he was not aware whether it was on the throat. This witness was permitted to be declared hostile and to be cross-examined with reference to his case diary statement because of the unwilling admission made by him in cross-examination. The Sessions Judge was in

Section 162 — Note 20 (contd.)

error in permitting the witness to be declared hostile and to be confronted with the case diary statement. It was but a detail which was brought out in cross-examination and not a contradiction. (1964) Mad LJ (Cri) 39 (Ker) = 1962 Ker LT 529 (531).

(13) Notes prepared from memory of what prosecution witness had stated before investigating officer copy of notes got exhibited by defence — Making use of such document would offend provisions of Section 162. AIR 1960 Mys 111 (127) = 38 Mys LJ 265 = 1960 Cri LJ 934 (DB).

21. Effect of refusal to grant copies to accused. — [Note: As the result of amendment of the section by Act 26 of 1955, the provision relating to the grant of copies of the statements made to the police during the investigation, to the accused on his request cotnained in the old proviso 1 has been omitted in view of the fact that the amended Section 173 (4) makes it obligatory on the police to supply to the accused before the commencement of the inquiry or trial, free copies of statements of all witnesses recorded under Section 161 (3) whom the prosecution proposes to examine as witnesses. The case law on this topic has been, therefore, given under separate headings as (a) Case law after the amendment, and (b) Case law before the amendment.]

(a) Case law after the amendment.

(1) Provisions in Section 173 (4) and Section 207A (3) have been introduced to simplify the procedure in respect of inquiries leading upto a Sessions trial and at the same time to safeguard the interests of accused persons by enjoining upon the police officers concerned and Magistrates before whom such proceedings are brought to see that all the documents necessary to give the accused persons all the information for the proper conduct of their defence, are furnished. **AIR 1957 SC 737 (741) = 1958 SCR 283 = 1957 Cri L Jour 1320.**

(2) Copy of statement of approver recorded during investigation not supplied to accused — It is a fatal defect — High Court will not consider approver's evidence in appeal — Case held unfit for remand after prolonged trial. AIR 1963 Andh Pra 314 (319) = ILR (1962) Andh Pra 96 = 1963 Cri LJ 121 (DB).

(3) In cases exclusively triable by Court of Session it is the duty of the Magistrate while holding a preliminary inquiry, to satisfy himself that the documents referred to in Section 173 have been furnished to the accused and if he found that the police officer concerned had not carried out his duty in that behalf, the Magistrate should see to it that that is done. **AIR 1957 SC 737 (741) = 1958 SCR 283 = 1957 Cri L Jour 1320.**

(4) No evidence affecting a party is admissible against that party. Unless the latter has had an opportunity of testing its truthfulness by cross-examination. AIR 1963 Andh Pra 314 (319) = ILR (1962) Andh Pra 96 = (1963) 2 Cri LJ 121.

(5) The non-compliance with Ss. 173 (4) and 207A (3) has not, necessarily, the result of vitiating the proceeding and subsequent trial. The word 'shall' occurring in both these provisions is not mandatory but only directory. **AIR 1957 SC 737 (741) = 1958 SCR 283 = 1957 Cri L Jour 1320** °° 1962 (2) Cri LJ 682 (684, 685) = 1962 MPLJ 352 = 1962 Jab LJ 901 (DB).

(6) Failure to furnish statements of witnesses recorded in the course of investigation may not vitiate the trial. It does not affect the jurisdiction of the Court to try a case, nor is the failure by itself a ground which affects the power of the Court to record a conviction, if the evidence warrants such a course. The provision relating to the making of copies of statements recorded in the course of investigation is undoubtedly of great importance, but the breach must be considered in the light of the prejudice caused to the accused by reason of its breach. **AIR 1964 SC 286 (291, 292, 294) = (1964) 4 SCR 521 = 1964 (1) Cri LJ 167 (AIR 1945 Nag 1 and AIR 1946 Nag 173, Overruled.)** °° (1964) 1 Mys LJ 393 (398).

(7) An accused is undoubtedly entitled to inspect statements of prosecution witnesses recorded under Section 164. The Court is expected to afford all facilities to the accused not only when he is compelled by law to do so; but also when he has a discretion in the matter and the ends of justice require that the accused should be apprised of what certain prosecution witnesses had previously stated in the proceedings under Section 164. The same considerations are also applicable in case of statements made under Section 162, Criminal P. C. 27 Cut LT 116 (124, 125) = 1961 All Cri R 398 = 1961 All WR (Supp) 85 (Orissa).

(8) Bengal Excise Act (5 of 1909), Section 74 — Case investigated by Excise Officer — Section 162 applies but Sec. 173 (4) does not apply — Accused not entitled to copies of statement recorded during investigation in advance even on payment of costs — Proper procedure. AIR 1963 Cal 431 (432, 433) = 1963 (2) Cri LJ 129 (DB).

(9) It is necessary and desirable that customs Authorities should be compelled to furnish to accused before commencement of trial copies of statements of witnesses recorded by them in the course of their investigation. It was implicit in Sec. 162 that Court shall grant the request for referring to statements etc. or of supplying copies of such statements to enable accused to cross-examine witnesses for purposes of

Section 162 — Note 21 (contd.)
pointing out contradictions. (1967) 69 Bom LR 421 (442) = ILR (1969) Bom 349 (DB). (1965) 67 Bom LR 748, Dissented from.)

(10) Case started on complaint by Range Officer under Forest Act. Accused is entitled to grant of copies of statements of witnesses recorded during previous investigation into offence under Section 379, Penal Code and also those recorded by the forest authorities and whom the prosecution wanted to examine at the trial. ILR (1961) Madh Pra 1050 = 1961 Jab LJ 1151 = 1961 MPLJ 1177 = 1962 (2) Cri LJ 550 (550,551). (AIR 1957 Raj 185, Dist.)

(11) Final report by police finding no case against accused — Trial on basis of subsequent private complaint — S. 162 still applies — Accused can get copies of statements made to police by prosecution witnesses for contradicting them in the manner provided under Section 145 of the Evidence Act. AIR 1965 Orissa 21 (23, 24) = 1964 6 OJD 166 = 1965 (1) Cri LJ 191.

(12) Statements made during investigation of different offence — Accused has no right to free or certified copies of such statements. AIR 1967 Orissa 189 (190) = 1967 Cr LJ 1552 = 33 Cut LT 576.

(b) Case law before the amendment.

(1) A refusal to grant copies of statements to accused is only an error curable under the provisions of Section 537. AIR 1935 Sind 145 (178) = 36 Cri L Jour 1161 °° AIR 1954 SC 700 (703) = 1954 Cri L Jour 1751 °° AIR 1947 PC 67 (69) = ILR (1948) Mad 1 = 74 Ind App 65 °° AIR 1954 All 779 (781) = 1954 Cri L Jour 1705.

[See also AIR 1952 Cal 621 (626) = 1952 Cri LJ 1427 (DB) °° AIR 1952 Orissa 289 (300) = ILR (1952) Cut 109 = 1952 Cri L Jour 1533 (DB) °° AIR 1948 Cal 278 (280) = ILR (1948) 2 Cal 364 = 49 Cri L Jour 469 (DB).]

(2) Where a Court wrongly refuses to give copies to the accused and if on a reference to the statements it appears that the accused has been prejudiced, the conviction will be quashed and a new trial ordered. AIR 1950 Cal 565 (565) (DB) °° AIR 1957 Andh Pra 954 (955) = 1957 Cri L Jour 1227 °° AIR 1957 Andh Pra 729 (731) = 1957 Cri L Jour 1086 °° AIR 1956 Andhra 213 (216) = 1956 Cri L Jour 1279 (DB) °° AIR 1954 Madh B 138 (138) = 1954 Cri L Jour 1184 °° AIR 1950 Cal 363 (366) = 51 Cri L Jour 1307 (DB) °° AIR 1931 All 262 (263) = 32 Cri L Jour 562 °° AIR 1931 All 273 (274) = 32 Cri L Jour 870 °° (1874) 11 Bom HCR 120 (124) (DB) °° AIR 1928 Cal 260 (261) = 29 Cri L Jour 531 (DB) °° AIR 1933 Nag 4 (5) = 34 Cri L Jour 127 °° AIR 1920 Pat 268 (270) = 30 Cri L Jour 858 (DB).

[See also ('51) 55 Cal WN 398 (399) (DB) °° AIR 1951 Raj 145 (145) = ILR (1951) 1 Raj 178 = 52 Cri L Jour 1183 °° AIR 1950 Ajmer 44 (45) = 51 Cri L Jour 1301.]

(3) Each case must be decided on its own facts and the extent of the prejudice to the accused in each case must determine whether the trial should be held altogether vitiated or whether the defect can be remedied. ILR (1952) 2 Raj 435 (443) (DB) °°AIR 1954 SC 436 (438) = 1954 Cri L Jour 1155 = 1955 SCR 588 °° 1955 Ker L Tim 383 (385) °° AIR 1950 Nag 1 (5) = ILR (1950) Nag 229 = 51 Cri L Jour 235.

(4) Refusal of the accused's request for copies under this section will vitiate trial and cannot be cured under Section 537, because Court is bound to assume prejudice in such cases and the extent of prejudice cannot be gauged. AIR 1952 Mad 229 (230) = 1952 Cri L Jour 481 °° AIR 1951 Mad 685 (686) = 1952 Cri L Jour 509 °° AIR 1945 Nag 1 (5) = 46 Cri L Jour 448 = ILR (1945) Nag 151 (DB) °° AIR 1939 Pat 174 (176) = 40 Cri L Jour 509 (DB).

[See also AIR 1928 Lah 257 (258) = 29 Cri L Jour 348 (DB) °° AIR 1950 Cal 353 (353, 354) = 51 Cri L Jour 1334 °° AIR 1929 Nag 240 (240) = 30 Cri L Jour 1097.]

(5) Where a committing Magistrate refuses copies of statements, the committal need not be quashed because the accused has an opportunity to use the statement in the Sessions Court. AIR 1928 Pat 215 (216) = 29 Cri L Jour 297 (DB).

(6) The testimony of those witnesses copies of whose statements have been refused and thus the accused is deprived of his valuable right of putting their testimony to the touch-stone of cross-examination should be received with great caution. AIR 1953 Bhopal 21 (23) = 1953 Cri L Jour 990 °° AIR 1953 Bhopal 8 (12) = 1953 Cri L Jour 692 °° AIR 1949 Nag 260 = ILR (1949) Nag 379 = 50 Cri L Jour 669 (DB).

22. Failure to observe provisions of this section — Effect.— (1) A failure to observe the provisions of this section is only an error curable under the provisions of Section 537. AIR 1950 Pat 549 (550) °° AIR 1935 Sind 145 (178) = 36 Cri L Jour 1161 °° AIR 1948 Cal 278 (284) = ILR 1948-2 Cal 364 = 49 Cri L Jour 469 (DB) °° AIR 1947 PC 67 (69) = 74 Ind App 65 = 48 Cr L Jour 533 = ILR (1948) Mad 1 °° AIR 1946 Cal 483 (487) = 47 Cri L Jour 564 (DB) °° AIR 1935 Rang 98 (101) = 36 Cri L Jour 665 (DB).

(1A) Dying declaration — Recorded by Police Officer is as good as one recorded by Judicial Magistrate when it is recorded after medical opinion about fitness of victim provided the veracity of the witness recording it is not doubtful and the record

Section 162 — Note 22 (contd.)
is true and correct as made by its maker. (1969) 71 Punj LR 73 (83) (DB).

(2) Signing of statements recorded under this section is only an error curable under the provisions of Section 537. AIR 1945 Mad 284 (286) = ILR (1946) Mad 219 = 47 Cri L Jour 149 (DB) °° AIR 1946 Nag 173 (182) = ILR (1946) Nag 126 = 47 Cri L Jour 851 (DB). (Overruled by AIR 1958 SC 238 on another point.) °° AIR 1934 Sind 78 (83) = 35 Cri L Jour 1170 (DB).

(3) The signing of the statement or the giving of evidence by a witness who has signed the statement does not vitiate the whole proceedings. AIR 1947 PC 75 (77) = ILR (1948) 1 Cal 179 = 74 Ind App 80 = 48 Cri L Jour 679 °° AIR 1955 Pepsu 81 (86) = ILR (1954) Patiala 352 = 1955 Cri L Jour 983 (DB) °° AIR 1954 Trav-Co 282 (285) = ILR (1953) Trav-Co 841 = 1954 Cri L Jour 658 °° (1968) 9 Guj LR 1063 = ILR (1968) Guj 94 (97) (DB) °° (1959) Mad LJ (Cr) 816 °° 1959 Ker LJ 1143.

(4) Statements made by the witnesses to the Police in the inquest report are not to be signed by them, but the mere fact that such statements are signed by them does not make those statements inadmissible and hence they can be used for the purpose of confrontation under Section 162. 63 Pun LR 908 (913, 914) (DB).

(5) Provisions of Section 161 (3) are mandatory — Investigating Officer failing to record statements of witnesses — Prejudice caused to accused — Their valuable right to cross-examine witnesses on the basis of their earliest version is lost — Violation of mandatory provisions of Section 161 (3) is not mere irregularity curable under Section 537. (1968) 1 Andh WR 94 = 1968 Mad LJ (Cri) 75.

(6) Examination of accused — Purpose of, is to enable accused to explain any circumstances appearing in evidence against him — Since everything contained in police record does not constitute evidence, Magistrate is not justified in putting questions to the accused with reference to his statement recorded by the Police. 1968 Cri LJ 1345 (1351) = (1968) 2 Andh WR 86 (DB).

(7) Though it cannot be laid down as a general rule that evidence of a witness whose signed statement was taken during investigation cannot be acted upon in the absence of independent corroboration, as a matter of caution courts would hesitate to act upon the uncorroborated evidence unless it be that in any particular case there are circumstances to indicate that the credibility of the witness was not affected by being pinned down to a particular statement and that he was acting as a free agent when he gave the evidence before Court. AIR 1961 Ker 99 (104, 105) = (1961) 1 Cri LJ 505 = 1960 Ker LT 666 (FB).

(8-9) Illegality committed during investigation — Does not affect jurisdiction of Court for trial unless the same is discovered at an early stage of proceeding. AIR 1968 Mad 117 (133) = 1968 Cri LJ 493 = (1968) 1 Mad LJ 480.

(10) Violation of provisions may impair a statement recorded on oath under Section 164. AIR 1968 Mad 117 (128) = 1968 Cri LJ 493 = (1968) 1 Mad LJ 480 (DB).

23. "Dying declarations." — (1) A dying declaration made to a police officer during the course of investigation is not subject to the limitations mentioned in the main clause of the Section. AIR 1951 Him Pra 1 (Pr. 34)= 52 Cri L Jour 50 °° AIR 1950 Trav-Co 41 (44) = 1949 Trav-Co LR 74 = 51 Cri L Jour 988 (DB) °° AIR 1941 Rang 301 (303) = 43 Cri L Jour 123 °° AIR 1923 Cal 463 (465) = 24 Cri L Jour 193 (DB) °° 1886 Pun Re (Cr.) No. 13, p. 22 (22) (DB) °° AIR 1970 Goa 96 (100) °° AIR 1968 All 83 (86) = 1967 All Cri R 242 = 1968 Cri LJ 227 (DB).

(2) The admission of dying declarations as evidence rests on the doctrine of necessity. (1913) 14 Cri L Jour 510 (511) = 7 Low Bur Rul 83.

(3) When a man gasps out his story soon after the occurrence it may be said that there was no time for him to fabricate or for his friends to suggest falsehood. AIR 1931 Mad 180 (180) = 32 Cri L Jour 357 °° (1910) 11 Cri L Jour 171 (176) (Lah) °° (1911) 12 Cri L Jour 528 (529) (Mad).

(4) A dying declaration should be scrutinized with great care. It is not safe to base a conviction merely on the dying declaration. AIR 1953 Cal 383 (383) = 1953 Cri L Jour 831 (DB) °° 1949 Bur LR (HC) 154 (155) °° AIR 1941 Lah 368 (369) = 43 Cri L Jour 59 (DB) °° AIR 1930 All 532 (533) = 31 Cri L Jour 862 (DB) °° (1901) 25 Bom 45 (46) (DB).
[See also AIR 1952 Trav-Co 449 (450) = 1952 Cri L Jour 1558 (DB) °° AIR 1949 East Punj 228 (230) = 50 Cri L Jour 568 (DB).

(5) If the Court after taking everything into consideration is convinced that the dying declaration is true, it is its duty to convict the accused, notwithstanding that there is no corroboration in the true sense. AIR 1945 Nag 153 (155) = ILR (1945) Nag 613 = 47 Cri L Jour 92 (DB).
[See also AIR 1949 Nag 405 (407) = ILR (1949) Nag 301 = 51 Cri L Jour 224 (DB) °° ('62) 64 Pun LR 1064 (1070) (DB).]

(6) Under the Evidence Act, dying declarations are now relevant whether the person who made them was or was not, at the time when they were made, under the expectation of death. AIR 1950 Kutch 2 (3) = 51 Cri L Jour 363 °° (1873) 19 Suth WR (Cr) 44 (44) °° AIR 1960 Punj 310 (311) = 1960 Cri LJ 851.

163. No inducement to be offered.—(1) No police-officer[*] or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in the Indian Evidence Act, 1872, Section 24.

(2) But no police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will.

[1882 — S. 163; 1872 — Ss. 120, 184; 1861 — Ss. 98, 146.]

[*] By its Notification No. 577J dated 25-1-1956 as amended by Notification No. 1384J dated 24-2-1958 issued under S. 1 (2) of this Code, the State Government of West Bengal has extended S. 163 to the Commissioner of Police and the police in the town of Calcutta: see Cal. Gaz., 9-2-1956, Pt. I, page 468 and ibid, 6-3-1958, Pt. I, page 640.

Section 162 — Note 23 (contd.)

(7) Dying declaration that both A and B gave injuries to deceased — A held to have been falsely implicated by deceased and therefore acquitted — Same dying declaration could not constitute safe piece of evidence for convicting B — For, ordinarily, a dying declaration should be either accepted or rejected as a whole. AIR 1963 Punj 170 (173, 174) = (1963) 1 Cri LJ 469 = 64 Punj LR 1064 (DB)

(8) Where a person who made the dying declaration has survived and has not been examined in the case, the Court is prevented by law from taking note of it. AIR 1958 All 255 (278) = 1068 Cri L Jour 424 (DB).

(9) The dying declaration is admissible only when the cause of declarant's death is in issue. AIR 1925 All 227 (228) = 26 Cri L Jour 547 °° AIR 1916 Lah 106 (106) = 17 Cri L Jour 438 (439) (DB) °° AIR 1924 Nag 115 (116) = 26 Cri L Jour 1121 (DB) °° 1901 Punj Re (Cr) No. 17, p. 45 (47) (DB).

(10) Under Section 32 (1) it is the statement actually made by the deceased as to the cause of his death or of the circumstances of the transaction which resulted in his death which is relevant. AIR 1952 All 289 (297) = 1952 Cri L Jour 600 (DB) °° 1967 Ker LT 466 (473) = 1967 Ker LJ 509 (DB).

(11) When dying declarations are taken, the questions and answers should be taken down; such declaration should not be merely in the narrative form. AIR 1943 Pat 397 (401) = 45 Cri L Jour 213 (DB) °° AIR 1925 Cal 876 (881, 882) = 26 Cri L Jour 1256 (DB).

(12) When recording dying declarations made by signs the person recording the same should not give his own interpretation of the signs but should leave that to the Court. AIR 1949 Nag 405 (406) = ILR (1949) Nag 301 = 51 Cri L Jour 224 (DB).

(13) The dying declaration does not cease to be so merely because the declarant lingers for a few days and then dies. AIR 1929 Lah 64 (65) = 30 Cri L Jour 65 (DB).

(14) It is doubtful whether the dying declaration of a person whose chances to live can be relied upon for the purpose of corroboration especially where the person who has given the dying declaration is not the complainant. (1951) 54 Mys HCR 121 (122) = 29 Mys L Jour 10 (DB).

(15) An incomplete dying declaration is not admissible in evidence. 1950 All L Jour 412 (415) = 54 Cal WN 503 (PC).

(16) The mere fact that it is not so signed would not make it inadmissible. AIR 1951 Pepsu 111 (113, 114) = 3 Pepsu LR 303 = 52 Cri L Jour 883 (DB).

(17) The rule admitting a dying declaration is also subject to the rule against hearsay. AIR 1951 Him Pra 1 (Pr. 34) = 52 Cri L Jour 50.

(18) A dying declaration recorded by a clerk in the presence and supervision of the Magistrate does not become inadmissible merely because the scribe is not produced to prove it. AIR 1951 Pepsu 111 (113, 114) = 3 Pepsu LR 303 = 52 Cri L Jour 883 (DB).

Section 163 — Note 1

(1) Section 163 in Chapter XIV relates to information to the police and their power to investigate. Therefore the section can apply to investigations made under the Cr. P. Code only. AIR 1968 Bom 400 (412) = 69 Bom LR 808 = 1968 Cri LJ 1584.

(2) Injunctions are necessary for keeping under check the wide powers of investigation and search which are likely to jeopardise the cherished freedom of personal liberty. AIR 1968 Mad 117 (129, 130) = 1968 Cri LJ 493 = (1968) 1 Mad LJ 480 (DB).

(3) The term "police-officer" is also found in Sections 25 to 27 of the Evidence Act. It has been held that the term used in those sections should be read not in any restricted sense but according to its more comprehensive and popular meaning. (1893) 17 Bom 485 (486) (DB) °° AIR 1927 Nag 222 (224) = 28 Cri L Jour 471 (DB) °° AIR 1951 Punj 387 (387, 388) = 52 Cri L Jour 661 °° AIR 1970 SC 1065 = 1970 Cri LJ 998 = (1969) 2 SCR 613.

164. Power to record statements and confessions.—(1) *[Any Presidency Magistrate, any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf by the †[State Government] may, if he is not

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Section 163 — Note 1 (contd.)

(4) In deciding whether a certain person is a person in authority, the test is whether he has authority to interfere with the matter. Any concern or interest in it would be sufficient to give such authority. (1872) 9 Bom HCR 358 (369) (SB) °° AIR 1918 Mad 111 (113, 114) = 19 Cri L Jour 189 (DB) °° AIR 1915 Bom 249 (252) = 17 Cri L Jour 133 (DB).

(5) Generally speaking, a "person in authority" is one who is engaged in the apprehension, detention, or the prosecution of the accused, or one who is empowered to examine him. AIR 1933 Pat 149 (150) = 34 Cri L Jour 349 (SB).

(6) It is not enough that the accused or the person making the statement thought the party a person in authority: such person must be one in actual authority. AIR 1917 Sind 65 (69) = 18 Cri L Jour 58 (62) (DB).

(7) Provisions of Sections 161 and 163, Cr. P. C. emphasize the fact that a police officer is prohibited from beating or confining persons with a view to induce them to make statements. AIR 1966 SC 1786 (1787) = (1966) Cri LJ 1498 = (1967) 2 SCJ 94 °° AIR 1964 SC 33 (38) = (1964) 1 Cri LJ 16 = (1964) 3 SCR 942 (AIR 1963 SC 849 Rel. on. — Decision of Anantnarayana, J. in (1961) 1 Andhra WR 1 (FB), **Reversed.**)

(8) Whether any threat or inducement was offered in any particular case is a question of fact and has to be decided with reference to the circumstances of each case. AIR 1929 Pat 275 (277) = 30 Cri L Jour 675 (DB).

(9) Illegality in course of investigation does not affect the competence or jurisdiction of the Court for trial. But if the illegality is discovered at the early stage of the proceedings, i.e., before the framing of the charge, it cannot be passed over. AIR 1968 Mad 117 (133) = 1968 Cri LJ 493 = (1968) 1 Mad LJ 480 (DB).

(10) If it appears to the Court that the statement was caused by any inducement or threat or promise, it must declare such statement irrelevant under Section 24 of the Evidence Act. AIR 1951 Him Pra 82 (85) = 1952 Cri L Jour 33 °° AIR 1951 Kutch 27 (28) = 52 Cri L Jour 257.

(11) The onus of proving the existence of inducement, threat or promise is on the accused and he must prove his allegations. In the absence of such evidence, illegal pressure will not be presumed. AIR 1952 SC 214 (218) = 1952 SCR 812 = 1952 Cri L Jour 1131 °° AIR 1951 Punj 283 (287) (DB) °° 1890 All WN 173 (174) °° (1926) 27 Cri L Jour 983 (983) (DB). (Lah). °° AIR 1918 Cal 72 (72) = 19 Cri L Jour 959 (DB).

[See however AIR 1952 Pepsu 19 (21) = 3 Pepsu LR 377 (DB).]

(12) Whenever a statement is retracted as having been made under unlawful inducement, the Court should have before it the police-officers who had come into contact with the person. 1885 All WN 59 (59) (FB) °° AIR 1933 All 31 (38) = 34 Cri L Jour 489 (DB) °° (1901) 25 Bom 543 (546, 547) (DB) °° (1901-1902) 6 Cal WN ccxxxvi (ccxxxvi) °° AIR 1925 Lah 605 (608) = 27 Cri L Jour 514 (DB).

[See also AIR 1951 Him Pra 82 (85) = 1952 Cri L Jour 33.]

(13) In order that an act or omission may amount to an inducement, threat or promise, it must be such that without it, the person would not have made the statement. (1910) 11 Cri L Jour 694 (694, 695) = 37 Cal 735.

(14) The inducement, etc., need not be express but may be implied from the circumstances of the case. AIR 1929 Pat 275 (277) = 30 Cri L Jour 675 (DB).

(15) An act in order to amount to inducement, etc. must be such, as would make the person suppose, that the advantage to be gained or evil to be avoided would be of temporal nature. AIR 1926 All 246 (247) = 27 Cri L Jour 158 °° AIR 1922 Lah 263 (265) = 25 Cri L Jour 939 (DB) °° AIR 1925 Cal 587 (590) = 26 Cri L Jour 782.

(16) It is left to the Court entirely to form its own opinion as to whether the inducement, threat or promise, held out in any particular case, is sufficient to lead the person to suppose that he would gain an advantage of a temporal nature. AIR 1932 Sind 64 (66) = 33 Cri L Jour 650 (DB) °° AIR 1925 Lah 605 (608) = 27 Cri L Jour 514 (DB).

(17) In scrutinizing the case of inducement, etc., the Court will have to determine the sufficiency of inducement threat or promise. AIR 1925 Cal 587 (590, 591) = 26 Cri L Jour 782.

(18) It cannot be said that persuasions or bait held out to the accused are always illegal, or should not be given. AIR 1952 Vind Pra 42 (47) = 1952 Cri L Jour 986.

(19) See also Notes under Sections 24 and 25, Evidence Act.

SECTION 164 — SYNOPSIS

1. **Scope and applicability.**
2. **Who can record a statement or confession.**
3. **"If he is not a police-officer."**
4. **Magistrate acting under the section need not have jurisdiction in the case — Explanation.**
5. **Confessions to Magistrates of foreign States — Admissibility in evidence.**
6. **"Statement or confession."**

a police-officer] record any statement or confession made to him in the course of an investigation under this Chapter ‡[or under any other law for the time being in force] or at any time afterwards before the commencement of the inquiry or trial.

(2) Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion, best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in Section 364, and such statements or confessions shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

(3) §[A Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him and no Magistrate] shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and, when he records any confession, he shall make a memorandum at the foot of such record to the following effect:—

> °†"[I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe] that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the

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Section 164 — Synopsis (contd.)

7. Verification proceedings.
8. "May record."
9. "In the course of an invetigation ...... inquiry or trial."
10. Mode of recording and procedure.
11. "Shall then be forwarded."
12. Warning to the accused.
13. Confession must be voluntary.
14. Statement of witness to be voluntary.
15. "Upon questioning the person."
16. Memorandum at the foot of the confession.
17. Accused, when should be produced before Magistrate.
18. Confession immediately after police custody.
19. Confessing accused sent back to police custody.
20. Retracted confessions.
21. Confession of co-accused.

1. Scope and applicability. — (1) The view that this section has nothing to do with the admissibility of statements and confessions is wrong and hence a statement or a confession made to a Magistrate but not recorded by him in the manner laid down in this section cannot be admitted in evidence on the oral testimony of the Magistrate. AIR 1963 PC 253 (257, 258) = 37 Cri L Jour 897 °° AIR 1959 All 518 (524) = 1959 Cri L Jour 940 (DB). (Overruled in AIR 1966 All 192 (FB) on another point.) °° AIR 1956 Madh B 51 (53) = 1956 Cri L Jour 227 °° AIR 1954 SC 15 (19) = 1954 Cri L Jour 230 °° ILR (1959) Ker 319 (358) (DB) °° AIR 1956 Mad 425 (427) = 1956 Cri L Jour 1004 (DB) °° AIR 1961 SC 1527 (1532) = 1961 (2) Cri LJ 705 = (1962) 1 SCR 662 °° (1969) 11 Orissa JD 71 (81) (DB) °° (1966) 2 Mys LJ 335 (339) = (1966) 8 Law Rep 40 (DB).

(2) The confession or statement made to a Magistrate in the course of a police investigation becomes a matter required by the law to be reduced to writing and by virtue of the provisions of Section 91 of the Evidence Act, no evidence of such confession or statement is admissible except the record thereof prepared under this section. AIR 1952 Him Pra 3 (4) = 1952 Cri L Jour 133 °° AIR 1940 Pat 163 (169) = 41 Cri L Jour 533 (DB) °° AIR 1948 Nag 245 (248) = 49 Cri L Jour 331.

(3) A confession contained in a document delivered to a Magistrate is admissible in evidence although the confession has not been recorded under this section. AIR 1939 All 242 (246) = 40 Cri L Jour 559 °° ('64) 30 Cut LT 362 (365).

(4) The section does not exclude evidence of a confession made to a Magistrate otherwise than in the course of an investigation, etc. Such confessions are admissible under the Evidence Act, Section 21, though not recorded in accordance with this section. AIR 1953 Mad 138 (141) = ILR (1953) Mad 924 = 1953 Cri L Jour 315 °° AIR 1951 Vindh Pra 17 (26) = 52 Cri L Jour 561 °° AIR 1960 Mad 443 (444, 445) = 1960 Cri LJ 1340 = 1960 Mad WN 538 (DB).

[See also AIR 1960 Mys 111 (128) = 38 Mys LJ 265 = 1960 Cri LJ 934 (DB) °° 1962 (2) Cri LJ 135 (139) = 1961 MLJ (Cr) 356 (DB) (Ker).]

(5) A confession recorded by a Magistrate holding an inquest under Section 176 is not governed by this section. AIR 1953 Mad 138 (141) (Pr 18) = ILR (1953) Mad 924 = 1953 Cri L Jour 315 (DB).

(6) A Magistrate can exercise the power under this section in the district in which he is appointed. AIR 1921 All 61 (62) = 22 Cri L Jour 567 (DB).

person making it and admitted by him to be correct and it contains a full and true account of the statement made by him.

(Signed) A. B.,
Magistrate."

Explanation.—It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case.

[1882 — S. 164; 1872 — S. 122; 1861 — Nil.]

[*] Substituted for "Every Magistrate not being a police-officer may", by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 35.

[†] Substituted for 'Provincial Government' by A. L. O., 1950.

[‡] Inserted after the words "under this chapter" by the Criminal Law Amendment Act (LXVI of 1952), S. 4 (28-7-1952).

[§] Substituted for "No Magistrate", by Act (XVIII of 1923), S. 35.

[*†] Substituted for "I believe", ibid.

OBJECTS AND REASONS

1923.— "The intention of the Bill was to leave the position in regard to statements made under Section 164 unaltered, but to confine the recording of confessions under that Section to superior Magistrates. We approve the Bill in so far as it deals with confessions and we think that statements also should not be recorded under the Section by Third Class Magistrates at all or by Second Class Magistrates unless specially empowered.

Section 164 — Note 1 (contd.)

(7) Where a Magistrate is not examined to prove any confession made to him by the accused but to prove what a Sub-Inspector of Police said to the accused and what the accused actually did in his presence, the evidence of the Magistrate is admissible. AIR 1950 All 9 (9) = 51 Cri L Jour 229.

(8) The recording of confessions, which might affect the life and liberty of the accused, is a serious matter and should not be treated in a casual manner. It is not to be regarded as a mere formal or routine ritual. (1967) 1 Andh WR 345 (353) = (1967) 2 Andh LT 61 (DB).

(9) Full and adequate compliance with the provisions of this section is imperative in recording confessions. AIR 1949 Orissa 67 (71) = ILR (1949) 1 Cut 207 = 51 Cri L Jour 72 (DB).

(10) Confession recorded by second class Magistrate not specially empowered — Defect is matter of substance and not of form — Defect cannot be cured by Section 533 — Section 537 does not apply to such proceedings. 1961 All LJ 617 (621) = 1961 All WR (HC) 481 (DB) °° (1967) 1 Andh LT 276 (283) (DB).

(11) The statements recorded under Section 164 would be public documents falling under Section 74 (1) (iii) of the Evidence Act and the accused will be entitled to the copies of the same as a person interested. AIR 1961 Mad 92 (101, 102) = 1961 (1) Cri LJ 382 = (1961) 1 Mad LJ 65 (FB).

(12) Where the accused was asked by the Magistrate to repeat his statement to the witnesses, it was held that every statement made to a person assisting the police during investigation could not be treated as a statement made to the police or to the Magistrate. AIR 1954 SC 322 (333, 334) = 1954 SCR 1098 = 1954 Cri L Jour 910.

(13) Where it was alleged that the accused made a confession soon after he was apprehended, the unexplained delay of 16 days in recording the same, was deprecated. AIR 1960 Madh Pra 102 (104) = 1960 Cri LJ 480 = 1960 Jab LJ 391 (DB).

2. Who can record a statement or confession. — (1) A third class Magistrate cannot now act under this section. AIR 1930 Lah 60 (61) = 31 Cri L Jour 79 (DB).

(2) A confession coming under this section but recorded by a Magistrate who has not the power to do so under this section is not admissible in evidence. 1948 Bur LR 49 (54) °° AIR 1964 SC 358 (364) = (1964) 4 SCR 485 °° AIR 1969 Bom 189 (194) = 1969 Cri LJ 706 = 71 Bom LR 105 (DB) °° 1967 Cri L Jour 1104 (1105) = 1965 All LJ 77 °° 1961 All LJ 617 (623, 624) = 1961 All WR (HC) 481 (DB).

[See also AIR 1964 Ker 241 (243, 244) = 1964 Ker LJ 76 = 1964 (2) Cri LJ 414 (DB) °° ILR (1959) Ker 819 (358, 359) (DB).]

(3) A Presidency Magistrate cannot record a statement or confession made in the course of an investigation in the town of Calcutta. (1888) 15 Cal 595 (606) (FB) °° AIR 1925 Cal 587 (589, 590) = 26 Cri L Jour 782.

We consider that a statutory obligation should be laid on a Magistrate acting under the Section to warn an accused person about to make a confession that the same may be used against him, and we think that the certificate prescribed by sub-section (3) should record the fact that the warning had been given."—S. C. R. (18 of 1923).

STATE AMENDMENTS

Gujarat

In its application to the State of Gujarat, the amendment made in Sec. 164 is the same as that made in Maharashtra.—See Cent. Act XI of 1960, S. 87.

NOTE.—Magistrates appointed for the City of Ahmedabad have the powers of and exercise the jurisdiction of a Presidency Magistrate.—See Guj. Act XIX of 1961, S. 14 (3) (4-11-1961).

Maharashtra

(1) In its application to the State of Maharashtra, in sub-section (1) of Section 164 for the words "any Presidency Magistrate, any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf by the State Government" substitute the words "any Presidency Magistrate, any District Magistrate, any Sub-Divisional Magistrate, any Magistrate of the first class or any other Magistrate specially empowered by the State Government in this behalf."—Bombay Act XXIII of 1951, Section 2 and Schedule (1-7-1953).

(2) After the reorganization of the State of Bombay in 1956, the amendment made in S. 164 by the above-mentioned Bombay Act is extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Section 164 — Note 2 (contd.)

[But see AIR 1926 Pat 279 (282) = 27 Cri L Jour 957 (DB).]

(4) The power to record a confession under this section is among the ordinary powers conferred on a First Class Magistrate by the Code, both under Section 164 itself and under Schedule III. It is not competent for the State Government to take away that power. ILR (1959) Ker 319 (358) (DB) °° AIR 1959 Ker 46 (52) = 1959 Cri L Jour 187 (DB).

(5) A coroner is not required to comply with the formalities for recording confessions under Section 164. AIR 1945 Bom 265 (268) = 46 Cri L Jour 714 (FB).

(6) When a Magistrate holding an inquest under Section 176 records a statement, it is admissible in evidence under Section 21, Evidence Act, although the Magistrate is not one who has power to record confessions under this section. AIR 1926 Bom 151 (152) = 27 Cri L Jour 466 °° AIR 1953 Mad 138 (140, 142) = ILR (1953) Mad 924 = 1953 Cri L Jour 315 (DB) °° AIR 1964 Andh Pra 548 (554) = 1964 (2) Cri LJ 636 = (1964) 2 Andh WR 43 (DB).

(7) Statements made in answer to notice under Sec. 171-A of Sea Customs Act of 1878 are not confessions recorded by Magistrate under Section 164 of Cr. P. Code — But Section 30 of Evidence Act of 1872 is applicable to such statements if they are voluntary. AIR 1968 SC 832 (835) = (1968) 2 SCR 641 = 1968 Cri LJ 1017.

(8) Where a statement is relevant under Section 32 (1) of the Evidence Act, its admissibility is not affected by the fact that it was not recorded by a Magistrate having power under this section. AIR 1941 Rang 301 (302, 303) = 43 Cri L Jour 128 (Obiter.) °° AIR 1955 Trav-Co 243 (244) = ILR (1955) Trav-Co 39 = 1955 Cri L Jour 1405 (DB).

(9) It is but proper that a Magistrate who would be a witness in the case should, as far as possible, not be the committing Magistrate. AIR 1950 Mad 579 (581) = 51 Cri L Jour 1047 (DB).

(10) Village Magistrates in the Madras State are not Magistrates within the meaning of the Code and therefore cannot record a statement or confession under Section 164. AIR 1959 Mad 175 (178) = 1959 Cri L Jour 603 (DB).

(11) An officer having powers of a first class Magistrate cannot, after reversion to the post of Tehsildar, record a confession. AIR 1957 Him Pra 52 (56) = 1957 Cri L Jour 1254.

(12) It is improper for a Magistrate who has taken part in the investigation by having been present at the time of exhumation of the corpse and by drawing up an inquest report, to record the confessional statement of the accused. AIR 1959 Mys 250 (252) = 1959 Cri L Jour 1349 (DB).

(13) Where Magistrate Third Class holds identification parade, statements of identifying witnesses made to him are admissible. Section 164 is no bar. AIR 1965 Madh Pra 225 (230) = 1965 (2) Cri LJ 507 = 1967 MPLJ 697 (DB).

3. "If he is not a police-officer." — (1) The mere fact that the police-officer is

Mysore

In its application to the State of Mysore, in sub-section (1) of S. 164 for the words "any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf by the State Government" substitute the words "any District Magistrate, any Sub-Divisional Magistrate, any Magistrate of the first class, or any other Magistrate specially empowered by the State Government in this behalf."—Mys. Act XIII of 1965, S. 29 (1-10-1965).

Punjab: Haryana: Chandigarh

In its application to the States of Punjab and Haryana and the Union Territory of Chandigarh, in Section 164 in sub-section (1), for the words "Presidency Magistrate, any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf by the State Government", substitute the words "Judicial Magistrate of the first class or any Judicial Magistrate of the second class specially empowered in this behalf by the High Court."—Punj. Act XXV of 1964, S. 2 and Sch., Pt. I, item (39) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Section 164 — Note 3 (contd.)

also a Magistrate will render the confession inadmissible in evidence. Thus, a confession made to a police patel in Bombay is inadmissible. (1893) 17 Bom 485 (486) (DB).

(2) A confession made to a Deputy Superintendent of Police who is also a Magistrate is inadmissible. AIR 1930 Rang 227 (228) = 31 Cri L Jour 823 (DB) °° (1876) 1 Cal 207 (215, 216) (DB).

(3) Where an enquiry is conducted by a Magistrate instead of a police-officer under Regulation 737 of the Police Regulations, he does not cease to be a Magistrate. Hence, the statements made by witnesses before him, unless they are recorded as required by this section, cannot be admitted in evidence. AIR 1940 Nag 186 (190) = 41 Cri L Jour 757.

(4) Confession of accused at the time of arrest made to Superintendent of Central Excise — Confession is excluded from evidence under Sec. 25, Evidence Act, as made to police officer. AIR 1966 All 42 (44) = 1966 All Cri R 85 = (1968) Cri LJ 4.

(5) Central Excise Officer is not a police officer for all purposes — Confession recorded by him not hit by Section 25, Evidence Act. AIR 1965 Bom 195 (200, 201) = 67 Bom LR 317 = 1965 (2) Cri LJ 616 (DB).

4. Magistrate acting under the section need not have jurisdiction in the case — Explanation. — (1) A Magistrate acting under this section need not necessarily be one having jurisdiction in the case. (1870) 7 Bom HCR 56 (57) (DB) °° (1873) 10 Bom HCR 166 (174) (FB) °° (1897) 10 CPLR (Cr) 16 (19) °° AIR 1918 Pat 179 (183) = 19 Cri L Jour 135 (SB). [See however 1886 Rat 254 (261) (DB) °° (1902) 29 Cal 483 (487) (DB).]

(2) A Magistrate is not incompetent to act under this section merely because he directs the police investigation. (1911) 12 Cri L Jour 489 (491, 492) = 5 Sind LR 81 (DB).

(3) Magistrate going to hold preliminary inquiry afterwards. He is not incompetent to act under this section. (1910) 11 Cri L Jour 453 (463, 470) = 37 Cal 467 (DB) °° (1899) 3 Cal WN 387 (391) (DB) °° 1877 Rat 121 (121).

(4) A Magistrate who has begun an enquiry into the guilt of persons alleged to have been confederates of the confessing prisoner is not incompetent to act under this section. AIR 1932 Lah 103 (109) = 33 Cri L Jour 97 (DB).

(5) It cannot be said that a Magistrate who records statements of an accused person or a witness under Section 164, is holding any preliminary enquiry. 1969 All WR (HC) 157 = 1969 All Cr R 113 (118) (DB) (All).

5. Confessions to Magistrates of foreign States — Admissibility in evidence. — (1) The mere fact that a confession was made before a Magistrate of a foreign State does not render it inadmissible in evidence. AIR 1938 All 625 (629) = 40 Cri L Jour 132 (DB) °° (1907) 6 Cri L Jour 377 (377) = 1907 Pun Re (Cr) No. 8 (DB) °° AIR 1921 Nag 39 (40) = 23 Cri L Jour 673 (DB) °° AIR 1934 Lah 873 (874) = 36 Cri L Jour 383.

(2) A confession made to a Magistrate of a foreign State will not be entitled to the same weight as a confession recorded by a Magistrate in India in strict compliance with the terms of Section 164. (1909) 9 Cri L Jour 297 (301) = 1909 Pun Re (Cr) No. 2 (DB).

(3) In the case of a confession made to a Magistrate of a foreign State, all that has to be seen is whether there is anything in the substantive or natural law to vitiate it. AIR 1932 Lah 367 (368) = 33 Cri L Jour 460.

(4) A confession or statement made to a Magistrate of a foreign State can be presumed to be genuine under Section 80 of the Evidence Act. AIR 1938 All 625 (629) = 40 Cri L Jour 132 (DB) °° (1890) 12 All 595 (597) (DB).

Rajasthan

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendment made in Section 164 is the same as that made in (1) of Maharashtra.—See Cent. Act XXXVII of 1956, S. 119 (1-11-1956).

Union Territories (except Chandigarh)

In its application to the Union territories, for sub-section (1) of Section 164, substitute the following sub-sections namely:—

> "(1) Any Judicial Magistrate of the first class or any Judicial Magistrate of the second class specially empowered in this behalf by the State Government in consultation with the High Court, may record any statement or confession made to him in the course of an investigation under this Chapter or under any other law for the time being in force or at any time afterwards before the commencement of the inquiry or trial.
>
> (1A) Any Executive Magistrate of the first class or of the second class (not being a police officer) may be specially empowered by the State Government to record such statements or confessions if that Government for reasons to be recorded in writing considers it necessary so to do."—Act 19 of 1969, S. 3 and Sch., item 40 (in Delhi, on 2-10-1969).

West Bengal

In sub-section (1) for the words "Magistrate of the first class" substitute the words "Judicial Magistrate of the first class" and for the words "Magistrate of the second class" substitute "Judicial Magistrate of the second class". — W. B. Act 8 of 1970, S. 2 and Sch., item 57.

Section 164 — Note 5 (contd.)

[But see AIR 1914 Bom 41 (41) = 15 Cri L Jour 433 (DB) °° (1881) 2 Weir 125 (125) (DB).]

6. "Statement or confession." — (1) The section provides for the recording of confessions by accused persons and statements by any person including an accused. 1952 Cri L Jour 79 (80) (Pak-FC) °° AIR 1937 Nag 254 (256) = 38 Cri L Jour 648 (DB) °° AIR 1925 Cal 926 (927) = 26 Cri L Jour 1279 (DB) °° AIR 1922 Cal 342 (345) = 22 Cri L Jour 562 (DB). (**Dissenting from** 2 Cal WN 702.)

(2) A statement (which is not a confession) is to be recorded in the manner prescribed for recording evidence, while a confession should be recorded in the manner provided by Section 364. AIR 1944 Nag 105 (118) = 45 Cri L Jour 673 (FB) °° AIR 1937 Nag 254 (256) = 38 Cri L Jour 648 (DB) °° 1893 Pun Re (Cr) p. 23 (27) (DB) °° (1898) 2 Bom 643 (644) (DB) °° AIR 1917 Mad 316 (317) = 17 Cri L Jour 195 (DB).

(3) A confession by an accused person cannot be made the basis of a prosecution for perjury under Section 193 of the Penal Code. AIR 1917 Mad 316 (317, 318) = 17 Cri L Jour 195 (196, 197) (DB).

(4) A statement which is to be recorded in the manner prescribed for recording evidence may be made the basis of a charge for perjury. AIR 1933 Lah 321 (323) = 34 Cri L Jour 469 (DB) °° AIR 1933 Mad 767 (768) = 35 Cri L Jour 503 (DB) °° (1969) 11 Orissa JD 71 (77) (DB).

(5) A statement cannot form the basis of a charge of giving false evidence in any stage of a judicial proceeding within the meaning of Section 193 of the Penal Code. But the statement can be made the basis of a charge under the second part of Section 193 of the Penal Code. AIR 1921 Bom 3 (14) = 22 Cri L Jour 241 (FB) °° AIR 1932 Lah 254 (254) = 33 Cri L Jour 413 °° 1899 All WN 39 (39, 40) °° ILR (1965) Cut 510 (515) (Ori).

[See also AIR 1969 Andh Pra 415 (417) = (1969) 1 Andh WR 543 = 1969 Cri LJ 1476 °° AIR 1968 Mys 95 (97) = (1967) 2 Mys LJ 377 = 1968 Cri LJ 521.]

[But see AIR 1959 Andh Pra 250 (251) = ILR (1958) Andh Pra 614 = 1959 Cri L Jour 564.]

(6) A statement recorded under this section by a Magistrate who has no jurisdiction to commit the case to the Court of Session is not one made in a stage of judicial proceeding within the meaning of Section 193 of the Penal Code. (1887) 11 Bom 702 (704) (FB) °° (1912) 13 Cri L Jour 709 (710) (DB) (Bom).

(7) Where there is divergence between the statement recorded under this section and the statement of the witness at the trial and the statement at the trial is true and the statement recorded under this section is false, the Court acting under Section 476 ought not to lay a complaint against the witness under Sec. 476. AIR 1949 Mad 502 (503) = 50 Cri L Jour 775 °° AIR 1941 Bom 408 (409, 410) = 43 Cri L Jour 167 (DB).

Section 164 — Note 6 (contd.)

(8) A confession means an admission of certain facts which constitute an offence, made by a person who is charged with the offence which is the subject-matter of the statement. **AIR 1952 SC 354 (357) = 1953 SCR 94 = 1953 Cri L Jour 154** °° AIR 1956 Madh-B 107 (109) = 1956 Cri L Jour 408 (DB) °° AIR 1954 Kutch 20 (21) = 1954 Cri L Jour 793 °° AIR 1953 All 163 (164) = 1953 Cri L Jour 428 (DB) °° 10 J & K LR 1 (8) (DB) °° AIR 1935 Cal 681 (682) = 37 Cri L Jour 69 (DB) °° (1912) 13 Cri L Jour 352 (393) = 35 Mad 397 (FB) °° (1884) 6 All 509 (539) (FB) °° AIR 1966 Orissa 205 (206) = 32 Cut LT 402 = 1966 Cri LJ 1180.

(9) No statement that contains self-exculpatory matter can amount to a confession, if the exculpatory statement is of some fact which, if true, would negative the offence alleged to be confessed. Moreover, a confession must either admit in terms the offence or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession. **AIR 1952 SC 354 (357) = 1953 SCR 94 = 1953 Cri L Jour 154** °° AIR 1959 All 518 (522) = 1959 Cri L Jour 940 (DB). **(Overruled on another point in AIR 1966 All 192 (FB).)** °° AIR 1953 All 142 (143) (Pr 4) = 1953 Cri L Jour 385 (DB) °° AIR 1951 Ajmer 15 (17) °° AIR 1950 Orissa 202 (203) = 51 Cri L Jour 1493 (DB) °° **AIR 1939 PC 47 (52) = 40 Cri L Jour 364** °° **AIR 1966 SC 119 (123, 124) = (1966) 1 SCR 134 = 1966 Cri LJ 100** °° **AIR 1960 SC 409 (412, 413) = 1960 Cri LJ 544. (AIR 1939 PC 47 and AIR 1952 SC 354, Applied; AIR 1957 All 388, Reversed.)** °° AIR 1969 Orissa 245 (248) = 1969 Cri LJ 1255 (DB) °° 1967 Cri LJ 1236 (1237) = 32 Cut LT 939 (DB) °° AIR 1966 Pat 448 (451) = 1966 BLJR 861 = 1966 Cri LJ 1469 (DB).

(10) Statements recorded under Sec. 164 are to be used only for a very limited purpose and cannot be used as substantive evidence. AIR 1963 Ker 152 (154, 155) = 1962 Ker LT 564 = 1963 (1) Cri LJ 597.

(11) Whether a statement is to be called a confession or not, depends not merely on the nature of the statement itself but on the use that was intended to be made of it. (1912) 13 Cri L Jour 352 (393) = 35 Mad 393 (FB) °° AIR 1917 Mad 316 (317) = 17 Cri L Jour 195 (196, 197) (DB).

(12) A confession or an admission must either be accepted as a whole or rejected as a whole. The Court is not competent to accept only the inculpatory part while rejecting the exculpatory one as inherently incredible. **AIR 1952 SC 354 (357) (Pr 17) = 1953 SCR 94 = 1953 Cri L Jour 154** °° AIR 1956 Hyd 180 (184) = ILR (1956) Hyd 191 = 1956 Cri L Jour 1320 °° AIR 1954 Trav-Co 282 (286) = ILR (1953) Trav-Co 841 = 1954 Cri L Jour 658 (DB) °° AIR 1953 Him Pra 105 (109) = 1953 Cri L Jour 1665 °° ('61) 63 Punj LR 629 (631).

(13) A "statement" which is not a confession, as for example, one which inculpates a co-accused but exculpates the person making it, cannot be used as a confession, whether against the person making it or against others with whom he may be jointly tried. AIR 1952 All 796 (798) = ILR (1950) All 1132 = 1952 Cri L Jour 1277 (DB) °°° AIR 1957 Cal 372 (374) = 1957 Cri L Jour 707 °° ILR (1954) Nag 643 (645) (DB) °° AIR 1952 J & K 49 (51) (Pr 5) = 9 J & K LR 1 = 1953 Cri L Jour 150 (DB) °° (1966) [illegible] Cut LT 1140 (1148) (DB).

(14) A statement which is not a confession may be admissible as an admission to prove a relevant fact. (1950) 51 Cri L Jour 1552 (1554) = 77 Ind App 65 (PC) °° AIR 1954 Sau 55 (62) = 1954 Cri L Jour 678 (DB) °° AIR 1945 Bom 1[illegible] (154, 155) = ILR (1945) Bom 278 = 46 Cri L Jour 541 (DB) °° AIR 1936 Pat 358 (359) = 37 Cri L Jour 862 (DB).

[See however AIR 1955 Ajmer 10 (11) = 1955 Cri L Jour 595.]

(15) The probative value of a statement or confession made under Section 164, has always to be decided in the light and context of the other evidence and any proposition of law which requires its rejection per se cannot be said to be well founded. ('62) 64 Pun LR 98 (111) (DB).

(16) Evidence of the prosecution witnesses cannot be held to be unworthy of credit and discarded merely because their statements were recorded under Sec. 164. 1961 Raj LW 462 = 1962 (2) Cri LJ 156 (158) (Raj).

(17) Before making a confession, the accused took the Magistrate to the scene of occurrence and pointed out to him various spots. The Magistrate marked them on certain plans and made some notes. It was held that the plans and notes could not be proved in absence of record of the accused's statement under this section. AIR 1945 Lah 105 (108) = ILR (1945) Lah 290 = 47 Cri L Jour 4 (FB) °° AIR 1929 Lah 794 (796) = 31 Cri L Jour 269.

(18) Once the investigation has started any non-confessional statement made by the accused is also required to be recorded in the manner indicated in this section and if no such record has been made by the Magistrate, the Magistrate would not be competent to give oral evidence of such statement having been made by the accus-

Section 164 — Note 6 (contd.)
ed. AIR 1954 SC 322 (333) = 1954 SCR 1098 = 1954 Cri L Jour 910 °° (1957) 36 Pat 141 (256, 257) (DB) °° AIR 1964 SC 358 (364) = 1964 SCD 345 = 1964 (1) Cri LJ 263 (2) °° 1967 Cri LJ 1104 (1105) = 1965 All LJ 77.

(19) A confession made under this section is good evidence and an accused can be convicted on the strength of it. AIR 1951 Pat 86 (87) = 52 Cri L Jour 771 (DB) °° (1951) 4 Sau LR 94 (99) (DB) °° AIR 1945 Lah 43 (45) = 46 Cri L Jour 736 (DB) °° AIR 1947 Mad 264 (265) = ILR (1947) Mad 433 = 48 Cri L Jour 89 (DB) °° AIR 1944 Lah 472 (473) = 46 Cri L Jour 152 (DB) °° (1966) 32 Cut LT 1170 (1174, 1175) = ILR 1966 Cut 635 (DB) °° AIR 1963 Guj 135 (137) = (1963) 2 Cri LJ 755 = (1962) 3 Guj LR 1052 (DB) °° (1962) 4 Orissa JD 369 (371, 372) = 29 Cut LT 33 (DB) °° AIR 1960 Raj 101 (103) = 1960 Cri LJ 520 (DB).

[See also AIR 1945 PC 181 (184) = 47 Cri L Jour 575.]

(19a) Confessional statement under this section can be admitted into the evidence and made an exhibit without the Magistrate being examined in Court. (1969) 11 Orissa JD 71 (81) (DB).

(20) The weight to be attached to a confession depends on the facts and circumstances of each case. AIR 1936 Lah 247 (251) = 37 Cri L Jour 432 (DB) °° (1962) 2 Ker LR 231 (240) (SC) °° ILR (1962) Madh Pra 133 (137) (DB).

(21) Much of the force of the confessional statement is taken away if what is stated in the confession was already known to the police before the confession was recorded. AIR 1957 Mys 50 (52) = ILR (1956) Mys 244 = 1957 Cri L Jour 521 (DB).

(22) The truth of the confession does not depend on the mode of its recording alone. In assessing the value of a confession its interim value will have to be taken into account. 1961 Ker LT 201 (206) (DB).

(23) Before a confession is taken into consideration the Court has not only to be satisfied that it was genuinely made but has also to be satisfied that it was made freely and voluntarily. AIR 1958 Pat 166 (170) = 1958 Cri L Jour 406 (DB) °° AIR 1967 Delhi 14 (15, 16) = 1967 Cri LJ 628 = 69 Pun LR (D) 100 (DB).

(24) If a confession is the only evidence in the case it must be accepted in its entirety. AIR 1952 SC 343 (350) (Pr 23) = 1952 SCR 1091 = 1953 Cri L Jour 129 °° 1953 Raj LW 116 (119, 120) °° AIR 1946 All 15 (17) = ILR (1946) All 111 = 47 Cri L Jour 311 (DB) °° ILR (1963) Andh Pra 454 (461) (DB).

(25) Where there is other evidence upon the record whereby the truth or falsity of a part of a confession can be tested, the Court should test it and reject the part which is false. AIR 1952 Him Pra 81 (94) = 1952 Cri L Jour 1720 °° (1951) 4 Sau LR 249 (256) (DB) °° AIR 1944 Sind 137 (141) = 46 Cri L Jour 19 (DB).
[See also AIR 1951 Ajmer 25 (27) °° AIR 1948 All 211 (212) = ILR (1948) All 259 = 49 Cri L Jour 243.]

(26) Where a part of a confession is inculpatory and a part exculpatory and there is evidence upon the record to show that the exculpatory part is false, the Court can ignore the exculpatory part and convict the accused on the basis of the inculpatory portion of the confession. (1951) 3 Pepsu LR 620 (624) (DB). (AIR 1945 Lah 91, Rel. on.) °° AIR 1944 Sind 137 (141) = 46 Cri L Jour 19 (DB) °° AIR 1945 Lah 91 (94) (DB).

(27) A confession made under this section comes within the ambit of Section 5, Oaths Act, and the Magistrate acts illegally in recording it on solemn affirmation. AIR 1947 Lah 92 (96, 99) = 47 Cri L Jour 772 (DB).

(28) A confession which not only confesses a crime but builds up the entire prosecution case against the accused and introduces facts not within his knowledge or paves the way for corroborating evidence already in the possession of the police is always suspect. AIR 1952 Pepsu 94 (97) (Pr 11) = 1952 Cri L Jour 952 (DB) °° AIR 1951 Kutch 92 (95) (Prs 21, 22) = 1952 Cri L Jour 10.

[See however AIR 1949 Mad 317 (317) (Pr 2) = 51 Cri L Jour 8 (DB).]

(29) There is an inherent danger in accepting evidence already gathered against the accused as corroborating his subsequent confession. AIR 1951 Kutch 27 (29) (Pr 9) = 52 Cri L Jour 257.

[See also AIR 1954 J & K 1 (4) = 1953 Cri L Jour 1865 = 10 J & K LR 94 (104) (DB) °° (1950) 3 Sau LR 29 (30) (DB).]

(30) A statement recorded under this section cannot be admitted as substantive evidence against an accused person but it can only be used for contradicting the maker of the statement. AIR 1949 PC 257 (259) = 28 Pat 592 = 76 Ind App 147 = 50 Cri L Jour 872 °° AIR 1958 Pat 412 (413) = 1958 Cri L Jour 929 °° AIR 1957 Assam 168 (172) = 1957 Cri L Jour 1231 (DB) °° 1957 Cri L Jour 117 (120) (All) °° AIR 1946 PC 45 (45) = 47 Cri L Jour 344 °° AIR 1946 PC 38 (41) = 73 Ind App 1 = 47 Cri L Jour 336 = 21 Luck 176 = ILR (1946)

Section 164 — Note 6 (contd.)
Kar (PC) 45 °° AIR 1960 SC 490 (492, 493) = 1960 Cri LJ 679 °° AIR 1969 Orissa 289 (291) = 1969 Cri LJ 1517 = 35 Cut LT 362 (DB) °° 1968 Cri LJ 1390 (1394) (Manipur) °° AIR 1967 Him Pra 10 (11) = 1967 Cri LJ 62 °° 1966 Cri LJ 336 (337) (Orissa) °° 1966 BLJR 786 (789) (DB) °° ('65) 69 Cal WN 764 (766) (DB) °° AIR 1965 Orissa 38 (43) = 1965 (1) Cri LJ 321 (DB) °° ('64) 30 Cut LT 407 (414) (DB) °° 1964 Raj LW 404 (406) = ILR (1964) 14 Raj 905 °° AIR 1963 Andh Pra 252 (261, 262) = (1962) 2 Andh LT 368 = 1963 (1) Cri LJ 735 (DB) °° ILR (1961) 2 Cal 281 = 1961 (2) Cri LJ 71 (75) (DB).

(See also AIR 1960 All 521 (525, 526) = 1960 Cri LJ 1167 = 1960 All Cr R 304 °° AIR 1968 All 170 (177) = 1968 Cri LJ 584 (DB).

(31) A statement recorded under this section can be used for corroborating the maker of it. AIR 1950 Kutch 88 (89) °° AIR 1957 Assam 168 (172) = 1957 Cri L Jour 1231 (DB) °° 1957 Cri L Jour 117 (120) (All) °° AIR 1950 Lah 167 (168) = 51 Cri L Jour 1350 °° AIR 1949 PC 257 (259) (Pr 5) = 28 Pat 592 = 76 Ind App 147 = 50 Cri L Jour 872 °° AIR 1944 Nag 105 (109) = 45 Cri L Jour 673 (FB) °° AIR 1969 Orissa 289 (291) = 35 Cut LT 362 = 1969 Cri LJ 1517 (DB) °° AIR 1965 Orissa 38 (43) = (1965) 1 Cri LJ 321 (DB).

[See also **AIR 1944 FC 38 (39) = 46 Cri L Jour 317.**]

(32) A statement recorded under this section cannot be used for the purpose of contradicting the statements made by other witnesses at the trial. AIR 1926 Lah 122 (124) = 26 Cri L Jour 1425 (DB).

(33) Statements recorded under this section should, under Section 80 of the Evidence Act, be presumed to be genuine and need not be formally proved. AIR 1952 Ajmer 49 (50) (Pr 8) = 1952 Cri L Jour 1563 °° AIR 1938 Lah 477 (477) = 39 Cri L Jour 864 °° AIR 1936 Pat 11 (13) = 36 Cri L Jour 235 (DB) °° AIR 1917 Pat 247 (248) = 18 Cri L Jour 445 (DB).

[But see AIR 1964 All 290 (295, 300) = 1963 All LJ 1128 = 1964 (2) Cri LJ 1 (FB) °° AIR 1963 All 308 (311) = 1963 (2) Cri LJ 1 = 1963 All LJ 61 (DB). (Approved in AIR 1964 All 290 (FB).]

(34) Statements recorded under this section are public documents being the acts of a judicial officer done under the provisions of the Code, and the public servant, in whose custody those documents are, is bound to issue copies thereof and allow inspection of the same by the accused person. AIR 1945 Mad 85 (86) = 46 Cri L Jour 417 °° AIR 1937 Sind 303 (304) = 39 Cri L Jour 57 (DB) °° AIR 1932 All 327 (329) = 33 Cri L Jour 752 °° AIR 1938 Rang 442 (445) = 40 Cri L Jour 265 (DB).

[But see (1907) 30 Mad 466 (467, 468) = 6 Cri L Jour 346 (DB).]

(35) Witness treated as hostile and permitted to be cross-examined — Statements made by such witness in case diary and under Section 164 are not substantive evidence — Such statements can only be used to discredit testimony. 1962 Ker LJ 1094 (1097, 1098).

7. Verification proceedings. — (1) The system of verification of confessions is very objectionable. (1903) 7 Cal WN 220 (224) (DB).

(2) Verification proceedings are not wholly illegal. They are undertaken with a view to testing the truth of a confession and to obtain evidence either corroborating the confession or indicating its falsity. AIR 1937 Cal 99 (110, 111) = 38 Cri L Jour 818 (SB).

(3) Statements made by the accused to the verifying Magistrate should be recorded in the manner provided by this section, and if they are not so recorded, such statements are not admissible in evidence. AIR 1937 Cal 99 (110, 111) = 31 Cri L Jour 818 (SB) °° AIR 1918 Cal 88 (91) = 19 Cri L Jour 305 (DB).

[See also AIR 1952 Tripura 1 (5) = 1952 Cri L Jour 1201.]

(4) The statement made by the accused in course of the verification by the Magistrate is no evidence at all. (1957) 36 Pat 141 (256) (DB).

8. "May record." — (1) When a confession or statement is alleged to have been made to a Magistrate in the course of an investigation it cannot be proved otherwise than by the record prepared under this section. **AIR 1936 PC 253 (257) = 37 Cri L Jour 897 °° AIR 1954 SC 322 (333) = 1954 SCR 1098 = 1954 Cri L Jour 910.**

(2) The Magistrate is not bound to record a confession under this section. Where he does so is a matter of duty and discretion and not of obligation. **AIR 1936 PC 253 (257) = 37 Cri L Jour 897.**

(3) A statement may be recorded by the Magistrate on the request of the witness himself and the Police need not send the witness before the Magistrate for this purpose. But the Magistrate is not bound to record the statement of such a witness but has a discretion in the matter. AIR 1948 Mad 489 (491) = ILR (1949) Mad 206 = 50 Cri L Jour 28.

9. "In the course of an investigation .... inquiry or trial." — (1) A confession, in

Section 164 — Note 9 (contd.)
order to come within this section, must be made either in the course of an investigation under Chapter XIV of the Code; or at any time afterwards and before the commencement of the inquiry or trial. AIR 1945 Nag 72 (73) = ILR (1945) Nag 515 = 46 Cri L Jour 731 °° AIR 1955 Pat 425 (426) = 1955 Cri L Jour 1377 (DB) °° (1910) 11 Cri L Jour 453 (462, 470) = 37 Cal 467 (DB).

(2) A statement made at a time when there is no investigation under Chapter XIV of the Code is not made under this section. AIR 1941 Rang 301 (302) = 43 Cri L Jour 123 °° AIR 1955 Pat 425 (426) = 1955 Cri L Jour 1377 (DB) °° AIR 1953 Pepsu 182 (186) = 1953 Cri L Jour 1700 (DB) °° AIR 1966 Andh Pra 131 (133, 134) = (1965) 2 Andh WR 344 = 1966 Cri LJ 509 (DB).

(3) Magistrate can record confession even after submission of police charge-sheet provided Magisterial inquiry has not commenced. AIR 1966 All 192 (196) = 1966 Cri LJ 386 = 1965 All LJ 1110 (FB). (AIR 1959 All 518 and AIR 1955 All 138 and AIR 1957 All 184, Overruled.)

(4) An investigation held by the police of a foreign State is not one under Chapter XIV of the Code and a statement taken by a Magistrate of a foreign State in the course of such investigation is not one under this section. AIR 1925 Bom 529 (530) = 26 Cri L Jour 1478.

(5) Where an accused approaches a Magistrate and volunteers to make a confession without having been arrested or prompted by a police officer, Section 164 has no application. 1961 Jab LJ 1313 = ILR (1962) Madh Pra 133 (137, 138) (DB).

(6) The arrest and production of the accused before Magistrate must be considered as something done in the course of the investigation and therefore S. 164 will apply. AIR 1926 Cal 742 (743) = 27 Cri L Jour 621 (DB).

(7) A statement or confession recorded after the commencement of the inquiry or trial is not within this section. AIR 1953 Bilaspur 3 (4) = 1953 Cri L Jour 708 °° AIR 1922 Lah 189 (191) = 23 Cri L Jour 617 (DB) °° AIR 1930 Lah 454 (456) = 31 Cri L Jour 533 (DB).

(8) The condition requiring the confession to be prior to the commencement of the inquiry or trial is only imposed when the investigation has ceased and not when the confession is made in the course of the investigation. (1910) 11 Cri L Jour 453 (462) = 37 Cal 467 (DB) °° AIR 1932 Lah 103 (108) = 33 Cri L Jour 97 (DB).

(9) Where a Magistrate takes cognizance of the offence under Section 190 even prior to the submission of the final report by the police under Section 173, and in the course of his inquiry or trial he records the confession of the accused under Sec. 342, his action will not be one under this section and he is not bound to comply with the formalities prescribed by this section. AIR 1948 Lah 43 (45) = 48 Cri L Jour 977 (DB).

[See however AIR 1951 Punj 390 (392) = 52 Cri L Jour 877 (DB).]

[But see AIR 1928 Lah 724 (725, 726) = 29 Cri L Jour 697 (DB).]

(10) A statement made at an inquiry which is held before any investigation is held is not within this section. (1906) 3 Cri L Jour 138 (140) = 32 Cal 1085 (DB).

(11) The fact that the accused was not formally extradited at the time his confession was recorded does not vitiate the confession. AIR 1951 Him Pra 1 (9) = 52 Cri L Jour 50.

10. Mode of recording and procedure.— (1) Sub-section (2) which provides that statements should be recorded in the manner prescribed for recording evidence, should be strictly followed. AIR 1934 All 81 (83) = 35 Cri L Jour 385 (FB) °° AIR 1933 All 356 (357, 358) = 34 Cri L Jour 574 °° AIR 1934 Oudh 151 (153) = 35 Cri L Jour 915 (DB) °° 1963 (1) Cri LJ 645 (647) (DB) (All).

(2) The mere "filing of a confession already written and signed and handed over to the Magistrate does not amount to "recording" a confession. AIR 1933 All 356 (357) = 34 Cri L Jour 574.

(3) The writing out of the confession is not sufficient to make it a "record". The writing must be made a part of the judicial record. (1906) 5 Cri L Jour 4 (5) (DB) (Bom).

(4) Where a Magistrate writes out a confession, but refuses to make the memorandum under sub-section (3), on the ground that the confession in his opinion has not been voluntarily made, such confession cannot form part of the judicial record and is, therefore, inadmissible in evidence. AIR 1918 Oudh 295 (296) = 19 Cri L Jour 507 (DB).

(5) Confession not recorded by Magistrate himself, but by Ahmad Reader on ground that he (Magistrate) was not well conversant with Urdu — Memorandum as required by Section 364 (3) not made by Magistrate — No reason as to how much time for reflection was given to accused, made — Facts showing that only one hour was given for reflection — Sec. 364 held not complied with. (1963) 3 SCR 749 = 1964 (1) Cr LJ 566 (568, 569, 570).

(6) Where a confession was not signed by the accused, nor was his thumb impression affixed to it and the Magistrate also did not sign the English version of it, it was held that no reliance should be placed on the confession as being voluntarily made. AIR 1945 Bom 484 (485) = 47 Cri L Jour 252 (DB).

Section 164 — Note 10 (contd.)

(7) The omission to take the signature of the accused is not necessarily fatal to its admissibility in every case and the defect can be cured under the provisions of Section 533 in proper cases. AIR 1941 Nag 17 (18, 19) = 42 Cri L Jour 117 (DB).

(8) Where an accused person is able to write his name, his thumb impression is not a signature within the meaning of Section 364. (1905) 2 Cri L Jour 405 (405, 406) = 32 Cal 550 (DB).

(9) An accused person who refuses to sign a statement or a confession is not liable for punishment under Section 180, Penal Code. (1877) 4 Bom 15 (19).

(10) The record of a confession should be in plain and legible writing. 1896 Rat 837 (838) (DB).

(11) Whether a confession has been properly recorded or not must be left to be decided by the Judge before whom it is tendered as evidence. AIR 1951 Orissa 71 (76) (DB).

(12) There is no provision of law which forbids a Magistrate from recording a confession on a Sunday or any other holiday and at a place other than the open court-house. AIR 1950 Mad 579 (581) = 51 Cri L Jour 1047 (DB) °° AIR 1954 SC 462 (464) = 1954 Cri L Jour 1313 = 1954 SCR 1133 °° AIR 1953 Trav-Co 402 (407) = ILR (1953) Trav-Co 514 = 1953 Cri L Jour 1613 (DB).

(13) It is not ordinarily proper to record a confession at night in a police-station or in the Magistrate's house. AIR 1955 Pepsu 33 (36) = ILR (1954) Patiala 316 = 1955 Cri L Jour 537 (DB) °° AIR 1951 Orissa 78 (80, 81) (DB).

(14) Confessional statements should be recorded in the court-room and if for some reason they are not so recorded during the ordinary court-hours, some explanation should be furnished by the prosecution. AIR 1959 Mys 47 (49) = ILR (1958) Mys 35 = 1959 Cri L Jour 337 (DB) °° AIR 1955 Pepsu 33 (36) = ILR (1954) Patiala 316 = 1955 Cri L Jour 537 (DB) °° 48 Cri LJ 794 (797) (DB) (Lah).

[See also (1959) 37 Mys LJ 462 (467) (DB).]

[See however 1961 (2) Cri LJ 250 (252) = 39 Mys LJ 288 (DB) °° AIR 1960 Mys 199 (202) = 1960 Cr L Jour 1108 = 38 Mys LJ 20 (DB).]

(15) The mere fact that a confession was not recorded at the court-house or in daytime is not sufficient to show that it was not made voluntarily. 1948 Bur LR 217 (236) (SB) °° AIR 1927 Cal 398 (400, 401) 28 Cri L Jour 485 (DB) °° AIR 1925 Cal 587 (594, 595) = 26 Cri L Jour 782.

(16) A confession taken in jail without any adequate reason therefor and in disregard of the instructions contained in the Government orders is improper. AIR 1957 SC 381 (386) = 1957 Cri L Jour 559.

(16a) Although recording of confession in jail is improper, such confessions may be held to be voluntary if there are other facts and circumstances which completely assured its voluntariness. 1970 Cri LJ 603 (608) (All).

(17) Where the accused person is making a confession, a third party should not be allowed to put or suggest questions to be put to the accused person. (1909) 10 Cri L Jour 125 (133) (DB) (Cal).

[See also AIR 1945 Bom 484 (487) (DB) °° AIR 1934 All 908 (913) = 36 Cri L Jour 152 (DB).]

(18) This section does not require the Magistrate to put questions to the accused; he can be asked to give the story in his own way. The idea is that it must be a spontaneous narrative. AIR 1953 Hyd 145 (152) = ILR (1951) Hyd 895 = 1953 Cri L Jour 785 °° 3 Sau LR 14 (17, 18) (DB).

(18a) Procedure as to recording of confession in form of questions and answers is not obligatory — Confession recorded in form of narrative is not defective and is admissible in evidence. 1970 Cri LJ 781 (784 (DB) (Assam).

(19) It is a serious irregularity in recording if the questions put by the Magistrate to the accused during the course of recording and the answers elicited, indicate that the accused was subjected to a kind of cross-examination at the hands of the Magistrate. AIR 1957 Mys 50 (52) = ILR (1956) Mys 244 = 1957 Cri LJ 521 (DB).

[See also 30 Cut LT 163 = 1964 (2) Cri LJ 105 (106) (DB).]

11. "Shall then be forwarded." — (1) Provision in sub-section (2) regarding forwarding of statements and confessions is imperative. AIR 1940 Rang 33 (34) = 41 Cri L Jour 392 °° AIR 1931 Lah 59 (60) = 32 Cri L Jour 253.

(2) Magistrate after recording confession making it over to police officer — Procedure is objectionable. AIR 1931 Lah 408 (414) = 32 Cri L Jour 818.

[See AIR 1936 Lah 341 (343) = 37 Cri L Jour 504 (DB).]

12. Warning to the accused. — (1) Section 164 (3), requires three things, namely the two warnings that the accused was not bound to make the confession, and if he did so it would be used against him, and thirdly, questioning of the accused so that the Magistrate may satisfy himself that it was made voluntarily. AIR 1957 Raj 141 (143) = ILR (1957) 7 Raj 677 = 1957 Cri L Jour 545 (DB) °° (1963) 2 SCR 517 (532, 533) = 1965 SCJ 500 °° (1967) 1 Andh LT 276 (282) (DB) °° ILR (1962) Madh Pra 133 (137) (DB).

(2) Under the section a Magistrate is required, before recording a confession, to explain to the accused that he is not bound to make a confession and that if he does so, it may be used as evidence against him. AIR 1951 Orissa 168 (171) = ILR (1951)

Section 164 — Note 12 (contd.)

Cut 65 = 1952 Cri L Jour 1743 (FB) °° AIR 1959 All 518 (523) = 1959 Cri L Jour 940 (DB). (Overruled on another point in AIR 1966 All 192 (FB).) °° AIR 1957 Madh B 72 (74) = 1957 Cri L Jour 199 (DB) °° AIR 1964 Orissa 144 (148, 149) = (1963) 5 Orissa JD 372 = 1964 (1) Cri LJ 680 (DB) °° 1963 Ker LT 229 (238) (DB).

[See AIR 1946 Pat 169 (173) = 24 Pat 646 = 48 Cri L Jour 30 (DB).]

(3) An omission to repeat the warning on the second day on which the recording of the confession is continued will not render the confession inadmissible in evidence. AIR 1953 Mad 74 (76) = ILR (1953) Mad 417 = 1953 Cri L Jour 264 (DB).

[But see AIR 1957 Raj 141 (144) = ILR (1957) 7 Raj 677 = 1957 Cri L Jour 545 (DB) °° AIR 1955 Ajmer 10 (11) = 1955 Cri L Jour 595.]

(4) The Magisrate is bound to append a memorandum to the confession containing a clause to the effect that he has warned the accused. Such a record is conclusive, in the absence of anything to the contrary, as to the fact that such a warning was given before the confession was recorded. AIR 1952 Trav-Co 305 (307) = 1952 Cri L Jour 1304 (DB) °° AIR 1933 Bom 145 (146) = 34 Cri L Jour 555 (FB) °° AIR 1947 Pat 305 (309) = 25 Pat 612 (DB).

(5) Where the accused is not told that he need not make a confession, his confession is inadmissible in evidence and Secion 533 will not cure the defect. AIR 1953 Madh B 87 (88) = 1953 Cri L Jour 610 (DB) °° AIR 1953 Vind Pra 38 (40) = 1953 Cri L Jour 1193 °° AIR 1951 Orissa 168 (175, 176) = ILR (1951) Cut 65 = 1952 Cri L Jour 1743 (FB) °° AIR 1947 Pat 305 (325) = 25 Pat 612 (DB) °° AIR 1965 All 40 (43) = 1965 (1) Cri LJ 4 (DB).

[See however AIR 1957 Madh B 72 (74) = 1957 Cri L Jour 199 (DB).]

(6) The section mentions two periods of time, viz. 'In the course of investigation' and 'or at any time afterwards before the commencement of trial'. The precautions in the section must be followed whenever confession is recorded. AIR 1965 All 40 (43) = 1965 (1) Cr LJ 4 (DB).

(7) Where a warning is actually given but the record does not show it, the defect can be cured under Sec. 533, by the evidence of the Magistrate that he did give the warning. AIR 1942 Pat 283 (285) = 43 Cri L Jour 301 (DB) °° 1955 Andh WR 444 (446) °° (1936) 37 Cri L Jour 1101 (1103) (DB) (Cal) °° AIR 1933 Bom 145 (146) = 34 Cri L Jour 555 (FB) °° AIR 1969 Orissa 144 (148, 149) = 35 Cut LT 287 (DB) °° 1963 Ker LT 229 (238) (DB).

(8) The defect about questioning accused for finding out voluntary character of confession can be cured by adopting the course provided in Sec. 533. 1961 Jab LJ 1313 = ILR (1962) Madh Pra 133 (137) (DB).

(9) A warning cannot be invalidated merely because the accused is not specifically warned that his statement, even if retracted later, might be used as evidence against him. AIR 1951 Orissa 78 (80) (DB).

(10) In view of Section 29, Evidence Act, a confession may be admitted in evidence although the accused was not warned as required by this section. AIR 1957 Raj 141 (143) = ILR (1957) 7 Raj 677 = 1957 Cri L Jour 545 (DB) °° AIR 1954 Bom 285 (290, 292) = ILR (1954) Bom 484 = 1954 Cri L Jour 887 (DB).

(11) Section 164 (3) being a special provision for Magistrate's recording confessions would not apply to confessions elicited by persons in circumstances mentioned in Section 29, Evidence Act. AIR 1957 Andh Pra 729 (733) = 1957 Cri L Jour 1086.

(12) The exact words of the warning are not material provided the Magistrate recording the confession explains and the person making it clearly understands that he need not make a confession. AIR 1952 Trav-Co 305 (307) = 1952 Cri L Jour 1304 (DB) °° AIR 1956 Raj 34 (36) = ILR (1955) 5 Raj 1012 = 1956 Cri L Jour 266 (DB).

(13) This section and Section 364 as well as Rule 85, Madras High Court Criminal Rules of Practice do not require that the warning that the accused is not bound to make any confession should be in the form of a question and answer. Even otherwise, Section 533, is sufficient to cure the defect. AIR 1955 Mad 495 (497) = ILR (1956) Mad 351 = 1955 Cri L Jour 1197 (DB).

[See also 1963 Ker LT 229 (238) (DB) °° 1961 MLJ (Cr) 311 = (1961) 1 Andh WR 406 (411, 412) (DB).]

(14-15) It is not for the Magistrate to merely tell the person making the statement that he should think over the matter and state what really happened, as otherwise the statement would be used against him. AIR 1940 Mad 562 (563) = 42 Cri L Jour 64 (DB) °° AIR 1947 Pat 305 (327, 328) = 25 Pat 612 (DB). (Per Ray, J.)

(16) It is not necessary that there should be any note of the warning at the beginning of the confession. It is sufficient if that is recorded in the memorandum which is required to be made at the foot. AIR 1952 Trav-Co 305 (307) = 1952 Cri L Jour 1304 (DB) °° AIR 1933 Bom 145 (145, 147) = 34 Cri L Jour 555 (FB).

Section 164 — Note 12 (contd.)
(Overruling AIR 1932 Bom 553 = 34 Cri L Jour 73.)

[See AIR 1947 Pat 305 (309) = 25 Pat 612 (DB).]

(17) Where the accused knew that they were being sent to the judicial lock up for their confessions being recorded, it is not necessary that the Magistrate should specifically bring to their notice by any order that their confessions would be recorded. AIR 1954 Sau 115 (117) = 1954 Cri L Jour 1458 (DB).

(18) A Magistrate recording a confession should warn the accused that he is a Magistrate. AIR 1953 Orissa 149 (150) = ILR (1952) Cut 620 = 1953 Cri L Jour 1008 (DB) °° AIR 1957 Madh B 72 (74) = 1957 Cri L Jour 199 (DB) °° AIR 1954 Trav-Co 456 (459) = 1954 Cri L Jour 1468 (DB).

(19) Magistrate not making record about his having disclosed his identity to accused — His subsequent oral evidence is inadmissible. AIR 1960 Mys 163 (165, 166) = 37 Mys LJ 848 = 1960 Cri LJ 959 (DB).

(20) Accused aware of fact that Magistrate recording confession is Magistrate — There is no illegality in omission to warn accused of that fact. AIR 1932 Lah 103 (109) = 33 Cri L Jour 97 (DB) °° AIR 1954 Trav-Co 456 (459) = 1954 Cri L Jour 1468 (DB) °° (1909) 10 Cri L Jour 325 (335) (DB) (Cal) °° 1960 Andh LT 510 (512, 513) (DB).

[But see (1932) 33 Cri L Jour 567 (569) (DB) (Lah).]

(21) The omission on the part of the Magistrate to make known to the accused that he was in the presence of a Magistrate takes away much of the force of the confessional statement. AIR 1959 Mys 47 (48) = ILR (1958) Mys 35 = 1959 Cri L Jour 337 (DB) °° AIR 1959 Mys 250 (252) = 1959 Cri L Jour 1349 (DB) °° AIR 1957 Mys 50 (52) = ILR (1956) Mys 244 = 1957 Cri L Jour 521 (DB).

(22) Where only one person is involved in a crime and such a person wants to confess, the failure to warn the person that it was not intended to take him as an approver will amount only to an irregularity. AIR 1953 Mad 564 (565) = ILR (1953) Mad 1170 = 1953 Cri L Jour 1069 (DB).

[See also AIR 1952 Mad 411 (412) = 1952 Cri L Jour 853 (DB).]

(23) Where the warning contemplated under Section 164 (3) has not been given before recording the confession but it is given after the accused has confessed the guilt, the procedure offends the provisions of Section 164 (3) and if it has also resulted in prejudice to the accused the confession must be held invalid. AIR 1957 Mys 50 (51, 52) = ILR (1956) Mys 244 = 1957 Cri L Jour 521 (DB).

(24) A confessional statement cannot be rejected merely on ground of failure to give warning to accused. 1961 (2) Cri LJ 229 (230, 231) (DB) (J and K).

13. Confession must be voluntary. — (1) A Magistrate should not record any confession unless he has reason to believe that it is made voluntarily. AIR 1949 Orissa 67 (71) = ILR (1949) 1 Cut 207 = 51 Cri L Jour 72 (DB) °° AIR 1956 SC 217 (221) = 1956 Cri L Jour 426 °° ILR (1956) 1 All 236 (287) °° 1963 (2) Cri LJ 562 (565, 566) (Manipur).

[See also 1965 (2) Cr LJ 557 (560) (Ker).]

(2) A Magistrate should enquire whether the confession is made voluntarily before recording it. AIR 1945 Bom 484 (487) = 47 Cri L Jour 252 (DB) °° AIR 1959 Mys 47 (48) = ILR (1958) Mys 35 = 1959 Cri L Jour 337 (DB) °° AIR 1918 Pat 179 (183) = 19 Cri LJ 135 (SB) °° 1963 Ker LT 229 (238) (DB).

[See also AIR 1965 Orissa 66 (99) = (1965) 1 Cri LJ 458 (DB) °° 1961 Jab LJ 1313 = ILR (1962) Madh Pra 133 (139) (DB).]

(3) Where the accused are very young, ignorant, and illiterate belonging to backward class, and express fear of the police even after being given ample time for reflection there is no duty cast on the Magistrate to give them further time, but he has only to refuse to record the confessions. Accused can be taken as approver. (1967) 1 Andh WR 345 (350) = (1967) 2 Andh LT 61 (DB).

(4) Where the confessing accused is a child, the Magistrate must fully satisfy himself that the child is making a true confession voluntarily. AIR 1965 Punj 291 (295) = 1965 (2) Cri LJ 127 = 66 Pun LR 1230 (DB).

(5) A confession which is recorded without asking questions as to its voluntariness is inadmissible in evidence and cannot be acted upon. AIR 1957 Raj 141 (144) = ILR (1957) 7 Raj 677 = 1957 Cri L Jour 545 (DB) °° 1957 Jab LJ 460 (464, 465) (DB).

[See however (1936) 37 Cri L Jour 1101 (1104) (DB) (Cal).]

(6) The Magistrate should record the circumstances under which confessions are made, showing in whose custody the prisoners were and how far they were free agents. AIR 1944 Bom 338 (341) (DB) °° (1888) 1 CPLR (Cr) 115 (117).

[See also AIR 1953 Him Pra 105 (108) = 1953 Cri L Jour 1665.]

(7) It is no ground for thinking that when a particular accused had been kept in a solitary cell the confession made by him was not voluntary. (1963) 2 SCR 890 = 1963 (2) Cri LJ 702 (704) (DB).

(8) If the Magistrate, after questioning the accused, is not satisfied that a confession is voluntary and made without any

Section 164 — Note 13 (contd.)

pressure, it is not admissible in evidence. (1913) 14 Cri L Jour 211 (212) = 35 All 260 (DB) °° AIR 1956 SC 217 (222) = 1956 Cri L Jour 426 °° AIR 1925 Cal 587 (597, 598) = 26 Cri L Jour 782 °° (1910) 11 Cri L Jour 694 (695) = 37 Cal 735.

(9) If the Court sees any ground of exclusion mentioned in Section 24 of the Evidence Act, such as inducement, threat or promise, it may reject the confession as not voluntary. AIR 1953 Bilaspur 3 (5) = 1953 Cri L Jour 708 °° AIR 1956 Raj 67 (72) = ILR (1956) 6 Raj 359 = 1956 Cri L Jour 550 (DB) °° AIR 1951 Orissa 168 (170) = ILR (1951) Cut 65 = 1952 Cri L Jour 1743 (FB) °° AIR 1944 Nag 105 (107, 115) = 45 Cri L Jour 673 (FB) °° AIR 1934 All 81 (85) (FB) °° 1968 Raj LW 604 (606) (DB) °° AIR 1967 Orissa 24 (26) = 1967 Cri LJ 233 = 32 Cut LT 1011 (DB) °° AIR 1966 Orissa 130 (135) = 1966 Cri LJ 683 (DB) °° ILR (1962) Madh Pra 133 (139) = 1961 Jab LJ 1313 (DB).

[See also AIR 1954 Trav-Co 282 (286, 287) = ILR (1953) Trav-Co 841 = 1954 Cri L Jour 658 (DB).]

(10) It is for the prosecution to prove that the confession was made without threats or promises or inducements. AIR 1951 Him Pra 82 (85) = 1952 Cri L Jour 33 °° AIR 1958 Pat 166 (170) = 1958 Cri L Jour 406 (DB) °° (1957) 36 Pat 141 (256) (DB) °° AIR 1951 Orissa 168 (170) = ILR (1951) Cut 65 = 1952 Cri L Jour 1743 (FB) °° AIR 1967 Tripura 1 (5) = 1967 Cri LJ 125 °° AIR 1960 Mys 199 (201, 202) = 38 Mys LJ 20 = 1960 Cri LJ 1108 (DB).

(11) The assumption that a person would not make a confession of his guilt which will be prejudicial to his interest, unless some pressure is exerted on him is not wholly correct. AIR 1951 Him Pra 1 (10) = 52 Cri L Jour 50.

(12) Where a Sessions Judge is of the opinion that a confession is induced by torture, his duty is to exclude it entirely from the evidence and not to leave it to the jury to reject it if they find it to be not voluntary. AIR 1950 Cal 331 (332) = 51 Cri L Jour 1282 (DB).

(13) In the case of a confession duly certified by the Magistrate; it may fairly be assumed that he did his best to assure himself that the statements were voluntary and that if he had any suspicion he would not have placed them on the record. AIR 1951 Kutch 92 (94) = 1952 Cri L Jour 10 °° AIR 1949 Nag 405 (407) = ILR (1949) Nag 301 = 51 Cri L Jour 224 (DB) °° AIR 1941 Pat 303 (305) = 42 Cri L Jour 843 (DB).

[See also AIR 1954 Kutch 22 (23) = 1954 Cri L Jour 801.]

(14) Certificate by Magistrate is no conclusive proof as to voluntary nature of confession. (1909) 10 Cri L Jour 125 (129) (DB) (Cal) °° AIR 1947 Oudh 95 (97) = 48 Cri L Jour 27 (DB) °° AIR 1922 Oudh 302 (303) = 24 Cri L Jour 561 (DB).

(15) The failure of the Magistrate to append a certificate as required by sub-s. (3) is only an irregularity curable under Section 537. 1961 (2) Cri LJ 250 (252) = 39 Mys LJ 288 (DB).

(16) The mere omission to comply with rules issued by the Government under this section is not sufficient to rule out the confession if there has been no breach of the provisions of this section. AIR 1938 All 625 (630) = 40 Cri L Jour 132 (DB) °° AIR 1938 Mad 490 (491) = 39 Cri L Jour 585 (DB) °° AIR 1933 Oudh 299 (302) = 34 Cri L Jour 838 (DB) °° AIR 1921 Nag 39 (40) = 23 Cri L Jour 673 (DB).

(17) Where, when the confession was recorded, the accused was actually in police custody and there were a number of police officers all around him and the record which was in the third person, was itself made by a police officer though to the dictation of the Magistrate, the confession could hardly be accepted as a voluntary confession. ILR (1959) Ker 319 (358) (DB).

(18) Prima facie whether or not a confession is voluntary would be a question of fact and in an appeal by special leave under Article 136 of the Constitution the Supreme Court would be reluctant to interfere with such finding. AIR 1957 SC 637 (643) = 1957 SCR 953 = ILR (1957) Punj 1602 = 1957 Cri L Jour 1014 °° AIR 1963 Guj 135 (137) = (1962) 3 Guj LR 1052 = (1963) 1 Cri LJ 755 (DB).

[See also AIR 1960 Mys 199 (201, 202) = 38 Mys LJ 20 = 1960 Cri LJ 1108 (DB).]

(19) The mere insistence on the part of the accused to make a statement is not a proper basis for taking the view that his confessions were voluntary. AIR 1959 Mys 47 (49) = ILR (1958) Mys 35 = 1959 Cri L Jour 337 (DB).

(20) Delay in producing accused before Magistrate may cast doubt on voluntariness of confession. 1964 Mad LJ (Cri) 713 (719) (Mys) °° 1961 (2) Cri LJ 250 (252) = 39 Mys LJ 288 (DB).

(21) Where the Magistrate gave accused warning after preliminary questioning and sent him back to jail and on the next day the accused was produced before the Magistrate and the confession was recorded, the confession was held to be voluntary. AIR 1970 SC 283 (286) = (1969) 2 SCJ 870 = 1970 Cri LJ 373 °° (1966) 32 Cut LT 1170 (1181) = ILR (1966) Cut 635 (DB).

(22) Confessional statement, must be considered as a whole and a confession by the accused cannot be viewed as voluntary. AIR 1967 Manipur 11 (19) = 1967 Cri LJ 1023.

(23) Where there is no suggestion of any assault or inducement to extort confession

Section 164 — Note 13 (contd.)

and the accused are given sufficient time for full reflection, the confessions are voluntary. (1966) 32 Cut LT 1140 (1146) (DB).

(24) Confession by accused after being tackled by investigating officer — Exertion of undue pressure cannot be inferred so as to render the confession not voluntary. ILR (1963) Cut 567 (569).

(25) Fact that accused at no stage stated that it was not given voluntarily is of importance in judging voluntariness of confession. 39 Mys LJ 288 = 1962 Mad LJ (Cri) 313 = ILR (1961) Mys 286 = 1961 (2) Cri LJ 250 (252) (DB).

14. Statement of witness to be voluntary. —(1) If a statement of a witness is previously recorded under S. 164, Criminal P. C. it leads to an inference that there was a time when the police thought the witness may change but if the witness sticks to the statement made by him throughout, the mere fact that his statement was previously recorded under Section 164 will not be sufficient to discard it. The Court, however ought to receive it with caution. AIR 1968 SC 1270 (1272) = (1968) 3 SCR 354 = 1968 Cri LJ 1473. ((1900 ILR 27 Cal 295 and AIR 1938 Pat 290, Overruled.) °° ILR (1952) Cut 219 (273) (DB) °° AIR 1940 Nag 340 (346) = 42 Cri L Jour 17 (DB).

(2) The fact that the police have considered it necessary for the statement of a witness to be recorded under Section 164 suggests that they do not consider him altogether a reliable witness, that is to say, they apprehend that he may be tampered with. But there is no objection to the procedure being followed in appropriate cases. ILR (1951) 1 Raj 712 (716) (DB) °° AIR 1955 Andhra 161 (163) = ILR (1955) Andhra 633 = 1955 Cri L Jour 1152 (DB) °° AIR 1941 Oudh 517 (522, 523) = 42 Cri L Jour 758 (DB) °° AIR 1940 Nag 340 (346) = 42 Cri L Jour 17 (DB) °° AIR 1968 Mad 117 (130) = (1968) 1 Mad LJ 480 = (1968) Cri LJ 493 (DB).

[See also AIR 1967 Raj 159 (167) = 1967 Cri LJ 922 = 1967 Raj LW 326.]

(3) It cannot be laid down that a witness has to be disbelieved merely because the investigating officer thought, during investigation that his statement should be recorded under Section 164 so that he might make sure that the witness did not retract from it or prove hostile. ILR (1952) Cut 219 (273) (DB).

(4) Statements taken from a witness who was kept in police custody for a number of days should be regarded with great suspicion by Courts. 1955 Andh WR 854 (859) (DB).

15. "Upon questioning the person." — (1) Where a Magistrate is asked to record a confession under this section, he should, before doing so, question the person making it with a view to find out whether it is made voluntarily. AIR 1952 Bhopal 25 (28) = 1952 Cri L Jour 1366 °° AIR 1959 Mys 47 (49) = ILR (1958) Mys 65 = 1959 Cri L Jour 337 (DB) °° AIR 1957 Raj 141 (144) = ILR (1957) 7 Raj 677 = 1957 Cri L Jour 545 (DB) °° AIR 1954 Manipur 6 (8) = 1954 Cri L Jour 1329 °° AIR 1954 Pat 109 (114) = 32 Pat 249 = 1954 Cri L Jour 171 (DB).

(2) Section 29 of the Evidence Act, which makes an exception in the case of the two warnings contains nothing which does away with the necessity of questioning the accused for the purposes of finding out whether the confession was made voluntarily. Such questioning is absolutely essential to make the confession admissible. AIR 1957 Raj 141 (144) = ILR (1957) 7 Raj 677 = 1957 Cri L Jour 545 (DB).

(3) The Magistrate who records a confession must also record a brief statement of the reasons for his believing that the statement was voluntarily made. AIR 1938 Pat 352 (357) = 39 Cri L Jour 725 (DB).

(4) This section does not require the Magistrate to make the statement of reasons before he begins to record the confession. He can add the certificate only after recording the statement. AIR 1953 Mad 74 (77) = ILR (1953) Mad 417 = 1953 Cri L Jour 264 (DB).

(5) It would be necessary in every case to put the questions prescribed by the High Court circulars but the questions intended to be put under sub-section (3) of Sec. 164 should not be allowed to become a matter of a mere mechanical enquiry. The Magistrate should be fully satisfied that the confessional statement which the accused wants to make is in fact and in substance voluntary. AIR 1957 SC 637 (643) = 1957 SCR 953 = ILR (1957) Punj 1602 = 1957 Cri L Jour 1014 °° 1963 Ker LT 229 (238) (DB).

(6) One of the important methods of finding out whether the confession is voluntary is to question the accused as to his motive in making the confession and as to the circumstances under which the question of confession and the willingness of the accused to confess first arose. AIR 1953 Hyd 145 (152) = ILR (1951) Hyd 895 = 1953 Cri L Jour 785 (DB) °° 1955 BLJR 565 (570) °° AIR 1949 Orissa 67 (72) = ILR (1949) 1 Cut 207 = 51 Cri L Jour 72 (DB) °° AIR 1942 Pat 90 (95) = 43 Cri L Jour 36 (DB) °° AIR 1933 All 61 (38) = 34 Cri L Jour 489 (DB).

(7) The rule as to the necessity of questioning as to the motive is a rule of prudence and not of law. AIR 1951 Orissa 71 (76) (DB) °° AIR 1923 Pat 13 (17, 18) = 24 Cri L Jour 497 (DB) °° AIR 1925 Cal 587 (594) = 26 Cri L Jour 782.

(8) No confession can be ruled out as inadmissible on the ground that the accused was not asked the motive of the confession.

Section 164 — Note 15 (contd.)
AIR 1951 Orissa 245 (248) = 52 Cri L Jour 685 (DB). (Per Panigrahi, J.) °° 1955 BLJR 565 (570) °° 1964 (2) Cri LJ 487 (491) = (1962) 4 OJD 156 (DB).

[See AIR 1951 Him Pra 75 (81) = 1952 Cri L Jour 15.]

[See also ILR (1951) 1 Raj 245 (252) (DB).]

(9) The Court must in each case satisfy itself that the Magistrate honestly believed and took steps to ascertain that the confession was a voluntary one. AIR 1954 Pat 109 (114) = 32 Pat 243 = 1954 Cri L Jour 171 (DB) °° AIR 1953 Him Pra 105 (108) = 1953 Cri L Jour 1665.

(10) It is desirable that the Magistrate should put various questions to see if the confession is voluntary. AIR 1942 Pat 427 (428) = 43 Cri L Jour 544 (DB) °° AIR 1923 Pat 13 (18) = 24 Cri L Jour 497 (DB) °° AIR 1923 Pat 356 (360) = 24 Cri L Jour 649 (DB).

(11) The question put must be in pursuance of a real endeavour to find out the object of the confession and must be directed to eliciting facts which will enable the Magistrate to judge the character of the confession that the accused is about to make. AIR 1952 Pepsu 94 (96) = 1952 Cri L Jour 952 (DB) °° AIR 1955 Ajmer 10 (11) = 1955 Cri L Jour 595.

(12) A Magistrate will be wholly unjustified in extracting by putting questions by way of cross-examination facts which the deponent has not spoken to before him, or which tend to incriminate him. AIR 1926 All 22 (25) = 26 Cri L Jour 1209 (DB) °° AIR 1930 All 746 (750) = 32 Cri L Jour 152 (DB) °° AIR 1948 Nag 344 (348) = ILR (1948) Nag 147 = 49 Cri L Jour 561 (DB).

(13) It is essential for a Magistrate recording confession to put down in the record of the confession itself every circumstance and every detail which is necessary for the trial Court to come to the conclusion that the confession is voluntary. (1959) 37 Mys LJ 462 (467) (DB).

(14) It is always advisable to record the questions and answers by means of which a Magistrate satisfies himself that a confession is voluntary so that it may furnish data to the Court of Session and the High Court. AIR 1959 Mys 250 (252) = 1959 Cri L Jour 1349 (DB) °° AIR 1955 Pepsu 33 (37) = ILR (1954) Patiala 316 = 1955 Cri L Jour 537 (DB) °° AIR 1954 Trav-Co 456 (459) = 1954 Cri L Jour 1468 (DB) °° AIR 1953 Manipur 7 (7) = 1954 Cri L Jour 183 °° AIR 1951 Orissa 168 (175) = ILR (1951) Cut 65 = 1952 Cri L Jour 1748 (FB).

[See also AIR 1954 Bom 285 (288) = ILR (1954) Bom 484 = 1954 Cri L Jour 887 (DB) °° AIR 1954 Manipur 6 (8) = 1954 Cri L Jour 1329.]

(15) Mere cerificate of the Magistrate in the absence of any record of questions and answers that he was satisfied that the confession was a voluntary one, is not conclusive and the confession may still be involuntary. AIR 1953 Manipur 7 (7) = 1954 Cri L Jour 183.

(16) An omission to record questions and answers is not a fatal defect but only an irregularity cured by Section 533 of the Code. AIR 1951 Orissa 168 (175) = ILR (1951) Cut 65 = 1952 Cri L Jour 1743 (FB) °° AIR 1959 Orissa 33 (36) = 1959 Cri L Jour 353 (DB) °° AIR 1955 Pepsu 33 (37) = ILR (1954) Patiala 316 = 1955 Cri L Jour 537 (DB) °° AIR 1954 Trav-Co 456 (459) = 1964 Cri L Jour 1468 (DB) °° AIR 1951 Orissa 71 (76) (DB) °° AIR 1934 All 81 (84, 85) = 35 Cri L Jour 385 (FB).

[See also AIR 1954 Bom 285 (288) = ILR (1954) Bom 484 = 1954 Cri L Jour 887 (DB).]

(17) Where the accused is questioned after the confession is recorded, the defect is one of mere form and does not alter the character of the confession. AIR 1914 Cal 600 (601) = 15 Cri L Jour 25 (DB) °° (1909) 10 Cri L Jour 325 (337) (DB) (Cal).

(18) Where an accused refuses to make a statement, the Magistrate should record that also. AIR 1933 All 31 (37) = 34 Cri L Jour 489 (DB).

16. Memorandum at the foot of the confession. — (1) A memorandum required under sub-section (3) need not be appended in the case of a record of a statement of a witness under this Section. (1900) 27 Cal 295 (300) (DB) °° AIR 1955 Vindh Pra 86 (87) = 1955 Cri L Jour 1000.

(2) Endorsement of certificate by Magistrate below statement of witness recorded under Section 164 not in proper form does not necessarily mean that any threat was given to witness or that his evidence given in Court is less believable. **AIR 1968 SC 1270 (1272) = 1968 Cr LJ 1473 = (1968) 3 SCR 354.**

(3) A confession without the memorandum or with a defective memorandum is inadmissible in evidence. AIR 1943 Oudh 269 (270) = 44 Cri L Jour 389 (DB) °° AIR 1935 Oudh 477 (481) = 36 Cri L Jour 1007 °° AIR 1925 Lah 605 (610, 611) = 27 Cri L Jour 514 (DB).

[See however AIR 1950 Kutch 30 (31) = 51 Cri L Jour 749.]

(4) Confession without memorandum or with defective memorandum — Defect curable under Section 533 — Confession is admissible. AIR 1940 Nag 230 (231) = 41 Cri L Jour 553 (DB) °° AIR 1946 Pat 169 (171) = 24 Pat 646 = 48 Cri L Jour 80 (DB) °° AIR 1968 Manipur 34 (39) = 1968 Cri L Jour 514.

(5) The section does not require that the memorandum should be written by the

Secion 164 — Note 16 (contd.)
Magistrate himself in his own hand. It is enough if it is signed by him. AIR 1933 Bom 145 (145, 147, 148) = 34 Cri L Jour 555 (FB). (Overruling AIR 1932 Bom 553 = 34 Cri L Jour 73.) °° AIR 1933 Sind 166 (167) = 34 Cri L Jour 808 (DB).

[But see AIR 1945 Bom 292 (295) = 47 Cri L Jour 51 (DB).]

17. **Accused, when should be produced before Magistrate.** — (1) This section does not say anything as to when an accused person should be produced before a Magistrate for making a confession; but on general principles it is necessary and desirable that he should be produced before the Magistrate as soon as he expresses his desire to make a confession. AIR 1944 Bom 338 (340, 341) (DB).

(2) There is no universal mandatory rule of law that a confession recorded after about one hour or so of the willingness shown by the accused must be declared as inadmissible or untrustworthy. The question has to be decided on the facts of each case. AIR 1959 Punj 110 (112) = 1959 Cri L Jour 362 (DB).

18. **Confession immediately after police custody.** — (1) Under Section 26 of the Evidence Act, a confession made to a Magistrate even while the accused is in the custody of the police-officer, is not inadmissible in evidence. (1909) 10 Cri L Jour 584 (587, 588) (DB) (Lah).

(2) A confession made by an accused person, afer he has been in police custody for some time, cannot be rejected on that sole ground. (1887) 9 All 528 (566) (SB) °° AIR 1956 Raj 34 (36) = ILR (1955) 5 Raj 1012 = 1956 Cri L Jour 266 (DB) °° AIR 1955 J and K 13 (17) = 1955 Cri L Jour 1183 (DB) °° AIR 1967 Delhi 14 (15, 16) = 69 Pun LR (D) 100 = 1967 Cri LJ 628 (DB).

(3) Confession made by the accused after he has been in police custody for some time must be always viewed with great suspicion. AIR 1940 All 46 (51) = 41 Cri L Jour 258 (DB) °° 48 Cri L Jour 794 (797) (DB) (Lah).

[See also AIR 1955 Manipur 1 (7) = 1955 Cri L Jour 139.]

(4) The Magistrate must be careful to ascertain how long such a person has been under the influence of the police. AIR 1953 Hyd 145 (152) = ILR (1951) Hyd 895 = 1953 Cri L Jour 785 (DB) °° AIR 1951 Him Pra 82 (84) = 1952 Cri L Jour 33 °° AIR 1949 Orissa 67 (71, 72) = ILR (1949) 1 Cut 207 = 51 Cri L Jour 72 (DB) °° 1885 All WN 59 (60) (FB) °° (1901) 25 Bom 543 (546) (DB).

(5) In recording a confession of a prisoner fresh from the hands of the police, the Magistrate would exercise a sound discretion, if before recording it he gives the accused a short time to enable him to think over the question independent of the influence of the police and to decide whether he would make a confession or not. AIR 1952 Him Pra 68 (72) = 1952 Cri L Jour 1495 °° AIR 1957 SC 637 (643, 644) = 1957 SCR 953 = ILR (1957) Punj 1602 = 1957 Cri L Jour 1014 °° AIR 1959 All 518 (523) = 1959 Cri L Jour 940 (DB). (Overruled on another point in AIR 1966 All 192 (FB).) °° AIR 1958 All 1 (4) = 1958 Cri L Jour 1 (DB) °° 1970 Cri LJ 781 (786, 787) (DB) (Assam) °° (1962) 4 OJD 156 = 1964 (2) Cr LJ 487 (490, 491) (DB) (Orissa) °° (1960) 26 Cut LT 14 (17) (DB).

[See also 1957 Ker LT 1132 (1134, 1135) (DB) °° AIR 1954 Him Pra 11 (14) = 1953 Cri L Jour 1900.]

(6) Where an accused person is produced by the investigating officer before the Magistrate for recording his confession, it is of the utmost importance that his mind should be completely free from any possible influence of the police and he must be sent to jail custody and given adequate time to consider whether he should make a confession at all. (1963) 2 SCR 517 (532) = 1965 SCJ 500.

(7) Where there may be reason to suspect that the accused has been persuaded or coerced to make a confession even longer period than 24 hours may have to be given to him before his statement is recorded. AIR 1957 SC 637 (644) = 1957 SCR 953 = ILR (1957) Punj 1602 = 1957 Cri L Jour 1014 °° AIR 1959 Him Pra 3 (7) = 1959 Cri L Jour 448 °° 1968 Raj LW 604 (606) (DB) °° AIR 1965 Orissa 175 (177, 178) = 1965 (2) Cri LJ 520 (DB) °° 1962 (2) Cri LJ 540 (542) (DB) (Guj).

(8) Though in ordinary circumstances an interval of 24 hours may be regarded as reasonable time for reflection, it is not to be taken as an absolute rule. AIR 1958 Ker 207 (209) = ILR (1958) Ker 545 = 1958 Cri L Jour 1021 (DB) °° AIR 1965 Orissa 66 (69) = 1965 (1) Cri LJ 458 (DB).

[See also AIR 1958 Pat 190 (192) = 1958 Cri L Jour 548 (DB).]

(9) Where the Magistrate has taken the necessary precautions to satisfy himself that the confession is a voluntary one, the mere fact that a police-officer at or soon after the arrest of the accused told him to make a confession to the Magistrate is no proof that he was forced to make the statement. AIR 1937 Mad 755 (758) = 39 Cri L Jour 390 (DB).

(10) Where there is reason to apprehend that the influence of the police is still continuing on the mind of the accused, the confession would have little weight, where, on the other hand, there is no such apprehension, it may have greater weight. AIR 1952 Vindh Pra 42 (45) = 1952 Cri L Jour 986 °° AIR 1934 All 81 (85) = 35 Cri L Jour 385 (FB) °° AIR 1934 Oudh 151 (153, 154) = 35 Cri L Jour 915 (DB).

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(11) The failure of the Magistrate to question a prisoner as to how long he was in custody will not invalidate the confession otherwise duly made. AIR 1923 Pat 13 (17) = 24 Cri L Jour 497 (DB) °° AIR 1931 Lah 763 (766) = 32 Cri L Jour 985 (DB).

(12) A confession recorded in the presence of the police-officer having the custody of the prisoner cannot be safely relied on. AIR 1924 Lah 624 (626) = 25 Cri L Jour 116 (DB) °° AIR 1955 Tripura 19 (22) = 1955 Cri L Jour 1292 °° AIR 1934 Pat 586 (587) = 36 Cri L Jour 12 (DB) °° AIR 1917 Pat 475 (477) = 18 Cri L Jour 623 (DB).

[But see (1875) 24 Suth WR (Cr) 33 (36) (DB).]

(13) A confession recorded after allowing the police-officer to put questions or by using a police-officer as a scribe, or after the perusal of statements alleged to have been made by the accused to the police and recorded by them, cannot safely be relied upon. (1898) 2 Cal WN 702 (709, 717) (DB) °° AIR 1920 Lah 144 (159) = 21 Cri L Jour 418 °° (1909) 10 Cri L Jour 125 (133) (DB) (Cal) °° (1909) 10 Cri L Jour 325 (336) (DB) (Cal) °° AIR 1923 Pat 13 (17) = 24 Cri L Jour 497 (DB).

(14) The presence of a police officer at the time of recording the confession is neither necessary nor proper even though such officer is not concerned in the investigation of the crime. AIR 1942 Pat 90 (94, 95) = 43 Cri L Jour 36 (DB).

(15) Where a prisoner in police custody is brought before a Magistrate for the purpose of having his confession recorded, he does not cease to be in the custody of the police merely because the police-officer is not in the room but waits outside the room or in the next room. 1896 Rat 855 (856) (DB) °° (1910) 11 Cri L Jour 247 (248) (DB) (Cal) °° AIR 1931 Lah 408 (414) = 32 Cri L Jour 818.

(16) This section is not intended to enable the police to obtain an incriminating statement from some person and as it were to put a seal on that statement by sending that person in custody to a Magistrate to be examined. A statement so obtained always raises a suspicion that it is not voluntary. (1900) 27 Cal 295 (300) (DB) °° (1902) 29 Cal 483 (487) (DB) °° (1908) 7 Cri L Jour 315 (315, 316) (DB) (Cal) °° (1886) 2 Weir 414 (415) (DB).

19. Confessing accused sent back to police custody. — (1) The practice of sending the accused after the confession to the custody of the police is very improper. Where the accused is sent back to the police custody instead of to the judicial lock-up after his confession has been recorded, the confession must necessarily be suspected to be not voluntary. AIR 1957 Him Pra 52 (56) = 1957 Cri L Jour 1254 °° AIR 1955 J and K 13 (17) = 1955 Cri L Jour 1183 (DB) °° AIR 1955 Manipur 1 (7) = 1955 Cri L Jour 139 °° AIR 1955 Pepsu 33 (37) = ILR (1954) Patiala 316 = 1955 Cri L Jour 537 (DB) °° AIR 1954 Him Pra 11 (14) = 1953 Cri L Jour 1900.

[See also AIR 1950 Raj 16 (20) = 51 Cri L Jour 1077 (DB).]

[See however AIR 1953 Raj 131 (132) = ILR (1952) 2 Raj 669 = 1953 Cri L Jour 1038 (DB) °° AIR 1953 Trav-Co 402 (407) = ILR (1953) Trav-Co 514 = 1953 Cri L Jour 1613 (DB) °° AIR 1944 Bom 338 (341) (DB).]

20. Retracted confessions. — (1) A retracted confession is always open to suspicion and cannot be acted upon unless it is corroborated by credible independent evidence. **AIR 1953 SC 131 (132) = 1953 SCR 546 = 1953 Cri L Jour 668 °° AIR 1957 SC 637 (643) = 1957 SCR 953 = ILR (1957) Punj 1602 = 1957 Cri L Jour 1014** °° AIR 1959 Mad 175 (179) = 1959 Cri L Jour 603 (DB) °° **AIR 1956 SC 9 (11) = 1956 Cri L Jour 126** °° AIR 1958 Andh Pra 37 (42) = 1958 Cri L Jour 18 (DB) °° AIR 1958 Pat 166 (172) = 1958 Cri L Jour 406 (DB) °° **AIR 1953 SC 459 (462) = 1953 Cri L Jour 1925 = 55 Pun LR 158 (163) °° AIR 1953 SC 411 (413) = ILR (1951) Cut 464 = 1953 Cri L Jour 1633 = 1951 All WR (Sup) 38 (40)** °° AIR 1939 Cal 65 (74) = 40 Cri L Jour 199 (FB) °° AIR 1970 Orissa 54 (56) °° 1969 Cri LJ 1172 (1173) = 35 Cut LT 94 °° AIR 1968 Manipur 34 (39) = 1968 Cri LJ 514 °° AIR 1967 Him Pra 10 (13) = 1967 Cri L Jour 62 °° AIR 1965 Assam 89 (91) = 1965 (2) Cri LJ 614 (DB) °° AIR 1965 Mad 94 (96) = (1965) 1 Cri LJ 306 °° 1964 All Cri R 127 = 1964 All WR (HC) 189 (190) (DB) °° 1963 (2) Cri LJ 234 (236) (DB) (Orissa). (General corroboration is sufficient.) °° AIR 1961 Mys 71 (73, 74) = 1961 (1) Cri LJ 400 = 38 Mys LJ 695 (DB) °° 1959 Ker LJ 593 (594) (DB).

(2) The rule that a retracted confession cannot be acted upon unless corroborated is one more of prudence than of law. AIR 1959 Mad 175 (179) = 1959 Cri L Jour 603 (DB) °° **AIR 1954 SC 4 (5) = 1954 Cri L Jour 236 °° AIR 1967 SC 349 (352) = 1967 Cri LJ 409 = (1966) 2 SCWR 641** °° (1969) 71 Punj LR (Delhi) 198 (200) = (1968) 34 Cut LJ 1077 (1088) °° (1966) 32 Cut LT 1140 (1143) (DB).

(3) Whether corroboration is necessary when confession is retracted has to be determined on the circumstances of a particular case. What the Court has to see is whether the confession was made voluntarily and, if so, whether it is true as tested by the circumstances under which it was made and retracted. AIR 1953 Mad 61 (63) = ILR (1953) Mad 169 = 1953 Cri L Jour 245 (DB) °° AIR 1952 Pepsu 19 (20) = 3 Pepsu LR 377 (DB) °° **AIR 1949 PC 257 (260, 261) = 28 Pat 592 =**

Section 164 — Note 20 (contd.)
76 Ind App 147 = 50 Cri L Jour 872 °° (1897) 20 All 133 (134) (DB) °° AIR 1933 Bom 230 (231) = 34 Cri L Jour 896 (DB) °° (1967) MLJ (Cr) 789 (790, 791) = (1967) 2 Andh WR 340 (DB) °° AIR 1965 Orissa 66 (69, 70, 71) = 1965 (1) Cri LJ 458 (DB).

(4) Corroboration must be on some material particular connecting the accused with the offence. AIR 1959 Mad 175 (179) = 1959 Cri L Jour 603 (DB) °° (1969) 71 Punj LR (Delhi) 198 (200) °° AIR 1967 Orissa 24 (25, 26) = 1967 Cri LJ 233 = 32 Cut LT 1011 (DB) °° AIR 1965 Orissa 66 (69, 70, 71) = (1965) 1 Cri LJ 458 (DB) °° AIR 1960 Mys 199 (202, 203) = 38 Mys LJ 20 = 1960 Cr LJ 1108 (DB).

[But see 1961 (2) Cri LJ 229 (232) (DB) (J and K).]

(5) It is not necessary that each and every circumstance mentioned in the confession with regard to the participation in crime must be separately and independently corroborated. AIR 1959 Ker 46 (50, 51) = 1959 Cri L Jour 187 (DB) °° (1968) 34 Cut LT 1077 (1088) °° (1966) 32 Cut LT 1140 (1143, 1144) (DB) °° AIR 1965 Orissa 31 (32, 33) = 1965 (1) Cri LJ 315 = 30 Cut LT 517 °° (1961) 2 Cri LJ 229 (232) (DB) (J and K).

(6) A conviction based upon a retracted confession even if uncorroborated is not illegal if the Court believes that it is voluntary and true. AIR 1957 Andh Pra 758 (765) = 1957 Cri L Jour 1091 (DB) °° AIR 1955 Assam 51 (53) = 1955 Cri L Jour 437 (DB) °° 1955 BLJR 565 (570) °° AIR 1952 Pepsu 94 (97) = 1952 Cri L Jour 952 (DB) °° AIR 1944 Mad 117 (120) = 45 Cri L Jour 373 (FB) °° AIR 1967 SC 349 (352) = (1966) 3 SCR 517 = 1967 Cri LJ 409.

[See also AIR 1967 Manipur 11 (19) = 1967 Cri LJ 1023.]

(7) Where a retracted confession is not liable to suspicion that it was due to any such undue influence as is referred to in Section 24 of the Evidence Act, a conviction based thereon is not illegal. AIR 1943 Oudh 269 (271) = 44 Cri L Jour 389 (DB) °° AIR 1934 Lah 89 (90) = 35 Cri L Jour 1453 °° 1890 All WN 173 (174) °° AIR 1925 All 627 (630) = 26 Cri L Jour 1431 (FB) °° (1901) 25 Bom 168 (171) (DB) °° 1963 (2) Cri LJ 234 (235, 236) (DB) (Orissa).

(8) It is the duty of the Judge, when a confession is retracted, to inquire and ascertain, before acting upon it, whether the confession was not the result of such undue influence. AIR 1959 Mad 175 (179) = 1959 Cri L Jour 603 (DB) °° 1885 All WN 59 (59) (FB) °° (1871) 8 Bom HCR (Cr) 126 (136, 137) (FB) °° AIR 1933 Cal 835 (837, 839) = 34 Cri L Jour 1087 (SB).

(9) A confession which is subsequently retracted may be used to corroborate an approver though it is the duty of the Court to scrutinize such corroboration with great care. AIR 1943 Sind 166 (170) = 45 Cri L Jour 118 (DB) °° AIR 1937 Rang 218 (218) = 38 Cri L Jour 774.

(10) A retracted confession may be taken into consideration as against a co-accused and may form the basis of conviction if there is substantial and independent corroboration both as to the crime and the criminal. AIR 1952 Cal 231 (232) = 1952 Cri L Jour 623 (DB) °° AIR 1959 SC 1 (3) = 1959 Cri L Jour 90 °° AIR 1955 Assam 51 (53) = 1955 Cri L Jour 437 (DB) °° AIR 1955 Him Pra 15 (18) = 1955 Cri L Jour 679 °° AIR 1955 Punj 110 (111, 112) = 1955 Cri L Jour 737 (DB).

(11) By itself a retracted confession is a very slight evidence against the co-accused. AIR 1952 Assam 169 (171) = 1952 Cri L Jour 1663 (DB) °° AIR 1955 Assam 51 (53) = 1955 Cri L Jour 437 (DB) °° AIR 1942 Pat 90 (92) = 43 Cri L Jour 36 (DB).

(12) The circumstance that the confession was not retracted in the Court of the Committing Magistrate but was retracted in the Sessions Court at a late stage goes strongly in favour of the confession being held to be voluntary. AIR 1954 Him Pra 11 (14) = 1953 Cri L Jour 1900.

(13) A confession retracted before the committing Magistrate would be deemed to have been retracted at the earliest opportunity. Such confession cannot be relied upon without corroboration. AIR 1957 Him Pra 52 (56) = 1957 Cri L Jour 1254.

(14) What amount of corroboration would be necessary would always be a question of fact to be determined in the light of the circumstances of each case. AIR 1957 SC 637 (643) = 1957 SCR 953 = ILR (1957) Punj 1602 = 1957 Cri L Jour 1014.

(15) The corroboration of a retracted confession must be on some material particular connecting the accused with the offence. There should be some circumstance on record which implicates the accused. Recovery of an incriminating object or similar other circumstance affords sufficient corroboration. AIR 1957 Andh Pra 758 (765) = 1957 Cri L Jour 1091 (DB).

(16) Statement of witnesses recorded under Section 164, on oath, cannot be used as corroboration of the retracted confession of the accused, when the witnesses had complained that the statements were obtained under police pressure. AIR 1957 Him Pra 52 (58) = 1957 Cri L Jour 1254.

(17) Extra-judicial confession retracted — Accused, after murder, confessing occurrence to Magistrate — Statement not recorded because Magistrate at that time not concerned with investigation — Statement admissible both as first information report and admission. AIR 1960 Mad 191 (193) = 1960 Cri LJ 616 (DB).

21. Confession of co-accused. — (1) The confession of an accused person is not evi-

165. Search by police-officer.—*[(1) Whenever an officer in charge of a police-station or a police-officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police-station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

(2) A police-officer proceeding under sub-section (1) shall, if practicable, conduct the search in person.]

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may †[after recording in writing his reasons for so doing] require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing ‡[specifying the place to be searched and, so far as possible, the thing for which search is to be made]; and such subordinate officer may thereupon search for such thing in such place.

Section 164 — Note 21 (contd.)

dence in the ordinary sense of the term as defined in Section 3, Evidence Act. It cannot be made the foundation of a conviction and can only be used in support of other evidence. **AIR 1952 SC 159** (160) = **1952 SCR 526 = 1952 Cri L Jour** 839 °° AIR **1953 SC 131** (132) = 1953 SCR 546 = **1953 Cri L Jour** 668 °° AIR 1957 Bom 226 (230) = ILR (1958) Bom 1092 = 1957 Cri L Jour 1107 (DB) °° AIR 1970 Orissa 100 (104) (DB) °° AIR 1967 Pat 283 (284) = 1967 Cri LJ 1179 = 1968 All Cri R 82 °° (1966) 32 Cut LT 1140 (1147, 1148) °° AIR 1966 Pat 448 (452) = 1966 BLJR 861 = 1966 Cri LJ 1469 (DB) °° 1966 Raj LW 382 (391) = ILR (1966) 16 Raj 252 (DB).

[See also AIR 1965 Orissa 66 (68) = 1965 (1) Cri LJ 458 (DB).]

(2) A conviction can be based on the uncorroborated testimony of an accomplice provided the Judge has the rule of caution, which experience dictates, in mind and gives reasons why he thinks it would be safe in a given case to disregard it. **AIR 1952 SC 159** (161) = **1952 SCR 526 = 1952 Cri L Jour** 839 °° (1967) 1 Andh LT 276 (DB) °° AIR 1967 Manipur 11 (20) = 1967 Cri LJ 1023.

(3) Confession of accused of having abetted co-accused in murder of her husband — Evidence of strained relationship between couple and accused's liaison with co-accused affords substantial corroboration. AIR 1952 Him Pra 81 (90) = 1952 Cri L Jour 1720.

(4) Statements made in answer to notices under Section 171-A of Customs Act of 1878 are not confessions recorded by Magistrate under Section 164 of Criminal P. C. — But Section 30 of Evidence Act of 1872 is applicable to such statements if they are voluntary. AIR 1968 SC 832 (835) = (1968) 2 SCR 641 = 1968 Cri LJ 1017.

SECTION 165 — SYNOPSIS

1. Scope and applicability.
1A. Searches under other Acts.
2. "Police-officer making an investigation."
3. "Any offence which he is authorized to investigate."
4. "Anything necessary for the purposes of an investigation."
5. "In any place within the limits of the police-station of which he is in charge."
6. "Any place" if includes the house of the accused.
7. "After recording in writing the grounds of his belief."
8. Nature of search.
9. Who can conduct the search.
10. Conduct of search — Sub-section (4).
11. Inspection of things seized in search.
11A. Disposal of property seized in search.
11B. Illegal search, effect.
12. Resistance to illegal search.
13. Damages for illegal search.
14. "In person" — Sub-section (2).
15. "An order in writing" — Sub-section (3).
16. "Copies of any record" — Sub-section (5).

1. Scope and applicability. — (1) Magistrate cannot make a search under this section but can only act under Section **105.** (1909) 2 Ind Cas 436 (438) = 36 Cal **438** (SB). (**Overruled** by 13 Cri L Jour 693 on another point.)

(2) There is nothing in Article 20 of the Constitution or in any of its articles to prohibit the police from searching the person of the accused or the premises in the manner laid down in the Code. Nor have

(4) The provisions of this Code as to search-warrants †[and the general provisions as to searches contained in Section 102 and Section 103] shall, so far as may be, apply to a search made under this section.

†[(5) Copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate§ empowered to take cognizance of the offence and the owner or occupier of the place searched shall on application be furnished with a copy of the same by the Magistrate:

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of costs.]°†

[1882 — S. 165; 1872 — S. 379; 1861 — S. 142.]

[°] Substituted for the original sub-sections (1) and (2), by the **Code of Criminal** Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 36.

[†] Inserted, ibid.

[‡] Substituted for "specifying the document or thing for which search is to be made and the place to be searched", Ibid.

[§] Provisions of this section apply to searches made by certain customs officers, with this modification that as if for the word "Magistrate", wherever occurring in sub-section (5), the words "Collector of Customs" were substituted—See Customs Act, 1962 (LII of 1962), S. 105 (2) (1-2-1963) and to searches under the Foreign Exchange Regulation Act, 1947, S. 19D (as inserted by Act 55 of 1964, S. 15 (a)) with the modification that for the word "Magistrate", wherever occurring, the words "Director of Enforcement or other officer exercising his powers", were substituted.

[°†] By notifications issued under S. 1 (2) of this Code, the State Government of West Bengal has extended Sec. 165 of the Code to the Commissioner of Police and the police in the town of Calcutta—See Notifications No. 1048J dated 15-3-1943 read with Nos. 1002J D/- 25-3-1946 and 3019J D/- 25-9-1946—Cal. Gaz., D/- 26-9-1946, Ext.

STATE AMENDMENT

West Bengal

In sub-section (5) for the words 'nearest Magistrate' substitute the words 'nearest Judicial Magistrate' — W. B. Act 8 of 1970 S. 2 and Sch., item. 58.

Section 165 — Note 1 (contd.) the powers of the Magistrate to issue a search warrant in the manner set out by the Code been abrogated by the Constitution. AIR 1955 Mad 685 (685) = 1955 Cri L Jour 1602 (1).

1A. Searches under other Acts. — (1) Search under S. 22A, Forward Contracts (Regulation) Act, 1952 — Section 165, Cr. P. C. does not apply. AIR 1968 All 338 (341) = 1968 Cri LJ 1325.

(2) Search under Section 5 of Public Gambling Act — Section 165, Cri. P. C. does not apply. AIR 1967 Him Pra 18 (20) = 1967 Cri LJ 376 (2).

(3) Search under Section 29 of Madras Prohibition Act — Section 165 (5) Cr. P. C. does not apply. 1955-1 Mad LJ 70 (70).

(4) Search under Central Excises and Salt Act — Section 165, Cr. P. C. applies. **AIR 1960 SC 210 (211, 212, 213) = 1960 Cri LJ 286 = 1960 (1) SCR 991.**

(5) But this section does not apply when only inspection of account books and register is to be made. **AIR 1968 SC 59 (66) = (1968) 1 SCR 148.**

(6) Search under Section 49 of Punjab Excise Act, 1914 — Section 165, Cr. P. C. applies. (1964) 66 Punj LR 569 (573).

(7) Search under Section 22 (4) of Rajasthan Sales Tax Act, 1954 — Section 165 of Criminal P. C. would be available. AIR 1968 Raj 188 (205).

(8) Search under Section 14 of Opium Act, 1878 — Section 165, Criminal P. C. applies. AIR 1969 Raj 121 (122) = 1969 Cri LJ 515 = ILR (1969) 19 Raj 559.

(9) Search under Section 132, Income-tax Act, 1961 — Provisions of Criminal P. C. to apply — But that does not mean that limitations prescribed by this section are also incorporated therein. **AIR 1970 SC 292 (297).**

2. "Police-officer making an investigation." — (1) A police constable deputed by his superior is authorised to conduct a search under this section. **1880 Pun Re (Cr) No. 24 p. 41 (41).**

(2) Police officer asked by Magistrate under Section 202, Cr. P. C. to enquire and report — **Held,** he is not police officer making investigation into offence. **1963 (1) Cri LJ 100 (101) (Manipur).**

(3) Searching officer not obtaining warrant nor recording grounds to believe that attempt to obtain search warrant would have afforded offender opportunity to escape or of concealing evidence — **Held,** search was illegal and entire proceedings based thereon were void ab initio. **1969 All Cr R 1 (All) = 1969 All WR (HC) 8.**

Section 165 (contd.)

3. "Any offence which he is authorized to investigate. — (1) Before the section can be brought into operation, there must have been an offence committed which the police-officer is authorized to investigate. (1908) Bom 590 (595) (DB) °° 1966 All Cri R 91 (93) = 1966 All WR (HC) 157 °° AIR 1968 SC 1517 (1520) = (1969) Cr LJ 37 = (1968) 2 SCJ 941.

[See also AIR 1925 Cal 831 (833) = 26 Cri L Jour 1213 (DB) °° AIR 1933 Sind 325 (326) = 35 Cri L Jour 129 (DB).]

(2) A police-officer cannot make a search under this section in a non-cognizable case which he has not been authorized by a competent Magistrate to investigate. AIR 1943 Lah 28 (30) = 44 Cri L Jour 301 (DB) °° (1897) 24 Cal 691 (696) (DB).

(3) A police officer cannot make a search for stolen property where he has no information at all of the theft of the same. AIR 1923 Cal 108 (110) = 24 Cri L Jour 674 (DB).

4. "Anything necessary for the purposes of an investigation." — (1) The section includes a search for some document but does not include the inspection of any place inside a house. AIR 1928 All 185 (186) = 29 Cri L Jour 272.

(2) Where a police-officer searches a house for a person who is said to have committed an offence, this section has no application. AIR 1942 Pat 281 (282) = 43 Cri L Jour 279.

(3) Police Officer proceeding to spot with raiding party to verify information — Section 165 is not attracted. ('63) 65 Pun LR 1128 (1130).

5. "In any place within the limits of the police-station of which he is in charge." — (1) A police-officer has no power to make a search under this section beyond the local limits of his own jurisdiction. AIR 1923 All 433 (433) = 24 Cri L Jour 276 °° AIR 1919 Mad 353 (356, 357) = 20 Cri L Jour 145 (DB).

(2) Search beyond limits of jurisdiction is only an irregularity not affecting merits unless trial is prejudiced. 1964 All WR (HC) 727 (728).

6. "Any place", if includes the house of the accused. — (1) A search under this secion can be made of the house of an accused person. AIR 1914 Cal 256 (258, 259) = 14 Cri L Jour 405 (DB). (12 Cri L Jour 8, Not followed.) °° AIR 1927 Cal 93 (95) = 27 Cri L Jour 1195 (DB) (Do).

7. "After recording in writing the grounds of his belief." — (1) A police officer is bound first to record in writing the grounds of his belief that the search was necessary. AIR 1935 Nag 237 (239) °° AIR 1958 Raj 296 (298) = 1958 Cri L Jour 1350 °° AIR 1946 Lah 456 (459) = 48 Cri L Jour 161 (DB) °° AIR 1926 All 147 (150, 151) = 27 Cri L Jour 11 (DB) °° AIR 1928 All 185 (186) = 29 Cri L Jour 272 °° AIR 1933 Oudh 305 (307) = 34 Cri L Jour 568 °° AIR 1932 Pat 66 (68) = 33 Cri L Jour 233 (DB) °° AIR 1968 Delhi 208 (209, 211) = (1968) 70 Punj LR (D) 96 = 1968 Cri LJ 1265 (FB) °° 1962 (2) Cri LJ 569 (573, 574) = (1961) 3 Orissa JD 360 (DB) °° 1959 Andh LT 562 (571, 572).

[See however AIR 1957 Mys 24 (25) = ILR (1956) Mys 238 = 1957 Cri L Jour 381.]

[But see AIR 1939 Lah 280 (283, 284).]

(2) The recording of grounds of his belief by Police Officer is a preliminary step in conduct of search. 1959 Ker LT 801 (803).

(3) Necessity to record reasons for search and specify the article does not arise where in a case of search for cerain articles relating to an offence under Section 420 some other articles are found. 1961 (1) Cri LJ 595 (600) = 1960 All LJ 365 (DB).

(4) The recording can be done at any place or at any time prior to the actual search. AIR 1933 Sind 240 (243).

(5) Where nothing is brought on record to show that the police officer had put down in writing the grounds of his belief Court may resort to the presumption that all official things are presumed to be rightly done. Madh BLJ (1954) HCR 1325 (1339).

(6) From the mere fact that a search list and requisition made at Police Station alone are produced in case it cannot be presumed that there was non-compliance with the provisions of the section. AIR 1953 Trav-Co 466 (469) = ILR (1952) Trav-Co 937 = 1953 Cri L Jour 1670 (DB).

(7) The provisions in sub-section (1) of Section 165 are only directory. AIR 1969 Delhi 26 (35, 37) = 1969 Cri LJ 168.

[But see (1968) 9 Guj LR 364 (371) = ILR (1968) Guj 117 (DB).]

(8-9) Grounds for belief — Place where search has to be made ned not be mentioned. AIR 1969 Delhi 26 (38, 39) = 1969 Cri LJ 168.

(10) The recording of reason is an important step in the matter of search and should not be ignored. The recording of reason does not confer on the officer jurisdiction to make a search. The jurisdiction is conferred by the statute and not derived from the record of reasons. AIR 1960 SC 210 (213) = 1960 Cri LJ 286 = (1960) 1 SCR 991 °° (1968) 9 Guj LR 278 = ILR (1967) Guj 1046 °° (1964) 66 Punj LR 569 (573) °° 1962 Ker LT 790 (791).

(11) Officer authorised under Sec. 165 (3) is not required to record grounds of his belief. AIR 1969 Delhi 91 (107) = 71 ITR 550.

(12) Procedural defects like non-recording of reasons or failure to obtain warrant from Magistrate — Effect — Accused can resist search — Evidence in respect of such search is not rendered inadmissible.

Section 165 — Note 7 (contd.)
(1968) 9 Guj LW 278 (292) = ILR (1967) Guj 1046.

(13) The phrase "reasonable grounds for believing" considered together would mean that the conclusion arrived at should not be a mere suspicion, but must be such as is regarded as true by the person making it. (1968) 9 Guj LR 364 (373) = ILR (1968) Guj 117 (DB).

8. Nature of search.—(1) The section does not authorize a search for stolen property or for property generally, but only a search for specified stolen articles. AIR 1944 Pat 228 (230) = 45 Cri L Jour 802 (DB) °° Madh BLJ (1954) HCR 1325 (1341) °° AIR 1927 Cal 93 (94) = 27 Cri L Jour 1195 (DB).

(2) In conducting searches under S. 132 of Income Tax Act an Income-tax Officer ought to proceed on the lines of Sections 96, 98 and 165, Cr. P. Code. AIR 1965 All 487 (491) = ILR (1964) 2 All 377 (DB).

9. Who can conduct the search.— (1) Any superior police-officer, for example, a Circle Inspector of Police, is competent to conduct the search under this section. AIR 1927 All 516 (516) = 28 Cri L Jour 652.

(2) Company Commander of Battalion of Provincial Armed Constabulary, not being superior in rank to officer in charge of police station, a police officer making investigation cannot conduct search. 1968 All Cri R 295 (297) = 1968 All WR (HC) 454.

10. Conduct of search — Sub-section (4). — (1) A police officer is bound to call upon two or more respectable witnesses as provided in S. 103 to attend and witness the search. AIR 1926 All 147 (150, 151) = 27 Cri L Jour 11 (DB) °° AIR 1933 Sind 220 (222) = 34 Cri L Jour 848 (DB) °° AIR 1935 All 520 (520) = 36 Cri L Jour 551 (552) (DB).

[See also AIR 1956 Bom 287 (293) = ILR (1956) Bom 343 = 1956 Cri L Jour 585 (DB).]

(2) The fact that the police took two independent witnesses and did not call upon two witnesses from the locality does not make the search illegal. AIR 1927 All 516 (517) = 28 Cri L Jour 652 °° Madh BLJ 1954 HCR 1325 (1340).

(3) Failure by the police to call witnesses does not make the search illegal. (1912) 13 Cri L Jour 763 (764) (DB) (Mad).

(4) Attendance of witnesses at the search is not always essential to enable evidence as to the search to be given. AIR 1946 PC 16 (19) = 72 Ind App 305 = ILR (1946) Lah 1 = 47 Cri L Jour 489.

[See also AIR 1955 Cal 129 (129) = 1955 Cri L Jour 433 (DB).]

(5) It cannot be held that the things discovered as a result of searches conducted illegally can in no case be taken as incriminating circumstances and it would be in each case a question of fact whether the accused can reasonably be held to be in recent possession of the things which are shown to belong to somebody else. Madh BLJ 1954 HCR 1325 (1345).

(6) Defective search does not vitiate trial nor makes the evidence of search officer inadmissible in evidence. 1961 Ker LT 992 (993).

11. Inspection of things seized in search. — (1) Where a document or other thing is seized under this section and sent to the Magistrate under Section 170, the prosecutor must have an opportunity of inspection. (1887) 15 Cal 109 (142) (DB).

11A. Disposal of property seized in search — (1) Magistrate has power of disposal under Section 523, Cr. P. C. over the property seized in search under this section. AIR 1967 Cal 421 (422) = 69 Cal WN 663.

(2) See also Section 523, Cr. P. C.

11B. Illegal search, effect. — (1) Any illegality in the search will not vitiate the conviction of the accused if there is otherwise ample evidence to support it and no prejudice is caused by the illegal search to the accused. AIR 1952 Tripura 1 (4) = 1952 Cri LJ 1201 °° 1962 BLJR 344 (347) °° ('62) 64 Punj LR 403 (404) °° AIR 1953 Trav-Co 466 (469) = ILR (1952) Trav-Co 937 = 1953 Cri LJ 1670 (DB).

(2) Even if search is illegal by reason of non-compliance with Section 165, Cr. P. C. the seizure of articles is not vitiated. Illegality of search only calls for careful scrutiny of evidence regarding seizure. AIR 1963 SC 822 (824) = (1963) 1 Cri LJ 809 = (1963) Supp 1 SCR 408 °° (1968) 70 Punj LR (D) 259 (262, 263) (DB) °° AIR 1965 Orissa 136 (138) = 2 Cri LJ 112 = 31 Cut LT 172 ° AIR 1963 Ker 241 (246) = 1962 Ker LJ 1212 = (1963) 2 Cri LJ 279 °° (1963) 1 Cri LJ 669 (674) (DB) (Ker) °° 1963 BLJR 742 (743) °° ('63) 65 Punj LR 1128 °° AIR 1961 Ker 8 (12) = 1961 (1) Cri LJ 70 = 1960 Ker LJ 842 (FB). (Evidence of illegal search is admissible.)

(3) Illegal search and seizure of articles — Material collected can be used as evidence for demanding duty and imposing penalty for irregularities under Act. 1963 Ker LT 1109 (1111).

12. Resistance to illegal search. — (1) Resistance to illegal search will not be an offence either under Section 353 or Section 332 of the Penal Code. AIR 1944 Pat 228 (231) = 45 Cri L Jour 802 (DB) °° AIR 1958 Raj 296 (298) = 1958 Cri L Jour 1350 °° AIR 1960 SC 210 (212) = 1960 Cri LJ 286 = (1960) 1 SCR 991 °° AIR 1969 Raj 121 (123) = 1969 Cri LJ 515 = ILR (1969) 19 Raj 559 °° AIR 1965 Orissa 136 (138) = 31 Cut LT 172 = 1965 (2) Cri LJ 112 °° AIR 1964 Pat 493 (496) = (1964) 2 Cri LJ 571 °° 66 Pun LR 569 (573) = 1964 Cur LJ 160 °° 1968 BLJR 671 (674, 675) °° 1969 All WR (HC) 8 = 1969 All Cr R 1.

166. When officer in charge of Police-station may require another to issue search-warrant.—(1) An officer in charge of a police-station *[or a police-officer

Section 165 — Note 12 (contd.)

[But see 1892 All WN 1 (2).]

(2) Search in contravention of Sections 103 and 165 — Search can be resisted — Search of articles held not affected. AIR 1963 SC 822 (824) = 1963 (1) Cri LJ 809.

13. Damages for illegal search. — (1) A police-officer, who makes a search under this section in a non-cognizable case without an order from the Magistrate will be liable for damages in a suit. (1897) 24 Cal 691 (696) (DB).

(2) If the search by a police-officer is a bona fide one, he is not liable for damages. AIR 1919 Mad 751 (752) = 19 Cri L Jour 901 (DB) °° AIR 1933 Sind 240 (242, 243).

(3) Where a police-officer not having jurisdiction over the place searched helps in a search conducted by another police-officer who is authorized to conduct the search, he is not liable in damages. AIR 1919 Mad 226 (228) = 20 Cri L Jour 422 (DB).

(4) A police-officer is liable for damages if he fails to record the grounds of his belief as required by this section. AIR 1935 Nag 237 (239).

[But see AIR 1939 Lah 280 (282).]

14. "In person." — — Sub-section (2).— (1) Sub-sec. (2) does not lay down that the police-officer should conduct himself the search, e. g., ransack the boxes, examine the roof, dig up the floor or otherwise seek the property. (1912) 13 Cri L Jour 763 (764) (DB) (Mad). (Dissenting from 6 Cri L Jour 105 (Mad).) °° AIR 1919 Mad 226 (228) = 20 Cri L Jour 422 (DB) °° AIR 1927 All 516 (516, 517) = 28 Cri L Jour 652.

[But see (1907) 6 Cri L Jour 105 (106) (Mad).]

(2) Where two houses have to be searched simultaneously and the Sub-Inspector searches one house and orders his constable to search the other, the procedure is not illegal. AIR 1932 Oudh 249 (250) = 33 Cri L Jour 492. (Case under Excise Act.)

15. "An order in writing" — Sub-section (3). — (1) An oral order requiring a subordinate officer to make a search is illegal. AIR 1935 Nag 237 (239) °° Madh BLJ (1954) HCR 1325 (1341) °° 1964 Raj LW 126 (129, 132).

(2) Search in pursuance of oral order invalid — Other evidece of order inadmissible under Section 91, Evidence Act — No presumption under Section 114, Evidence Act applies. (1962) 3 Guj LR 736 (737, 738).

(3) Sub-section (3) has no application to a case in which the officer in the process of conducting a search himself has a part of it actually done under his own direction and in his own presence by one of his subordinates. AIR 1941 Lah 297 (298) = 42 Cri L Jour 612 (DB).

(4) The words "and such subordinate officer may, thereupon, search for such thing in such place" mean that he is to search only for the thing which he is instructed to search for and that he is to search for it only in the place specified in his authority. AIR 1944 Pat 228 (230) = 45 Cri L Jour 802 (DB).

(5) A subordinate police-officer can enter a house without any warrant or order in writing in search of a person who is charged with a cognizable offence. (1870) 7 Bom HCR (Cr) 50 (52) (DB).

16. "Copies of any record" — Sub-section (5). — (1) The provisions of sub-section (5) are an additional safeguard to protect individuals against general or roving searches. It is, therefore essential that reasons recorded for the search should be sent to the Magistrate forthwith. AIR 1926 Cal 663 (663, 664) = 27 Cri L Jour 542 (DB) °° AIR 1959 Mad 544 (547) = 1969 Cri L Jour 1445 °° 1969 Cri LJ 952 (953) (All) = 1968 All WR (HC) 39 °° 1959 Andh LT 562 (571, 572) °° ('57) 23 Cut LT 449 (465).

[See **AIR 1967 SC 1298 (1301) = (1967) 2 SCR 340 = 1967 Cri LJ 1194.**]

(2) The safeguard consists in that the search, when the record is sent forthwith to the Magistrate, would be in the knowledge of the Magistrate who if he considers it necessary might even be present at the place of search and see that the search is made in accordance with law. AIR 1969 Delhi 26 (41) = 1969 Cri LJ 168).

(3) An order by a Magistrate refusing or passing an order tantamount to the refusal of copies of records made under sub-sec. (1) or sub-section (3) to the owner or occupier of the place searched, is illegal and will be set aside. AIR 1928 All 402 (402) = 29 Cri L Jour 663.

(4) The provision is directory. This however does not mean that the police officer has a discretion to fulfil or not to fulfil the requirement of sub-section (5). The requirement has to be fulfilled by a police officer who seeks to exercise the power to search under section 165. AIR 1969 Delhi 26 (41) = 1969 Cri LJ 168.

(5-6) Investigation under S. 132, Income-tax Act, 1961 — Not being in the nature of investigation into any offence sub-section (5) of Sec. 165 does not apply to search under Section 132. AIR 1969 Delhi 91 (100) = 71 ITR 550.

(7) Search — Mahazar itself and articles recovered forwarded to Court two months after search — Held there was contravention of Section 165 (5). 1962 Ker LT 790 (791).

Section 166 — Note 1

(1) Omission to comply with this sub-section will render a conviction for resistance to the search liable to be set aside. AIR 1926 Cal 663 (663) = 27 Cri L Jour 542 (DB).

not being below the rank of sub-inspector making an investigation] may require an officer in charge of another police-station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made, within the limits of his own station.

(2) Such officer, on being so required, shall proceed according to the provisions of Section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

†[(3) Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police-station to cause a search to be made under sub-section (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police-station or a police-officer making an investigation under this Chapter to search, or cause to be searched, any place in the limits of another police-station, in accordance with the provisions of Section 165, as if such place were within the limits of his own station.

(4) Any officer conducting a search under sub-section (3) shall forthwith send notice of the search to the officer in charge of the police-station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under Section 103, and shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred to in Section 165, sub-sections (1) and (3).

(5) The owner or occupier of the place searched shall, on application, be furnished with a copy of any record sent to the Magistrate under sub-section (4):

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.]

[1882 — S. 166; 1872 — S. 380; 1861 — S. 143.]

[*] Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 37

[†] Sub-sections (3) to (5) were added, ibid.

STATE AMENDMENT

West Bengal

In sub-section (4) for the words 'nearest Magistrate' substitute the words 'nearest Judicial Magistrate' — W. B. Act 8 of 1970, S. 2 and Sch. item 59.

167.*§ Procedure when investigation cannot be completed in twenty-four hours.—(1) Whenever *[any person is arrested and detained† in custody, and

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Section 166 — Note 1 (contd.)

(2) Sub-Inspector in Section 166, Criminal P. C. does not include Assistant Sub-Inspector. 1964 Raj LW 126 (131, 132).

(3) Even a police officer obtaining a document or a thing under Section 94 or under Sections 165 and 166, Cr. P. C. is bound to see that no hardship is caused to the person in possession. ILR (1959) Ker 165 (172).

SECTION 167 — SYNOPSIS

1. Scope and object.
2. Difference between this section and Section 344 — See Section 344.
3. "Or the police-officer making the investigation if he is not below the rank of Sub-Inspector."
4. "Shall forthwith .... forward the accused."
5. "A copy of the entries in the diary."
6. To any Magistrate having jurisdiction or not.
7. "In such custody as such Magistrate thinks fit."
8. "Fifteen days in the whole."
9. Reasons to be recorded.
10. Effect of detention in contravention of this section.
11. Nature of proceedings under this section.
12. Applicability of this section to security proceedings.

it appears that the] investigation ‡[* * *] cannot be completed within the period of twenty-four hours fixed by Section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police-station §[or the police-officer making the investigation if he is not below the rank of sub-inspector] shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused *†[* * *] to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

*‡[Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the [State Government] shall authorise detention in the custody of the police.]

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

(4) If such order is given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

Section 167 — Synopsis (contd.)

12A. Applicability to arrests under Section 54 or Section 151.

13. If approvers can be detained in police custody under this section.

14. Admissibility of statements reduced to writing during police investigation.

15. Application to arrest under other Acts.

1. Scope and object.— (1) Provisions of this section are to be read as supplementary to those in Section 61. AIR 1931 Lah 353 (355) = 32 Cri L Jour 1785 (DB).

(2) Sections 61 and 167 are in accordance with the principle that justice is not delayed. AIR 1956 Orissa 129 (Pr. 9) = ILR (1956) Cut 267 = 1956 Cri L Jour 909 (DB).

(3) The object of Section 61 and this section is to enable person arrested to make any representation. (1888) 11 Mad 98 (102) (DB) •• AIR 1924 Cal 476 (478) = 25 Cri L Jour 732 (DB) •• AIR 1931 Lah 99 (100) = 33 Cri L Jour 180 •• AIR 1932 Oudh 11 (17) = 33 Cri L Jour 287 (DB).

(4) The intention of Section 61 and this section is to prevent possible abuse by police of their powers in trying to make discoveries of crime by means of duress, terror and wrongful confinement. AIR 1943 Nag 36 (70) = 44 Cri L Jour 237 (DB) •• 1886 Rat 254 (272, 273) (DB).

(5) Magistrate before whom the production has to be made has to scrutinize the act of others and to see whether it was legal and proper and further whether the formalities required by law had been complied with. AIR 1954 All 601 (605) = 1954 Cri L Jour 1317 = ILR (1955) 1 All 793 (DB).

(6) This section provides that in certain cases detention in police custody of the arrested person may be permitted so that the police may complete the investigation and decide whether to proceed under Section 169 or under Section 170. AIR 1926 Bom 551 (554) = 27 Cri L Jour 1169 (DB).

(7) A Magistrate's power to remand an accused person to police custody is regulated by this section. (1949) 2 Sau LR 183 (186) (DB).

(8) There is no other section in the Code for remand to police custody (1949) 2 Sau LR 183 (186) (DB).

(9) Before a Magistrate can make order of remand the accused must have been arrested by the police and forwarded to the Magistrate. AIR 1956 Madh B 130 (131) = 1956 Cri L Jour 619.

(10) Where a person who is required by the police presents himself before the Magistrate the Magistrate cannot remand him to police custody. (1949) 2 Sau LR 183 (186) (DB).

[But see (1966) 2 Mys LJ 76 (77) = 1966-7 Law Rep 236.]

(11) The section does not apply to the case of a convicted criminal prisoner who is governed by Prisons Act, 1894 and Prisoners Act, 1900. These Acts do not empower a Magistrate to transfer a convict prisoner from the custody of the prison to that of the police for purposes of investigation. AIR 1956 Madh B 130 (132) = 1956 Cri L Jour 619 •• (1966) 2 Mys LJ 76 (77) = 1966 7 Law Rep 236.

[1882 — S. 167; 1872 — S. 124; Paras. 2, 3 and 4; 1861 — S. 152.]

[*§] By a notification issued under Section 1 (2) of this Code, the State Government of West Bengal has extended Section 167 of the Code to the Commissioner of police and the police in the town of Calcutta with the following modifications, namely, (a) omission of reference to Section 61 of the Code; (b) substitution of the words "if any" for the words "hereinafter prescribed"; (c) omission of Proviso to sub-section (2) and (d) omission of sub-section (4)—See Notification No. 6922J dated 8-10-1926 in Cal. Gaz., 14-10-1926.

[*] These words were substituted for the words "it appears that any" by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 38.

[†] See also Article 22 (1) of the Constitution of India.

[‡] The words "under this Chapter" were omitted by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 38.

[§] Inserted, ibid.

[*†] The words and brackets "(if any)" were omitted, ibid.

[*‡] Proviso to sub-section (2) was inserted, ibid.

OBJECTS AND REASONS

"Clause 167.—It has been held by the High Court of Madras [see (1887) 11 Mad 98 (101)] that the clause does not contemplate remands for successive periods of fifteen days. We think this decision is right and have put in words to make the point clear. Any further proceedings should be taken under S. 344."—S. C. R. 1898.

Section 167 — Note 1 (contd.)

(12) Where an accused is kept in jail by orders of adjournment or remand under Secion 344, he can be handed over to the police in some other case for purposes of investigation. In view of Section 167 (2) there is no prohibition against such a course. But a good case must be made out for detaining him in connection with the other case. AIR 1954 Raj 290 (291) = 1955 Cri L Jour 79 = ILR (1954) 4 Raj 413 (DB). (AIR 1937 Sind 251 = 39 Cri L Jour 10, Dissented from.)

(13) Though there is no provision in the Code authorising a Magistrate to order arrest of a person who he thinks is guilty of the commission of a cognizable offence unless he has taken cognizance of the case, the provisions of Sections 167, 54 and 65 lead to the conclusion that he has such power to arrest a person during the course of investigation. AIR 1958 All 578 (Prs 16, 19) = 1958 Cri L Jour 1278 (DB).

(14) The section does not apply where a person is detained in connection with proceedings under Section 107. AIR 1957 All 189 (Pr 6) = 1957 Cri L Jour 427 (DB).

(15) For analogous provisions, see Section 344 of the Code and Article 32 of the Constitution of India.

2. Difference between this section and Section 344. — See Section 344.

3. "Or the police officer making the investigation if he is not below the rank of Sub-Inspector." — (1) This section applies only when the police are investigating the case; a Magistrate who makes an investigation under Section 202 cannot under this section keep the accused in custody. AIR 1930 All 259 (260) = 31 Cri L Jour 998. Also see Section 202.

(2) An officer attached to the criminal investigation or intelligence department working under the orders of his superior cannot be taken to be an investigating officer; he is asked to do only particular acts e.g., to make a search. (1912) 13 Cri L Jour 305 (350) = 35 Mad 247 (SB).

(3) The Chief Police Officer present can apply for remand under the Bengal Police Code. (1912) 13 Cri L Jour 65 (106) (Cal).

4. "Shall forthwith .... forward the accused." — (1) The word "accused" in this section and in Sections 169, 170 and 173 denotes the supposed offender who has not yet come under the cognizance of any official other than the police, and who in Chapter V is called "person arrested". (1892) 16 Bom 661 (668) (DB).

[See also AIR 1958 Andh Pra 87 (Pr 15) = 1958 Cri L Jour 18 (DB) ** AIR 1947 Lah 92 (96) = 47 Cri L Jour 772 (DB).]

(2) Under no circumstances can the prisoner be detained by police-officer for more than twenty-four hours without the special leave of a Magistrate under this section.

STATE AMENDMENTS

Gujarat

In its application to the State of Gujarat, the amendments made in Section 167 are the same as those made in Maharashtra. — See Cent. Act XI of 1960, S. 87.

NOTE.—(1) Magistrates appointed for the City of Ahmedabad have the powers, perform the functions and exercise the jurisdiction of a Presidency Magistrate.—See Guj. Act XIX of 1961, S. 14 (3).

(2) The combined effect of Ss. 14 (3) and 15 of Guj. Act XIX of 1961, seems that the provisions of Sec. 96 (1) (ii) of the Bombay Police Act, 1951 (XXII of 1951) would apply to the Magistrates in the City of Ahmedabad.

Maharashtra

(1) In its application to the State of Maharashtra, in Section 167—

(i) in sub-section (1) for the words "the nearest Magistrate" substitute the words "the nearest Judicial Magistrate";

(ii) for sub-section (4), substitute the following, namely :—

"(4) Any Magistrate giving such order shall forward a copy of his order, with his reasons for making it, to the Sessions Judge."—Bom. Act XXIII of 1951, S. 2 and Schedule (1-7-1953).

(2) Notwithstanding anything contained in sub-section (2) of Sec. 167, the Presidency Magistrate in Greater Bombay to whom an accused person is forwarded under sub-sec. (2) of Section 167 of the Code, may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit for a term not exceeding fifteen days at a time: see the Bombay Police Act, 1951, XXII of 1951, S. 96 (1) (ii). (1-8-1951).

Section 167 — Note 4 (contd.)

Any longer detention is absolutely unlawful. 7 Suth WR (Cr) 3 (6) (DB) °° AIR 1957 SC 389 (Prs 3, 4, 5) = 1957 SCR 279 = 36 Pat 513 = 1957 Cri L Jour 567 °° (1880) 6 Cal L Rep 289 (293) (DB).

(3) Unless a police officer considers that he can complete the investigation within a period of 24 hours, it is his duty to produce the accused forthwith before the Magistrate. AIR 1964 Manipur 39 (43) = 1964 (2) Cri LJ 307.

(4) If the accused is produced before a Magistrate after the expiry of twenty-four hours, the Magistrate has power to remand him to police custody under this section. AIR 1951 Madh B 70 (71) = 52 Cri L Jour 233.

(5) The accused should actually be sent to the Magistrate; the police cannot have the accused in their custody and merely write for and obtain the special leave under this section for such detention. (1912) 13 Cri L Jour 65 (106) (Cal) °° 1867 Pun Re (Cr) No. 39 p. 72 (76) (DB).

(6) An order of remand obtained in absence of accused is illegal. AIR 1948 Mad 100 (100) = ILR (1948) Mad 279 = 49 Cri L Jour 41 (DB).

(7) The section does not require the production of the accused before the Magistrate on the occasion of a subsequent remand. AIR 1952 Assam 167 (167, 170) = ILR (1952) 4 Assam 18 = 1952 Cri L Jour 159.

(8) If police cannot complete investigation within twenty-four hours, they must forward the accused to the nearest Magistrate who can authorise his detention for a term not exceeding fifteen days. AIR 1964 Ker 232 (233) = 1964 (2) Cri LJ 300 = 1963 Ker LT 251.

(9) To attract the section there must be person arrested and detained in custody and it must appear to the police officer that he has to conduct an investigation and that the investigation against the arrested person cannot be completed within twenty-four hours. AIR 1962 Ker 215 (219, 220) = 1962 Ker LT 17 = 1962 (2) Cri LJ 72 (DB).

5. "A copy of the entries in the diary."—(1) It is imperative that the police-officer should send along with the accused a copy of entries in diary which he is bound to keep under Section 172. The entries in diary afford to the Magistrate the information upon which he can decide whether or not he should authorize the detention of the accused in custody or upon which he can form an opinion as to whether or not further detention is necessary. (1897) 19 All 390 (404) (FB) °° AIR 1957 Andh Pra 561 (Pr 13) = 1957 Cri L Jour 1062 (DB). (Magistrate should insist upon observance of the provisions of sub-section 3 (1).) °° (1882) 6 Mad 69 (70) (DB) °° AIR 1967 Tripura 1 (5) = 1967 Cri LJ 125 °° (1963) 1 Andh LT 406 (412) (DB).

(2) From the omission to send the copies with the remand report it may reasonably

(3) After the re-organization of the State of Bombay in 1956, the amendments made in Section 167 by Bombay Act mentioned in (1) above are extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Mysore

In its application to the State of Mysore, in Section 167, for sub-section (4), substitute the following namely :—

"(4) (Same as in Maharashtra (1) (ii)."—Mys. Act XIII of 1965, Sec. 36 (1-10-1965).

Punjab: Haryana: Chandigarh

In its application to the States of Punjab and Haryana and the Union Territory of Chandigarh, in Section 167,—

(i) in sub-section (2), proviso substituted as follows, namely :—

"Provided that no Executive or Judicial Magistrate of the second class not specially empowered in this behalf by the State Government or the High Court, as the case may be, shall authorise detention in the custody of the police;" and

(ii) for sub-section (4), the following shall be substituted, namely :—

"(4) If such order is given by an Executive Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate and if such order is given by a Judicial Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate."—Punj. Act XXV of 1964, S. 2 and Sch., Pt. I, item (40) (2-10-1964) and Act 31 of 1966, Ss. 29 and 88 (1-11-1966).

Rajasthan

Abu Area.—In its application to the Abu area of the State of Rajasthan, the amendments made in Section 167 are the same as those made in (1) of Maharashtra.—See Cent. Act XXXVII of 1956, S. 119 (1-11-1956).

Section 167 — Note 5 (contd.)

be inferred that the entries in the police diary had not come into existence by that time. AIR 1957 Andh Pra 561 (Pr 13) = 1957 Cri L Jour 1062 (DB)

[See also ILR (1959) Andh Pra 797 (820) (DB) •• (1968) 2 Andh LT 202 (204) (SC). (Where the police diary was not sent along with the remand report to the Magistrate and the police thus did not strictly conform to the provisions of Section 167, the default cannot vitiate the trial, and displace the evidence of a truthful witness.)]

[But see AIR 1965 Andh Pra 361 (365) = (1965) 2 Andh WR 151 = 1965 (2) Cri LJ 458. (If there is credible evidence that the entries in the case diary were already in existence, it would not necessarily be outweighed by a mere omission to send a copy of them along with the remand report.)]

(3) Non-compliance with Section 167 (1) may in proper cases and according to circumstances lead to inference that evidence adduced by prosecution is tainted. AIR 1966 Ker 229 (231, 232) = 1966 Cri LJ 1007 (DB).

(4) Omission of police officer to forward copies of case diary entries so far made along with the application for remand, instead of a summary or purpose thereof, is a violation of provisions of Section 167 (1). AIR 1966 Ker 229 (231) = 1966 Cri LJ 1007 (DB).

(5) Section 167 read with Section 172 does not visualise the sending along with the remand report, a copy of the statements of witnesses recorded by police officer under Section 166. (1963) 1 Andh LT 406 (412) (DB).

(6) It is duty of the police to comply with Section 167 (1). The Magistrate should insist on such strict compliance and if the police do not satisfy the Magistrate with the documents that a remand was necessary, the Magistrate may release the accused. AIR 1964 Manipur 39 (45) = 1964 (2) Cri LJ 307. (AIR 1963 Manipur 12, Foll.)

6. To any Magistrate having jurisdiction or not. — (1) If the police consider that detention of an accused in their custody is necessary, they must take the accused to the nearest Magistrate, whether he has or has not jurisdiction to try the case. (1911) 12 Cri L Jour 15 (17) (DB) (All) •• AIR 1958 Tripura 34 (Prs. 14, 18) = 1958 Cri L Jour 1248. (But remand under Section 344 can be granted only by Magistrate having jurisdiction to try the case.) •• AIR

Union Territories (except Chandigarh)

In its application to the Union territories, in Section 167,—

(i) for the proviso to sub-section (2), substitute the following proviso namely:—

"Provided that no Executive Magistrate of the second class not specially empowered in this behalf by the State Government and no Judicial Magistrate of the second class not specially empowered in this behalf by the State Government in consultation with the High Court, shall authorise detention in the custody of the police"; and

(ii) for sub-section (4), substitute the following sub-section namely:—

"(4) If such order is given by an Executive Magistrate other than the District Magistrate or Sub-divisional Magistrate he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate and if such order is given by a Judicial Magistrate other than the Chief Judicial Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate."—Act 19 of 1969, S. 3 and Sch., item 41 (in Delhi, on 2-10-1969.)

West Bengal

(1) In sub-section (1) for the words 'nearest Magistrate' substitute the words 'nearest Judicial Magistrate',

(2) In the Proviso to sub-section (2), for the words 'no Magistrate of the third class, and no Magistrate of the second class', substitute the words 'no Judicial Magistrate of the third class, and no Judicial Magistrate of the second class';

(3) For sub-section (4) substitute the following:—

"(4) Any Magistrate giving such order shall forward a copy of his order, with his reasons for making it, to the Sessions Judge."—W. B. Act 8 of 1970, Section 2 and Schedule, item 60.

Section 167 — Note 6 (contd.)

1946 Sind 43 (48) = ILR (1945) Kar 419 = 47 Cri L Jour 548 (DB) °° AIR 1922 Mad 215 (217) = 23 Cri L Jour 490 (DB) °° AIR 1969 Orissa 296 (297) = 1969 Cri LJ 152 = 35 Cut LT 1044 (DB).

(2) The latitude given by this section to police to send accused to the nearest Magistrate whether he has or has not jurisdiction to try the case, is merely to provide for cases in which it might not be possible to approach the Magistrate having jurisdiction to try the case owing to distance or similar difficulties. In the absence of such difficulties, it is desirable that the Magistrate of the ilaqa should be approached. The practice of obtaining an order of detention from any Magistrate at the choice of the police is open to objection. AIR 1931 Lah 99 (101) = 33 Cri L Jour 180.

(3) Under Section 167 (2), if the Magistrate to whom the accused person is forwarded, has no jurisdiction to try the case then he can only order the accused to be forwarded to a Magistrate having jurisdiction. He has no power under Section 167 to admit the arrested person to bail. He has no power even under Section 497 to grant bail. AIR 1959 Madh Pra 147 (Prs 3, 5) = 1959 Cri L Jour 600.

(4) The Magistrate having himself been a witness of the incident cannot bring to bear an impartial and judicial mind to decide whether or not the accused is to be remanded to custody. The law never countenances a judge who is a judge in his own cause. AIR 1959 All 384 (Pr 20) = 1959 Cri L Jour 685 (DB).

(5) Arrest without warrant — Remand during police investigation for more than fifteen days under Section 344 by Magistrate having jurisdiction to try case but without taking cognizance of case such remand was held as illegal. AIR 1966 Mad 349 (351 to 354) = 1966 Cri LJ 1141.

(6) A Deputy Commissioner of Police, Calcutta, who is a Justice of the Peace, cannot order the detention of the arrested person in police custody. AIR 1926 Cal 1121 (1130) = 27 Cri L Jour 1201 (FB). (Overruling 27 Cri L Jour 1185.)

(7) Merely because Bombay Police Act provides a method by which it is possible to extend period of police remand, it will not be open to Police Officer to produce accused before Presidency Magistrate and obtain remands into police custody which normally they will not be able to obtain under Section 167. The choice is not left to the police in such matters. AIR 1968

Section 167 — Note 6 (contd.)
Bom 273 (277) = 69 Bom LR 859 = 1968 Cr LJ 903 (DB).

(8) Remand from time to time by Thana Court — Before expiration of last remand period, accused taken to Bombay and produced before Presidency Magistrate for further remand is not proper action of police. AIR 1968 Bom 273 (277) = 1968 Cr LJ 903 = 69 Bom LR 859 (DB).

(9) Even a link Magistrate has to act under Section 167 and abide by the strict provisions of that section. AIR 1963 Manipur 12 (14) = (1963) 1 Cri LJ 451.

7. **"In such custody as such Magistrate thinks fit."** — (1) The Magistrate has complete freedom to remand the accused to whatever custody he thinks fit. AIR 1948 Mad 100 (100) = ILR (1948) Mad 279 = 49 Cri L Jour 41 (DB).

(2) A person under authorised detention by a Court order under Section 167 or under remand granted under Section 344 cannot be said to be illegally or improperly detained. AIR 1960 Madh Pra 135 (136) = 1960 Cri LJ 608 = 1960 MPLJ 241 (DB).

(3) Detention after order of remand by Magistrate is not one by police. AIR 1961 Bom 42 (43) = ILR (1960) Bom 938 = 62 Bom LR 816 = (1961) (1) Cri LJ 228.

8. **"Fifteen days in the whole."** — (1) The longest period for which accused can be ordered to be detained by one or more such orders is only fifteen days. (1887) 11 Mad 98 (101, 102) (DB) °° AIR 1958 Manipur 33 (Pr 6) = 1958 Cri L Jour 1325 °° 1902 Pun Re (Cr) No. 24, p. 69 (70) (DB).

(2) Where even within the fifteen days' time the investigation is not complete, the police may release accused under Sec. 169 or they may send him to the Magistrate having jurisdiction to try the case or hold an inquiry with a report under Sec. 173; then the Magistrate may remand the accused under Section 344. AIR 1924 Cal 614 (616) = 26 Cri L Jour 68 (DB) °° AIR 1958 Manipur 33 (Pr 6) = 1958 Cri L Jour 1325 °° AIR 1931 All 617 (619, 620) = 32 Cri L Jour 1045 °° 1970 Cri LJ 78 (81) = 1968 Allahabad WR (HC) 855 °° AIR 1969 Orissa 296 (297) = 1969 Cri LJ 152 = 35 Cut LT 1044 (DB).

[See also AIR 1949 Cal 143 (143) = ILR (1949) 2 Cal 75 = 50 Cri L Jour 231 (DB).]

(3) Where after expiry of fifteen days' remand, the police neither produce the accused nor apply for fresh remand, but release the accused, the Magistrate should pass an order for discharge of accused and cancellation of warrant of arrest. AIR 1958 Manipur 33 (Pr 2) = 1958 Cri L Jour 1325.

(4) Where a person is arrested without warrant it is not required that he must be released on expiry of fifteen days, if the police are still investigating the matter. A Magistrate having jurisdiction to take cognizance of the offence can avail himself of the provisions of Section 344 without taking cognizance of the offence or while the matter is still under investigation. AIR 1955 All 521 (522) = 1955 Cri L Jour 1305 (DB). (AIR 1955 All 462 = 1955 Cri L Jour 1146, **Overruled;** AIR 1924 Cal 614 = 26 Cri L Jour 68, **Doubted.**) °° AIR 1964 Kerala 232 (233) = (1964) 2 Cri LJ 300 = 1963 Ker LJ 251.

[See AIR 1956 Orissa 129 (Prs 10, 15) = ILR (1956) Cut 267 = 1956 Cri L Jour 909 (DB). (AIR 1955 All 521, AIR 1949 Cal 143 and AIR 1931 All 617, **Dissented from.**)]

(5) Under Bombay Police Act (22 of 1951), Section 96 a Presidency Magistrate in Greater Bombay, whether he has or has no jurisdiction to try the case, has authority to remand accused to police custody for more than fifteen days, but not for more than fifteen days at a time. AIR 1968 Bom 273 (275) = 1968 Cri LJ 903 = 69 Bom LR 859 (DB).

(6) Section 167 (2) only prescribes the maximum period of 15 days, but it does not authorise the Magistrates automatically to remand accused for that period. At every stage when they obtain a remand, the police must satisfy the Magistrate that there is sufficient evidence against accused and further evidence might be obtained and it is only when a Magistrate is satisfied, that he should direct a remand. AIR 1956 Orissa 129 (Pr 8) = ILR (1956) Cut 267 = 1956 Cri L Jour 909 (DB). (Observations to the contrary in AIR 1955 All 521, **Dissented from.**)

(7) Remand under Section 344 will not be to police custody. A detention in the police custody for more than fifteen days is illegal. AIR 1931 Lah 99 (101) = 33 Cri L Jour 180 °° AIR 1949 Cal 143 (143) = ILR (1949) 2 Cal 75 = 50 Cri L Jour 231 (DB).

[See AIR 1958 Tripura 34 (Prs 15, 17) = 1958 Cri L Jour 1248.]

(8) When the Police want to investigate into an offence they must proceed according to the provisions of the Code and not of some other law which may merely authorise detention of person for reasons of public security. Such a use of the provisions of that law will be a fraud on it. See AIR 1945 Nag 8 (17, 18) = ILR (1945) Nag 6 (DB).

(9) If a Magistrate, having ordered the accused to be detained for a period of less than fifteen days, thinks no further detention is necessary and sends him to a Magistrate having jurisdiction, then the Magistrate to whom the accused is sent cannot remand the accused again, even for such period as will bring the total period of detention to fifteen days. A remand by

Section 167 — Note 8 (contd.)
such Magistrate will be one under S. 344 and not under this section. AIR 1937 Sind 251 (252, 253) = 39 Cri L Jour 10.

(10) The Magistrate acting under Section 167, must satisfy himself whether there is any evidence collected against accused persons before he orders their remand to custody continuously for months. If the Police will not produce their diary to justify further remand, the Magistrate would be exceeding his authority in ordering further remand. AIR 1961 Tripura 4 (7, 8) = (1961) 1 Cri LJ 160.

(11) Under Section 167, a Magistrate whether he has jurisdiction to try the case or not shall not remand the accused for a period exceeding fifteen days in the whole. If the investigation is incomplete, the only way is to obtain remand under Section 344, Cr. P. Code. AIR 1968 Bom 273 (275) = 1968 Cri LJ 903 = 69 Bom LR 859 (DB).

(12) Section 167 and Section 344 empower the Magistrate to grant time to the Police in connection with the investigation of a case. Under Section 167, remand is really authorised detention. When investigation is not completed within 15 days and more time is needed for collecting further evidence, it is at that stage that remand is granted. AIR 1960 Madh Pra 135 (136) = 1960 MPLJ 241 = 1960 Cri LJ 608 (DB).

9. Reasons to be recorded.— (1) The object of sub-section (3) is to see that the Magistrate takes the trouble to study the police diaries and to ascertain the actual conditions under which detention is asked for. (1900) 2 Bom LR 1092 (1093) (DB) °° AIR 1931 Lah 99 (101) = 33 Cri L Jour 180.

(2) The law is jealous of the liberty of the subject and does not allow detention unless there is a legal sanction for it. AIR 1931 Lah 476 (478) = 32 Cri L Jour 913 (DB).

(3) In every case where a detention in police custody is ordered under this section, the Magistrate should state his reasons clearly. (1899) 23 Bom 32 (34) (DB) °° AIR 1957 Andh Pra 456 (Pr 4) = 1957 Cri L Jour 930 (DB). (Madras Criminal Rules of Practice, Rule 86 (1).) °° (1912) 13 Cri L Jour 65 (106) (Cal) °° AIR 1931 Lah 476 (478) = 32 Cri L Jour 913 (DB) °° AIR 1914 All 466 (467) = 15 Cri L Jour 288.

(4) He should satisfy himself, firstly, that the accusation is well founded, and, secondly, that the presence of the accused is necessary while the police investigation is being held, as for example, where some property has to be recovered or produced by the accused. AIR 1951 Madh B 70 (71, 72) = 52 Cri L Jour 233 °° (1907) 11 Cal WN 554 (557) = 6 Cri L Jour 86 (DB) °° AIR 1925 Bom 387 (389) = 26 Cri L Jour 1181 (DB) °° (1901) 25 Bom 543 (548) (DB).

(5) The mere fact that the police state that the presence of the accused is necessary to finish the investigation is not sufficient to order detention. (1903) 7 Cal WN 457 (459) (DB) °° AIR 1963 Manipur 12 (14) = (1963) 1 Cri LJ 451.

(6) To order a detention of accused in order to get from him a confessional statement or to force him to give a clue to stolen property is most objectionable. (1886) 2 Weir 414 (415) (DB) °° (1871) 3 NWP HCR 275 (280) (DB).

(7) It is improper to order detention in police custody on a mere expectation that time will show his guilt. 1872 Pun Re (Cr) No. 17, p. 21 (24) (DB).

(8) Detention in police custody for the reason that the accused promised to tell the truth is improper. AIR 1932 Oudh 11 (17) = 33 Cri L Jour 287 (DB).

(9) It is improper to order detention in police custody for verifying a confession recorded under Section 164. (1903) 7 Cal WN 220 (224) (DB).

(10) Detention in police custody for the reason that though repeatedly asked the accused did not give any clue to the property is improper. (1871) 3 NWPHCR 275 (279, 280) (DB).

(11) It is improper for a Magistrate to authorize detention in police custody without recording special reasons. (1893) 21 Cal 642 (661) (DB) °° AIR 1933 Oudh 315 (319) = 35 Cri L Jour 10 (DB).

(12) The mere omission to record reasons where it appears that the Magistrate has made the order after due consideration, does not make such detention illegal, nor will such detention be illegal within the meaning of Section 491. AIR 1932 Lah 13 (14) = 32 Cri L Jour 1022 °° AIR 1930 Lah 945 (945) = 32 Cri L Jour 339. (Detention under Section 491.)

(13) Magistrates ordering detention should always be careful to ascertain how long the persons have been in police custody and under police influence. 1885 All WN 59 (60) (FB).

(14) Where there are good reasons for remand under this section a Magistrate should invariably limit the term of detention as much as possible to what may be necessary for the object in view. (1907) 11 Cal WN 554 (557) = 6 Cri L Jour 86 (DB).

(15) Remand is within discretion of Magistrate having jurisdiction. There can be no interference by High Court in the shape of general order, without reference to the facts of particular case, that remand be prohibited in all cases against a particular person. ILR (1955) Patiala 44 (51).

Section 167 — Note 9 (contd.)

(16) When a Magistrate in his discretion refuses remand the District Magistrate or the Sessions Judge cannot direct that the accused should be remanded. He can only report the matter to the High Court for its orders. AIR 1951 All 460 (460, 461) °° (1949) 2 Sau LR 183 (184) (DB).

(17) Orders of remand should be made in the prescribed form and not on mere chits of paper. AIR 1959 All 384 (Pr 17) = 1959 Cri L Jour 685 (DB).

(18) Two-fold object of Section 167 — Firstly it gives protection to the accused as police cannot keep him in custody for more than 24 hours and have to produce him before a Magistrate within stipulated period — Secondly the Magistrate has to decide whether or not he should be remanded to police custody. (1966) 2 Mys LJ 76 (77) = 1966-7 Law Rep 236.

(19) It will be wrong for a Magistrate either to order detention of accused under Section 167 or to call upon him to produce sureties under Section 496 or 497 if the arrest is illegal. 1962 (1) Cri LJ 673 (675, 676) (Tripura).

(20) Where the Magistrate did not comply with provisions of Section 167 (1) but played in the hands of the police, the Sessions Judge should be cautious in placing implicit reliance in his testimony. AIR 1967 Tripura 1 (5) = 1967 Cri LJ 125.

10. Effect of detention in contravention of this section. — (1) Where a police-officer detains a person for a period longer than that fixed in Section 61, the detention is illegal. AIR 1919 All 160 (161) = 20 Cri L Jour 381 °° 1885 All WN 59 (59) (FB) °° AIR 1961 Bom 42 (43) = 62 Bom LR 816 = 1961 (1) Cri LJ 228.

(2) The officer is liable to punishment under Section 29 of the Police Act if he detains persons for a period longer than that fixed by Section 61. (1864) 1 Suth WR (Cr) 5 (5) (DB) °° 1870 Pun Re (Cr) No. 36, p. 56 (58) (SB).

(3) The illegal detention does not affect the power of the Magistrate to act under this section when the accused person is brought before him to be dealt with under the section. AIR 1951 Madh B 70 (71) = 52 Cri L Jour 233.

(4) It is not necessary to prove that the police-officer detained the accused with any guilty knowledge. (1873) 19 Suth WR (Cr) 36 (36) (DB).

(5) If the detention is for the purpose of wrongfully obtaining a confession or some property from the accused, the police-officer may render himself liable to be punished under Sections 347 and 348 of the Penal Code. 1886 Rat 254 (272, 273) (DB).

(6) The Magistrate may directly order the police-officer in whose custody the accused is, to detain or release the accused; such order need not be communicated through the Superintendent of Police. Where an order of release has been conveyed to the police-officer, any further detention will be illegal. AIR 1938 All 534 (535) = 39 Cri L Jour 971.

(7) Question of illegal detention under Section 167, sub judice — Matter cannot be decided in proceedings for habeas corpus. AIR 1964 Tripura 57 (59) = 1964 (2) Cri LJ 588.

(8) Remand to police custody from time to time by Thana Court — Before expiration of last remand period, accused taken to Bombay and produced before Presidency Magistrate for further remand — Action of police held amounted to deliberate flouting of orders of Judicial Magistrate of Thana Court. AIR 1968 Bom 273 (277) = 1968 Cri LJ 903 = 69 Bom LR 859 (DB).

11. Nature of proceedings under this section. — (1) Magistrate ordering detention under this section acts in his judicial and not executive capacity. AIR 1930 Lah 945 (946) = 32 Cri L Jour 339 °° AIR 1959 All 384 (Pr 17) = 1959 Cri L Jour 685 (DB) °° AIR 1969 Andh Pra 281 (288, 289) = (1968) 2 Andh WR 122 = 1969 Cri LJ 1025 (DB).

[See AIR 1954 All 601 (605) = ILR (1955) 1 All 793 = 1954 Cri L Jour 1317 (DB). (Magistrate ordering arrest of certain person under Section 64 cannot apply judicial mind to the case under Sec. 167 (1) and hence order of remand made by him is not legal.)]

[See also AIR 1952 Assam 167 (167) = ILR (1952) 4 Assam 18 = 1952 Cri L Jour 1659 °° AIR 1952 Hyd 112 (116) = ILR (1952) Hyd 122 = 1952 Cri L Jour 1076 (DB).]

(2) In these matters the Magistrate exercises discretionary functions in respect of which the initiative is that of the executive but the responsibility is his. His discretion in such matters has necessarily to be exercised with reference to such material as is by then available and is not a prima facie judicial determination of any specific issue. His functions in these matters are not only supplementary, at a higher level, to those of the executive but are intended to prevent abuse. **AIR 1957 SC 389 (Pr 3) = 1957 SCR 279 = 36 Pat 513 = 1957 Cri L Jour 567.**

(3) The guarantee contained in Art. 22 was intended to offer protection to the subject against the act of the executive or other non-judicial authorities. The protection would become meaningless if one, who is supposed to be the protector of the subject, is merely to act mechanically without applying a judicial mind to see whether the arrest of the person produced before him is legal and further regular and in accordance with law. AIR 1959 All 384 (Prs 19, 20) = 1959 Cri L Jour 685 (DB).

Section 167 — Note 11 (contd.)

(4) When arrest by police officers was shown to be illegal, the State ought to have proved that at the stage of remand the Magistrate directed detention in jail custody after applying his mind to all relevant matters. Remand order held patently routine and made mechanically. **AIR 1969 SC 1014 (1019) = (1969) 3 SCR 154 = 1969 Cri LJ 1440.**

(5) An application by the police for an order of detention under this section is a proceeding within the meaning of Sec. 340, sub-section (1), and the accused is entitled to be represented by counsel in such a proceeding. AIR 1926 Bom 551 (554) = 27 Cri L Jour 1169 (DB) ** AIR 1931 Lah 99 (100) = 33 Cri L Jour 180.

(6) The police should not refuse to allow a legal adviser of the accused to have an interview or to allow the relatives of the accused to supply him with food and clothing. AIR 1932 Lah 13 (14) = 32 Cri L Jour 1022.

(7) Accused must be informed by the Magistrate of grounds of arrest and be allowed to consult and be defended by a lawyer of his choice — Constitution of India, Article 22. 1963 (2) Cri LJ 562 (567, 568) (Manipur).

(8) Magistrate should see that a detained person is informed of the grounds of his arrest and should not simply order his continued detention. AIR 1963 Manipur 12 (14) = 1963 (1) Cri LJ 451.

(9) The production of the accused before Magistrate under this section does not amount to taking cognizance or commencement of judicial proceedings. AIR 1943 Nag 36 (70) = 44 Cri L Jour 237 (DB) ** (1942) 23 Pat L Tim 684 (687).

(10) A prisoner produced before a Magistrate with entries of a case diary under Section 167 is entitled to ask for bail seeking assistance of a legal adviser and has a right of being heard. AIR 1969 Andh Pra 981 (988) = (1968) 2 Andh WR 1228 = 1969 Cri LJ 1025 (DB).

(11) A proceeding held by a Magistrate on receipt of an investigating officer's report under S. 167 (1) is a proceeding within meaning of Section 195 (1) (b). 1968 (2) Cri LJ 64 (65) (DB) (All).

(12) False report to Police against certain persons leading to their arrest and remand to custody — Remand and bail proceedings are "proceedings" in relation to an offence under Section 211, I. P. C. 1968 (2) Cri LJ 64 (65, 66) (DB) (All).

12. Applicability of this section to security proceedings. — (1) Section 167 only permits a remand when a case relating to any cognizable or non-cognizable offence is being investigated and the order is to be for period during which investigation remains pending. Where persons were arrested and detained in connection with proceedings for prevention of breach of peace under Section 107, Cr. P. C. and not on any allegation or suspicion of any offence, Section 167 is not applicable. AIR 1957 All 189 (Pr 6) = 1957 Cri L Jour 427 (DB).

12A. Applicability to arrests under Section 54 or Section 151. — (1) Whether arrest was under Section 151 or under Section 54 is not relevant for the purpose of remanding accused under Section 167. AIR 1962 Ker 215 (220) = (1962) 2 Cri LJ 72 = 1962 Ker LJ 223 (DB).

(2) The scope of Section 167 (2) is not confined to cases where accused has been arrested and a case has been registered against him for the commission of a cognizable or non-cognizable offence. The section would be applicable even if the arrest is made under Section 151, Cr. P. C. 1963 All WR (HC) 439 = 1963 All Cr R 234 = 1963 All LJ 744 = 1965 (2) Cr LJ 271 (272) (All) (DB). (AIR 1960 Kerala 297, Foll.; 1960 All LJ 227, Rel. on. AIR 1957 All 189, Not foll.) AIR 1960 Ker 297 (297, 298) = 1960 Ker LT 460 = 1960 Cr LJ 1212 (2).

(3) Person arrested under Section 151 and kept in jail custody — Detention order served against him while in custody — Continuation of detention under order is illegal. AIR 1968 Pat 22 (24) = 1967 BLJR 37 = 1968 Cri LJ 75 (DB).

(4) Arrested person should not be remanded as a matter of routine specially when arrest is under Section 54. AIR 1965 Tripura 27 (28) = 1965 (2) Cri LJ 139.

13. If approvers can be detained in police custody under this section. — (1) Approver cannot be detained in police custody. He can be kept only in magisterial custody. AIR 1931 Lah 480 (480) = 33 Cri L Jour 162 (DB).

14. Admissibility of statements reduced to writing during police investigation. — (1) A statement recorded during police investigation is inadmissible in evidence. (1912) 13 Cri L Jour 244 (245) (DB) (Mad).

15. Application to arrest under other Acts. — (1) Arrest under Armed Forces (Assam and Manipur) Special Powers Act (1958), Section 4 (c) — For procedure for remand of accused, Section 167 and not Section 109 will apply. AIR 1963 Manipur 12 (13, 14) = 1963 (1) Cri LJ 451.

168. Report of investigation by subordinate police-officer.— When any subordinate police-officer has made any investigation under this Chapter, he shall report the result of such investigation to the officer in charge of the police-station.

[1882—S. 168; 1872—S. 123; 1861—S. 151.]

169. Release of accused when evidence deficient[†]. — If, upon an investigation under this Chapter, it appears to the officer-in-charge of the police-station [*][or to the police-officer making the investigation] that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or commit him for trial.

[1882—S. 169; 1872—S. 125; 1861—S. 153.]

[*] Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), Section 39.

[†] C.f.: Customs Act 1962 (52 of 1962), Section 104 (3).

SECTION 168

1. Object. — (1) The scheme of the Code shows that while it is permissible for an officer in charge of a Police station to depute some subordinate officer to conduct some of the steps in the investigation the responsibility for every one of these steps is that of the officer in charge of the Police Station. **AIR 1955 SC 196 (201) = ILR (1955) Punj 135 = 1955 SCR 1150 = 1955 Cri L Jour 526.**

2. Whether the report made under this section is a public document. — See Section 157.

SECTION 169 — SYNOPSIS

1. **Scope.**
2. **Insufficiency of evidence.**
3. **Surety bond to appear before a Magistrate.**
4. **Re-arrest of the person released under this section.**
5. **Power of police-officer to allow withdrawal of complaint.**
6. **Investigation under other Acts.**
7. **Powers of Magistrates under this section.**

1. Scope. — (1) Sections 169, 170 and 173 should be read together. Section 169 relates to cases where there is no sufficient evidence for forwarding the accused to a Magistrate, and consequently no person is sent up for trial. Section 170 applies where upon investigation the accused is sent up for trial. Section 173 contains general directions relating to both. (1908) 7 Cri L Jour 414 (415) = 4 Low Bur Rul 137 ** ILR (1968) 1 Punj 171 (176).

(2) This section is applicable while the case is still under investigation of the police. It cannot be applied to a case where the accused has appeared before the Magistrate. AIR 1933 All 582 (585) = 35 Cri L Jour 208 (DB) ** 1969 Cri LJ 542 (546) (Andh Pra) (DB). **(Section 169 relates to cases in which no person is sent up for trial.)**

(3) A person whose name is not mentioned in the F. I. R. but is arrested by police during investigation, is an accused person within the meaning of this section, whether he be forwarded to the Magistrate or not. AIR 1958 Andh Pra 37 (Pr 16) = 1958 Cri L Jour 18 (DB). (Statement by him leading to discovery is admissible under Section 27, Evidence Act.)

2. Insufficiency of evidence. — (1) Where after the completion of investigation it is found that there is no sufficient evidence or reasonable ground of suspicion to justify the sending up of the accused, the accused must be released. AIR 1914 All 413 (413) = 15 Cri L Jour 696 ** AIR 1921 All 278 (280) = 22 Cri L Jour 115.

[See AIR 1939 Lah 523 (524) = 41 Cri L Jour 146.]

(2) When an investigation officer reports to a Magistrate that there is no sufficient evidence against an accused, the Magistrate cannot order his further detention to enable the police to institute proceedings under Section 110. AIR 1914 All 413 (413) = 15 Cri L Jour 696 ** AIR 1921 All 278 (280) = 22 Cri L Jour 115.

(3) No sufficient evidence against accused — Police officer has to proceed under Section 169 and direct accused to appear before Magistrate empowered to take cognizance of case on police report. 1962 (1) Cri LJ 96 (97, 98) (Tripura).

3. Surety bond to appear before a Magistrate. — (1) The section authorizes the taking of a bond with or without sureties for appearance of accused before Magistrate empowered to act on a police-report. Therefore, a bond taken under this section for appearance of accused before the police is ab initio void. AIR 1925 Lah 152 (152) = 25 Cri L Jour 712.

OBJECTS AND REASONS

1923.— "We see no cogent reason for the first amendment of Sections 169 and 170, which substitutes the words 'upon the completion of an investigation' for 'upon an investigation'. In the case of Section 169, we agree that the power contemplated by the section should be exercisable by investigating officers, and we see no reason in this case to restrict the power to officers not below the rank of Sub-Inspector. With regard to Section 170, however, we consider that the direct responsibility for sending up a case should rest with the officer in charge of the police station. Section 168 undoubtedly contemplates that the officer in charge is to assume responsibility, and to enable all investigating officers to send up cases under Section 170 without reference to the officer in charge would tend to make Section 168 of no effect.

We considered whether the power to admit to bail in bailable cases should not be extended to investigating officers, but, on the whole, we are inclined to confine this power also to the officer in charge of the police station."

—S. C. R. (18 of 1923).

170. Case to be sent to Magistrate when evidence is sufficient. — (1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police-report and to try the accused

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Section 169 — Note 3 (contd.)

(2) A police officer cannot, except in the case of a minor, take a third party's bond for appearance of accused without taking a bond from the accused himself because there cannot be a surety without a principal. AIR 1928 Lah 318 (319) = 29 Cri L Jour 491.

4. Re-arrest of the person released under this section. — (1) The admission to bail under this section is only a provisional arrangement. The Magistrate to whom report is sent under Section 173 may either discharge the bond or order the re-arrest of the accused. If the Magistrate believes, that there is a prima facie case of a non-bailable offence, the police should re-arrest accused and forward him in custody to the Magistrate. 1877 Rat 121 (121).

(2) Where a person is apprehended along with others and is released by the police under this section, it is unfair to launch a prosecution against such person based upon facts disclosed in the evidence which he gives against the accused. AIR 1933 All 399 (401) = 34 Cri L Jour 761.

[See also AIR 1925 Cal 104 (104) = 25 Cri L Jour 311 (DB). (Such course is contrary to the traditions of justice in Criminal Courts.)]

5. Power of police-officer to allow withdrawal of complaint. — (1) Permission to withdraw a complaint is a judicial act exercise of which is vested in Magistrates under Sections 248 and 345— Police have no authority to entertain an application for withdrawal under this or any other section. 1875 Rat 91 (91).

6. Investigation under other Acts. — (1) In case of investigation by Customs Officers under Sea Customs Act, question of application of Sections 169 and 170 does not arise. **AIR 1968 SC 938 (941) = (1968) 2 SCR 624 = 1967 Cri LJ 1124.**

7. Powers of Magistrates under this section. — (1) Police submitting report that no case made out for sending accused for trial — Magistrate has no power to call upon police to submit a charge-sheet. **AIR 1968 SC 117 (124) = (1967) 3 SCR 668 = 1968 Cri LJ 97.** (AIR 1960 Bom 240 and AIR 1966 Pat 488, **Overruled.)** ** AIR 1962 Cal 135 (145, 149, 162) = 1962 (1) Cr LJ 285 = 66 Cal WN 697 (FB). (ILR (1961) 2 Cal 544 and obiter observations in AIR 1941 Cal 263, **Overruled.)** ** AIR 1969 Orissa 149 (150) = 1969 Cri LJ 926 = 34 Cut LT 1237 ** AIR 1965 Him Pra 37 = 1965 (2) Cri LJ 99 (101).

[See also 1969 Cr LJ 1307 (1309) = 35 Cut LT 381.]

(2) Where police send a report viz. a charge-sheet under Sec. 170, the Magistrate, if he differs from the police cannot call upon them to submit a final report under Section 169. **AIR 1968 SC 117 (123) = 1968 Cri LJ 97 = (1967) 3 SCR 668.**

(3) Police submitted final report under Section 369 — Magistrate not satisfied, taking suo motu cognizance of case — Offences triable by Court of Session or Magistrate of first class — Question whether procedure under Section 207-A or 208 applies left undecided — In the peculiar circumstances of the case, Magistrate directed to record testimony of all witnesses of fact. 1967 All Cri R 385 (386) = 1967 All WR (HC) 600.

SECTION 170 — SYNOPSIS

1. **Scope and applicability.**
2. **Accused must be forwarded to a Magistrate having jurisdiction.**
3. **"Police report".** — See Section 190.
4. **Powers and duties of the police under this section.**
5. **"Accused" meaning of.**
6. **Bond by the complainant and witnesses.**

or commit him for trial or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

(2) When the officer in charge of a police-station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

(3) If the Court of the District Magistrate or Sub-Divisional Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such

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Section 170 — Synopsis (contd.)

7. Powers of the Magistrate under this section.

8. Application to investigation under other Acts.

1. Scope and applicability. — (1) Sections 170, 171 and 173 are to be read together. They contemplate a simultaneous action. Putting all these sections together, the accused should be forwarded after the officer in charge of a police station comes to the conclusion that there was sufficient evidence and should also forward a report under Section 173. AIR 1956 Orissa 129 (Pr 14) = ILR (1956) Cut 267 = 1956 Cri L Jour 909 (DB).

(2) The existence of sufficient evidence is a condition precedent for the police acting under this section and for making a request to the Magistrate to take cognizance of the offence. AIR 1955 All 462 (467) = 1955 Cri L Jour 1146.

(3) The purpose of forwarding accused to a Magistrate under this section is not to obtain a remand under Section 344 merely but is for the Magistrate to take cognizance of the offence. AIR 1955 All 462 (467) = 1955 Cri L Jour 1146.

(4) The procedure prescribed under this section applies also to investigations conducted in a non-cognizable case under the orders of a Magistrate. AIR 1931 All 263 (264) = 32 Cri L Jour 465 ** (1913) 14 Cri L Jour 218 (218) (All).

(5) When a Magistrate directs an investigation under Section 156 (3), the police, after holding the investigation, may find case to be true and may make report to that effect. Upon receipt of this report the Magistrate may proceed to issue process against the accused. If on the other hand, the police finds the case to be false and reports accordingly which report also is to be made under this section, the Magistrate has nothing further to do in the chain of that proceeding. He is in seisin of nothing. AIR 1956 Cal 76 (Pr 15) = 1956 Cri L Jour 505 (2) (DB).

(6) Even though a private complaint is lodged with the Magistrate and the Magistrate has taken cognizance upon it, the police can still make an inquiry into the offence which came to their knowledge not from the complainant but on information, from other persons. A charge-sheet by the police is proper and the mere fact of there being a private complaint does not take away the rights of the police to conduct prosecution. AIR 1928 Mad 1268 (1270) = 30 Cri L Jour 326.

2. Accused must be forwarded to a Magistrate having jurisdiction. — (1) An accused can, under this section, be forwarded only to a Magistrate empowered to take cognizance of the offence, upon a police-report, and to try or commit him for trial. It is irregular to send the accused and the witnesses before another Magistrate who is not so empowered. (1902) 29 Cal 483 (487) (DB).

(2) When forwarding the accused under this section, it is not necessary to forward the report prescribed by Section 173. AIR 1931 All 617 (619) = 53 All 729 = 32 Cri L Jour 1045.

(3) A Magistrate cannot authorise a police constable to admit to bail persons sent up to him by police patels under Bombay Village Police Act, 8 of 1867, for offences for which bail might be allowed by this Code. 1869 Rat 26 (26).

3. "Police report". — See Section 190.

4. Powers and duties of the police under this section. — (1) It is for the officer in charge of a police-station to decide whether there is sufficient evidence or not, to justify the forwarding of the accused. AIR 1939 Lah 522 (524) = 41 Cri L Jour 146 ** AIR 1931 Lah 99 (101) = 33 Cri L Jour 180.

(2) The power cannot be exercised by an officer subordinate to the officer in charge of a police-station and proceedings instituted at his instance will be void under Section 530, Clause (p). See AIR 1918 Cal 50 (51) = 19 Cri L Jour 961.

(3) Assistant Sub-Inspector in charge of police station in absence of Sub-Inspector who is Officer-in-charge, record-

Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons.

(4) *[* * * *.]

(5) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

[1882—S. 170; 1872—S. 123, para. 1, S. 127, para. 1, S. 128, para. 2, S. 130, paras. 1-4; 1861—Ss. 151, 155, 156, 158.]

[*] Sub-section (4) was repealed by the Code of Criminal Procedure (Amendment) Act, 1926 (II of 1926), Section 2.

OBJECTS AND REASONS

See under Section 169.

STATE AMENDMENTS

Gujarat

Same as that of Maharashtra.—See Central Act XI of 1960, Section 87.

Maharashtra

In its application to the State of Maharashtra, delete, sub-section (3) — Bom. Acts XXIII of 1951, Section 2 and Schedule (1-7-1953) and XCVII of 1958, Sec. 2 (1-9-1959).

Section 170 — Note 4 (contd.)

ing F. I. R. and investigating it — Complaint about offence under Section 182, Penal Code, filed by him is valid. ILR (1963) Cut 790 (792).

(4) The power cannot be controlled by the Superintendent of Police, especially after it has been exercised. AIR 1918 Cal 485 (485) = 18 Cri L Jour 886 (887) (DB).

(5) When the officer in charge of police-station considers that there is sufficient evidence, he is bound to forward the accused in custody or, if the offence is bailable, to take bail for his appearance before the Magistrate. AIR 1920 Nag 255 (259, 260) = 21 Cri L Jour 769. (**Overruled** on another point in AIR 1937 Nag 17 = 38 Cri L Jour 251 (FB).)

(6) He cannot discharge the accused nor entertain an application to withdraw the complaint inasmuch as the power to permit such withdrawal is a judicial act which must be done by a Magistrate. 1875 Rat 91 (91).

(7) Where definite allegations are made by aggrieved persons, it is generally not for the police to play the role of Judges and to pronounce their verdict on the truth or falsehood of those allegations. They are bound to send up the accused for trial and not to discuss probabilities and improbabilities of the case and come to a final decision of their own. But where there is a tendency to implicate innocent persons along with guilty, not only Courts but investigating officers must proceed cautiously and use their discretion. A police officer is in the same position as a Magistrate holding inquiry in cases triable by a Court of Session and hence, where an investigating officer is not satisfied with the evidence against some of the accused and feels that they have been falsely implicated, he will be quite justified in not sending up such accused for trial. AIR 1939 Lah 523 (524) = 41 Cri L Jour 146.

(8) The police officer is bound to send all persons acquainted with the facts of the case as witnesses at the trial and cannot omit to do so on the ground that some of the witnesses are relations of the accused. AIR 1933 All 582 (586) = 35 Cri L Jour 208 (DB).

[See (1966) 5 Suth WR (Cr) 6 (6) (DB).]

(9) It is not the duty of the officer to intimate to the accused the offence with which he is charged. But he is bound to intimate to him whether the warrant is bailable or not. AIR 1931 All 263 (265) = 32 Cri L Jour 465.

(10) Where articles are recovered from or near the corpse of a deceased person it is the duty of the police to send them to malkhana in sealed cover with contents noted above. Otherwise no reliance can be placed upon evidence furnished by recovery of these things. AIR 1949 All 291 (296) = ILR (1949) All 658 = 50 Cri L Jour 498 (DB).

(11) The property connected with the offence has to be forwarded to the Court by the Police and the Court has to give directions for its custody during the pendency of the case. It is not desirable that it should be left in the possession of the Court Inspector, who is a police officer and the prosecutor even though he might be attached to the Court. AIR 1958 Tripura 40 (Pr 34) = 1958 Cri L Jour 1549.

(12) Muddamal articles produced under Section 170 (2) before Criminal Court — Articles cannot be returned to Police — Application by prosecution for return of Muddamal liquor to police for being sent to Chemical Analyser — Application cannot be granted. AIR 1961 Guj 4 (5) =

Mysore

In its application to the State of Mysore, in Section 170, omit sub-section (3). —Mys. Act XIII of 1965, Section 31 (1-10-1965).

Punjab: Haryana: Chandigarh

In its application to the States of Punjab and Haryana and Union Territory of Chandigarh, in sub-section (3) of Section 170, for the words "District Magistrate or Sub-Divisional Magistrate" substitute the words "Chief Judicial Magistrate". — Punj. Act XXV of 1964, Section 2 and Schedule, Part I, Item (41) (2-10-1964) and Act 31 of 1966, Sections 29 and 88 (1-11-1966.)

Rajasthan

Abu Area.— Same as that of Maharashtra. — See Central Act XXXVII of 1956, S. 119.

Union Territories (except Chandigarh)

In its application to the Union territories, in Section 170, for the words "District Magistrate or Sub-Divisional Magistrate", substitute the words "Chief Judicial Magistrate". — Act 19 of 1969, Section 3 and Schedule, Item 42 (In Delhi, on 2-10-1969).

West Bengal

In its application to the State of West Bengal, in sub-section (3) for the words "District Magistrate or sub-Divisional Magistrate", substitute the words "Sub-divisional Judicial Magistrate".—W. B. Act VIII of 1970, Section 2 and Schedule, Item 61.

Section 170 — Note 4 (contd.)

(1961) 1 Cri LJ 54 (1) = (1960) 1 Guj LR 133.

(13) Filing of preliminary charge-sheet does not deprive the Police to continue the investigation. Recovery of article at instance of accused is part of the investigation. Documents of such recovery prior to filing of final charge-sheet but after filing of preliminary charge-sheet are admissible. 1969 Cr LJ 542 (547) (Andh Pra) (DB).

(14) Complaints officer to be examined at the trial as a principal witness conversant with the facts of case — Investigation by Complaints Officer himself is extremely improper — It does not, however, vitiate the trial. AIR 1964 All 481 (484) = 1964 (2) Cri LJ 497.

(15) If there is sufficient evidence or reasonable ground to justify the forwarding of accused to a Magistrate, the investigating officer has to forward the accused, under Section 170, to the competent Magistrate to take cognizance of the offence or commit him for trial, or if offence is bailable release him on bail on taking security from him. (1967) 8 Guj LR 350 (352) (DB).

5. "Accused", meaning of. — (1) The word "accused," as used in this Chapter relating to investigations, means a person against whom there has been an accusation and evidence is being collected by an executive officer, and as used in the Chapters relating to inquiries and trials, means the subject of accusation over whom the Magistrate or Court is exercising jurisdiction. AIR 1937 Nag 17 (21) = 38 Cri LJ 251 (FB) ** AIR 1958 Andh Pra 37 (Pr 15) = 1958 Cri LJ 18 (DB). (It may be that after arrest he is released on security bond during investigation.) ** AIR 1920 Nag 255 (257) = 21 Cri LJ 769. (Overruled on another point in AIR 1937 Nag 17 = 38 Cri LJ 251 (FB).)

6. Bond by the complainant and witnesses. — (1) This section requires that when the accused is forwarded to the Magistrate or released on security for his appearance, the officer in charge of the police-station shall require the complainant and witnesses to execute a bond for their appearance before the Magistrate. To send up an accused without such bonds being taken is illegal. (1969) 11 Suth WR (Cr) 47 (48) (DB).

(2) The stage when the bond from a witness or complainant is to be taken comes in only when the accused is arrested and is either forwarded under custody or is released on security. Otherwise the bond is not one furnished under this section. 1893-1900 Low Bur Rul 478 (479).

(3) The bond taken under this section from a witness or complainant should specify the particular day on which he has to appear before the Magistrate. Such date must be the date on which the accused is expected to appear before the Magistrate or if a security for his appearance has been taken, the date of his appearance. (1966) 6 Suth WR (Cr) 52 (52) (DB) ** 1893-1900 Low Bur Rul 478 (479).

(4) For form of bond by a witness or complainant, see Form No. 26, Schedule V.

7. Powers of the Magistrate under this section. — (1) Police investigation in progress — Magistrate directing Police to effect arrest of the accused forthwith and report compliance by a certain date was improper and not in accordance with law. 1962 (2) Cri LJ 655 (656) (Cal).

171. Complainants and witnesses not to be required to accompany police-officer.—No complaint or witness on his way to the Court[°] of the Magistrate shall be required to accompany a police-officer,

Complainants and witnesses not to be subjected to restraint.

or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond:

Recusant complainant or witness may be forwarded in custody.

Provided that if any complainant or witness refuses to attend or to execute a bond as directed in Section 170, the officer in charge of the police-station may forward him in custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

[1882—S. 171; 1872—S. 130, para. 5, S. 131; 1861—Ss. 158, 159.]

[°] As to attendance in Courts of persons confined in prisons for obtaining their evidence or for answering a criminal charge, see the Prisoners (Attendance in Courts) Act, 1955 (32 of 1955), Sections 3 and 5.

172. Diary of proceedings in investigation. — (1) Every police-officer[°] making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(2) Any Criminal Court may send for the police-diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in

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Section 170 — Note 7 (contd.)

(2) Final report by police — Report disclosing offence — Magistrate can take cognizance of offence. AIR 1962 Cal 135 (143, 144) = 1962 (1) Cri LJ 285 = 66 Cal WN 697 (FB). (Cri. Revn. No. 226 of 1960, D/- 12-9-1960 (Cal) and obiter observations in AIR 1941 Cal 263, **Overruled.** Per S. K. Sen, N. K. Sen and Amaresh Roy, JJ.; Bhattacharya and D. N. Das Gupta, JJ., contra.)

8. Application to investigation under other Acts. — (1) Investigation by Customs Officers under Sea Customs Act and not by the police under Ch. XIV, Cr. P. Code — Section has no application **AIR 1968 SC 938 (941) = (1968) 2 SCR 624 = 1968 Cr LJ 1124.**

Section 171 — Note 1

(1) If a police-officer detains any witness against his will, his act is illegal and he may become liable to punishment under Penal Code. (1892-1896) 1 Upp. Bur Rul 221 (225).

(2) Statements obtained from a witness subjected to restraint cannot be regarded as voluntary. (1900) 4 Cal WN 49 (54) (DB).

(3) The Court can ask the investigating officer by means of a Rubkar to arrange for the production of witnesses in Court. But a direction to the effect that the investigating officer should himself produce the witnesses in Court is not strictly in accordance with the provisions of the section. 1951 RD (HC) 41 (43).

(4) Sections 170, 171 and 173 are to be read together. They contemplate a simultaneous action. AIR 1956 Orissa 129 (134) = ILR (1956) Cut 267 = 1956 Cri LJ 909 (DB).

SECTION 172 — SYNOPSIS

1. **Scope and object.**
2. **"Day by day."**
3. **Contents of a diary.**
4. **Admissibility of a diary in evidence.**
5. **Inspection by accused.**
6. **Use of the diary.**
7. **Refreshing memory.**
8. **"May send for the police diaries".**
9. **Provisions under other Acts.**
10. **Obligation to maintain case diaries.**

1. Scope and object. — (1) The object of the section is to enable the Magistrate to know what was the information obtained from day to day by the police-officer who was investigating the case and what were the lines of his investigation. (1897) 19 All 390 (397) (FB) ** AIR 1934 Cal 458 (459) = 35 Cri LJ 904 (DB).

(2) It is essential that the diary should be kept strictly in accordance with the provisions of the Code in enabling the Court to judge of the weight to be attached to the evidence. AIR 1952 Mad 821 (824) = 1953 Cri LJ 29 ** AIR 1952 Vindh Pra 7 (7) = 1952 Cri LJ 143.

(3) In the undermentioned case the method of writing case diaries on loose sheets has been disapproved. AIR 1952 Vindh Pra 7 (7) = 1952 Cri LJ 143.

(4) The police-officer is charged with the duty of maintaining a diary in in-

the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police-officer who made them, to refresh his memory, or if the Court uses them for the purpose of contradicting such police-officer, the provisions of the Indian Evidence Act, 1872, Section 161 or Section 145, as the case may be, shall apply.

[1882—S. 172; 1872—S. 126; 1861—S. 154.]

[*] By its Notifn. No. 577J dated 25-1-1956 as amended by No. 1384J dated 24-2-1958 issued under Section 1 (2) of this Code, the State Government of West Bengal has extended Section 172 to the Commissioner of Police and the Police in the town of Calcutta: see Cal. Gaz., 9-2-1956, Pt. I, page 463 and Ibid, 6-3-1958, Pt I, page 640.

Section 172 — Note 1 (contd.)

vestigation of cognizable as also of non-cognizable cases. (1899) 27 Cal 144 (150, 151) (DB).

[See also AIR 1942 Cal 593 (597) = 44 Cri LJ 145 (DB).]

(5) The omission to maintain it deprives the Court of a very valuable aid which such diaries can give if legitimately used. AIR 1918 Lah 171 (175) = 19 Cri LJ 517 (DB).

(6) The section does not apply to personal diaries maintained by a police-officer not conducting any investigation. AIR 1925 Cal 959 (960) = 26 Cri LJ 579 (DB).

(7) The section does not apply to a departmental enquiry. AIR 1935 Sind 13 (14) = 36 Cri LJ 581 (FB).

(8) Section applies to all police-officers making an investigation. AIR 1935 Lah 230 (243) = 35 Cri LJ 1180 (DB).

(9) A diary prepared by the police under Section 47-A of the Calcutta Suburban Police Act, does not fall either under Section 172 or Section 162, and is not privileged. AIR 1924 Cal 542 (542) = 24 Cri LJ 757 (DB).

(10) Sections 172 and 162 do not apply to the Calcutta police and there is nothing in Calcutta Police Act relating to any confidential diary which cannot be reached by any party in a criminal case. AIR 1929 Cal 257 (257) = 30 Cri LJ 577

[See also AIR 1940 Cal 97 (103) = 41 Cri LJ 329 (DB).]

(11) The special law for investigation in the Presidency Town of Calcutta barring the application of Section 162 and 172, does not amount to discriminatory law and do not constitute a contravention of Article 14 of the Constitution of India. AIR 1955 Cal 138 (140) = 1955 Cri LJ 752 (DB).

(12) Panchanamas may be read by witnesses while under examination to refresh their memory. AIR 1933 Sind 220 (222) = 34 Cri LJ 848 (DB).

(13) The failure of police-officers to keep a diary lays the evidence of the police-officers open to adverse criticism and may diminish its value, but it does not make that evidence inadmissible. AIR 1947 PC 75 (77) = ILR (1948) 1 Cal 179 = 74 Ind App 80 = 48 Cri LJ 679 ** AIR 1955 Nag 121 (125) = ILR (1954) Nag 922 = 1955 Cri LJ 819.

[See also AIR 1950 Ajmer 44 (45) = 51 Cri LJ 1301.]

2. "Day by day." — (1) Police-officers are required to enter proceedings in a diary from day to day. AIR 1935 Lah 230 (243) = 35 Cri LJ 1180 (DB).

(2) Delay in making entry may throw suspicion on the diary. AIR 1935 Nag 69 (75) (DB).

3. Contents of a diary. — (1) The section does not contain an exhaustive list of the matters which may, with propriety, be entered in the diary. (1897) 19 All 390 (414) (FB).

(2) Case diary containing the confidential communications or reports are privileged but not statements of witnesses recorded during police investigation or other official matters contained therein such as site plan prepared during the investigation. AIR 1965 All 494 (495) = 1964 All LJ 950 = 1965 (2) Cr LJ 452.

(3) Impression gathered or circumstances ascertained by police officer at spot are not required to be entered in general diary but in the diary to be maintained under Section 172 — They are not relevant facts under Section 35, Evidence Act, and hence not admissible in evidence. AIR 1966 All 222 (223, 224) = 1966 Cri LJ 498 = 1964 All WR (HC) 579.

4. Admissibility of a diary in evidence. — (1) Entries in diary are only notes of secondary evidence of witnesses. 1900 All WN 130 (131) (DB).

(2) Entries in police diaries cannot be used either as substantive or as corroborative evidence in the case. AIR 1953 Hyd 145 (153) = ILR (1951) Hyd 895 = 1953 Cri LJ 785 ** AIR 1953 Pepsu 66 (73) = 3 Pepsu LR 90 = 1953 Cri LJ 884 (DB) ** AIR 1952 Him Pra 81 (92) = 1952 Cri LJ 1720. (AIR 1917 PC 25 = 18 Cri LJ 471 and 19 All 390 (FB), Relied on.) ** AIR 1952 Orissa 37 (42)

Section 172 — Note 4 (contd.)

(DB) ** AIR 1933 PC 124 (132) = 34 Cri LJ 322.

(3) Entries in Police Case diary cannot be accepted as evidence — Particulars have to be established by evidence — Entry giving the date on which certain witness was examined by the police officer in the course of investigation — The date must be deposed to as the date on which such examination took place by the Police Officer concerned. AIR 1967 Manipur 11 (16) = 1967 Cri LJ 1023.

(4) Entries in diary cannot be read to the jury. (1900) 27 Cal 295 (305) (DB).

(5) The Court cannot look into entries in diary and take the facts and statements written therein as materials which would help it to come to a finding on the evidence in the case. (1912) 13 Cri LJ 905 (909) (SB) (Cal) ** (1911) 15 Cal WN 47n (47n) (DB) ** AIR 1926 Lah 54 (59) = 26 Cri LJ 1308 (DB) ** AIR 1928 Lah 820 (823) = 29 Cri LJ 493 (DB).

(6) To reject the story of the defence on the ground that it is nowhere mentioned in the diary, is an improper use thereof. AIR 1926 Lah 485 (486) = 27 Cri LJ 572 (DB) ** 1883 All WN 37 (37).

(7) What the Court can do is to discover out of the diary any matter that is important and then by calling for the necessary witnesses or documents to have that matter properly proved in evidence. (1906) 3 Cri LJ 408 (408, 409) (DB) (Cal) ** AIR 1933 Pat 440 (441) = 34 Cri LJ 948 ** AIR 1927 Oudh 64 (65) = 28 Cri LJ 134 (DB).

(8) The absence of a statement in the case diary is not in itself evidence that such a statement was not made. The proper way to prove an omission is to question the police-officer who wrote the diary. If he is unable to say that a particular statement was not made to him, an omission cannot be proved by filing the case diary. AIR 1942 Mad 288 (289) = 43 Cri LJ 582 ** AIR 1942 Mad 58 (60) (DB).

(9) Consent cannot legalise the use of diaries as evidence. AIR 1925 Oudh 1 (8) = 25 Cri LJ 449.

[See also AIR 1946 Pat 127 (127) (DB).]

(10) Where the accused seeks to show that a witness has made a statement in Court which is contrary to what he has told a police-officer, proper way of contradicting him is to ask police-officer when he is in the witness box, about it and to permit, if necessary, the filing of such portions of the record in the case diary as will support the police-officer's statement. AIR 1942 Mad 58 (60) (DB).

(11) When a diary was referred to by a Magistrate as corroborative evidence, but there was legal evidence to held him to come to the same finding, the High Court declined to interfere. AIR 1948 Cal 16 (18) = 48 Cri LJ 351 (DB) ** AIR 1915 Mad 11 (11) = 15 Cri LJ 256 ** AIR 1925 Pat 165 (167) = 25 Cri LJ 1266.

[See AIR 1917 PC 25 (28, 30) = 18 Cri LJ 471. (In this case their Lordships of the Privy Council declined to interfere because substantial justice had been done.)]

(12) There is no objection to such entries being used against the police-officer himself e.g., in a case against him under Section 211 of the Penal Code. But in such a case where only portions of the diary were placed in evidence, the police-officer was held entitled to place other portions which explained those which were admitted. (1967) 8 Suth WR (Cr) 87 (90) (DB).

(13) A police-officer charged with an offence cannot use as evidence in his favour any entries made by him in a special diary. (1883) 6 All 42 (44).

(14) An entry in a police diary made by the police officer for his own benefit even if admissible should not always be taken without scanning, other circumstances have to be considered along with the entry. AIR 1956 Assam 170 (173) = 1956 Cri LJ 1283 (DB).

(15) A police diary could be referred to by prosecution, not to substantiate the offence against the accused, but to see whether a witness has turned hostile. AIR 1918 Pat 459 (459) = 19 Cri LJ 512 (DB).

(16) Whether the record of a statement be proved and used under Section 162 or used under Section 172, sub-section (2), without being proved, it is necessary for the Court to be astute and avoid using it otherwise than as provided by law. AIR 1933 Pat 589 (595) = 35 Cri LJ 379 (DB).

(17) Entries in the general diary should be proved by calling the writer to state orally the particulars recorded in each entry and then producing the general diary in corroboration of his oral evidence. They differ in no respect from any other record in writing of a statement or event. AIR 1941 Rang 209 (212) = 43 Cri LJ 157 (DB).

(18) A Police diary may be an official document, and the entries therein are worth what they are but they cannot surely be accepted to be absolutely correct for all purposes, in the absence of any definite proof. AIR 1956 Assam 170 (173) = 1956 Cri LJ 1283 (DB).

5. Inspection by accused. — (1) This section provides that neither the accused nor his agent is entitled to see the diary merely because it is referred to by the Court. AIR 1952 Mad 535 (538) = 1952 Cri LJ 1150 ** (1897) 20 Mad 189 (204) (FB) ** AIR 1958 All 1 (7) = 1958 Cri LJ 1. ** AIR 1935 Rang 370 (373) = 13 Rang 570 = 36 Cri LJ 1487 (FB).

Section 172 — Note 5 (contd.)

(2) Case diary not available to accused persons, and so also to litigants in civil cases. Bar imposed by Section 162 applies only to that enquiry or trial resulting from that investigation. AIR 1965 All 494 (495) = 1964 All LJ 950 = (1965) 2 Cri LJ 452.

(3) It is the Court and not the accused or his agent that can use the special diary for the purpose of contradicting the police-officer who prepared it. (1897) 19 All 390 (394) (FB).

(4) The Court cannot delegate this power to the counsel for the defence. AIR 1933 Lah 498 (500) = 34 Cri LJ 464 (DB).

(5) The accused's right to see the police diary will arise only, if the diary is used by police-officer to refresh his memory or by Court to contradict the police-officer. (1882) 8 Cal 154 (157) (DB) ** AIR 1935 Rang 370 (373) = 13 Rang 570 = 36 Cri LJ 1487 (FB) ** AIR 1915 Mad 11 (11) = 15 Cri LJ 256 (256) ** AIR 1931 Pat 150 (151) = 32 Cri LJ 638 (DB).

(6) If the diary is used by the police-officer to refresh his memory, Section 161, Evidence Act will apply and the adverse party must be shown the entry and he may cross-examine the witness on it. (1906) 4 Cri LJ 79 (82) = 33 Cal 1023 (DB).

(7) The defence is entitled to an inspection of only that portion of the diary from which the witness refreshed his memory and not the entire diary. AIR 1922 Pat 562 (562) = 23 Cri LJ 591 (DB) ** (1897) 19 All 390 (393, 394) (FB) ** (1882) 8 Cal 739 (744) (DB) (Cal).

(8) If the accused does not exercise his right as soon as the witness refreshes his memory he does not continue to retain it during the whole of the subsequent examination of the witness. (1882) 8 Cal 739 (744) (DB) (Cal).

(9) Although the defence counsel is not entitled as of right to see the case diary, there is no prohibition against Court permitting in its discretion the defence counsel to see portions of the police diary which the Court considers that in the interests of justice he should see and use in the defence of the case. AIR 1953 Mad 179 (182) = ILR (1953) Mad 284 = 1953 Cri LJ 424 (DB).

(10) Copies of statements entered in a diary cannot, as a matter of course, be granted to accused. AIR 1936 Lah 359 (360) = 38 Cri LJ 246 ** (1894) 16 All 207 (208) (DB).

(11) The sole right conceded to the accused by the Legislature is the limited right of inspection and not to have copies. (1897) 19 All 390 (406) (FB).

(12) The accused cannot be prejudiced if no diary is maintained. AIR 1931 Pat 150 (151) = 32 Cri LJ 638 (DB).

(13) The diaries should be liable to be inspected as well as called for by the party who desires their inspection in any enquiry or trial, civil or criminal, wherein that party is not the accused. AIR 1936 Lah 359 (360) = 38 Cri LJ 246 ** AIR 1957 Raj 185 (189) = ILR (1957) 7 Raj 693.

(14) The police diary is a privileged document coming under Section 123, Evidence Act. AIR 1936 Lah 359 (360) = 38 Cri LJ 246.

[See however AIR 1940 Lah 217 (224) = 41 Cri LJ 667 (DB). (Diary of constable shadowing movements of suspect does not relate to affairs of State.)]

(15) Section 172 does not apply to the statements of persons recorded and are not privileged. AIR 1933 Nag 4 (5) = 28 Nag LR 291 = 34 Cri LJ 127 ** AIR 1928 Lah 257 (258) = 9 Lah 389 = 29 Cri LJ 348 (DB) ** AIR 1927 Cal 644 (644) = 28 Cri LJ 805 (DB).

6. Use of the diary. — (1) The diary cannot be used for anything other than to assist the presiding Judge in the inquiry or trial. AIR 1952 Mad 586 (587) = 1952 Cri LJ 1240 (DB) ** AIR 1955 Cal 234 (235) = 1955 Cri LJ 752 (DB) ** AIR 1926 Pat 20 (23) = 27 Cri LJ 362 (DB) ** AIR 1928 All 25 (28) = 29 Cri LJ 26 (DB).

[See also AIR 1953 Punj 149 (154) = 1953 Cri LJ 1018. (Application under Section 561-A for quashing proceedings of lower Court made at early stage of proceeding — High Court is entitled to look into police diaries.)]

(2) A judge is in error in making use of the police diaries at all in his judgment and in seeking confirmation of his opinion on the question of appreciation of evidence from statements contained in those diaries. **AIR 1954 SC 51 (60) = 1954 Cri LJ 338 = 1954 SCR 475.**

(3) The diary can be used for the suggestion of questions to witnesses when the Court considers there is reasonable ground for so doing. ILR (1947) Kar 301 (309) (DB) ** AIR 1917 PC 25 (28) = 18 Cri LJ 471.

(4) The diary might be used to suggest means for further elucidating, by legal evidence, points that need clearing up. AIR 1953 Hyd 145 (153) = ILR (1951) Hyd 895 = 1953 Cri LJ 785 ** AIR 1952 Orissa 37 (42) (DB) ** ILR (1947) Kar 301 (309) (DB) ** AIR 1944 Cal 243 (244) = 46 Cri LJ 28 (DB) ** AIR 1942 Pat 90 (94) = 43 Cri LJ 36 (DB) ** AIR 1926 Lah 54 (59) = 26 Cri LJ 1308 (DB) ** AIR 1969 Cal 451 (456) = 1969 Cri LJ 1120 = 73 Cal WN 547.

(5) It is the duty of the Judge to bring on record by evidence any material facts that may come to his knowledge and it is for that purpose he can and should use the diary. AIR 1928 All 25 (28) = 29 Cri LJ 26 (DB).

Section 172 — Note 6 (contd.)

(6) It is a mistake to exclude supervision notes from police diaries sent to the Courts. The notes cannot of course be used as evidence any more than can the diaries of the investigating officer himself; but they usually make these diaries more intelligible and more useful as aid in inquiries and trials. AIR 1938 Pat 290 (294, 295) = 39 Cri LJ 635 (DB).

(7) The Court may use the diary as containing indications of sources and lines of enquiry and as suggesting names of persons whose evidence may be material for the purpose of doing justice. (1897) 19 All 390 (395) (FB) ** AIR 1935 Rang 370 (373) = 3 Rang 570 = 36 Cri LJ 1487 (FB) ** AIR 1930 Lah 318 (319, 320) = 31 Cri LJ 343.

(8) The object of sub-s. (2) is to enable the Court to direct the police-officer to refresh his memory from notes made by him in the course of his investigation or to question him as to contradictions. If used for such a purpose, the provisions of Sections 145 and 161 of the Evidence Act, shall apply. AIR 1926 Lah 54 (59) = 26 Cri LJ 1308 (DB) ** (1897) 19 All 390 (393) (FB).

(9) The Judge can refer to the diary even after delivery of a verdict by the jury or of the opinions by the assessors. AIR 1929 Cal 57 (58) = 30 Cri LJ 435 (DB).

(10) The power given to the Court under Section 172 should be sparingly exercised. 1929 Mad WN 587 (591) (DB).

(11) The Court can make use of the police diary of the counter case in the manner laid down in sub-section (2) of the section. AIR 1944 Cal 243 (244) = 46 Cri LJ 28 (DB).

(12) Section 172 does not give a Criminal Court an unfettered right to make use of a case diary. The words "if the Court uses them . . . . as the case may be, shall apply" show that without confronting the police officer who had prepared the case diary in terms of Section 161 of the Evidence Act, the case diary cannot be used. AIR 1958 All 1 (7) = 1958 Cri LJ 1.

(13) A party desiring to use, for purposes of corroboration or contradiction, the statement of a witness recorded by a police officer during the investigation of a crime, or the site plan or any other document prepared during the police investigation, or any fact noted in the case diary, has to apply to the Superintendent of Police for a copy of such statement, document or entry. If a certified copy is furnished, that copy can be filed in the case. AIR 1965 All 494 (496) = 1964 All LJ 950 = 1965 (2) Cri LJ 452.

(14) Magistrate can look into the case diary as aid in framing charge though not for founding the charge. AIR 1964 Cal 59 (60, 61) = 1964 (1) Cri LJ 184.

(15) Final report by police — Report disclosing offence — Magistrate can look into police diaries but cannot take cognizance of offence upon police diaries alone, independently of final report. AIR 1962 Cal 135 (143, 144) = 1962 (1) Cri LJ 285 = 66 Cal WN 697 (FB). (Cri Revn. No. 226 of 1960, D/- 12-9-1960 (Cal) and obiter observations in AIR 1941 Cal 263, **Overruled;** Per S. K. Sen, N. K. Sen and Amaresh Roy, JJ.; Bhattacharya and D. N. Das Gupta, JJ., contra.)

7. Refreshing memory. — (1) Persons other than police-officers cannot use it for the purpose of refreshing their memory. (1897) 19 All 390 (394) (FB).

(2) The accused cannot insist on the police-officer's referring to his diary to refresh his memory. (1882) 8 Cal 154 (156) (DB) ** AIR 1932 Lah 103 (112) = 33 Cri LJ 97 (DB).

(3) It was held in proceedings under Section 110 that though it may be within the right of police-officers not to refer to a diary, the accused was nevertheless entitled to the benefit of the witness's refusal to disclose the source of his information. AIR 1925 Pat 131 (132) = 26 Cri LJ 738.

(4) A Court can compel the police-officer to refresh his memory. AIR 1921 All 86 (86) = 23 Cri LJ 143 (DB) ** 1956 All LJ 833 (835) ** AIR 1942 Lah 89 (91) = 43 Cri LJ 588 (DB) ** AIR 1924 Pat 829 (830).

[But see (1926) 95 Ind Cas 277 (280) = 27 Cri LJ 757 (Nag).]

(5) Even if a Magistrate is held to exercise judicial functions in taking cognizance of a case, that is no bar to his taking cognizance of case on second thought after having accepted the final report once. 1968 All LJ 768 (769). (Police report and protest applications by parties before Court — Court held took cognizance under Cls. (b) and (c) of Section 190 (1).)

(6) A Judge is not bound to compel a witness to refresh his memory. (1882) 8 Cal 739 (745) (DB).

8. "May send for the police diaries." — (1) The order for the production of the diaries must be made in and confined to each particular case. (1887) 19 All 390 (415) (FB) ** 1894 All WN 181 (181) (DB).

(2) Police diaries not being evidence in the case, a Court is not empowered to draw any presumption for or against the prisoner from non-production thereof. 1894 All WN 181 (181) (DB).

(3) To say that in every murder case, Court must scrutinise the police diary and make a list of witnesses whom the prosecutor must examine is virtually to suggest that the Court should itself take the role of a prosecutor. AIR 1965 SC 328 (332, 333) = (1964) 3 SCR 397 = 1965 (1) Cri LJ 350.

173. Report of police-officer. — °[(1) Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer† in charge of the police-station shall—

(a) forward to a Magistrate‡ empowered to take cognizance of the offence on a police-report a report, in the form prescribed by the °§[State Government], setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case; and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties, and

(b) communicate, in such manner as may be prescribed°‡ by the °§[State Government], the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.]

(2) Where a superior officer of police has been appointed under Section 158, the report shall, in any cases in which the °§[State Government] by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation.

Section 172 — Note 8 (contd.)

(4) Under Section 167 investigating officer has to submit copy of entries in diary contemplated by Section 172 (1) — Copy of statements recorded under Section 161 need not be forwarded. (1963) 1 Andh LT 406 (412) (DB).

9. Provisions under other Acts. — (1) There is no provision in the Sea Customs Act similar to the provision in Section 172 under which a police officer is required to maintain a diary relating to the steps taken by him in the investigation and the need for sending copies of the diaries to the criminal Court. 69 Bom LR 421 (441) = ILR (1969) Bom 439 (DB).

10. Obligation to maintain case diaries. — (1) Section 172 does not apply to an inquiry or investigation started under Section 174. Though under sub-rule (5) of Rule 225 in Chapter VI of the Bombay Police Manual, case diaries in regular investigations as also case diaries in inquiries under Section 174, Cr. P. Code have been placed on the same footing and the sub-rule says that case diaries should be maintained in both cases, the provisions in the Police Manual do not have the force of a statute. AIR 1968 Bom 127 (146, 147) = 1968 Cri LJ 453 = 68 Bom LR 941 = 1967 Mah LJ 25 (DB). **(Overruled** on another point in AIR 1969 Bom 294 (FB).

(2) Where a Police Officer suspects the commission of a cognizable offence, the proper provision for taking action is Section 156 or 157. As both these sections are in Chapter 14 of the Cr. P. C., an investigation done thereunder would be covered by Section 172. AIR 1966 All 222 (224) = 1964 All WR (HC) 579 = 1964 All Cr R 425 = ILR (1965) 1 All 298 = 1966 Cri LJ 498.

SECTION 173 — SYNOPSIS

1. Scope and object.
2. "Every investigation under this chapter."
3. "As soon as it is completed."
4. "The officer in charge of the police-station shall."
4A. Police reports and other reports under S. 173.
5. Report, to whom to be sent.
6. What the report should contain.
7. How the report can be used.
8. Right of accused to copy of report.
8A. Use of additional evidence after submission of report or charge-sheet.
9. Penalty for submitting an incorrect or false report.
10. Nature of order by Magistrate striking off case reported by police.
10A. Action by Magistrate on final report.
11. Discharge of accused — Sub-section (3).
12. Applicability of section to proceedings for offences under Acts other than Penal Code.
13. Nature of proceedings under the section.

1. Scope and object. — (1) Section 157 provides for a police-report as to information received about an offence, but before it is investigated. This section provides for a final report after completion of the investigation and showing the results of such investigation. AIR 1952 Him Pra 81 (87) = 1952 Cri LJ 1720 ** 4 Low Bur Rul 137 (137, 138) = 7 Cri LJ 414 ** (1904) 1 Cri LJ 539 (540) = 1904 Upp Bur Rul (Ist Qr Cr PC) 4.

(3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

§[(4) After forwarding a report under this section, the officer in charge of the police station shall, before the commencement of the inquiry or trial, furnish or cause to be furnished to the accused, free of cost, a copy of the report forwarded under sub-sec. (1) and of the first information report recorded under Section 154 and of all other documents*† or relevant extracts thereof, on which the prosecution proposes to rely, including the statements and confessions, if any, recorded under Section 164 and the statements recorded under sub-section (3) of Section 161 of all the persons whom the prosecution proposes to examine as its witnesses:

(5) Notwithstanding anything contained in sub-section (4), if the police-officer is of opinion that any part of any statement recorded under sub-section (3) of Section 161 is not relevant to the subject-matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, he shall exclude such part from the copy of the statement furnished to the accused and in such a case, he shall make a report to the Magistrate stating his reasons for excluding such part:

Section 173 — Note 1 (contd.)

[See also AIR 1952 Him Pra 68 (71) = 1952 Cri LJ 1495.]

(2) The practice of submitting a number of incomplete challans before a complete challan is forwarded to the Magistrate and Magistrate commencing inquiry or trial on foot of the incomplete challans and recording prosecution evidence piecemeal as the names of witnesses are disclosed in instalments in the various incomplete challans is against law as the section contemplates one police report and that when the investigation is completed. AIR 1952 Him Pra 81 (87) = 1952 Cri LJ 1720 ** AIR 1952 Him Pra 68 (71) = 1952 Cri LJ 1495.

(3) Though the incomplete challan has been held not be a police report within the meaning of this section, it was held to fall under Sec. 190 (1) (b) and it was held that the Magistrate was entitled to take cognizance of the case on such report. AIR 1952 Him Pra 81 (87) = 1952 Cri LJ 1720 ** AIR 1956 All 525 (Pr 8) = 1956 Cri LJ 1037 (DB).

(4) Magistrate's failure to take cognizance of the offence on the earlier report does not prevent his taking cognizance on the subsequent report. AIR 1956 All 525 (Pr 7) = 1956 Cri LJ 1037 (DB).

(5) It is only when the final report as contemplated under Sec. 173 it will be clear whether an offence has been committed or not. Till then, the Magistrate does not take cognizance. AIR 1956 Mad 392 (Prs 3, 4, 6) = 1956 Cri LJ 1000 (2).

[See also AIR 1957 Cal 379 (Prs 6, 8, 9, 11) = 1957 Cri LJ 713.]

(6) Till the final report under this section is made the investigation must be deemed to be pending and an informant cannot be prosecuted under Section 211 of the Penal Code. AIR 1915 Bom 80 (81) = 16 Cri LJ 161 (DB).

(7) The accused gave first information to police that a particular article was stolen from his shop and gave the names of the two complainants as suspected persons. The police applied to the Magistrate, for permission to keep the investigation on dormant file as they were unable to trace the offenders. The complainants thereupon filed a complaint against the accused under Section 500, Penal Code. It was held that the complaint could be entertained before the final report of the police is submitted under Section 173, Criminal P. C. AIR 1955 Sau 19 (20) = 1955 Cri LJ 259 (DB).

(8) The final report under this section is to be sent in the form prescribed by the State Government. Where the accused is sent up for trial the form of the report in some States is called the charge sheet. The report sent when the accused is not sent up is called the "final report" or "referred charge sheet." AIR 1932 Pat 72 (76) = 33 Cri LJ 349 ** (1897) 20 Mad 189 (194, 198, 205) (FB) ** AIR 1932 Mad 673 (675) = 33 Cri LJ 785 ** AIR 1970 Pat 159 (161) ** ILR (1962) Andh Pra 775 = 1963 (1) Cr LJ 108 (108, 109).

(9) A distinction is made between a charge sheet and a report under this section. According to it column 6 of the charge sheet contains the substance of the statements of the witnesses made before the police and this is not required to be stated in a report under this section. AIR 1951 Mys 106 (107) = ILR (1951) Mys 430 = 52 Cri LJ 1211 (DB).

(10) A Report under Section 173 is not a complaint. AIR 1956 Bom 414 (415) = 1956 Cri LJ 721 (DB) ** AIR 1962 Raj 1 (2) = 1961 Raj LW 498 = 1962 (1) Cri LJ 80 (DB) ** AIR 1960 Raj 150 (151) = 1960 Cri LJ 853 = 1960 Raj LW 42.

(11) No illegality is committed by an investigating officer in submitting a charge-sheet after previously submitting a final report. AIR 1956 All 525 (Pr 9)

Provided that at the commencement of the inquiry or trial, the Magistrate shall, after perusing the part so excluded and considering the report of the police officer, pass such orders as he thinks fit and if he so directs, a copy of the part so excluded or such portion thereof, as he thinks proper, shall be furnished to the accused.]

[1882—S. 173; 1872—Ss. 125, 127; 1861—Ss. 153; 155.]

[°] Substituted for the original sub-section (1), by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), Section 40.

[†] By its Notifn. No. 577J dated 25-1-1956 as amended by No. 1384J dated 24-2-1958 issued under Section 1(2) of this Code, the State Government of West Bengal has extended Section 173 to the Commissioner of Police and the police in the town of Calcutta: see Cal. Gaz., 9-2-1956, Pt. I, page 463 and Ibid 6-3-1958, Pt. I, page 640.

[‡] Notwithstanding anything contained in Section 173, the officer in charge of police station shall forward his report under Section 173 of the Code to the Commissioner or such other officer as the Commissioner may direct in that behalf; see the Bombay Police Act, 1951 (XXII of 1951), Section 96 (1) (iii) (1-8-1951), Bom. Act LVI of 1959, Section 3 and Sch. Besides Greater Bombay, cities of Nagpur and Poona have Commissioners of Police appointed for them.

[§] Sub-sections (4) and (5) were substituted for former sub-section (4) by the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), Section 23. (1-1-1956).

[°†] For definition of "document", see General Clauses Act (X of 1897), Sec. 3 (18).

[°‡] For form prescribed in Mysore State, see Mys. Gaz., 12-6-1969, Pt IV, S. 2-C (ii), p. 2839.

[°§] Substituted for 'Provincial Government' by A. L. O. 1950.

Section 173 — Note 1 (contd.)
= 1956 Cri LJ 1037 (DB). (AIR 1928 Pat 585, **Dissented from.**) ** 1967 Mad LJ (Cri) 183 = 1966 Ker LJ 990 (991) ** (1966) 2 Mys LJ 520 (521) = 1966-8 Law Rep 251 ** AIR 1963 Pat 268 (269, 270) = 1963 (2) Cri LJ 42= 1963 BLJR 787.

(12) Even if it be held that the investigating officer has no power to submit a charge sheet after the final report and that the charge-sheet does not amount in law a report in writing of facts constituting an offence, it is undoubtedly an information upon which the Magistrate can take cognizance of the offence. AIR 1956 All 525 (Pr 8) = 1956 Cri LJ 1037 (DB).

(13) There is nothing said in the Code as to when the investigation is to be considered to have ended. If a police-officer after he lays a charge gets information, he can still investigate and lay further charge sheets. AIR 1952 Orissa 350 (350, 351) = ILR (1952) Cut 104 = 1952 Cri LJ 1635 ** AIR 1949 All 599 (602) = 50 Cri LJ 923 ** AIR 1946 Mad 502 (503) = ILR (1946) Mad 816 = 47 Cri LJ 993 ** 1966-8 Law Rep 251 = (1966) 2 Mys LJ 520 (521).

[See however AIR 1951 Raj 131 (132) = 52 Cri LJ 964 ** 1955-2 Mad LJ 316 (318, 319).]

(14) After the filing of the charge-sheet under Section 173, and the posting of the case for further cross-examination there can be no further investigation into the case by the Police. AIR 1956 Mad 592 (Prs 1, 2) = ILR (1957) Mad 426= 1956 Cri LJ 1207 (2) ** AIR 1969 Cal 316 (319, 320) = 1969 Cri LJ 723 ** AIR 1961 Tripura 8 (10, 11) = 1961 (1) Cri LJ 437.

(15) Sections 170, 171 and 173 contemplate a simultaneous action. The accused should be forwarded after the officer-in-charge of a police station comes to the conclusion that there was sufficient evidence and also forward a report under Section 173. The Code thus contemplates filing of an additional or supplementary charge-sheet as is seen from cl. (2) of Section 173, under which a superior officer can order a further investigation. AIR 1956 Orissa 129 (Pr 14) = ILR (1956) Cut 267 = 1956 Cri LJ 909 (DB). [But see AIR 1960 Madh Pra 135 (136) = 1960 Cri LJ 608 = 1960 MPLJ 241.]

(16) Ordinarily there should be a separate challan for each case but the challan cannot be thrown out or returned for amendment on this ground. Nor can the police withdraw the challan and file separate challans in such a case. AIR 1951 Hyd 113 (115, 116) = ILR (1951) Hyd 352 = 52 Cri LJ 1376 (DB).

(17) Where the offence is likely to have been committed by one or the other of the two persons or both, it is the practice of the police to submit a charge sheet against both whether as principal offenders or as one of them being an abettor or a conspirator, as the case may be. AIR 1952 Him Pra and B 46 (48) = 1952 Cri LJ 1128.

(18) The provisions of this section do not apply to a case under Section 3 or 4

OBJECTS AND REASONS

1923.— ". . . . We think that the functions contemplated by Section 173 should be exercised by the officer in charge only. We have considered the objections raised to Clause (b) which the Bill adds to Section 173 (1). On the whole, we are in favour of retaining it. But we have introduced the words 'if any,' to meet the case where there is no informant." — S. C. R. (18 of 1923).

1955.— In respect of the amendment made by Act 26 of 1955, the Joint Committee observe: "Clause 23 — The Committee are not in agreement with the provisions made in this clause and have consequently recast it. They consider that it is very necessary, in order to give the accused all possible help in defending himself, that he should be aware of all the statements, reports, confessions, etc., before the commencement of the trial. The Committee also consider that supply of such documents to the accused should be free of charge. It has also been provided that if the police officer thinks that the disclosure to the accused of any part of any statement recorded under sub-section (3) of Section 161 is inexpedient in the public interest and is not essential in the interests of justice, he may exclude such part from the copy of the statement furnished to the accused. But, in such a case, the police officer shall make a report to the Magistrate drawing his attention to the parts so excluded. At the commencement of the inquiry or trial the Magistrate shall consider whether the police officer was justified in excluding the part from the copy supplied to the accused and he may, if he thinks fit, direct the part so excluded to be supplied to the accused."— J. C. R. Gaz., Ind., 1954, Extra., Pt. II-S. 2, page 419.

Section 173 — Note 1 (contd.)

of the Rajasthan Gambling Ordinance as the offence under these section is a non-cognizable offence. AIR 1958 Raj 108 (Pr 10) = ILR (1957) 7 Raj 976 = 1958 Cri LJ 692 (DB).

(19) There is no reason to restrict Section 190 (1) (b) only to reports under Section 173. The information given to the magistrate under Section 153 (2) is as much a report as a report under Section 173 and the Magistrate is empowered to take cognizance on such a report under Section 190 (1) (b). AIR 1959 Raj 191 (Pr 5) = ILR (1959) 9 Raj 86 = 1959 Cri LJ 1112.

(20) Court has no power to issue summons to a person to be present in Court and give his finger prints in course of Police investigation except under Section 5 Identification of Prisoners Act. AIR 1970 Mad 85 (88).

2. "Every investigation under this chapter. — (1) The words "every investigation under this chapter" will include investigation started on information under Section 154, as well as investigation into a non-cognizable case under orders of the Court under Section 155, sub-section (2). AIR 1915 Bom 80 (80) = 16 Cri LJ 161 (DB).

[See also AIR 1958 Punj 172 (Prs 6, 7, 10) = ILR (1957) Punj 2021 = 1958 Cri LJ 683 ** AIR 1942 Cal 593 (597) = 44 Cri LJ 145 (DB).]

(2) The formation of the opinion, by the police, is the final step in the investigation, and that final step is to be taken only by the police and by no other authority. AIR 1968 SC 117 (123) =1968 Cri LJ 97 = (1967) 3 SCR 668.

(3) Section 173 requires the submission of the final report by the police officer as soon as investigations are completed. The report has to be forwarded to a Magistrate empowered to take cognizance of the offence on a police report. AIR 1959 Bom 437 (Pr 5) = ILR (1959) Bom 1088 = 1959 Cri L Jour 1153 (DB).

[See also 1969 Cri LJ 542 (546, 547) (Andh Pra) (DB).]

(4) Magistrate on receipt of private complaint examining it and sending it to police for enquiry under Section 156 (3) — Police have to investigate into the case under Chap. XIV and submit report. AIR 1964 Mys 129 (129) = 1964 (2) Cri LJ 41 = (1963) 2 Mys LJ 41.

(5) Every investigation should on its completion, be followed by a final report under this section. Where the police after investigation into a non-cognizable case under Section 155, sub-section (2) filed a complaint instead of making a report under this section, it was held that the procedure was irregular though not a material irregularity vitiating the trial. AIR 1929 Mad 115 (117) = 30 Cri L Jour 469.

(6) An investigation under Chap. XIV must lead up to a report under Sec. 173 giving rise immediately to a liability in the police officer concerned to furnish copies of certain documents to the accused and giving rise at the same time to a corresponding right in the accused to get such copies. AIR 1968 Cal 540 (542, 543) = 1968 Cri LJ 1411 = ILR (1969) 2 Cal 161.

(7) Report of police officer in non-cognizable case without order under Section 155 (2), does not come under Section 173. In such a case procedure under Section 252 and not Section 251-A is to be followed. AIR 1959 Cal 640 (Prs 6, 7) = 1959 Cri L Jour 1163 ** 1968 All Cri R 368 (371) = 1968 All

Section 173 — Note 2 (contd.)
LJ 765 (DB) ** (1968) 70 Bom LR 757 (764) = 1969 Mah LJ 199 ** AIR 1967 Mad 390 (391) = (1967) 1 Mad LJ 108 = (1967) Cr LJ 1525. (Decision so far as it holds the police report to be a complaint appears to be contrary to decision of Supreme Court in **AIR 1965 SC 1185.)** ** 1963 Raj LW 212 (213) ** 1962 (2) Cri LJ 719 (722) = (1962) 1 Andh WR 195. (Offence under Section 211 of Indian Penal Code.) ** AIR 1962 Raj 94 (95) = 1962 (1) Cri LJ 467 = 1961 Raj LW 515.

[But see AIR 1969 All 123 (128) = 1969 Cr LJ 354.]

(8) Cognizable offence — Complainant examined on oath — Magistrate ordering police to institute case and report — Charge-sheet by police purporting to be a report under Section 173 — Case, ultimately committed — Cognizance held taken on complaint and not on police report. **AIR 1964 SC 1541 (1544) = 1964 (2) Cri LJ 468 = (1964) 5 SCR 37 **** AIR 1967 Mad 390 = (1967) 1 Mad LJ 108 = 1967 Cri LJ 1525.

(9) The report under Section 173 is a report on the results of the investigation made under this chapter, i. e., Chapter XIV which means an investigation made under Section 155 (2) or Section 156. The extension of Section 173 to the Calcutta Police without an extension of Section 156 is meaningless. AIR 1958 Cal 324 (Prs 13, 15) = 1958 Cri L Jour 865 (DB). (61 Cal WN 248, **Overruled.)** ** AIR 1958 Cal 341 (Prs 9, 10) = 1958 Cri L Jour 881 (DB).

(10) See also following case. 1957 BLJR 342 (344). (Offence under Sec. 47 (a), Bihar and Orissa Excise Act (2 of 1915) — State Government, authorising under Section 7 (2) (d), officer not below rank of officer in charge of police station to exercise powers of Excise Officer — Officer in charge of police station can investigate into offence and make complaint or report on basis of which Magistrate can take cognizance.)

(11) Filing of charge-sheet and arresting accused can be said to be part of investigation. AIR 1969 Guj 362 (367) = 1969 Cri LJ 1503 = 10 Guj LR 1024 (DB).

(12) An illegal investigation does not affect the jurisdiction of the Court to try the case. AIR 1969 Guj 362 (368) = 1969 Cri LJ 1503 = 10 Guj LR 1027 (DB) ** 1969 Mad LW (Cri) 90 (97).

(13) Private complaint under Sec. 379, Penal Code — Magistrate immediately examining the complainant — Police asked to investigate and submit report — Police investigation held one under Section 202 and not under Section 156 (3) — Report by Police not one under Section 173. 1969 Cri LJ 1458 (1459) = 1969 Mad LW (Cri) 86.

(14) Accused charged with offences under Sections 147, 148 and 326 with Section 149, of Penal Code — At stage of Court considering papers filed under Section 173, prosecution filing a Memo that accused is also guilty under Section 307 of Penal Code and should be committed to Sessions — Accused applying to Court for examining witnesses' — Order of Court committing accused to Sessions without examining witnesses held, violated Section 207-A. AIR 1967 Mys 199 (199, 200) = 1967 Cri LJ 1534 = (1967) 1 Mys LJ 387 (DB).

(15) Petition challenging legality of investigation and praying for re-investigation, submitted during examination of first prosecution witness — Not premature. AIR 1961 Andh Pra 448 (450) = (1961) 1 Andh WR 153 = (1961) 2 Cri LJ 605.

(16) Police can file two charge sheets against same offender. 1963 (1) Cri LJ 108 (108, 109) = ILR (1962) Andh Pra 775.

(17) Section 173 (4) applies only when investigation is made by a police officer and that too under Chapter XIV of the Code. AIR 1966 Bom 253 (257) = 67 Bom LR 748 = 1966 Cr LJ 1395.

(18) Sub-section (2) of Section 251-A, Section 173 (2) and Section 540 co-exist supplementing each other. Under Section 251-A (2), Magistrate has to consider all documents referred to in Section 173. AIR 1969 Cal 451 (456) = 73 Cal WN 547 = 1969 Cri LJ 1120.

(19) Submission of report under Section 173 both in respect of offence informed and of offence committed during investigation is not illegal. 1969 Mad LW (Cri) 90 (97).

3. “As soon as it is completed”. — (1) It is incumbent upon the investigating officer to complete his investigation without unnecessary delay. (1900) 2 Bom LR 1092 (1094) (DB) ** AIR 1932 Lah 345 (347) = 33 Cri L Jour 220 (DB) ** AIR 1965 Tripura 27 (29) = 1965 (2) Cri LJ 139 ** AIR 1960 Tripura 8 (12) = 1960 Cri LJ 404.

(2) There is no justification whatever for an investigating officer to delay his final report under this section till the proceedings under Section 202 before the Magistrate terminate. AIR 1933 All 582 (585) = 35 Cri L Jour 208 (DB).

(3) The fact that there was considerable delay in the preparation of the report is not by itself a sufficient reason for discrediting the evidence against the accused. AIR 1944 Pat 211 (213) = 46 Cri L Jour 129 (DB).

(4) Filing of charge-sheet — Duty of Investigation Officer — He cannot fail to submit charge sheet on the ground that the evidence is insufficient to sustain a conviction. ('64) 30 Cut LT 43 (48).

Section 173 — Note 3 (contd.)

(5) Inordinate delay in submitting police report under Section 173 condemned — Investigation into criminal offences must always be free from any objectionable features or infirmities which may lead to grievance of accused that investigation is carried on unfairly or with any ulterior motive. **AIR 1960 SC 866 (870) = 1960 Cri LJ 1239 = (1960) 3 SCR 388.**

(6) In view of delay in investigation and filing charge-sheet by police, accused held entitled to reduction of sentence. AIR 1960 Tripura 8 (12) = 1960 Cri LJ 404.

(7) Where before filing a report the police had practically conducted the entire investigation, the report filed by the police amounted to a charge-sheet and not first information report. AIR 1961 Ker 99 (103) = 1961 (1) Cri LJ 505 = 1960 Ker LT 666 (FB).

(8) Police not filing final report or charge-sheet against public servant for offence under Section 354, Penal Code, because of pendency of departmental enquiry — Magistrate ordering accused to be put on trial on basis of case-diaries — Orders, though not illegal, was held to be improper and quashed. 1961 (2) Cri LJ 448 (453) = 1961 Andh LT 224.

4. "The officer in charge of the police-station shall". — (1) The duty of the police-officer is to "investigate" and find the real culprit and bring him to justice: he ought not to try to get a confession from the alleged offender. (1884) 6 All 509 (542) (FB).

[See also AIR 1933 All 31 (37, 38) = 34 Cri L Jour 489 (DB).]

(2) The police-officer should not adjudicate on the guilt or innocence of the alleged offenders and especially in cases of rioting it is not the duty of the police-officer to decide as to which of the parties was in the wrong. (1912) 13 Cri L Jour 737 (738) = 1913 Pun Re (Cr) No. 2 (DB).

(3) The final step in the investigation, viz., the formation of the opinion and filing a charge-sheet under Section 173 is to be that of the officer in charge of the Police station. There is no provision permitting delegation thereof but only a provision entitling superior officers to supervise or participate under Sec. 551. AIR 1955 SC 196 (201) = ILR (1955) Punj 135 = 1955 Cri L Jour 523 = 1955 SCR 1150.

(4) The railway police can also submit a report to the Magistrate under this section. AIR 1928 Bom 162 (164) = 29 Cri L Jour 551 (DB).

(5) There cannot be any prejudice if the officer who had investigated the offence submits the challan under the signature directly and not through the officer-in-charge of the police-station. AIR 1958 Tripura 1 (Pr 39) = 1958 Cri L Jour 97.

(6) Assistant Sub-Inspector in charge of police station in absence of Sub-Inspector who is officer-in-charge, recording F. I. R. and investigating it — Complaint of offence under Section 182, I. P. Code, filed by him is valid. ILR (1963) Cut 790 (792).

(7) A police officer entitled to investigate into offences under Suppression of Immoral Traffic in Women and Girls Act (1956), can make a report about the investigation made by him to a Magistrate and the Magistrate can take cognizance of the offences on the basis of the reports. AIR 1969 Bom 285 (291) = 70 Bom LR 778 = 1969 Cri LJ 1038.

(8) A report submitted to the Magistrate by a police officer having powers to investigate under Chap. XIV — Report not submitted by the officer in charge of the police station within whose jurisdiction offence was committed — Report is still a police report under Section 173. AIR 1963 Cal 191 (193, 194) = (1963) 1 Cri LJ 424 (DB).

(9) Police have no right not to charge sheet particular person. AIR 1968 Bom 400 (412) = 69 Bom LR 808 = 1968 Cr LJ 1584 (DB).

4A. Police reports and other reports under Section 173. — (1) All reports under Section 173, Criminal P. C.; are police reports but all police reports need not be reports under Section 173. The report under Section 173 (1) is submitted by the police only after the investigation is completed and not before. AIR 1966 Andh Pra 377 (380) = (1966) 1 Andh WR 76 = 1966 Cri LJ 1377 (DB).

(2) Expression "Police report" used in Section 251-A means a formal charge-sheet or chalan, containing accusation of a cognizable offence, submitted by a police officer after investigation. AIR 1965 Him Pra 37 (39) = (1965) 2 Cri LJ 99 ** AIR 1967 Cal 352 (354) = 1967 Cri LJ 858.

[See also AIR 1965 Him Pra 37 (39, 40) = (1965) 2 Cri LJ 99.]

(3) Madras Prohibition Act (10 of 1937), Chap. V and Section 48 — Investigation of Offences under the Act — Provisions in Chap. V are supplementary to those in Criminal P. C. — Report by police officer making investigation under the Prohibition Act is under Sec. 173, Criminal P. C. 1962 Mad LJ (Cri) 331 = (1962) 1 Mad LJ 434.

(4) A police report or a charge-sheet under Section 173 does not constitute a complaint of facts on the basis of which cognizance can be taken by the Nyaya Panchayat under Section 87 of the Bombay Village Panchayats Act. 1962 Nag LJ 130 (132) (Bom).

(5) Police submitting report after investigation under Chapter XIV of the Code, in the form of a complaint —

Section 173 — Note 4-A (contd.)
Complaint should be treated as equivalent to police report under Sec. 173. AIR 1963 Cal 191 (193) = (1963) 1 Cri LJ 424 (DB).

(5-A) Raid by police with intention to detect cognizable offence under R. 131-B of Defence of India Rules — Submission of report by police for offence under Section 134, Customs Act — Permission under Section 137, Customs Act obtained — Magistrate can take cognizance — Report under Section 173 can be treated as complaint under Section 190 (1) (b). AIR 1970 Bom 225 (231, 232).

(6) Charge sheet submitted by Police Officer in respect of an offence under Section 11 of Essential Commodities Act (1955) is a report in writing by a public servant even though it is a non-cognizable offence and no investigation had been specially ordered. 1962 (1) Cri LJ 623 (625) (DB) (All) ** 1961 (1) Cri LJ 644 (645) (Cal).

(7) Bribe demanded by public servant — Trap laid with decoy — Demand made — Complaint then filed by decoy — Report filed after investigation under Chap. 14, Criminal P. C., is one under Section 173, Criminal P. C., only. 1969 Mad LW (Cri) 90 (97).

5. Report, to whom to be sent. — (1) The final report under this section should be sent to the Magistrate who is empowered to take cognizance of the offence on a police-report as provided in Section 190, sub-section (1) (b). AIR 1928 Pat 585 (586) = 29 Cri L Jour 942.

(2) Even with reference to offences which are exclusively triable by a Special Judge under Section 7 (1) of the Criminal Law Amendment Act, 1952, the Magistrate who is empowered to take cognizance of the offence upon a police report has got jurisdiction to take action on a report submitted to him under this section, after completing the investigation. AIR 1959 Bom 437 (Prs 8, 10) = ILR (1959) Bom 1088 = 1959 Cri L Jour 1153 (DB).

(3) On receipt of final report, the Magistrate should deal with it under the provisions of Section 204. He cannot, however, direct a further investigation and call for a fresh report. AIR 1932 Lah 611 (612) = 33 Cri L Jour 912 ** AIR 1954 Kutch 26 (27) = 1954 Cri L Jour 1066 ** AIR 1932 Mad 673 (673) = 33 Cri L Jour 785.

(4) The Magistrate cannot direct the police to prefer a charge-sheet against the accused. The police must be allowed to form their own opinion of a case when submitting their report and a Magistrate cannot ask them to change their opinion merely because he does not agree with them. AIR 1932 Mad 673 (673) = 33 Cri L Jour 785 ** AIR 1956 Assam 127 (2) (Pr 4) = 1956 Cri L Jour 974 (2) ** AIR 1953 Assam 112 (112) = ILR (1952) 4 Assam 273 = 1953 Cri L Jour 797 (DB).

[But see ILR (1957) Cut 377 (379). (AIR 1932 Pat 72, Foll.) ** AIR 1932 Pat 72 (77) = 33 Cri L Jour 349 ** AIR 1933 Pat 242 (244) = 34 Cri L Jour 1198 (DB). (**Dissenting from** AIR 1928 Pat 585 = 29 Cri L Jour 942.) ** (1907) 7 Cri L Jour 414 (415) = 4 Low Bur Rul 137.]

(5) Where on the police reporting that there is no case against the accused, the Sub-Divisional Magistrate orders the case to be struck off of the file but his order is set aside by the District Magistrate, the order of the District Magistrate is not ultra vires. Where in such a case, the District Magistrate takes cognizance of the offence under Section 190 (1) (c), it is not necessary for him to send the case back to the police for filing charge-sheet. AIR 1951 Raj 146 (146) = 52 Cri L Jour 1174.
See also under Section 190.

(6) The power to order further proceedings (if any) under this section can apply only to the offence to which the report relates. The Magistrate has no power under the section to order proceedings against the informant. (1904) 1 Cri L Jour 539 (540) = 1904 Upp Bur Rul (1st Qr. P. C.) 4.

(7) As to the power of a Magistrate who has accepted a report by the police that the case is false, to direct the police to charge-sheet the accused, subsequently, see the following cases. AIR 1941 Pat 395 (398) = 42 Cri L Jour 504 ** AIR 1952 Pat 125 (Pr 3) = 1952 Cri L Jour 303 ** (1907) 6 Cri L Jour 34 (36) (DB) (Cal).

(8) When there is no police-report against a particular person the Magistrate, unless he is empowered under Section 190, sub-section (1) (c), cannot issue a warrant against that person for being tried before him. (1911) 12 Cri L Jour 92 (93) = 5 Sind LR 1 (DB).
[See however ILR (1957) Punj 802 (807).]

(9) A defect or illegality in investigation, however serious, has no direct bearing on the competence of the procedure relating to cognizance or trial. In any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial curable under Sec. 537. AIR 1958 Tripura 1 (Pr 39) = 1958 Cri L Jour 97.

(10) Even though an illegality is committed by a Magistrate in calling for a charge-sheet after the police submitted the final report, in the absence of proof of miscarriage of justice thereby, neither the trial nor the result of the trial is vitiated when the case was tried by a competent Court. 1969 Cr LJ 1307 (1309) = 35 Cut LT 381.

(11) Cognizable offence — Magistrate taking cognizance on complaint by

Section 173 — Note 5 (contd.)
police officer — Procedure not illegal — No prejudice to accused. AIR 1960 Ker 315 (316, 317) = 1960 Cri LJ 1334 = 1960 Ker LT 271 (DB).

6. What the report should contain. — (1) A report under this section includes both a "charge sheet" and a "referred charge sheet", i. e., both a report charging a person with an offence, and a report stating the case to be false. AIR 1952 Pepsu 29 (30) = 3 Pepsu LR 184 = 1952 Cri L Jour 482 (DB) ** AIR 1932 Mad 673 (675) = 33 Cri L Jour 785 ** 1967 (8) Guj LR 350 (353) (DB).

(2) Where Police Officer concludes that investigation does not disclose an offence, he has to submit a report in prescribed form asking for (A) or (B) or (C) summary as the case may be. 1967 (8) Guj LR 350 (353) (DB).

(3) First Information Report disclosing a cognizable case against 6 persons — Police filing charge-sheet against one of them only — No summary regarding others submitted — Non-inclusion of certain eye-witnesses in the charge-sheet — **Held,** provisions contravened. 1967 (8) Guj LR 350 (352) (DB).

(4) The report should be sent in the form prescribed by the State Government. It should contain the names of the parties, the nature of the information received, names of persons who appear to be acquainted with the facts of the case and state whether the accused (if arrested) have been forwarded in custody or have been released on bail. (1897) 20 Mad 189 (205) (FB) ** AIR 1930 Bom 372 (372) = 31 Cri L Jour 1142 (DB) ** AIR 1924 Sind 71 (72) = 26 Cri L Jour 181 (FB) ** (1910) 11 Cri L Jour 145 (146) = 37 Cal 49 (DB).

(5) Where Investigating officer examines witnesses and reduces their statements into writing, if he wishes to examine any one of them, he has to mention their names in the charge-sheet and supply the accused with a copy of their statements. ILR (1959) 2 Assam 470 (472).

(6) Where the first report made by the police to the Magistrate, though called incomplete challan, contains all the particulars required by the section and a second report, called a supplementary challan, is filed subsequently, giving the names of certain witnesses who are merely formal witnesses, the first report is the complete report as required by sub-section (1) (a) and is not vitiated by the mere fact that a supplementary challan is subsequently filed. **AIR 1951 SC 441 (442, 443) = 1951 SCR 729 = 52 Cri L Jour 1491.**

(7) Where instead of giving the nature of the information and the facts constituting the offence, merely the sections of the Penal Code were mentioned, it was held that the provisions of this section were not complied with. AIR 1930 Bom 372 (373) = 31 Cri L Jour 1142 (DB) ** AIR 1955 Bhopal 20 (21) = 1955 Cri L Jour 1561.

(8) Where the charge sheet merely referred to the first information report but did not conform to the provisions of Section 173 (1) (a), it was held that the Magistrate acted illegally in taking cognizance on such a defective charge-sheet. AIR 1952 Tripura 14 (15) = 1952 Cri L Jour 1405.

(9) Where the report not only refers to the first information report but also mentions that the information is found to be true upon investigation, the Magistrate can take cognizance of the case upon it. AIR 1956 All 525 (527) = 1956 Cri L Jour 1037 (DB).

(10) It is not necessary to give the abstract of the evidence taken by the police during the investigation. AIR 1930 Mad 191 (191) = 31 Cri L Jour 387.

(11) According to the undermentioned Mysore case which makes a distinction between a charge sheet and a police report, the former contains, in its column 6, the substance of the statements of the witnesses made before the police, which is not required to be stated in the police report. AIR 1951 Mys 106 (107) = ILR (1951) Mys 430 = 52 Cri L Jour 1211 (DB).

(12) It is also not necessary to produce along with the report all the documents on which reliance is to be placed at the trial and the accused is not entitled to insist on the production of such documents before the trial starts. AIR 1937 Lah 411 (415) = 38 Cri L Jour 955.

(13) It is not essential that the charge-sheet should give a full and detailed description of the place where the offence was committed. Therefore, the vague description of the scene of the offence in the charge-sheet does not introduce an infirmity in the trial. AIR 1956 Bom 195 (195) = 1956 Cri L Jour 481 (DB).

(14) It is not every communication from the police that will be a report under this section; the section contemplates a report after an investigation of a case. (1871) 8 Bom HCR (Cr) 113 (115) ** (1912) 13 Cri L Jour 752 (753) = 6 Sind LR 82 (DB).

(15) Documents of investigation and the like which are to form part of judicial record later on should never be prepared in pencil. They should always be in ink and should be legible. AIR 1954 Manipur 6 (Pr 28) = 1954 Cri L Jour 1329.

(16) Where a charge-sheet in the form of final police-report is filed after investigation into a cognizable offence registered under Section 420, I. P. C., but it relates to two offences namely under Section 420 and Section 294-A, I. P. C., the charge sheet cannot be

Section 173 — Note 6 (contd.)

regarded as a complaint required by Section 196. AIR 1957 Andh Pra 987 (Pr 10) = 1957 Cri L Jour 1389.

(17) Where during the investigation of a cognizable offence about which an information is given to the police, the police officer investigates any subsidiary and non-cognizable offence which arises out of the facts, he can include those latter cases in his main report under this section. AIR 1958 Punj 172 (Prs 6, 7, 10) = ILR (1957) Punj 2021 = 1958 Cri L Jour 683.

(17-A) The police officer will be competent to include the offence under Section 7, Essential Commodities Act, though non-cognizable, in the charge sheet under Section 173 with respect to a cognizable offence, i. e., Section 420, I. P. C.. **AIR 1965 SC 1185 (1186, 1187) = 1965 (2) Cri LJ 250.**

(18) Report under Section 173 by police after investigation in respect of offences, some cognizable and some non-cognizable — Permission to investigate non-cognizable not obtained — Permission not necessary — Decision by Magistrate to follow procedure under Sec. 252 is erroneous — Proper procedure is that applicable to case instituted on police report. 1963 Raj LW 206 (207).

(19) Report of police relating to cognizable as well as non-cognizable offences — Section 156 and not Sec. 155 (2) is applicable — Report by police after investigation is one under Sec. 173 — Procedure prescribed by Sec. 207-A inapplicable for trial. 1963 Raj LW 212 (213).

(20) Notes jotted down at scene of occurrence while examining witnesses — Statements of those witnesses reduced to writing under Section 161 at police station after destroying earlier notes — **Held,** statements reduced to writing at police station were relevant. AIR 1967 Mad 426 (427) = (1967) 1 MLJ 366 = 1967 Cri LJ 1644.

(21) The charge-sheet is not a complete or accurate thesis of the prosecution case. **AIR 1962 SC 1821 (1876) = 1962 (2) Cri LJ 805 = (1963) 1 SCR 253.**

(22) Non-compliance with Secs. 173 and 190, Criminal P. C. — Amounts merely to error in proceedings antecedent to trial — Section 537 is attracted — Trial not vitiated unless such non-compliance results in miscarriage of justice. 1962 (2) Cri LJ 544 (545) (J and K) ** AIR 1965 Him Pra 60 (61) = 1965 (2) Cri LJ 763.

7. How the report can be used. — (1) The report of the police-officer is not per se legal evidence of the facts stated therein. (1969) 12 Suth WR (Cr) 60 (63) (FB).

(2) The report can be used to suggest means of further elucidating points which need clearing up. AIR 1925 Pat 165 (167) = 25 Cri L Jour 1266.

(3) It is improper and illegal for a Magistrate to draw material for a conviction from the report of the investigating officer when he has not been examined as a witness. AIR 1927 Pat 37 (38) = 27 Cri L Jour 1112.

(4) The police-report can be used by the Magistrate "as credible information" under Section 5 of the Public Gambling Act (3 of 1867) for issuing a warrant of arrest. (1913) 14 Cri L Jour 293 (295) = 9 Nag LR 68.

(5) It can be used as the basis for issuing a search warrant. 1897 Cr Rg 40.

(6) When the police sent a report to the Magistrate under this section that an information as to an alleged theft was groundless, it was held that merely on this report and without a formal complaint the informant could not be prosecuted under Section 182 of the Penal Code. (1802) 6 Oudh Cas 1 (7) (DB).

(7) A committing Magistrate is not justified in making a commitment on the basis of Police record under Sec. 173 without taking any evidence whatsoever. AIR 1957 Madh B 7 (Prs 1, 8) = 1957 Cri L Jour 64.

[But see AIR 1965 Orissa 214 (214, 215) = 31 Cut LT 1069 = 1965 (2) Cri LJ 792.]

(8) There is nothing illegal in committing the accused solely on the basis of the documents referred to in the section when on the side of the prosecution there is no evidence as to the actual commission of the offence. AIR 1957 Mys 5 (Prs 7, 8) = ILR (1956) Mys 255 = 1957 Cri L Jour 76 (DB) ** AIR 1962 Guj 1 (4) = 1962 (1) Cri LJ 26 = (1961) 2 Guj LR 582 (DB).

(9) Case on circumstantial evidence — Evidence not recorded under Sec. 207-A (4) — Magistrate questioning accused on documents produced under Section 173 — No error of law. AIR 1963 Ker 85 (85) = 1962 Ker LJ 718 (DB).

(10) The examination of the accused under Section 251-A must necessarily be with regard to the material against him in the documents referred to in this section. But the answers do not constitute any evidence either for or against him, consequently he cannot be convicted on the basis of these answers. AIR 1958 Madh Pra 99 (Pr 3) = 1958 Cri L Jour 522 (DB).

(11) Prosecution and accused can rely on or refer to documents mentioned in this section in support of their contention of being heard under Section 251-A (2) and (3). AIR 1968 Mad 117 (122, 123) = 1968 Cri LJ 493 = (1968) 1 Mad LJ 480.

(12) Where a person who is accused of having committed an offence by reason of his having given false informa-

Section 173 — Note 7 (contd.)

tion, demands a judicial investigation into the truth of the charge made by him, during the pendency of such judicial investigation, a prosecution against him on the supposition that the charge made by him is false, is unjustified. 1959 All WR (Sup) 12 (13).

(13) Police report disclosing offence — Magistrate can look into police diaries but cannot take cognizance of offence upon police diaries alone, independently of final report. AIR 1962 Cal 135 (145, 146) = 66 Cal WN 697 = (1962) 1 Cri LJ 285 (FB).

(14) Preliminary report by police against some persons — Case registered and Magistrate issuing orders to enable further investigation by police — Final report submitted leaving out three persons — Magistrate takes cognizance only on second report — Procedure held not illegal. AIR 1966 Andh Pra 377 (379, 380) = (1966) 1 Andh WR 76 = 1966 Cri LJ 1377 (DB).

(15) In a case instituted on a police report, there is no provision for examination of a witness before making an order under Section 251-A (2) discharging an accused or under Section 251-A (3) framing charge. AIR 1968 Mad 117 (132) = 1968 Cri LJ 493 = (1968) 1 Mad LJ 480 (DB).

8. Right of accused to copy of report. — (1) Section 173 (4) and Section 207-A (3) have been introduced by the amending Act of 1955, in order to simplify the procedure in respect of inquiries leading upto a Sessions trial, and at the same time, to safeguard the interests of accused persons. **AIR 1957 SC 737 (Pr 10) = 1958 SCR 283 =1957 Cri LJ 1320** ** (1962) 66 Cal WN 1040 (1042) (DB) ** AIR 1960 Andh Pra 253 (255) = (1959) 2 Andh WR 249 = 1960 Cri LJ 561.

(2) Section 173 (4) is purely procedural and only directory. It does not enact any fundamental principle of criminal jurisprudence. AIR 1966 Bom 253 (258, 259).

(3) Granting of copies is to enable the accused to have all round picture of the case against him and to enable him to cross-examine the witnesses. This is intended for expeditious and speedy disposal of cases. AIR 1957 Mad 508 (Prs 4, 5) = ILR (1957) Mad 482 = 1957 Cri LJ 866 (DB) ** 1959-2 Andh WR 249 (252) ** 1970 Cri LJ 558 (Raj) ** AIR 1966 All 252 (253, 254) = 1965 All WR (HC) 659 = 1966 Cri LJ 506 ** AIR 1966 Guj 217 (218) = 1966 Cri LJ 990 = (1966) 7 Guj LR 829 ** 1962 (2) Cr LJ 560 (561) = 1962 All Cri R 188 (Mys).

(4) The object of Sections 162, 173 (4) and 207 (3) is to enable the accused to obtain a clear picture of the case against him before the commencement of the enquiry. **AIR 1964 SC 286 (291) = (1964) 1 Cri LJ 167 = (1964) 4 SCR 521.**

(5) Section 173 (4) enumerates the documents copies of which need be furnished to the accused. These documents refer to those on which the prosecution proposes to rely. AIR 1958 Cal 709 (Pr 6) = 1958 Cri LJ 1480 ** **AIR 1957 SC 623 (Pr 10) = ILR (1957) Punj 1668 = 1957 Cri LJ 1009.** (Object is to put the accused on notice of what he has to meet at the time of the inquiry or trial.)

(6) The right to obtain copies under Section 173 cannot relate to a non-cognizable case which has not been the subject-matter of any investigation at all but for which the accused is being tried AIR 1957 Raj 185 (Pr 8) = ILR (1957) 7 Raj 693 ** 1970 Cri LJ 553 (556) (Punj).

(7) The accused can always bring it to the notice of the Magistrate even in a summons case that the provision in Section 173 has not been complied with and it would then be the duty of the Magistrate to see that it is complied with before proceeding further with the case. AIR 1959 Mad 405 (Prs 5, 6) = 1959 Cri LJ 1092 ** 1962 (2) Cr LJ 590 (592) (Tripura).

(8) Investigation made by more than one police officer — Statement of witnesses recorded by every one of such officer — Copies of all statements should be supplied to accused. 1962 (2) Cr LJ 590 (592) (Tripura).

(9) The clause governs all criminal cases irrespective of the fact whether they are summons or warrant cases. 1957 Cri LJ 188 (Pr 4) (Madh B).

(10) The court cannot refuse to grant copies on any grounds other than those mentioned in Cl. (5). AIR 1957 Mad 508 (Prs 4, 5) = ILR (1957) Mad 482 = 1957 Cri LJ 866 (DB).

(11) Copies are to be supplied free of costs to the accused. AIR 1957 Mad 466 (Prs 3, 4) = ILR (1957) Mad 519 = 1957 Cri LJ 859 ** AIR 1959 Bom 314 (Pr 4) = ILR (1959) Bom 340 = 1959 Cri LJ 959.

(12) The stage at which the documents mentioned in the clause should be furnished to the accused, is laid down in Section 173, clause (4) and in sub-section (3) of Section 207-A with regard to committal cases and in Section 251-A with regard to warrant cases. Section 173 (4) also says that they must be furnished before the commencement of enquiry or trial. AIR 1957 Mad 508 (Prs 4, 5) = ILR (1957) Mad 482 = 1957 Cri LJ 866 (DB). (Statement under Section 161 (3).) ** AIR 1959 Bom 314 (Pr 4) = ILR (1959) Bom 340 = 1959 Cri LJ 959 ** AIR 1959 Madh Pra 290 (Prs 5, 6) = 1959 Cri LJ 988.

(13) Both Section 207-A and Section 251-A are subject to Section 173. If the copies of F. I. R. and the Station Diary

Section 173 — Note 8 (contd.)
Entry are not furnished to the accused, the Magistrate shall cause the same to be furnished by virtue of S. 207-A and S. 251-A, these can be supplied during the enquiry or the trial and not necessarily before the enquiry or trial. (1959) 25 Cut LT 216 (226) (DB) ** ILR (1967) 2 Punj 103.

(14) If in the course of the trial the prosecution feels that it is necessary to file additional documents or statements of witnesses on whom they propose to rely, the section does not prevent them from filing the same. But copies of such documents must be given in advance to the accused. In case of refusal by accused to receive same, he cannot later on complaint about their non-receipt. AIR 1958 Mad 295 (Pr 1) = 1958 Cri LJ 776 ** AIR 1959 Madh Pra 290 (291) = 1959 Cri LJ 988 ** AIR 1960 Andh Pra 329 (330) = 1960 Cri LJ 791 = (1960) 2 Andh WR 138 (DB). (AIR 1958 Andh Pra 568, **Dissent. from.)**

(15) There is no obligation cast on the prosecution to furnish a copy of the report of the 'Chemical Examiner to the accused except when the report is received by the Court either during the course of the enquiry or after committal. AIR 1957 Mad 508 (Pr 6) = ILR (1957) Mad 482 = 1957 Cri LJ 866 (DB).

(16) It would not be a sufficient compliance with the provisions of Section 173 (4) if only the English translation of the statements recorded in Tamil of the witnesses under sub-section (3) of Section 161 is furnished to the accused. AIR 1957 Mad 508 (Prs 7, 9) = ILR (1957) Mad 482 = 1957 Cri LJ 866 (DB).

(17) Expression "all the documents referred to in Section 173" means original documents and not their copies. Magistrate must refer to the, original documents. (1962) 3 Guj LR 700 (700) (DB).

(18) Police producing before Courts typed copies of statements of witnesses recorded by them under section and accused also furnished with such copies — Original handwritten statements not available — Prosecution evidence should be scrutinised with greater care. (1964) 1 Mys LJ 393 (396, 397, 398) (DB).

(19) Where statements of witnesses under Section 161 (3) are originally recorded in Tamil, but the accused is supplied before the commencement of the trial with copies of the English translation of statements as recorded in the case diary in pursuance of the prevalent practice and it transpires at the trial that the statements originally recorded are available, then in the interest of justice it is the duty of the Court to see that copies of these statemens are furnished to the accused. AIR 1958 Mad 143 (Pr 1) = 1958 Cri LJ 392.

(20) Clause (4) does not say that the accused should be given copies of statements in connected cases. **AIR 1957 SC 623 (Pr 11) = ILR (1957) Punj 1668 = 1957 Cri LJ 1009.**

(21) Under Section 173 (4), the prosecution is not prevented from calling any witness at the trial who has not been examined by the police or whose statement has not been recorded by them under Section 161 of the Code. AIR 1958 Cal 311 (Pr 3) = 1958 Cri LJ 863 ** 1959-2 Andh WR 249 (252).

(22) There is nothing in the law that prevents the prosecution from producing or the Court from examining, as a witness in the case, a person whose name has not been included in the report made or whose statement has not been furnished. AIR 1959 Cal 176 (Pr 8) = 1959 Cri LJ 318 (DB) ** AIR 1959 Madh Pra 290 (Prs 5, 6) = 1959 Cri LJ 988 ** AIR 1958 Cal 311 (Prs 3, 4) = 1958 Cri LJ 863 ** AIR 1960 Andh Pra 329 (330) = 1960 Cri LJ 791 = (1960) 2 Andh WR 138 (DB).

(23) Section 174 (4) has not been given a retrospective effect and its violation cannot affect the validity of the trial when the stage at which the report of the police to the Magistrate had to be sent had long ago passed. **AIR 1957 SC 623 (Pr 12) = ILR (1957) Punj 1668 = 1957 Cri LJ 1009.**

(24) Non-compliance with the provisions of clause (4) has not the result of vitiating those proceedings and subsequent trial. The word "shall" occurring both in sub-section (4) of Section 173 and sub-section (3) of Section 207-A, is not mandatory but only directory in case of prejudice to the accused, in the interest of justice, the Court may reopen the proceedings by insisting upon full compliance with the provisions of the Code. **AIR 1957 SC 737 (Pr 10) = 1958 SCR 283 = 1957 Cri LJ 1320** ** AIR 1959 Bom 314 (Pr 4) = ILR (1959) Bom 340 = 1959 Cri LJ 959 ** AIR 1959 Him Pra 3 (Pr 10) = 1959 Cri LJ 448 ** 1962 All Cri R 188 = 1962 (2) Cr LJ 560 (561) (Mysore).

[Contrary view held in the following cases must be held to be no more good law: AIR 1957 Mad 508 (Prs 7, 9) = ILR (1957) Mad 482 = 1957 Cri LJ 666 (DB) ** AIR 1958 Andh Pra 568 (Pr 3) = 1958 Cri LJ 1117 ** AIR 1957 Mad 466 (Prs 3, 4) = ILR (1957) Mad 519 = 1957 Cri LJ 859 ** 1957 Cri LJ 188 (Pr 2) (Madh B).]

(25) Non-supply of copies of statements — Effect.

(a) Before a trial can be held to be vitiated on the ground of non-compliance with Section 173 (4) the accused must show that its non-observance has prejudiced him and it has resulted in failure of justice. The irregularity does not per se vitiate the trial. Further, the non-supply of the copy of the previous statement may seriously reduce

Section 173 — Note 8 (contd.)

and impair the value of the statement of the witness but cannot render it inadmissible. AIR 1958 Punj 27 (Pr 6) = ILR (1958) Punj 218 = 1958 Cri LJ 94.

(b) Non-supply of copy of statement to accused — Examination of witness in trial — Evidence not inadmissible. AIR 1966 Guj 217 (219) = 1966 Cri LJ 990 = (1966) 7 Guj LR 829 (DB).

(c) Failure to grant copies to accused — Accused failing to meet straightforward case — No prejudice caused by omission or irregularity — Irregularity curable under Section 537. 1961 Pat LR 72 (76) (DB).

(d) Copy of sanction for prosecution not supplied to accused under Section 251-A — General statement by prosecution that copies of documents referred to in Section 173 had been furnished — Conviction of accused on his plea of guilty cannot be sustained — Fresh trial ordered after complying with Section 251-A by supplying copy of sanction to accused. AIR 1960 Ker 391 (391, 392) = 1960 Cri LJ 1602 = 1960 Ker LJ 688.

(e) Non-compliance resulting in prejudice to accused in conduct of trial — Court entitled to reopen whole case by insisting upon full compliance. 1962 All WR (Sup) 41 = 1962 (2) Cri LJ 560 (561, 562) (Mysore) ** AIR 1961 Andh Pra 3 (5, 7) = (1960) 2 Andh WR 73 = 1961 (1) Cri LJ 33.

(f) Copies of photo prints of documents used for handwriting expert not supplied to accused — No prejudice caused — Evidence of expert cannot be rejected. ILR (1962) 1 All 451 (547, 548).

(g) Sessions case — Statements of witnesses recorded by investigating officer under Section 161— Failure to supply copies of such statements to accused — Trial not vitiated, in absence of prejudice caused to accused by reason of such breach. **AIR 1964 SC 286 (294) = 1964 (1) Cri LJ 167 = (1964) 4 SCR 521.**

(h) Offence under Section 289, Penal Code — Chapter XIV, Criminal P. C. applies — Copies of record under Section 173, Criminal P. C. not supplied — Objection by accused towards end of trial — Accused should be allowed at least to go through record. AIR 1960 Cal 158 (159) = 1960 Cri LJ 335.

(i) In absence of complaint from accused that Magistrate had not made enquiries from accused about supply of copies, presumption is that Magistrate has followed the procedure as required and satisfied himself that accused had received the copies. AIR 1966 Guj 217 = (1966) 7 Guj LR 829 = 1966 Cri LJ 990.

(j) Provision under Section 173, though of great importance, its breach must be viewed in the light of the prejudice caused to the accused thereby. AIR 1967 Manipur 11 (22, 23) = 1967 Cri LJ 1023.

(26) Clause (4) has nothing to do with the examination of witnesses in the committal Court. The relevant section applicable is Section 207-A (4). Under it the prosecution is not obliged to examine witnesses produced by the prosecution as witnesses to the actual commission of the offence. AIR 1958 Mad 135 (Prs 6, 7) = 1958 Cri LJ 388 (DB).

(27) Section 173 (4) has no application to a departmental inquiry started against a Government servant even if the inquiry were held to be of a criminal nature. The Inquiry officer is not bound to see that the provisions of Section 173 (4) are observed. The contravention of its provisions does not necessarily vitiate it. AIR 1958 Punj 27 (Prs 5, 6) = ILR (1958) Punj 218 = 1958 Cri LJ 94.

(28) Where accused has no right to supply of copies:

(a) In cases started otherwise than on a police report the accused cannot insist that copies of statements of witnesses recorded under Section 161, be furnished to him. 1963 All WR (HC) 302 = 1963 (2) Cri LJ 706 (708) (All) ** 1967 All WR (HC) 829 (829) = 1967 All Cri R 530 ** AIR 1960 Andh Pra 329 (330) = 1960 Cri LJ 791 = (1960) 2 Andh WR 138.

(b) A warrant case instituted on a private complaint is governed by the procedure under Sections 252 to 259 and as these sections do not contain any provision similar to Section 173 (4) for furnishing such copies, the accused is not entitled to get such copies. AIR 1966 Bom 253 (259) = 1966 Cri LJ 1395 = 1967 Bom LR 748.

(c) Investigation by police officer not authorised under Section 5-A of Prevention of Corruption Act, 1947 is no investigation in eye of law or under Chapter XIV of Cr. P. C. and statements recorded by him are not statements under Section 161 and accused is not entitled to copies thereof. AIR 1969 All 503 (504) = 1968 All WR (HC) 575.

(d) Right of accused to obtain copies of statements recorded under Section 164, Cr. P. C. before the filing of the charge-sheet has been taken away by implication by Section 173 (4) of the Criminal P. C. and he

Section 173 — Note 8 (contd.)

would be entitled to the copies of those documents only in accordance with Section 173 (4). AIR 1961 Mad 92 (101, 102) = 1961 (1) Cri LJ 382 = (1961) 1 MLJ 65 (FB).

(e) Accused is not entitled under Section 173 (4) to copies of statements recorded under Section 174. — Section 173 (4) refers to statements recorded under Section 161 and not to statements recorded under Section 174. AIR 1968 Bom 127 (145) = 68 Bom LR 941 = 1968 Cri LJ 453 (DB). **(Overruled** on another point in AIR 1969 Bom 294 (FB).)

(f) Though not obligatory under Section 174 the interests of fair trial do require that copies of the statements recorded under Section 174, are made available to the accused at the proper time. AIR 1968 Bom 127 (148) = 1968 Cri LJ 453 = 68 Bom LR 941 = 1967 Mah LJ 25 (DB). (**Overruled** on another point in AIR 1969 Bom 294 (FB).)

(g) Statement under Section 164 — Prosecution not intending to rely on them — Accused is not entitled to copies thereof free of charge. 1965 Cur LJ 766 = 67 Pun LR 1181 (1183, 1184).

(h) Right of accused to copy of report and other documents — Statements made during investigation of a different offence — Accused has no right to copies free of cost but is entitled to certified copies on payment. AIR 1967 Orissa 189 (190) = 33 Cut LT 576 = 1967 Cr LJ 1552.

(i) When no statements are recorded either under Section 161 (3) or Section 164 then no right under sub-section (4) of Section 173 accrues to the accused. Sub-section (1) of Section 251-A relates only to the right which the accused has under Section 173 (4). AIR 1960 Andh Pra 329 (330) = 1960 Cri LJ 791 = (1960) 2 Andh WR 138 (DB).

(29) If the statements made to the investigating officer during investigation have been reduced to writing, then copies of such of those as the prosecution proposes to use must be given to the accused. AIR 1960 Andh Pra 367 (368) = 1960 Cri LJ 887 ** AIR 1960 Bom 150 (153) = 1960 Cri LJ 465 = 1959 Nag LJ 591

(30) Police recommending that case be dropped — Case instituted on private complaint — Accused still entitled to copies of documents. AIR 1965 Madh Pra 53 (55) = 1965 (1) Cri LJ 298 = 1965 Jab LJ 117.

(31) Copies of documents relied upon by prosecution to be supplied to the accused even before the commencement of sessions trial if not already supplied. AIR 1966 All 252 (253, 254) = 1965 All LJ 1091 = 1966 Cri LJ 508.

(32) Except for benefit of getting free copies of documents specified in Section 173 (4), there are no special advantages to the accused in a trial under Section 251-A. AIR 1960 Ker 315 (317) = 1960 Cr LJ 1334 = 1960 Ker LJ 271 (DB).

(33) Order directing framing of charge without reference to illegatity of statements under Section 173 (4) had to be quashed and matter was to be taken up once again after excluding from consideration all statements recorded under Sections 161 and 164 which were found vitiated. AIR 1968 Mad 117 (134) = 1968 Cri LJ 493 = (1968) 1 Mad LJ 480.

(34) Case investigated by police but no report under Section 173 filed — Cognizance taken on basis of complaint — Accused entitled to benefit of Section 173 (4) in the shape of copies of documents. AIR 1968 Cal 540 (547) = 1968 Cri LJ 1411 = ILR (1969) 2 Cal 161. ((1963) 2 Cri LJ 706 (All), **Dissented from.)**

(35) Proceeding instituted on a police report — Police report means report under Section 173. AIR 1963 Cal 191 (195, 196) = 1963 (1) Cri LJ 424 (DB).

(36) Term 'evidence' in Section 207-A (4) also covers the documents referred to in Section 173 (4), even though they are not proved. AIR 1966 Orissa 156 (159) = ILR (1966) Cut 168 = 1966 Cri LJ 789 (DB).

8A. Use of additional evidence after submission of report or charge-sheet. — (1) Section 173 (4) does not operate as a bar to the reception of any oral or documentary evidence at a later stage provided no prejudice is caused to the accused. 1960 Ker LT 1025 = 1961 (1) Cri LJ 658 (659) ** AIR 1960 Andh Pra 253 (255) = 1960 Cri LJ 561 = (1959) 2 Andh WR 249.

(2) Examination at trial of person whose statement was not recorded under Section 161 (3) — Section 173 (4) is no bar — Non-compliance with Section 173 (4) may affect value of evidence but cannot affect mandatory character of Section 251-A (7). AIR 1965 Guj 246 (246) = (1964) 5 Guj LR 981 = 1965 (2) Cri LJ 497 (1) ** AIR 1968 Andh Pra 236 (237) = (1967) 2 An WR 194 = 1968 Cr LJ 1035.

(3) Prosecution under Section 409, Penal Code — Accounts audited by auditor — Prosecution desiring to file loose sheets of accounts to be used by auditor at time of his examination in Court — Documents will be admissible under Section 68 (3) or Section 159 or Section 160,

Section 173 — Note 8-A (contd.)
Evidence Act — Copies should be supplied to accused before examination of auditor. AIR 1966 Orissa 189 (190) = ILR (1965) Cut 426 = 1966 Cri LJ 1042.

(4) Prosecution producing additional documents in course of trial — Copies not supplied before to accused — Section 173 (4) is no bar — Provisions not mandatory but only directory — They do not control provisions of S. 251-A (7). AIR 1963 Raj 85 (86) = 1962 Raj LW 560 = 1963 (1) Cri LJ 484 ** AIR 1963 Raj 43 (44) = 1962 Raj LW 635 = 1963 (1) Cri LJ 228 ** AIR 1960 Orissa 150 (150) = 1960 Cri LJ 1231 = (1959) 1 Orissa JD 474. (Prosecution allowed to produce injury report at late stage.)

(5) Section 173 does not disable the prosecution from examining a witness who has not been mentioned in the charge sheet or whose statement has not been recorded under Section 161 (3). AIR 1960 Andh Pra 367 (368) = 1960 Cri LJ 887. (**AIR 1957 SC 737,** Relied on; AIR 1957 Mad 466, held **Overruled** by AIR 1958 Mad 135.)

[But see ILR (1959) 11 Assam 470 (473).]

(6) Witnesses not examined by police, witnesses whose statements have not been reduced to writing and those whose names are not in list filed can also be called by prosecution. AIR 1968 Andh Pra 236 (237, 238) = 1968 Cri LJ 1035 = (1967) 2 Andh WR 197.

(7) Police cannot, as a matter of right ask the Court to examine witnesses with reference to the documents collected in further investigation. (1966) 2 Mys LJ 520 (522) = 1967 All Cr R 40.

9. Penalty for submitting an incorrect or false report.—(1) A police-officer who either negligently or improperly files an incorrect or false report can be proceeded against under Sec. 29 of the Police Act (5 of 1861). (1871) 15 Suth WR (Cr) 17 (17) (DB).

[See also AIR 1958 All 584 (Pr 4) = ILR (1958) 1 All 187 = 1958 Cri LJ 994 (DB). (Departmental action can only be taken only after final report has been made and accepted.]

(2) A police-officer submitting false report is liable to punishment under Section 218 of the Penal Code. But he cannot be prosecuted under Sec. 211 of the Penal Code for making a coloured or false report, as it cannot be said that he "instituted any criminal proceedings" against any person. (1900) 4 Cal WN 347 (348) (DB).

(3) See also the following cases. AIR 1921 Bom 115 (118) = 22 Cri LJ 609 (DB) ** AIR 1935 Cal 552 (554) (DB).

10. Nature of order by Magistrate striking off case reported by police. — (1) An order of the Magistrate directing a case reported to him by the police under this section to be struck off, is not a judicial order dismissing a complaint but an administrative one. AIR 1952 Pepsu 29 (30) = 3 Pepsu LR 184 = 1952 Cri LJ 482 (DB) ** AIR 1951 Raj 146 (146) = 52 Cri LJ 1174 ** AIR 1950 Lah 40 (42) = Pak LR (1949) Lah 872 = 51 Cri LJ 434 ** AIR 1933 Pat 242 (243) = 34 Cri LJ 1198 (DB) ** ('62) 64 Pun LR 279 (281).

[See also 1962 Raj LW 271 (274) ** AIR 1954 Kutch 26 (27) = 1954 Cri LJ 1066. (Where the sole question upon receipt of police report is whether a particular type of summary be given or not, the correctness, legality or propriety of the order is not required to be revised by the High Court as granting such summaries except summary in form No. B is an administrative order.)]

(2) An order directing the case reported by police to be struck off cannot be revised by the Sessions Judge under Section 436. 1899 Rat 521 (522) (DB).

(3) The order striking off the case does not amount to a discharge. Nor is it an acquittal under Section 245 so as to bar the issue of a warrant for the arrest of the person for the same crime. AIR 1950 Lah 40 (42) = Pak LR (1949) Lah 872 = 51 Cri LJ 434 ** AIR 1933 Pat 242 (243) = 34 Cri LJ 1198 (DB).

(4) An order issuing "A" Summary as contemplated under the provisions of the Bombay Police Manual Vol. II, R. 203 is not an administrative order but a judicial order. AIR 1959 Bom 437 (Pr 10) = ILR (1959) Bom 1088 = 1959 Cri LJ 1153 (DB). ("A" type of summary is issued where Magistrate classifies the case as true but undetected — "B" and "C" types of summaries explained.) ** AIR 1966 Bom 145 (146) = 1966 Cri LJ 650 = 67 Bom LR 822.

(5) Report under Section 173 to Magistrate for granting summary 'A', 'B' or 'C' — Grant of summary means accused will not be prosecuted — Order is for benefit of accused — Accused need not be heard, before granting summary. AIR 1966 Bom 145 (146) = 1966 Cri LJ 650.

(6) Magistrate taking cognizance of the report under Section 173 (1) (a), irrespective of whether it is a charge sheet or a Final Report, acts as a Court of law. 1965 All WR (HC) 783 (787) = 1965 All Cri R 520.

(7) Order of Commissioner of Police in Madras under Section 173 referring complaint as mistake of fact will not bar same complaint being filed before a Magistrate having jurisdiction, nor its entertainment by such Magistrate amount to abuse of process. AIR 1969 Mad 177 (179, 180) = 1969 Cri LJ 618 = (1968) 1 Mad LJ 321.

(8) The mere fact that an investigating officer has expressed an opinion about the innocence of an accused in his report under Section 173, Criminal P. C.,

Section 173 — Note 10 (contd.)
which section does not require him to do so, does not make it incumbent on the Courts to pass an order of acquittal. ('61) 63 Pun LR 571 (573).

(9) Letter to Police alleging certain cognizable offences — F. I. R. registered on the basis of the letter and investigation started— Informant filing complaint before Magistrate against the same persons making the same allegations — Police Report filed under Section 173 stating that the allegations were false — There could be no objection to the continuance of proceedings relating to the non-cognizable offences under the other sections. **AIR 1969 SC 355 (360) = (1969) 1 SCJ 383 = 1969 Cri LJ 645.** (C. R. No. 34-M of 1965 D/- 4-2-1966 (Punj), **Reversed.**)

10A. Action by Magistrate on final report. — (1) There is no power, expressly or impliedly conferred, under the Code, on a Magistrate to call upon the police to submit a charge sheet, when they have sent a report under Section 169 that there is no case made out for sending up an accused for trial. **AIR 1968 SC 117 (123, 124) = 1968 Cri LJ 97 = (1967) 3 SCR 668.** (AIR 1960 Bom 240; AIR 1960 Pat 438, **Overruled.** Cr. Rev. No. 1020 of 1966 D/- 13-9-66 (Pat) **Reversed.**) ** AIR 1962 Cal 135 (145) = 1962 (1) Cri LJ 285 = 66 Cal WN 697 (FB). (Cri Revn. No. 226 of 1960, D/- 12-9-1960 (Cal) and obiter observations in AIR 1941 Cal 263, **Overruled.**) ** AIR 1969 All 241 (241, 242) = 1968 All LJ 429 = 1969 Cri LJ 590 ** AIR 1969 Orissa 149 (150) = 1969 Cri LJ 926 = 34 Cut LT 1237 ** AIR 1960 Madh Pra 12 (13) = 1960 Cri LJ 79 = 1959 MPLJ 875.

(2) Magistrate, disagreeing with final report that no case is made out, can take cognizance under Section 190 (1) (c) or may order further investigation under Section 156 (3). **AIR 1968 SC 117 (123, 124) = 1968 Cri LJ 97 = (1967) 3 SCR** 668. (AIR 1960 Bom 240 and AIR 1966 Pat 438, **Overruled.** Cri. Revn. No. 1020 of 1966, D/- 5-8-1966 (Pat) and Cri. Revn. No. 40 of 1965, D/- 13-9-1966 (Pat), **Reversed.**) ** AIR 1966 Guj 283 (289, 290) = (1966) Cri LJ 1420 = (1966) 7 Guj LR 130 (FB) ** (1967) 8 Guj LR 350 (354) (DB) ** AIR 1966 Raj 233 (236, 237) = 1966 Raj LW 352 = 1966 Cri LJ 1202 (DB) ** AIR 1960 Mys 237 (238) = 1960 Cr LJ 1226 (1) = 38 Mys LJ 490 = 1960 Mad LJ (Cr) 594.

(3) Magistrate not agreeing with final report has power to require further investigation to be made. AIR 1969 All 241 (241, 242) = 1968 All LJ 429 = 1969 Cri LJ 590.

(4) Final report by police — Report negative — Report not to be superseded by executive order. By judicial order Magistrate can direct police to submit charge sheet. AIR 1966 Raj 233 (236, 237) = 1965 Raj LW 352 = 1966 Cri LJ 1202 (DB).

(5) Preliminary charge sheet filed against nine persons — Final charge sheet deleting names of first four accused, making fifth accused an approver and adding three more names as accused — Private complaint filed complaining against deletion of names of main accused and giving different complexion to entire case — Meanwhile original case committed to Sessions — **Held,** Sessions trial should be stayed for short period pending completion of enquiry by Magistrate against first four accused — In case of their committal, Sessions Judge would proceed with trial by clubbing the two cases. AIR 1969 AP 206 (207) = 1969 Cri LJ 802 (DB).

(6) Investigating officer of Postal department, after making enquiry into an alleged offence under Section 53 of Post Office Act, 1898, made a report and after obtaining orders from the Post Master General lodged a complaint with the Police. The police sent up a charge-sheet against the accused under Section 173. **Held,** that the charge sheet (police report) is not a complaint under Section 4 (1) (h). ILR (1966) Guj 576 = 1966-7 Guj LR 698 (699, 700).

(7) Magistrate is not deprived of his power by any provisions of Criminal Law Amendment Act 1952 to take cognizance of offence under Section 190 upon a report made by any police officer under Section 173. AIR 1967 Pat 416 (422) = 1967 Cri LJ 1677 = 1967 BLJR 411 (DB).

[But see AIR 1966 Guj 283 (287) = 1966 Cri LJ 1420 = (1966) 7 Guj LR 130 (FB).]

(8) Magistrate taking cognizance of offence on police challan — Supplementary challan against accused who were examined as witnesses in previous challan submitted by the police— Magistrate thereupon ordered de novo trial against all — Procedure illegal. AIR 1969 Cal 316 (320) = 1969 Cri LJ 723.

(9) After submission of police report under Section 173, Magistrate may himself hold enquiry or get it held by any Subordinate Magistrate for taking cognizance under Section 190 (1) (b). AIR 1967 Pat 416 (420) = 1967 Cri LJ 1677 = 1967 BLJR 411 (DB) ** AIR 1965 Orissa 135 (136) = 31 Cut LT 282 = (1965) 2 Cri LJ 111 ** AIR 1963 Ker 85 (85) = 1962 Ker LJ 718.

11. Discharge of accused — Sub-section (3). — (1) A Magistrate can discharge the accused under sub-section (3) only in case of release of accused by police officer on his own bond under Section 169. (1947) 48 Cri LJ 774 (777) (DB) (Lah).

Section 173 — Note 11 (contd.)

(2) The words 'or otherwise as he thinks fit' in Section 173 (3), give power to the Magistrate to order prosecution of a person released on his bond, and once he orders prosecution of such a person under that power, his trial or the institution of the case against him will still be on a police report and the procedure applicable is that under Section 251-A of the Code. ILR (1957) Punj 802 (807).

(3) The power of the Magistrate to order a prosecution does not depend on the question whether the police have arrested the person who, in the Magistrate's opinion, ought to be put on his trial. The Magistrate's powers in this respect are quite as wide under Section 173 as under Section 159. ILR (1957) Punj 802 (807).

(4) Name of A not mentioned as accused in final report under the section but his name mentioned under heading 'not sent up' — Question of discharge of A would not arise when he was not sent up upon charge sheet submitted by police. **AIR 1967 SC 1167 (1168)= (1967) 2 SCJ 427 = 1967 Cri LJ 1081.**

(5) If the proceedings against the accused commence under Section 207-A, the Magistrate cannot have recourse to his powers under Section 173 (1) and cancel the case against the accused. ILR (1967) 2 Punj 103 (115).

(6) Discharge by a Magistrate under Sec. 173 (3) is separate and distinguishable from that under Section 207-A (6). ILR (1968) 1 Punj 171 (176).

(7) Where a police report discloses that there is no case against the accused person the Magistrate has merely to affirm the order of release and discharge the accused. ILR (1968) 1 Punj 171 (176).

(8) Where an accused is arrested and being proceeded against in connection with offences which are triable by a Court of Session and not by a Magistrate, there are no provisions for his discharge other than those contained in sub-section (3) of Section 173 and sub-section (6) of Section 207-A of the Cr. P. Code. ILR (1967) 2 Punj 103 (110).

(9) The Commissioner of Police in Madras can receive occurrence reports under Section 157, and finally reports under Section 173 and can also pass orders under Section 173 (3). AIR 1969 Mad 177 (179) = 1969 Cri LJ 618 = (1968) 2 Mad LJ 321.

(10) Non-compliance with Sections 173 and 190 — Appellate Court, without going into merits holding trial vitiated and directing fresh trial — Order amounts to discharge and not to acquittal — Section 403, does not bar second trial. 1962 (2) Cr LJ 544 (545) (J and K).

12. Applicability of section to proceedings for offences under Acts other than Penal Code. — (1) Institution of case for offences under Railway Property (Unlawful Possession) Act — It is on complaint and compliance with Section 173 (4) not necessary. AIR 1969 Cal 594 (601) = 1969 Cri LJ 1480.

(2) Prosecution of accused under Official Secrets Act — Accused cannot claim copies of documents referred to in Section 173, as of right. AIR 1969 Cal 535 (538) = 1969 Cri LJ 1361 (DB).

(3) For investigations and proceedings under the Bengal Excise Act (5 of 1909), Section 74 of that act makes Section 162 applicable but not Section 173. Accused not entitled to copies of statement recorded during investigation in advance even on payment of costs. AIR 1963 Cal 431 (432, 433) = 1963 (2) Cri LJ 129 (DB) ** (1962) 66 Cal WN 1040 (1044) (DB).

(4) Warrant case instituted on complaint by Customs officer — Customs authorities making investigation before lodging complaint — Section 173 (4) not applicable — Statements of witnesses recorded during investigation — Accused not entitled to get copies of such statements and of documents proposed to be relied on by prosecution at or before commencement of inquiry or trial. AIR 1966 Bom 253 (257) = 67 Bom LR 748 = ILR (1966) Bom 720 = 1966 Cri LJ 1395.

(4A) Case instituted on private complaint by Assistant Collector of Customs for offence under Sea Customs Act for smuggling of goods — Documents referred in Section 173 (4) cannot be made available to accused by resorting to Section 94. **AIR 1970 SC 962 (966).** (69 Bom LR 421, **Reversed.**)

(5) Copy of order of special police officer making a search under Suppression of Immoral Traffic in Women and Girls Act ought to be supplied to accused free of cost — Suppression of Immoral Traffic in Women and Girls Act (1956), Sections 5, 15. (1968) 9 Guj LR 278 (287, 288) = ILR (1967) Guj 1046.

(6) The bar contained in Section 6 of the Prevention of Corruption Act (2 of 1947) is not to the institution of a police case or submission of a final form by police under Section 173. AIR 1967 Pat 416 (421) = 1967 Cri LJ 1677 = 1967 BLJR 411 (DB).

(7) Investigation commenced under Calcutta Police Act — Part of it conducted under Chapter XIV, Cri. P. Code — Report cannot be under Section 173 — Section 207-A will not apply. AIR 1961 Cal 181 (182, 183) = 1961 (1) Cri LJ 374 = ILR (1960) 1 Cal 676 (DB).

(8) Section 173 contemplates a report under Chapter XIV. It cannot embody the result of investigation under other laws. AIR 1961 Cal 181 (182, 183) = (1961) 1 Cri LJ 374 = ILR (1960) 1 Cal 676 (DB).

174. Police to inquire and report on suicide, etc. — (1) The officer in charge of a police-station or some other police-officer specially empowered by the *[State Government] in that behalf, on receiving information that a person—

(a) has committed suicide, or

(b) has been killed by another, or by an animal, or by machinery, or by an accident, or

(c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

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Section 173 — Note 12 (contd.)

(9) Offence under Section 7 (1) (a) (ii) of Essential Commodities Act is cognisable — Police report after investigation into the offence comes under the section. AIR 1968 Bom 311 (313) = 70 Bom LR 69 = 1968 Cr LJ 1054.

(10) Where investigation of a non-cognizable offence under Section 22 of the Cattle Trespass Act purported to be under Chapter XIV of the Code the provisions of Section 173, would apply and the accused will be entitled to the copies of the statements recorded under Section 161. AIR 1960 Bom 476 (477) = 62 Bom LR 497 = 1960 Cri LJ 1421.

(11) Offence under Cl. 3 (c) punishable under Section 7 of Essential Commodities Act — Charge-sheet filed under Section 173, Criminal P. C. — Held, charge-sheet complied with provisions of Section 11 of the Act though submitted on form prescribed for police challan. AIR 1966 Madh Pra 5 (6) = 1966 Cri LJ 33 = ILR (1965) Madh Pra 830 (DB).

(12) Documents need not be formally proved in committal proceedings sanction for prosecution under Section 25 (1) (a) of Arms Act, being part of the documents under Section 173, Magistrate can commit accused for offence under that section. AIR 1968 Pat 258 (268) = 1968 Cri LJ 958 (DB).

(13) Investigation by officer under Prevention of Corruption Act, 1947 — Officer not empowered under Section 5-A, Prevention of Corruption Act — Investigation illegal — Accused not entitled to copies of statements recorded in illegal investigation. AIR 1969 All 503 (504) = 1969 Cri LJ 1217 = 1968 All Cri R 354.

(14) Offence of bribery triable exclusively by Special Judge — Final report under Section 173, can be accepted by District Magistrate. AIR 1960 All 618 (622) = ILR (1960) 1 All 214 = 1960 Cri LJ 1290 (DB).

(15) The report of a police officer investigating a prohibition offence will fall not under Section 48 of the Madras Prohibition Act but under Section 173, Cri. P. C. 1960 Mad WN 317 (320) (DB).

13. Nature of proceedings under the section. — (1) Proceedings by Magistrate under Sections 167 and 173 are judicial. AIR 1969 Andh Pra 281 (291) = (1968) 2 Andh WR 122 = 1969 Cri LJ 1025 (DB).

(2) The commitment of a case to the Court of Session for trial without recording any evidence is not illegal unless from the commitment order it appears that the Magistrate had not perused the documents referred to in Section 173, Criminal P. C. AIR 1960 All 236 (238) = 1960 Cr LJ 447 = 1959 All LJ 838. (AIR 1956 Raj 318, Dissent from.)

(3) Police submitting report under Section 169 — Magistrate commits irregularity in calling for charge-sheet — Irregularity does not vitiate trial in absence of proof of miscarriage of justice. 1969 Cr LJ 1307 (1309) = 35 Cut LT 381.

(4) Under Section 173, Cr. P. Code it is open to the Magistrate to accept the police report or not. If he accepts it, then he is to cancel the case. But, if he does not, all that he can do is to make a notice that he does not accept the police report. AIR 1968 Manipur 29 (30) = 1968 Cr LJ 191.

(5) False information to Police — Case concelled on final report from Police — Magistrate in accepting such report does not act as Court — Prosecution of informant under Section 211, I. P. C. is not in relation to proceedings before Court. AIR 1961 Raj 231 (232, 233) = 1961 Raj LW 6 = 1961 (2) Cri LJ 691.

(6) Order directing submission of charge-sheet — Whether a judicial order or an administrative order (Quaere). AIR 1965 Orissa 135 (136) = 31 Cut LT 282 = (1965) 2 Cri LJ 111.

SECTION 174 — SYNOPSIS

1. **Object.**
2. **Some other officer specially empowered.**
3. **"Shall proceed to the place where the body of such deceased person is."**
4. **"In the presence of two or more respectable inhabitants."**

4A. Investigation under this section.

5. **"Draw up a report".**
6. **Form of inquest reports.**
7. **Inquest report — Admissibility of.**
8. **When there is any doubt, etc. — Sub-section (3).**
9. **"Forward the body."**
10. **Post mortem examination.**
11. **Confessions by the accused at the inquest.**
12. **False statement by witness at inquest.**

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the °[State Government], or by any general or special order of the District or Sub-Divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-Divisional Magistrate.

(3) When there is any doubt regarding the cause of death, or when for any other reason the police-officer considers it expedient so to do, he shall, subject to such rules as the °[State Government] may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the °[State Government], if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) In the Presidencies of Fort St. George‡ and Bombay,§ investigations under this section may be made by the head of the village, who shall then report the result to the nearest Magistrate authorised to hold inquests.

Section 174 — Synopsis (contd.)

13. **Inquest by Magistrate — Sub-section (5).**
14. **Coroners' inquest in the Presidency towns of Madras and Bombay.**
15. **Articles recovered from or near corpse — Disposal of.**

1. Object. — (1) The object of this section is merely to ascertain the cause of death; hence the inquiry under this section should be confined to that purpose only and should not be extended for the purpose of finding out the persons who caused the death. AIR 1940 Lah 210 (214) = 41 Cri LJ 639.

2. Some other officer specially empowered.— (1) Act 8 of 1867 of Bombay relating to police-patels remains unaffected except where the Code contains a specific provision to the contrary. (1894) 19 Bom 612 (613) (DB) ** 1895 Rat 740 (744) (DB) ** 1895 Rat 792 (792) (DB).

(2) A police constable in Bombay cannot hold the inquest as a police-patel. He has to proceed under this section. 1895 Rat 771 (772) (DB).

3. "Shall proceed to the place where the body of such deceased person is." — (1) This section is inapplicable where the dead body is not available, e.g., where it has been burnt or disposed of long ago. It is intended to be applied to cases in which an inquest is necessary. (1908) 9 Cri LJ 105 (106) = 1908 Pun Re (Cr) No. 27 (DB).

4. "In the presence of two or more respectable inhabitants." — (1) Failure to examine at the trial, persons who have witnessed the inquest proceedings, may be a ground for criticising the prosecution evidence in a case. (1909) 10 Cri LJ 321 (323) (DB) (Lah).

(2) Failure to comply with the mandatory provisions in Section 174 (1) which requires the presence of two or more respectable inhabitants of the neighbourhood discredits the report of the Police. AIR 1954 Trav-Co 282 (285) = ILR (1953) Trav-Co 841 = 1954 Cri LJ 658 (DB).

(3) A witness to the inquest is not competent to act as Juror in a case in which the inquest was made. AIR 1962 Cal 449 (453) = 67 Cal WN 221 = 1962 (2) Cri LJ 336 (DB).

4A. Investigation under this section. — (1) Maintaining of case diary not obligatory — Assuming failure amounts to illegality, trial not vitiated in absence of prejudice. AIR 1968 Bom 127 (145) = 68 Bom LR 941 = 1968 Cri LJ 453. (Two categories of investigations have been contemplated under Chapter XIV, Cr. P. C. The first category begins with information in cognizable cases and it ends with charge-sheet under Section 173, Cr. P. C. Sections 174 and 175 lay down complete procedure by itself for purpose of investigation which starts on information relating to suicide. etc. Overruled on another point in AIR 1969 Bom 294 (FB).)

(2) It is neither necessary that all eyewitnesses should be examined at the inquest nor is it incumbent on the Police Officer to record verbatim and separately the statements of each of the persons examined by him under Section 175, Cr. P. Code and investigation under S. 174, Cr. P. Code should not be confounded or

(5) The following Magistrates are empowered to hold inquests,°† namely, any District Magistrate, †[Sub-divisional Magistrate or Magistrate of the first class]; and any Magistrate especially empowered in this behalf by the °[State Government] or the District Magistrate.

[1882—S. 174; 1872—S. 133; 1861—S. 161.]

[°] Substituted for "Provincial Government" by A. L. O. 1950.

[†] Substituted for "or Sub-divisional Magistrate", by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), Section 41.

[‡] That is, the State of Tamil Nadu — See T. N. A. L. O. 1970.

[§] That is, States of Maharashtra and Gujarat and Bombay area of Mysore State.

[°‡] Salaried Magisrate for the City of Ahmedabad have been invested with powers to hold inquests under this section — See Guj. Gaz., 9-11-1961, Pt. IV-A, p. 286.

STATE AMENDMENTS

Andhra Pradesh

(1) Andhra Area — In its application to the Andhra area of the State of Andhra Pradesh in sub-section (4) of Section 174 after the word "Bombay" insert the words "and in the State of Andhra as it existed immediately before the 1st November, 1956."—An. A. L. O., 1953 and Andhra Pradesh A. L. O., 1957.

(2) Added Territories. — In its application to the territories added under Sec. 3 (a) of Central Act LVI of 1959, the amendments made in Section 174 by Madras Act XXXI of 1956 shall stand repealed. — Andhra Pradesh A. L. O., 1961 (w. r. e. f. 1-4-1960).

Section 174 — Note 4-A (contd.) equated with an investigation into a cognizable offence which is governed by provisions of Sections 160 and 161, Cr. P. Code. (1970) 1 An WR 182 (188). (But if there are police standing orders for recording the statement, they should be followed.)

5. "Draw up a report." — (1) The report under this section should contain the statements of the persons examined by the Police. There is nothing in the Code which prevents statements made at the inquest being recorded in full. On the other hand, such statements will be of great use to test the value of the evidence in Court. (1911) 12 Cri LJ 124 (125) (DB) (Mad).

(2) The statements cannot be used as substantive evidence. AIR 1952 Trav-Co 300 (Pr 10) = ILR (1952) Trav-Co 261= 1952 Cri LJ 1290 (DB).

(3) Sub-section (1) directs only police-officers to draw up and forward the report. A Magistrate holding an inquest under sub-section (5) is not bound to report to anyone else. But in case he sends a report, it cannot be treated as a finding in a judicial proceeding and is not open to revision by the High Court. (1878) 3 Cal 742 (752, 753) (DB).

[But see AIR 1940 Rang 68 (70) = 41 Cri LJ 470 (DB).]

(4) The statements of witnesses given before the Police holding the inquest fall within the purview of Section 162 which requires that such statements shall not be signed by the deponent. AIR 1954 Trav-Co 282 (285) = ILR (1953) Trav-Co 841 = 1954 Cri LJ 658 (DB) ** AIR 1955 Pepsu 81 (85) = ILR (1954) Patiala 352 = 1955 Cri LJ 983 (DB) ** AIR 1955 Trav-Co 6 (7) = ILR (1954) Trav-Co 1200 = 1955 Cri LJ 122 (DB).

(5) An inquest report is not a statement made by any person within the meaning of Section 180 of the Penal Code and a refusal by a person examined at the inquest to sign it is not an offence. (1910) 11 Cri LJ 500 (500) (Mad)

(6) The village-headman acting under sub-section (4) has only the powers of a police-officer specified herein. (1910) 11 Cri LJ 500 (500) (Mad).

6. Form of inquest reports. — (1) This section does not require a statement to be entered in the form as to who killed the deceased person. 1896 Rat 843 (843, 844) (DB) ** (1968) 2 SCWR 245 (247).

(2) The panchanama prepared by the police should not contain any incriminating statements made by the accused in the presence of the police. AIR 1950 Sau 2 (5) = 3 Sau LR 114 (DB).

(3) The inquest report is a document of vital importance and has to be prepared promptly because it has to be sent to the doctor along with the dead body sent for post-mortem examination. (1963) 65 Pun LR 409 (413).

7. Inquest report — Admissibility of.— (1) The report requires to be legally proved for it does not prove itself. (1905) 3 Cri LJ 41 (42) (DB) (Bom) **

Gujarat

In its application to the State of Gujarat, the amendment made in Section 174 is the same as that made in Maharashtra. — See Cent. Act XI of 1960, Section 87.

Note: For appointment of an Executive Magistrate in the City of Ahmedabad, see Gujarat Act XIX of 1961, Section 14 (3A), as inserted by Gujarat Act II of 1963.

Maharashtra

(1) In its application to the State of Maharashtra, in sub-section (5) of Section 174 for the words "or Magistrate of the first class and any Magistrate" substitute the words "or any Executive Magistrate." — Bom. Act XXIII of 1951, Section 2 and Schedule. (1-7-1953).

(2) After the re-organization of the State of Bombay in 1956, the amendment made in Section 174 by the above mentioned Bombay Act is extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Punjab; Haryana; Chandigarh:

In its application to the States of Punjab and Haryana and the Union Territory of Chandigarh, in sub-section (5) of Section 174, for the words "Magistrate of the first

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Section 174 — Note 7 (contd.)
AIR 1952 Hyd 55 (Pr 11) = 1952 Cri LJ 572 (DB).

(2) It is questionable how far an inquest report is admissible except under Section 145, Evidence Act. **AIR 1955 SC 216 (220) = 1955 Cri LJ 572 = 1955 SCR 1083.**

(3) It is not correct to say that in the face of the medical evidence the mention of injuries in the inquest report cannot prevail. If the investigation officer has stated a fact which he saw with his own eyes, it cannot be said that it should not be read in corroboration of the evidence of the eye-witnesses. AIR 1957 Raj 331 (Pr 13) = 1957 Cri LJ 1187.

(4) Statements contained in the Inquest Report are not substantive evidence and ought not to be relied upon to arrive at a conclusion. AIR 1957 Orissa 216 (Pr 6) = 1957 Cri LJ 1152 (DB) ** AIR 1952 Trav-Co 300 (Pr 10) = ILR (1952) Trav-Co 261 = 1952 Cri LJ 1290 (DB).

8. When there is any doubt, etc. — Sub-section (3). — (1) Failure to carry out the directions laid down under this section by a police officer knowing that he would thereby be saving some one from legal punishment is an offence under Section 217 or Section 218 of the Penal Code. AIR 1932 Cal 850 (855) = 33 Cri LJ 657 (DB).

9. "Forward the body." — (1) It is essential in a trial for murder that proof should be adduced of the fact that the same body over which the inquest was held was forwarded and examined by the medical officer. (1874) 11 Bom HCR 242 (243) (DB).

10. Post mortem examination. — (1) The medical officer must note the time when he conducted the examination. AIR 1931 Oudh 119 (120) = 32 Cri LJ 697 (DB).

(2) Considering the important nature of the evidence which is generally supplied by the results of such examination, the result of the observation, external and internal should be fully recorded. (1911) 12 Cri LJ 124 (125) (DB) (Mad).

(3-4) The post mortem examination is a very important piece of evidence in criminal trials, and the medical officers, who are entrusted with this work should do it with utmost care and attention and should not perform it as a mere formal duty. AIR 1955 All 189 (191) = 1955 Cri LJ 473 (DB).

(5) The post mortem report should mention whether the injuries are ante mortem or post mortem. AIR 1957 Orissa 216 (Pr 6) = 1957 Cri LJ 1152 (DB).

(6) The report of the medical officer is not admissible in evidence except for the purpose of contradicting the officer who made it or to refresh his memory under the provisions of Sections 159 to 161 of the Evidence Act. AIR 1930 Sind 225 (236) = 31 Cri LJ 1026 (DB) ** (1902) 6 Cal WN 98 (101) (DB).

[See also AIR 1967 Guj 288 (288) = 1967 Cri LJ 1633 (2).]

(7) When the medical officer is not examined at the beginning of the enquiry, a copy of the post mortem certificate ought to be given to the accused. AIR 1927 Mad 512 (512) = 28 Cri LJ 463.

11. Confessions by the accused at the inquest. — (1) Confessions made by an accused and recorded in the panchanamas in the presence of the police-officers must be excluded as inadmissible. (1911) 12 Cri L Jour 429 (429, 430) (DB) (Bom) ** AIR 1946 Nag 321 (323) = 47 Cri L Jour 918 = ILR (1946) Nag 946 (DB).
[See AIR 1932 Mad 24 (24) = 33 Cri L Jour 173.]

(2) Statement by a person at the time when there was no suspicion against him cannot be used as substantive evidence.

class and any Magistrate", substitute the words, "Executive Magistrate of the first class or any other Executive Magistrate". — Punj. Act XXV of 1964, Section 2 and Schedule Pt. I, Item (42) (2-10-1964) and Act 31 of 1966, Sections 29 and 88 (1-11-1966).

Rajasthan

Abu Area. — In its application to the Abu area of the State of Rajasthan, the amendment made in Section 174 was the same as that made in (1) of Maharashtra. — Cent. Act XXXVII of 1956, Section 119. (1-11-1956).

Tamil Nadu

(1) In its application to the pre-reorganization State of Madras, in Section 174 —

(i) in sub-section (2) add at the end the words "or, as the case may be, to the Chief Presidency Magistrate in the Presidency-town of Madras"; and

(ii) in sub-section (5) for the words "and any Magistrate." substitute the words "any Presidency Magistrate and any Magistrate." — Mad. Act XXXI of 1956, Section 2 (31-12-1956): Tamil Nadu A. L. O., 1969.

(2) Transferred Territories. — In its application to Kanyakumari district and Shenkottah taluk transferred to the State of Madras under Section 4 of the State Reorganization Act, 1956 the amendments made in Section 174 by Madras Act XXXI of 1956 are extended as from 18-12-1957 by Mad. Act XXII of 1957.

(3) Added Territories. — In its application to the territories added to the State of Madras under Section 3 (b) of Cent. Act LVI of 1959—

(a) the words "and in the State of Andhra as it existed immediately before the 1st November, 1956" added in Section 174 (4) by Andh. Pra. A. L. O., are omitted; — T. N. (Add. Ter.) A. L. O., 1961 (w. r. e. f.) (1-4-1960); Tamil Nadu A. L. O., 1969.

(b) the amendments made in Section 174 by Madras Act XXXI of 1956 are extended as from 6-12-1961 by Mad. Act XXXIX of 1961.

(4) In its application to the area comprised within the local limits of the ordinary original civil jurisdiction of the High Court of Madras, Section 174 shall be read as follows, namely:—

Section 174 — Note 11 (contd.)
AIR 1952 Trav-Co 300 (Pr 10) = ILR (1952) Trav-Co 261 = 1952 Cri L Jour 1290 (DB).

12. False statement by witness at inquest. — (1) Statements made in the course of an investigation under Chapter XIV are not "charges" as contemplated by Section 211 of the Penal Code. It would make criminal investigation very difficult if any persons who gave voice to a suspicion were rendered liable to criminal prosecution. AIR 1932 Mad 24 (24) = 33 Cri L Jour 173.

(2) The fact that a person accuses another falsely of murder in the course of an investigation under this section is not an offence under Section 194 of the Penal Code even when he volunteers the information. AIR 1922 Lah 133 (133, 134) = 23 Cri L Jour 82.

See also Section 161.

(3) Where a person makes contradictory statements, one before a police-officer under this section and another before the Magistrate in the course of the enquiry, he will be guilty of an offence under Section 193 of the Penal Code. (1909) 9 Cri L Jour 304 (305) (DB) (Mad).

13. Inquest by Magistrate — Sub-section (5). — (1) The investigation by Magistrate under this section is distinct from an enquiry under Section 202. AIR 1927 Lah 30 (31) = 28 Cri L Jour 26.

14. Coroners' inquest in the Presidency Towns of Madras and Bombay. — (1) The Coroners Act, 4 of 1871, empowers the Coroner to hold an inquest in the Cities of Bombay and Calcutta. It does not, however, take away the right of the Presidency Magistrate to investigate into the crime independently. (1892) 16 Bom 159 (161) (DB).

15. Articles recovered from or near corpse — Disposal of. — (1) Where articles are recovered from or near the corpse of the deceased it is the duty of the police to send them to the malkhana in sealed cover with contents noted above. Otherwise no reliance can be placed upon evidence furnished by recovery of these things. AIR 1949 All 291 (296) = ILR (1949) All 658 = 50 Cri L Jour 498.

174. Enquiry into violent or suspicious death to be ordinarily conducted by officer in charge of police station. — (1) An officer in charge of a police station, on receiving information that a person —

(a) has committed suicide, or

(b) has been killed by another, or by an animal, or by machinery, or by an accident, or

(c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give information thereof to the Commissioner of Police, and, in the absence of any rule or order under the next following section to the contrary, proceed to the place where the body of such deceased person is, and there, in the presence of five or more respectable inhabitants of the neighbourhood, make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the office of the Commissioner of Police.

(3) In any of the following cases, namely:—

(a) in any case in which the Local Government may by rule so require,

(b) in any case in which death appears to have been caused by violence, or there is any doubt regarding the cause of death,

(c) in any other case in which the police-officer considers it expedient so to do,

he shall cause the body to be examined by a medical officer appointed in this behalf by the Local Government.

(4) The police-officer may, by order in writing, summon five or more persons as aforesaid for the purpose of the investigation under this section, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(5) If the facts do not disclose a cognizable offence to which Section 170 applies, such persons shall not be required by the police-officer to attend a Magistrate's Court". — See Coroners (Madras) Act, 1889 (V of 1889), Section 4 (2) (Repealed by the Repealing and Amending Act, 1938 (I of 1938).)

(5) In sub-section (4) for "Presidencies of Fort St. George and Bombay", substitute, "State of Tamil Nadu and the Presidency of Bombay." — T. N. A. L. O. 1970 (14-1-1969).

Union Territories (except Chandigarh)

In its application to the Union Territories, in sub-section (5) of Section 174, for the words "Magistrate of the first class, and any Magistrate", substitute the words "Executive Magistrate of the first class, and any other Executive Magistrate".—Act 19 of 1969, S. 3 and Schedule, Item 43 (In Delhi, on 2-10-1969.)

West Bengal

(1) In its application to the State of West Bengal, to sub-section (1) of Seciton 174 add the following Proviso, namely,—

"Provided that, unless the State Government otherwise directs, it shall not be necessary under this sub-section, in any case where the death of any person has been caused by enemy action, to make any investigation or to draw up any report or to send any intimation to a Magistrate empowered to hold inquests." — Beng. Act VII of 1944, Section 4 (8-2-1945).

(2) The amendment made in Section 174 by the above-mentioned Bengal Act is extended in its application to—

(a) Cooch-Behar Area as from 1-1-1951 by Cent. Act LXVII of 1950, Section 3 and West Bengal Act LXIII of 1950;

(b) Chandernagore area as from 2-10-1954 by Cent. Act XXXVI of 1954, Sec. 17 and West Beng. Act V of 1955, Section 3;

(c) Transferred Territories, that is, territories transferred to the State of West Bengal under Section 3 of Cent. Act XL of 1956, as from 1-7-1959, by West Beng. Act XIX of 1958, Section 3.

(3) (i) in sub-sections (1) and (2), for the words "Sub-Divisional Magistrate" substitute the words "Sub-divisional Executive Magistrate".

(ii) in sub-section (5), for the words "Sub-Divisional Magistrate or Magistrate of the first class, and any Magistrate", substitute the words "Sub-divisional Executive Magistrate or Executive Magistrate of the first class, and any other Executive "Magistrate". — W. B. Act 8 of 1970, Section 2 and Schedule, Item 62.

[*]175. **Power to summon persons.** — (1) A police-officer proceeding under Section 174 may, by order in writing summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

(2) If the facts do not disclose a cognizable offence to which Section 170 applies, such persons shall not be required by the police-officer to attend a Magistrate's Court.

[1882—S. 175; 1872—S. 134; 1861—Nil.]

[*] In its application to the area comprised within the local limits of the ordinary original civil jurisdiction of the High Court of Madras, Section 175 shall be read as follows, namely:—

"175. **Power to make rules and orders with respect to investigations by other authorities than officers in charge of police stations.** — (1) The Local Government may make rules, and the Commissioner of Police may from time to time make general or special orders consistent with those rules, defining —

(a) the circumstances in which an officer in charge of a police station, after giving intimation to the Commissioner of Police of any such event as is mentioned in clause (a), clause (b), or clause (c) of sub-section (1) of the last foregoing section, is not to proceed to discharge any of the further functions of such an officer under that section, and

(b) the circumstances in which, and in such circumstances the authority by whom, those further functions are to be discharged.

(2) The authority to whom the discharge of such further functions may be entrusted by rules or orders under sub-section (1) may be the Commissioner of Police, or any of his Deputies or Assistants, or any other police-officer of rank not below that of Inspector, and such authority, in discharge of those functions, may exercise any of the powers and

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Section 175 — Note 1

(1) An investigation under Sec. 174 ceases when the cause of death is ascertained. Where it is ascertained that death is due to homicide, then the investigation becomes an investigation under Section 161. (1905) 2 Cri L Jour 590 (592) (Kathiawar).

(2) In an examination under this section the person examined is bound to answer truly the questions put to him. But a person who comes forward without being summoned by an order in writing to attend before the police officer and volunteers information is not bound to give true answers to questions. AIR 1922 Lah 133 (134) = 23 Cri L Jour 82 ** (1908) 9 Cri L Jour 105 (106) = 1908 Pun Re (Cr) No. 27 (DB).

(3) Statements of witnesses examined at the inquest can be recorded in full; verbatim reports of such statements may often be of great use to a Court in testing the value of the evidence given subsequently. (1911) 12 Cri L Jour 124 (125) (DB) (Mad).

(4) The statements of witnesses recorded under this section are governed by the general provisions contained in Section 162 which enjoins that the statement shall not be signed by the person making it. AIR 1955 Pepsu 81 (85) = ILR (1954) Patiala 352 = 1955 Cri L Jour 983 (DB).

[See also AIR 1968 Bom 127 (146) = 1968 Cri LJ 453 = 68 Bom LR 941. (Overruled on another point in AIR 1969 Bom 294 (FB)) ** AIR 1960 Andh Pra 545 (551) = 1960 Cri LJ 1402 (DB).]

shall perform the duties, which, but for such rules or orders, might be exercised and should be performed by the officer in charge of the police station." — See Coroners (Madras) Act, 1889 (V of 1889), Section 4 (2). (For rules under the section, see Notfn. No. 87, Ft. St. Geo. Gaz., 1889, Pt. I, p. 366.)

*176. **Inquiry by Magistrate into cause of death.**—(1) When any person dies while in the custody of the police,† the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in Section 174, clauses (a), (b) and (c) of sub-section (1), any Magistrate so empowered may hold an inquiry into the cause of death, either instead of, or in addition to, the investigation held by the police-officer, and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

(2) **Power to disinter corpses.**—Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.‡

[1882—S. 176; 1872—S. 135; 1861—Nil.]

[*] In its application to the area comprised within the local limits of the ordinary original civil jurisdiction of the High Court of Madras, S. 176 shall be read as follows, namely :—

"176. **Provisions with respect to inquiries by Presidency Magistrates and disinternment of dead bodies.**—(1) The Chief Presidency Magistrate, or such other Presidency Magistrate as the Chief Presidency Magistrate may depute in this behalf, shall when any person dies while in the custody of the police or in prison, and may in any other case mentioned in S. 174, sub-section (1), clause (a), cl. (b), or clause (c), hold an inquiry into the cause of death, either instead of, or in addition to, the investigation under either of the two last foregoing sections; and, where he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence, and shall record any evidence taken by him in the course of the inquiry as nearly as may be in the manner prescribed in section 362.

Section 176 — Note 1

(1) This section is designed to provide a check on the enquiry held by the police or to calm any alarm that has been created in the mind of the public by reason of a violent or unnatural death or to allay any unfounded suspicion or to put in force the law against a particular individual or merely to gain information which may be of use to the authorities. AIR 1959 Mad 294 (304) = ILR (1959) Mad 12 = 1959 Cri L Jour 856 (DB) ** AIR 1958 Punj 141 (146) = ILR (1958) Punj 745 = 1958 Cri L Jour 673 (DB). (AIR 1928 Bom 390 and 3 Cal 742 (750), Rel. on.)

(2) Section 176 empowers a Magistrate to hold an enquiry into the cause of death either instead of or in additon to the investigation held by the police officer under Section 174. AIR 1958 Punj 141 (146) = ILR (1958) Punj 745 = 1958 Cri L Jour 673 (DB).

(3) An enquiry conducted under Section 176 read with (Madras) Police Standing Order No. 157 does not offend the other sections of the Code. Nor does it violate Articles 14, 20 (3) and 21 of the Constitution. AIR 1959 Mad 294 (306, 307) = ILR (1959) Mad 12 = 1959 Cri L Jour 856 (DB).

(4) The omission to hold an enquiry under this section is curable under Section 537 where it has not occasioned any failure of justice. AIR 1945 Nag 143 (145) = ILR (1945) Nag 315 = 47 Cri L Jour 196 (DB). (For example, when there is no corpse on which an inquest could be held.)

(5) Proceeding under this section is both an "inquiry" and a "judicial proceeding". AIR 1940 Rang 68 (69) = 41 Cri L Jour 470 (DB) ** AIR 1928 Bom 390 (393) = 29 Cri LJ 1063 (DB). (3 Cal 742 and AIR 1921 Bom 3 = 22 Cri L Jour 241 (FB), Distinguished.)

(6) While holding an enquiry under this section, the Magistrate performs no judicial functions. AIR 1958 Punj 141 (146) = ILR (1958) Punj 745 = 1958 Cri L Jour 673 (DB). (AIR 1940 Rang 68, **Held,** no longer good law.)

(7) The enquiry by the Magistrate under this section occupies no higher status than that of a coroner's inquest, although by virtue of a definition in the

(2) Whenever the Commissioner of Police or a Presidency Magistrate considers it expedient, for the discovery of the cause of death of a deceased person whose body has been interred, that an examination should be made of the dead body, such Commissioner or Magistrate, as the case may be, may cause the body to be disinterred and examined."—See Coroners (Madras) Act, 1889 (V of 1889), S. 4 (2).

[†] Similarly when a prisoner dies in the prison in the cities of Calcutta and Bombay, Coroner has to be sent for.—See S. 9 of the Coroners Act, 1871 (IV of 1871).

[‡] For a similar power to order body to be disinterred given to the Coroners of Bombay and Calcutta, see S. 11 of the Coroners Act, 1871 (IV of 1871).

STATE AMENDMENT

Union Territory (Laccadive, Minicoy and Amindivi Islands)

In its applications to the Union Territory of L. M. & A. Islands, in Part V, after Section 176, insert the following, namely. —

"**176A. Power of Amin to investigate into certain offences.**—(1) Notwithstanding anything contained in this Code, where any cognizable offence triable by a Magistrate of the third class is committed in any area within the local limits of the jurisdiction of an Amin and no police-station is located within a reasonable distance from the place of commissison of such offence, the Amin may investigate into such offence and for the purposes of such investigation, the Amin shall have all the powers conferred and duties imposed by this chapter on an officer in charge of a police-station.

(2) For conducting any investigation under sub-section (1), the Amin shall be assisted by such number of residents of Laccadive, Minicoy and Amindivi Islands not exceeding four as the Administrator of the said Islands may appoint in this behalf.

Explanation. — In this section "Amin" means any officer appointed by such Administrator to exercise the powers and discharge the duties of an Amin in any local area." — Reg. VIII of 1965, S. 3 (1) & Sch.

NOTE.—The Union Territories (Separation of the Judicial and Executive Functions) Act, 1969 (19 of 1969) has now repealed this provision but since this Act has not been enforced so far, we have reproduced the same above. Act 19 of 1969 applies to all the Union Territories except Chandigarh.

Section 176 — Note 1 (contd.)

body of the Code it has been dignified to the status of a legal proceeding. AIR 1958 Punj 430 (430) = ILR (1958) Punj 899 = 1958 Cri L Jour 1347 (DB).

(8) A Magistrate holding an inquiry under this section acts purely in an executive capacity. AIR 1958 Punj 430 (430) = ILR (1958) Punj 899 = 1958 Cri L Jour 1347 (DB).

(9) The proceedings held in pursuance of the aforesaid provisions as a fact finding inquiry are not judicial or quasi-judicial proceedings amenable to a writ of certiorari. AIR 1959 Mad 294 (312) = ILR (1959) Mad 12 = 1959 Cri L Jour 856 (DB). (AIR 1944 Mad 37, **Overruled.**)

(10) Powers of Magistrate holding inquest — Whether he can record confession of accused — See Notes on Sec. 164.

(11) A report or finding under the section is not necessary; and if there is one, it does not form part of the proceeding. ('78) 3 Cal 742 (752, 753) (DB).

[But see AIR 1940 Rang 68 (70) = 41 Cri L Jour 470 (DB). (Court holding an enquiry under this section must come to a finding as to the cause of death.)]

(12) An accused is entitled to get copies of the inquest report and of the statements made by witnesses at the inquest. If they are not available, the Court has power under Section 94 to call upon the police to produce them. AIR 1925 Mad 424 (425) = 26 Cri L Jour 426.

(13) There is no objection to a Magistrate granting copies of statements recorded under Section 176, of witnesses who are going to be examined at the preliminary inquiry. AIR 1945 Mad 64 (65) = 46 Cri L Jour 412.

(14) A District Magistrate has no power to send the enquiry or interfere with it, beyond calling for a report under Section 435 and reporting for the orders of High Court under Section 438. AIR 1928 Bom 390 (390) = 29 Cri L Jour 1063 (DB).

PART VI

PROCEEDINGS IN PROSECUTIONS

CHAPTER XV

OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS

A — Place of inquiry or trial

177. Ordinary place of inquiry and trial.—Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

[1882—S. 177; 1872—S. 63, para. 1; 1861—S. 26.]

Section 176 — Note 1 (contd.)

(15) As to whether proceedings under Section 176 are open to revision, see Notes on Section 435.

(16) Statements recorded by Magistrate in the course of inquiry under this section would not be admissible in evidence in any future proceedings. AIR 1959 Mad 294 (312) = ILR (1959) Mad 12 = 1959 Cri LJ 856 (DB).

[But see AIR 1964 Andh Pra 548 (550, 551) = (1964) 2 Andh WR 43 = 1964 (2) Cri LJ 636 (DB). (AIR 1959 Mad 294, **Diss. from.**)]

(17) A Magistrate holding an inquiry under this section cannot be said to be performing the functions of a Court of law. AIR 1959 Mad 294 (316) = ILR (1959) Mad 12 = 1959 Cri L Jour 856 (DB). (AIR 1944 Mad 37, **Overruled.**) ** AIR 1958 Punj 141 (146) = ILR (1958) Punj 745 = 1958 Cri L Jour 673 (DB). (AIR 1940 Rang 68, **Held,** no longer good law — **AIR 1956 SC 66, Foll.**) ** AIR 1958 Punj 430 (430) = ILR (1958) Punj 899 = 1958 Cri L Jour 1347 (DB).

[But see AIR 1940 Rang 68 (70) = 41 Cri L Jour 470 (DB).]

(18) The result of an enquiry under Section 176 is not binding on any one and cannot be regarded as a judgment. It is wholly immaterial as far as Courts are concerned whether this inquiry is held by one executive officer or another. AIR 1958 Punj 430 (430) = ILR (1958) Punj 899 = 1958 Cri L Jour 1347 (DB).

(19) In the absence of compelling reasons to the contrary, an enquiry under Section 176 ought prima facie to be held in the same district in which all the witnesses who are to be examined under Section 176, are resident. AIR 1958 Punj 430 (430, 431) = ILR (1958) Punj 899 = 1958 Cri L Jour 1347 (DB).

(20) Statement in the inquest report is not evidence by itself and it certainly cannot be pitted against the evidence of the medical witness given in Court. **AIR 1956 SC 425 (432) = 1956 Cri LJ 815** ** 1968 Cr LJ 1237 (1241) (Manipur).

SECTION 177 — SYNOPSIS

1. **Scope.**
2. **"Ordinarily".**
3. **Several offences: venue.**
4. **"Within the local limits . . . ."**
   - **(a) Jurisdiction of Magistrate — Onus to prove.**
5. **Cheating, criminal misappropriation and selling etc., goods with counterfeit trade-mark.**
6. **Defamation, giving false information, etc.**
7. **Consequence forming part of offence charged** — See Section 179.
8. **Offences committed partly in one local area and partly in another** — See Section 182.
9. **Offences consisting of several acts** — See Section 182.
10. **Offences by foreigners.**
11. **Irregular arrest — Effect.**
12. **Transfer of territory from one State to another.**
13. **Transfer of territory to another district.**
14. **Military offenders.**
15. **Effect of trial at wrong places.**
16. **Committal by or to wrong Court.**

1. Scope — General. — (1) It is a general principle of law that all crime is local. AIR 1930 Bom 490 (491) (FB) ** (1893) 17 Bom 369 (372, 373) (DB) ** AIR 1970 Cal 110 (114) = 1970 Cri LJ 332 ** AIR 1965 Ker 295 (296) = 1965 (2) Cri LJ 775 = 1965 Ker LT 548 ** AIR 1963 Guj 234 (236) = 1963 (2) Cri LJ 273 = (1962) 3 Guj LR 409 (DB).

(2) The jurisdiction to try a person for an offence depends upon the crime having been committed within the area of such jurisdiction. AIR 1930 Bom 490 (491) (FB) ** AIR 1959 All 67 (Pr 2) = 1959 Cri L Jour 14 ** AIR 1970 Cal 110 (114) = 1970 Cri LJ 332 ** AIR 1965 Ker 295 (296) = 1965 (2) Cri LJ 775 = 1965 Ker LT 548 ** AIR 1963 Guj 234 (236) = 1963 (2) Cri LJ 273 = (1962) 3 Guj LR 409 (DB).

[See AIR 1933 Bom 148 (150) = 34 Cri L Jour 771 (DB).]

(3) The jurisdiction to try the offender does not depend upon either the place where the offender is found or upon his nationality. This principle is found

Section 177 — Note 1 (contd.)

enacted in Section 2 of the Penal Code. AIR 1922 Mad 215 (216) = 23 Cri L Jour 490 (DB) ** **AIR 1957 SC 857 (868) = 1958 SCR 328 = 1957 Cri L Jour 1346** ** AIR 1930 Bom 490 (491) (FB).

(4) An act, committed on land outside India by a foreigner, is not an offence triable by Indian Courts under their Criminal Codes. AIR 1946 Nag 128 (130) = ILR (1945) Nag 130 ** (1873) 10 Bom HCR 356 (357) (DB) ** (1876) 1 Mad 171 (172) (SB) ** (1887) 9 All 523 (525) (DB) ** (1901) 1901 Pun Re (Cr) No. 1, p. 1 (3) (DB) ** (1866) 4 Bom HCR (Cr) (Cas) 38 (39) (SB) ** (1880) 5 Bom 338 (346) (FB) ** (1880) 6 Cal 307 (308) (DB).

(5) If A, a foreigner, standing in foreign territory shoots B who is in Indian territory, A's act is not an offence within the Penal Code, and Indian Courts have no jurisdiction to try A for such act even if A is subsequently found in Indian territory. ('80) 1880 Pun Re (Cr) No. 35, p. 84 (89) (DB).

[See however (1912) 13 Cri L Jour 426 (427, 428) = 36 Bom 524 (DB). (A would be triable by Indian Court, if he was subsequently found within jurisdiction.)]

(6) Where it is sought to punish a person who is not a citizen of India as an offender in respect of a certain act, the question is not merely "where was the act committed" but "was the person at the time, when the act was done, within the Indian territory?" For, if he was not, the act is not an offence, the doer of it is not liable to be punished as an offender and he is not subject to the jurisdiction of Criminal Courts. (1878) 1878 Pun Re (Cr) No. 20, p. 49 (55) (DB).

(7) Where a resident in a foreign country commits an offence within India, he can be tried by Indian Courts, when he is brought within India by virtue of extradition proceeding in connection with another offence. **AIR 1957 SC 857 (868) = 1958 SCR 328 = 1957 Cri L Jour 1346.**

(8) It is the allegation in the complaint that gives jurisdiction to the Magistrate to take up the case for trial; where the evidence taken up to the time of framing charge indicates that the Magistrate has jurisdiction, the trial is to proceed. AIR 1959 Cal 677 (Pr 5) = 1959 Cri L Jour 1310 (DB) ** AIR 1970 Cal 110 (116) = 1970 Cri LJ 332.

(9) A question of jurisdiction should be determined by reference to the provisions of the Code. AIR 1933 Nag 33 (34) = 34 Cri L Jour 1038.

(10) Question of jurisdiction should be determined first and not left to be determined after the Court has made up its mind whether to acquit or convict. AIR 1923 All 91 (105) = 25 Cri L Jour 497 (DB) ** AIR 1959 All 67 (Pr 2) = 1959 Cri L Jour 14 ** AIR 1921 All 12 (12) = 22 Cri L Jour 308 (FB) ** AIR 1970 Cal 110 (117) = 1970 Cri LJ 332.

(11) Objection to jurisdiction must be raised at the earliest opportunity or at any time when the accused can satisfy the Court on evidence which has come upto that time that the Court has no jurisdiction and if the Court is satisfied it should not take further proceedings. AIR 1956 All 619 (Pr 14) = 1956 Cri L Jour 1165. (Case of breach of trust.)

(12) If a charge is laid before a Magistrate of an offence alleged to have been committed within his district, the Magistrate has jurisdiction to deal with it and it is not removed by reason of the evidence disclosing that the offence was really committed in another district. If the charge is not made good by the evidence, it will be a ground for acquitting the accused but not for quashing the proceeding. ('84) 1884 All WN 31 (31).

[See also AIR 1956 Punj 127 (128) = 1956 Cri L Jour 774.]

(13) A question of jurisdiction should be determined by the Court before which the offender is placed for trial and should not be referred to some superior officer to decide. ('12) 13 Cri L Jour 786 (786) = 37 Bom 114 (DB) ** AIR 1962 Pat 100 (101) = 1962 (1) Cr LJ 360.

(14) This section applies to the trial of offences. ('96) 1896 Pun Re No. 17 (Cr), p. 39 (41) (DB).

(15) The section applies to the determination of the appellate forum also. AIR 1952 Punj 186 (188) = ILR (1951) Punj 231 = 1952 Cri LJ 775 (DB).

(16) Proceedings under Section 488 — Forum — Section 177 not applicable to such proceedings. AIR 1968 Pat 383 (385). ((1966) 2 Mad LJ 326, Diss.)

(17) Where two forums have concurrent jurisdiction the lower one should be approached at the first instance, unless the party concerned gives special reasons for a direct approach to the higher, such as extreme urgency or a momentous question of general public policy. AIR 1952 Vindh Pra 87 (Pr 1) = 1953 Cri L Jour 74.

See also Sections 182 and 185.

(18) The section is inapplicable for determining the jurisdiction of a Court competent to entertain an application under Section 488, a refusal to maintain being no offence. 1893 Pun Re (Cr) No. 3, p. 30 (33, 34) (DB) ** AIR 1968 Pat 383 (385) = 1968 BLJR 781 = 1968 Cri LJ 1296.

[But see (1891) 13 All 348 (350). (Neglect of husband to maintain wife is an offence.)]

Offences under special or local laws. — (19) The rules of Chap. XV etc., determine the place of inquiry or trial in respect of all offences whether under

Section 177 — Note 1 (contd.)

General Law or under any special or local law except to the extent that they are excluded under Section 1 (2) of the Code. AIR 1959 Ker 311 (314) = 1959 Cri LJ 1172 = 1958 Ker LT 1079 (2).

(20) State legislature is competent to provide for trial of offences created by its statutes otherwise than is prescribed by Section 177, but the relevant provisions of the statute must clearly show that such departure is intended. **AIR 1960 SC 1329 (1332) = 1960 Cri LJ 1674** ** (1965) 7 OJD 28 = ILR (1964) Cut 932 = 31 Cut LT 140 (146).

(21) U. P. High Courts (Amalgamation) Order (1948), Clause 14 — The words 'Cases arising' in Clause 14 of U. P. High Courts (Amalgamation) Order, 1948 relates to place or area of origin of dispute. 1968 All WR (HC) 8 (9) = 1968 All Cr R 15.

(22) Section 8 of the Bombay Prevention of Hindu Bigamous Marriages Act (25 of 1946) (now repealed), did not make a departure from Section 177 of Criminal P. C. Offences punishable under Section 7 of the Act could not be tried even by the Courts specified in Section 8-A of the Act if the offences were committed outside the territorial jurisdiction of such Courts. **AIR 1960 SC 1329 (1332, 1333) = 1960 Cri LJ 1674** ** AIR 1954 Bom 337 (338) = ILR (1954) Bom 610 = 1954 Cri L Jour 1027.

(23) The section applied to an offence committed under Section 4 of the Madras Hindu (Bigamy Prevention and Divorce) Act (6 of 1949) as that Act did not provide for trial of offences committed under the Act. AIR 1950 Mad 823 (823, 824) = ILR (1951) Mad 549.

(24) Where the accused was arrested in Uttar Pradesh in pursuance of a warrant issued under Section 7 of the Indian Extradition Act for trial of offences under Sections 388 and 420, Penal Code, committed in Rajasthan, it was held that though the accused was extradited only for the offences under Sections 388 and 420, he could also be tried for an offence under Section 161, Penal Code, by a competent Magistrate in Rajasthan under the provisions of this section (in force in Rajasthan). AIR 1953 Raj 12 (15) = 1953 Cri L Jour 268.

Contempt of Court. — (25) The section applies to all offences whether under the Penal Code or otherwise. Thus, the jurisdiction of a High Court to punish a person for contempt of Court (which is not an offence under the Penal Code) is not ousted by the fact that the accused has removed himself beyond the limits of the jurisdiction of the High Court. (1949) ILR (1949) 1 Cal 355 (364) ** AIR 1934 Mad 423 (424) = 35 Cri L Jour 962.

Analogous law. — (26) Section 7 (2) of the Criminal Law Amendment Act, 1952 does not supplant Chapter XV of the Code nor is it in any way inconsistent with the provisions of this Chapter. AIR 1959 Ker 311 (Prs 10, 11) = ILR (1958) Ker 763 = 1959 Cri L Jour 1172.

(27) Sections 179, 180 and 182 are not exceptions to the general rule embodied in this section and are not repeated in Section 7 (2) of the Criminal Law (Amendment) Act, 1952. They are rather amplifications of that rule. AIR 1959 Ker 311 (Pr 12) = ILR (1958) Ker 763 = 1959 Cri L Jour 1172.

2. "Ordinarily". — (1) This section embodies the ordinary or general rule of jurisdiction and the following sections (viz., Sections 179-184), the exception. AIR 1937 Sind 68 (74) = 38 Cri L Jour 512 (FB) ** AIR 1956 Mys 46 (46) = ILR (1955) Mys 644 = 1956 Cri L Jour 633 ** AIR 1930 Bom 155 (156) = 31 Cri L Jour 833 (DB) ** 1885 Pun Re (Cr) No. 44, p. 92 (94) (SB).

(2) The word "ordinarily" has been advisedly used. AIR 1918 Mad 555 (557) = 18 Cri L Jour 878 (882) (DB). (**Overruled** on another point in AIR 1940 Mad 23 = 41 Cri L Jour 238 (FB).)

(3) The expression must be taken to mean "except in the cases provided hereinafter to the contrary." AIR 1952 Punj 186 (188) = ILR (1951) Punj 231 = 1952 Cri L Jour 775 (DB) ** AIR 1956 Mys 46 (46) = ILR (1955) Mys 644 = 1956 Cri L Jour 633 ** AIR 1937 Bom 186 (190) = 38 Cri L Jour 769 (DB).

[See AIR 1950 Mad 823 (823, 824) = ILR (1951) Mad 549.]

(4) The rule in this section should be read subject to any special provisions of law which may modify it, such as Section 197, sub-section (2). AIR 1952 Punj 186 (188) = ILR (1951) Punj 231 = 1952 Cri L Jour 775 (DB).

(5) Section 14 also enables the State Government to depart from this rule 1901 Pun Re (Cr) No 24, p. 59 (64) (FB).

(6) The section does not take away the jurisdiction of any other Magistrate to try a case if he could otherwise do so under any other competent order. AIR 1959 All 82 (Pr 32) = 1959 Cri L Jour 113.

(7) For exceptions to the general rule under other Acts, see the following cases (1879) 3 Bom 384 (385) (DB). (Cotton Frauds Act (Bombay), 7 of 1878.) ** (1910) 11 Cri L Jour 380 (381) = 1910 Pun Re (Cr) No. 12 (DB). (Workman's Breach of Contract Act, 1859.) ** (1898) 25 Cal 637 (638) (DB). (Act 13 of 1859, Section 1.) ** AIR 1916 Sind 86 (86) = 17 Cri L Jour 308 (309). (Workman's Breach of Contract Act, 1859.)

(8) It was held that Courts in India have jurisdiction over offences commit-

Section 177 — Note 2 (contd.)
ted on the high seas by virtue of 12 and 13 Vict., C. 96; 23 and 24 Vict., C. 88 and the Merchant Shipping Act, the procedure being ordinary procedure under the Code. AIR 1936 Sind 3 (4, 5) = 37 Cri L Jour 314 ** (1870) 7 Bom HCR (Cr) 89 (125, 128) (FB) ** (1871) 8 Bom HCR (Cr) 63 (66) (DB) ** (1901) 25 Bom 636 (638) (DB) ** ('90) 14 Bom 227 (230) (DB) ** (1889) 16 Cal 238 (244, 245) (SB) ** (1894) 21 Cal 782 (784) (DB) ** Also see Section 1.

(9) Section 684 of the Merchant Shipping Act provides for jurisdiction in any place in which the offender may be. (1912) 13 Cri L Jour 246 (247) = 39 Cal 487 ** AIR 1933 Cal 145 (145) = 34 Cri L Jour 631 (DB).

(10) The jurisdiction, however, conferred by 12 and 13 Vict. C. 96, 23 and 24 Vict. C. 88 and the Merchant Shipping Act does not extend over offences committed in non-British ships. AIR 1918 Bom 249 (250) = 19 Cri L Jour 237 (DB).

(11) The view stated, above (namely, that the word 'ordinarily' has been used in this section in the sense of "except as otherwise provided in the Code or by any special law") has now been confirmed by the Supreme Court in Narumal v. State of Bombay. **AIR 1960 SC 1329 (1332, 1333) = 1960 Cri LJ 1674.**

(12) In a later decision, Purushotham Dalmia's case, **AIR 1961 SC 1589**, the Supreme Court has taken a different view, namely, that the exceptions implied by the case of the word "ordinarily" in the section need not be limited to those specified for by law, and that such exceptions may be based on consideration of convenience or may be implied from other provisions of law such as those which permit joint trial of offences by the same Court. **AIR 1961 SC 1589 (1593) = 1961 (1) Cri LJ 728 = (1962) 2 SCR 101.** (Note: This view seems to conflict with the earlier view of the Supreme Court in **AIR 1960 SC 1329.**)

(13) Sections 179 to 185 and 188, as well as provisions of Sections 233 to 239 provide exceptions to Section 177 about the venue or place of inquiry or trial. AIR 1969 Raj 266 (269) = 1969 Raj LW 168 = 1969 Cri LJ 1268.

3. Several offences: venue. — (1) When an accused is charged with several offences over one or some of which only the Court has jurisdiction, it should try only such offence or offences. AIR 1928 Bom 475 (476) = 30 Cri L Jour 191 ** AIR 1954 Trav-Co 172 (174) = 1954 Cri L Jour 319.

[See also AIR 1949 Mad 3 (6) = 50 Cri L Jour 70.]

(2) Court having jurisdiction to try offence of conspiracy has also jurisdiction to try offences committed in pursuance of the conspiracy outside its jurisdiction. **AIR 1961 SC 1589 (1593) = 1961 (1) Cri LJ 728 = (1962) 2 SCR 101.** (63 Cal WN 628 = AIR 1959 Cal 510 = 1959 Cr LJ 965 (FB), **Overruled.) ** AIR 1961 SC 1601 (1602) = 1961 (2) Cri LJ 736 = (1962) 2 SCR 116.** (**AIR 1961 SC 1589, Rel. on.;** AIR 1961 Mad 126 Affirmed.) ** AIR 1966 Orissa 219 (222).

(3) Court having jurisdiction to try offences committed in pursuance of a conspiracy can also try the offence of conspiracy even if committed outside its jurisdiction. **AIR 1961 SC 1601 (1602) = 1960 Cri LJ 736 = (1962) 2 SCR 116 **** AIR 1963 Cal 191 (194) = (1963) 1 Cri L Jour 424 (DB).

(4) Provisions of Section 239 are not controlled by provisions of Section 177. **AIR 1961 SC 1601 (1602) = 1960 Cri LJ 736 = (1962) 2 SCR 116 **** 1967 All Cr R 543 (546) = 1967 All WR (HC) 841. (Section 239-B is an exception to the general rule laid down under S. 177.)

[See also AIR 1963 Cal 191 (194) = (1963) 1 Cri LJ 424 (DB). (Even when joinder of two charges for offences committed in different jurisdictions is legal, separate enquiry or trial for the offences in the Courts having territorial jurisdiction is also legal.)]

(5) But according to the cases noted below decided earlier the provisions of Section 239 are governed by Section 177 et. seq. relating to jurisdiction and there can be no joint trial unless the Magistrate has jurisdiction over all the offences charged. AIR 1929 Mad 839 (840) = 30 Cri LJ 1161 ** AIR 1958 Manipur 14 (Pr 14) = 1958 Cri LJ 393.

(6) Where two different offences are committed in the course of the same transaction, the case should be tried by the Magistrate who has jurisdiction to try both the offences and not by a Magistrate having jurisdiction over only one of them, for it would be highly inconvenient that the two offences should be tried by different officers. (1907) 2 Weir 144 (144) (DB) ** AIR 1958 Pat 585 (Pr 4) = 1958 Cri LJ 1339.

(7) Where two offences of defamation are committed, one in a village where the accused has been publishing libellous allegations against the complainant and the other by posting letters to others in other places they cannot be tried together at one place. AIR 1957 Mad 572 (Pr 3) = 1957 Cri LJ 983.

(8) Property entrusted to R at B misappropriated by him at J — Offence of receiving State property committed by V at J — V cannot be tried at B under Section 177. AIR 1969 Raj 266 (268, 270) = 1969 Cri LJ 1268 = 1969 Raj LW 168.

(9) Murder committed outside India, but conspiracy hatched in India —Indian Courts can try offenders for criminal conspiracy and not for murder — But if

Section 177 — Note 3 (contd.)

death is due to any act done in India, the offenders can be tried in India both for conspiracy and consequences of the Act. (Obiter). AIR 1964 All 572 (575) = 1964 (2) Cri LJ 632 = 1964 All LJ 581.

4. "Within the local limits . . . ." — (1) A Magistrate of a division whose powers have not been formally limited to any particular portion of the division has jurisdiction over all offences committed in the division. (1880) 2 Weir 13 (13) ** AIR 1965 Madh Pra 53 (55) = 1966 MPLJ 1189 = 1965 (1) Cr LJ 298.

(2) Under the section it is the Court within whose jurisdiction an offence is committed that can try but where that Court will sit has not been mentioned therein, and therefore if a Magistrate has been invested with the power to try cases in the local area where the offence has been committed, he could try the case irrespective of the place of his sitting. AIR 1959 All 82 (Prs 31, 33) = 1959 Cri LJ 113 ** 1968 All WR (HC) 8 (9) = 1968 All Cri R 15.

(3) It is only the Magistrate within whose local limits an offence has been committed that has jurisdiction to try it. An offence of bigamy or of abetment thereof can be tried only in the place where the bigamy or abetment took place and in the place from where the woman was enticed away. AIR 1950 Mad 823 (823, 824) = ILR (1951) Mad 549 ** AIR 1924 Lah 732 (732) = 26 Cri LJ 525 ** **AIR 1960 SC 1329 (1332) = 1960 Cri LJ 1674.** (Cr. Appeal No. 710 of 1955 D/- 5-10-1955 (Bom), **Reversed;** AIR 1955 Bom 439, **Overruled.**) ** (1967) 8 Guj LR 133 (135) ** AIR 1967 Mad 241 (242) = 1967 Cri LJ 899 = 1966 Mad LW (Cri) 77 ** (1965) 31 Cut LT 140 (145) = (1965) 7 Orissa JD 28. (Place of possession of contraband liquor.) ** AIR 1963 Guj 234 (236, 237, 238) = 1963 (2) Cri LJ 273 = (1962) 3 Guj LR 409 (DB). (Case under S. 66 (i) (b), Bombay Prohibition Act (25 of 1949) can be tried at the place where the accused consumed liquor.)

[But see 1967 All Cri R 543 (546) = 1967 All WR (HC) 841. (Bigamous marriage outside jurisdiction, but abetment within jurisdiction.)]

(4) Illegal prize competition promoted and conducted at place X, in India — Prizes meant for people at Y, a place out of India — Important ingredient of offence under Prize Competitions Act, 1955, S. 4 being promotion and conducting of competition, the offence is committed and is triable at X. AIR 1964 All 572 (575) = 1964 (2) Cri LJ 632 = 1964 All LJ 581.

(5) Where the offence charged is that of enticing away a married woman, it is the Court within whose limits the enticement took place that would have jurisdiction and not the Court within whose limits the woman was detained. AIR 1937 Bom 186 (189, 190) = 38 Cri LJ 769 (DB) ** (1880) 3 All 251 (253) (DB).

(6) The offence of using forged document as genuine is committed at a place where the document is so used. Where an applicant before the Public Service Commission at Madras sends his application along with a forged document by posting the same at Vizagapattam, the place of offence is Madras where the applicant intends to use the forged document as genuine by placing the same before the Public Service Commission for its consideration. AIR 1949 Mad 833 (833) = 51 Cri LJ 34.

(7) The offence of holding out false pretences to labourers and of inducing them thereby to enter into a contract must be tried in the place where such inducement was made. (1868) 4 Mad HCR (App) 4 (5) ** (1910) 11 Cri LJ 143 (144) = 37 Cal 27 (DB).

(8) The offence of murder should be committed for trial to the Sessions Court within the local limits of whose jurisdiction it was committed. AIR 1932 Cal 487 (488) = 33 Cri LJ 645 (DB).

(9) The offence under Section 134 of the Companies Act (failure to file a balance sheet) may be tried by the Court within whose jurisdiction the office of the Registrar where the balance sheet should be filed is situate, even though the company itself be located outside its jurisdiction. AIR 1917 Cal 1 (1) = 18 Cri LJ 787 (DB).

(10) Mere intention not followed by any act cannot constitute an offence and indirect preparation made, which does not amount to an act but which amounts to the commencement of an offence, does not constitute either a principal offence or an attempt or abetment. Hence, the Court at the place where only the preparation is made has no jurisdiction. AIR 1927 Mad 77 (78) = 28 Cri LJ 95 ** 24 Bom 287 (291) (DB).

(11) Offence under Section 204, Penal Code for the alleged suppression of the evidentiary documents alleged to have been suppressed by the accused at place B, is committed at B and not at V where the documents were handed over to the agents of the accused and therefore the Magistrate at V has no jurisdiction to try the offence under Section 204, Penal Code against the accused. 1957-2 Andh WR 368 (372).

(12) The sale of beer in excess of the quantity allowed under the Punjab Excise Act was entered in the registers of a company at R and the liquor was then sent to M under a railway receipt in which the name of the consignee was also shown as the company although the receipt was thereafter endorsed in favour of the purchaser: Held that the offence of illegal sale as well as illegal transport were committed at R and prima facie the Court at M had no jurisdiction to try

Section 177 — Note 4 (contd.)
these offences. AIR 1942 Lah 134 (134) = 43 Cri LJ 703.

(13) Contraband articles in possession of two accused seized at different places — Each act of possession is separate — Particular accused could be tried at the place where he was found in possession of the contraband articles for offence under Section 47 (a) of Bihar and Orissa Excise Act (1915). (1965) 31 Cut LT 140 (144) = (1965) 7 Orissa JD 28.

(14) Minor married woman abducted from district N and sold in district P for alleged purpose of prostitution— Accused (purchaser) having no knowledge that woman was abducted — Charge under Section 373 alone held was justified and Court at P and not at N held had jurisdiction to try. AIR 1946 Cal 459 (460) = 47 Cri LJ 1020 (DB).

(15) Offence under Section 486, Penal Code — Court at place where offence was committed can alone try. 1902 Pun Re (Cr) No. 32, p. 84 (86) (DB).

(16) An offence committed within British India could not be tried by a British Court out of British India. 1888 Rat 376 (376) (DB).

(17) A Magistrate holding powers within certain local limits cannot exercise those powers while he is beyond such local limits. (1910) 11 Cri LJ 570 (571) = 1910 Pun Re No. 23 Cr (DB).

(18) For jurisdiction in proceedings under Section 488 see Section 488. Such cases do not strictly come within the scope of Section 177.

(19) See also the following cases: AIR 1959 Ker 311 (Prs 15, 16) = ILR (1958) Ker 763 = 1959 Cri LJ 1172. (Criminal Law Amendment Act (1952), Sections 7 (3), 6 (1), 7 (2) — Conspiracy to cheat Central Government — Chapter XV of Criminal P. C. applies — Conspiracy outside Kerala — Consequences in Kerala— Special Judge in Kerala has jurisdiction — Deception begun in Kerala but completed outside — Territorial jurisdiction.)

(20) Goods obtained by Bombay office of firm under actual user's licence under Imports and Exports (Control) Act (1947) — Goods offered for sale from Bombay office and delivered to purchaser at Delhi — Delhi Courts have jurisdiction to try the case under Section 177. AIR 1967 Delhi 88 (91) = 1967 Cri LJ 300 = 69 Pun LR (D) 112.

(21) Office of State Insurance Corporation in Madras — Factories outside Madras liable to pay contributions in Madras making default in payment of contributions — Chief Presidency Magistrate has territorial jurisdiction to enquire into the matter. AIR 1960 Mad 64 (70, 72) = 1960 Cri LJ 242 = (1959) 2 Mad LJ 521 (FB).

4A. Jurisdiction of Magistrate — Onus to prove. — (1) Before accused could be convicted prosecution has to establish that Court taking cognizance and trying him had territorial jurisdiction. AIR 1963 Guj 234 (236) = 1963 (2) Cri LJ 273 = (1962) 3 Guj LR 409 (DB) ** AIR 1965 Ker 295 (296) = 1965 (2) Cri LJ 775 = 1965 Ker LT 548.

(2) Complainant is not bound to expressly indicate that the Court in which complaint is filed has jurisdiction to entertain it. 1967 All Cr R 543 (546) = 1967 All WR (HC) 841.

[But see 1966-32 Cut LT 423 (427) = 9 Orissa JD 24.]

(3) Complaint petition and complainant's statement on oaths silent as to facts relating to existence of territorial jurisdiction — Magistrate should allow parties to lead evidence to establish existence or otherwise of territorial jurisdiction — He cannot drop the proceedings. 1966-32 Cut LT 423 (433) = 9 Ori JD 24.

(4) Either complaint petition or statement of complainant on oath giving facts ousting jurisdiction — Magistrate can drop proceedings even after issue of process without giving opportunity for adducing further evidence. 1966-32 Cut LT 423 (433) = 9 Ori JD 24.

5. Cheating, criminal misappropriation and selling, etc., goods with counterfeit trade-mark. — (1) The place where the deception was practised and not where the fraud was discovered, is the place where the trial of the offence of cheating should be held. AIR 1915 All 428 (428) = 16 Cri LJ 825 ** 1968 Cr LJ 280 (280) = 8 Guj LR 551.

(2) Where in a case under Section 420, Penal Code, the deception takes place in one district and the deprivation of property in another district, the Court in either district can try the offence. See Section 179.

(3) Where A in district K despatches lottery tickets to B in T by V. P. P. and B accepts the V. P. P. the charge of cheating against A (the lottery never having been held) must be tried at T as both the deception and deprivation of property must be held to take place at T. AIR 1949 Mad 3 (5, 6) = 50 Cri LJ 70 (DB).

(4) The offence of misappropriation or breach of trust is triable at the place where it is committed. (1889) 26 Cal 746 (747) (DB) ** AIR 1955 Cal 498 (498) = 1955 Cri LJ 1257 (DB) ** AIR 1925 Cal 107 (108) = 25 Cri LJ 1186 (DB).

[See also AIR 1937 Bom 371 (372) = 38 Cri LJ 977 (DB).]

(5) The offence of criminal misappropriation or criminal breach of trust is not triable at a place where the complainant first acquired evidence that the offence was committed. AIR 1937 Sind 68 (72) = 38 Cri LJ 512 (FB) ** AIR 1930 Bom 490 (494) (FB).

See also S. 181.

Section 177 — Note 5 (contd.)

(6) A Magistrate has jurisdiction to try an offence under Section 486, Penal Code, if the accused be shown to be in possession of goods with a counterfeit trade-mark for sale or any other purpose of trade or manufacture though the sale or other purpose for which the accused has the goods in his own possession be not intended to take place within the jurisdiction of the Court in which the complaint is lodged. (1898) 25 Cal 639 (641) (DB).

6. Defamation, giving false information, etc. — (1) The sending of a newspaper or letter containing defamatory matter by post from one place to another is publication of such matter at the latter place, and a Magistrate at the latter place will, therefore, have jurisdiction over the offence. AIR 1943 Sind 196 (197) = 45 Cri LJ 105 ** (1880) 3 All 342 (346, 347) ** (1908) 8 Cri LJ 272 (276) = 33 Bom 77 (DB). **(Overruled** on another point in AIR 1952 Bom 177 (FB).) ** AIR 1968 Cal 266 (272, 273) = 1968 Cri LJ 736 ** AIR 1960 Orissa 126 (128, 129) = 1960 Cri LJ 1116 = ILR (1959) Cut 683.

[But see AIR 1967 Punj 403 (404) = 1967 Cri LJ 1182 = 69 Pun LR (D) 117.]

(2) Court within whose limits imputation was published has jurisdiction to try offence. AIR 1963 Madh Pra 128 (129) = 1963 (1) Cri LJ 445 = 1963 Jab LJ 170.

(3) Where printing and publishing defamatory matter is outside jurisdiction of the Court, the Court has no jurisdiction to try the complaint. AIR 1960 Orissa 126 (128) = 1960 Cri LJ 1116 = ILR (1959) Cut 683.

(4) The gist of an offence of defamation being publication of defamatory matter where defamatory matter is enclosed in an envelope, it cannot be said that the offence of defamation is committed at a place where the envelope is posted, unless publication at the place is proved. AIR 1957 Mad 572 (Pr 2) = 1957 Cri LJ 983. (AIR 1924 Mad 340 (343) (DB); AIR 1923 Mad 666 (666) held obiter and dissented from.)

[But see AIR 1959 Andh Pra 657 (Pr 6) = 1959 Cri LJ 1403. (Offence could be tried either where the posting took place or where the actual publication took place. AIR 1923 Mad 666 and AIR 1924 Mad 340, Rel. on.) ** AIR 1947 Mad 369 (369).]

(5) When a person presents a petition containing defamatory statements to a superior officer who in the ordinary course of official routine sends it to a subordinate officer for inquiry, there is publication in the place where the latter officer is. 1889 Pun Re (Cr) No. 14 p. 59 (59, 60).

(6) When a plaint in a suit containing defamatory allegations is filed in the Court at X and a copy thereof is delivered to one of the defendants along with the summons at Y, then the complaint of an offence punishable under Sec. 500 can be filed either in the Magistrate's Court at X where the defamatory matter was written and published or in the Court of the Magistrate, within whose jurisdiction the said matter was again published. AIR 1955 Mys 135 (135) = ILR (1955) Mys 401 = 1955 Cri LJ 1512.

(7) When one person instigates another to the commission of an offence by means of a letter sent through post, the offence of abetment is completed as soon as the contents of such letter become known to the addressee and such offence is triable at the place where the letter is received. (1894) 16 All 389 (390).

(8) The receipt at M of a parcel or a letter by which a person is deceived gives the Magistrate at M jurisdiction over the offence. AIR 1914 All 373 (374) = 15 Cri LJ 719 ** (1931) 132 Ind Cas 864 (864) = 32 Cri LJ 996 (Lah) ** AIR 1924 Pat 708 (708) = 35 Cri LJ 81.

(9) Where the accused were charged with trying to cheat the currency officer of Bombay by claiming payment of halves of certain currency notes and the declaration in support of the claim was made and posted in Calcutta, it was held that the case was triable in Calcutta. AIR 1923 Cal 401 (402) = 25 Cri LJ 184 (DB).

(10) The gist of the offence under Section 182, Penal Code, is the giving of information so as to cause the public servant to act on it; so the offence is complete only when it reaches the public servant. Hence, it is the place of delivery of a letter containing such information and not the place of posting that gives jurisdiction over the offence. AIR 1943 Mad 500 (500) = 44 Cri LJ 660 ** AIR 1932 Mad 427 (427) = 33 Cri LJ 452.

[But see AIR 1936 All 105 (107) = 37 Cri LJ 157 (DB). (Offence is committed in both places, place of posting and place where it was sent — The intention which is an essential ingredient of the offence is entertained by the person giving the information at the place where the letter is written and posted.)]

(11) The gist of the offence of printing seditious matter being the creation of written words, the printing of the same at a particular place confers jurisdiction on Courts of that place though publication has been elsewhere. AIR 1928 Rang 276 (276) = 30 Cri LJ 707.

(12) Where there is no evidence that the printing of papers with the object of deceiving was done in a particular district, the Courts of such district have no jurisdiction over the offence. AIR 1919 Pat 407 (409) = 20 Cri LJ 142 (DB).

(13) An offence under Section 7 (a) of the Copyright Act can be tried only at

Section 177 — Note 6 (contd.)
the place where the printing for sale of the offending copies of the book was done. AIR 1917 Lah 335 (336) = 18 Cri LJ 353.

See also Section 179, Note 4 and Section 182, Notes 4 and 6.

(14) Offence contemplated by Section 51 (b) (i) of Copyright Act (1957) deemed to be committed at places where advertisement reaches for circulation. Magistrate at that place has jurisdiction to entertain complaint. AIR 1969 Bom 302 (308, 309) = 71 Bom LR 409 = 1969 Cri LJ 1109.

(15) There is no specific provision in Copyright Act (1957) with regard to place of trial or where complaints are to be filed regarding criminal offences. Place of trial to be determined in accordance with provisions of Sections 177 to 188 Cr. P. C. AIR 1969 Bom 302 (303) = 71 Bom LR 409 = 1960 Cri LJ 1109.

7. Consequence forming part of offence charged. — See Section 179.

8. Offences committed partly in one local area and partly in another. — See S. 182.

9. Offences consisting of several acts. — See S. 182.

10. Offences by foreigners. — (1) See the following case and Note 1 above. AIR 1914 Lah 181 (182) = 15 Cri LJ 550.

11. Irregular arrest — Effect. — (1) Irregularity of arrest does not affect the jurisdiction of a Court to try the offender. (1906) 5 Cri LJ 89 (90, 91) = 1906 Pun Re (Cr) No. 17 (DB) ** (1904) 1 Cri LJ 535 (537) = 31 Cal 557 (DB).

[See however AIR 1925 Bom 131 (133, 134) = 26 Cri LJ 441 (DB).]

Also see Ss. 46, 80, 190, 252 and 537.

(2) An accused who has submitted to the jurisdiction of a Court must be regarded as having waived any irregularity affecting the manner in which his appearance before the Magistrate has been enforced. (1903) 16 CPLR 9 (10).

12. Transfer of territory from one State to another. — (1) Where after the filing of an appeal to a Sessions Judge against the conviction for an offence committed within British India, territory including the place where the offence had been committed was transferred to a Native State, it was held that the transfer did not affect the jurisdiction of the Sessions Judge to hear the appeal, the offence having been committed in British India. (1911) 12 Cri LJ 401 (401) = 33 All 578 (DB) ** (1911) 12 Cri LJ 470 (471) (All).

(2) Where an appeal against a conviction was properly filed in the Punjab High Court before the date with effect from which the place where the incident took place was included in the Patiala and East Punjab States Union under the Provinces and States (Absorption of Enclaves) Order 1950, the Punjab High Court would have jurisdiction to decide the appeal. AIR 1952 Punj 186 (188) = ILR (1951) Punj 231 = 1952 Cri LJ 775 (DB) ** (1912) 13 Cri LJ 169 (170) = 34 All 118 (DB). (Case of committal.) ** (1912) 13 Cri LJ 575 (576) = 34 All 451. (Inquiry after transfer of territory.)

[See also AIR 1950 Hyd 71 (Pr 2) = ILR (1951) Hyd 291 = 52 Cri LJ 1398 (DB). (Pending actions at the time of exchange of territory — Jurisdiction already vested is not affected.)]

(3) Where after the charge sheet was presented in the Ajmer Court and evidence for the prosecution was recorded, and the territory of Panth Piploda had merged with Madhya Bharat, it was held that the Ajmer Courts had jurisdiction in the matter and not the Courts in Madhya Bharat. AIR 1954 Ajmer 29 (30) = 1954 Cri LJ 564. (13 Cri LJ 169 = 34 All 118, Foll.)

(4) An offence was committed at a place K in Madras State. This place was subsequently transferred to Mysore State. It was held that the Mysore Court had jurisdiction to deal with the case. AIR 1951 Mys 115 (116) = ILR (1951) Mys 452 = 52 Cri LJ 1490 (DB).

13. Transfer of territory to another district. — (1) When an offence is committed within the local jurisdiction of a Magistrate, he is authorized to try the case or commit it to Sessions. The fact that the locality in which the offence was committed was subsequently transferred to another district will not oust the jurisdiction of the Magistrate to try the case or to commit it to the Sessions Court. AIR 1939 Cal 159 (160) = 40 Cri LJ 270 (DB).

14. Military offenders. — (1) Under Bengal Regulation 20 of 1825, military authorities could require a Magistrate to hand over to them any prisoner who may be apprehended and brought before him for an offence committed more than 120 miles from Calcutta; but a proceeding before the Magistrate when taken at the request of and assented to by the military authorities was not void. (1874) 22 Suth WR (Cr) 20 (24) = 13 Beng LR 574 (DB).

[See (1880) 5 Cal 124 (125) (DB). (Mutiny Act, Section 101.)]

15. Effect of trial at wrong places. — (1) Sections 177 to 185 deal with venue, and Section 531 enacts that no proceedings in a wrong place shall be set aside unless it appears that such error has in fact occasioned a failure of justice. AIR 1936 Pat 410 (411) (DB) ** AIR 1959 Mys 193 (Pr 2) = 1959 Cri LJ 1004 (DB) ** (1874) 21 Suth WR (Cr) 46 (46) (DB) ** 1883 Pun Re (Cr) No. 9 p. 11

178. Power to order cases to be tried in different sessions divisions.—Notwithstanding anything contained in section 177, the °[State Government] may direct that any cases or class of cases committed for trial in any district may be tried in any sessions division:

Provided that such direction is not repugnant to any direction previously issued by the High Court under section 15 of the Indian High Courts Act, 1861, †[or section 107 of the Government of India Act, 1915], ‡[or section 224 of the Government of India Act, 1935], §[or Article 227 of the Constitution], or under this Code, section 526.

[1882—S. 178; 1872—S. 63; 1861—Nil.]

[°] Substituted for "Provincial Government" by A. L. O. 1950.

[†] Inserted by the Amending Act, 1916 (XIII of 1916), S. 2 and Schedule.

[‡] Inserted by A. O., 1937.

[§] Inserted after the words "Government of India Act, 1935" by A. L. O., 1950.

179. Accused triable in district where act is done or where consequence ensues.—When a person is accused of the commission of any offence by reason of

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Section 177 — Note 15 (contd.)

(11) (DB) ** AIR 1967 Mys 44 (46) = (1966) 1 Mys LJ 324 = 1967 Cri LJ 503 ** AIR 1962 Mys 275 (279) = 40 Mys LJ 494 = (1962) 2 Cri LJ 765 (DB). (Case under Sections 180, 182.)

Also see S. 531.

(2) Territorial jurisdiction is not regarded as synonymous with essential jurisdiction and trial in a wrong district is not a fatal defect. 1902 Pun Re (Cr) No. 2, p. 4 (6) (DB) ** 1901 Pun Re (Cr) No. 24, p. 59 (77) (FB) ** (1905) 4 Cri LJ 500 (501) = 30 Mad 94 (DB) ** AIR 1967 Mys 44 (46) = (1966) 1 Mys LJ 324 = 1967 Cri LJ 503 (DB).

(3) Section 531, however, does not entitle a Magistrate to proceed with a trial in the wrong local area with his eyes open to the fact that he has no territorial jurisdiction. AIR 1946 Cal 459 (460) = 47 Cri LJ 1020 (DB) ** AIR 1959 Mys 193 (Pr 2) = 1959 Cri LJ 1004 (DB) ** ILR (1964) Cut 932 = 7 OJD 28 = 31 Cut LT 140 (146) ** 1966-32 Cut LT 423 (432) = 9 Ori JD 24.

(4) When an offence is being tried in a wrong Court, the want of jurisdiction may be cured by an order of the High Court under Section 526, transferring the case formally to such Court. AIR 1928 Bom 140 (140) = 29 Cri LJ 533 (DB) ** AIR 1925 Oudh 490 (490) = 26 Cri LJ 577 ** AIR 1960 Mad 64 (71, 72) = 1960 Cri LJ 242 = (1959) 2 Mad LJ 521 (FB). (13 Cri LJ 85 and 1939 Mad WN 517 and AIR 1923 Mad 326 in so far as they decide contrary, Held, overruled.)

[But see AIR 1923 Mad 326 (326) = 24 Cri LJ 351 (DB) ** (1886) 10 Bom 274 (280) (DB).]

(5) The plea of want of jurisdiction may be taken for the first time in the High Court. Neither the ignorance and consequent silence of parties nor their consent can vest a Magistrate with powers which the law does not give him. (1871) 16 Suth WR (Cr) 69 (70) (DB).

[See also AIR 1955 Pat 118 (120) = 33 Pat 996 = 1955 Cri LJ 501 (DB).]

(6) On question whether, when a commitment is made in respect of an offence committed outside the State, the High Court has jurisdiction to transfer the case to a Court having jurisdiction in that State there is conflict. See S. 531.

16. Committal by or to wrong Court.— (1) A committal erroneously made to the High Court may be validated under Section 526 because, although such committal may be in contravention of Section 206 yet the High Court has criminal jurisdiction under the Letters Patent to try cases committed to it instead of to the local Sessions Judge. AIR 1920 Mad 824 (825) = 20 Cri LJ 484 (DB).

See also S. 531.

Section 178 — Note 1

(1) Section 178 deals with power of State Government to order cases to be tried in different Sessions Division. AIR 1969 Raj 266 (268) = 1969 Raj LW 168 = 1969 Cri LJ 1268.

(2) State Government has no power under the section to direct that a case should be tried by a particular Court in a sessions division. 1872-1892 Low Bur Rul 263 (267). (Per Princep and O'Kinealy, JJ.) ** (1884) 10 Cal 643 (648) (DB).

(3) On an order for transfer being made by the State Government under this section the Sessions Court in the new division had full jurisdiction to try the case notwithstanding that the offence was not committed within the local limits of its jurisdiction. (1872-1892) Low Bur Rul 263 (268).

SECTION 179 — SYNOPSIS

1. Scope.

2. Nature of 'consequence' contemplated by section.

3. Consequence forming part of the offence charged, what is.

anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Illustrations

(a) A is wounded within the local limits of the jurisdiction of Court X, and dies within the local limits of the jurisdiction of Court Z. The offence of the culpable homicide of A may be inquired into or tried by X or Z.

(b) A is wounded within the local limits of the jurisdiction of Court X, and is, during ten days within the local limits of the jurisdiction of Court Y, and during ten days more within the local limits of the jurisdiction of Court Z, unable in the local limits of the jurisdiction of either court Y, or Court Z, to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into or tried by X, Y or Z.

(c) A is put in fear of injury within the local limits of the jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into or tried either by X or Y.

(d) A is wounded in °[the State of †[Madras]] and dies of his wounds in Poona. The offence of causing A's death may be inquired into and tried in Poona.

[Code of 1882—S. 179, same, except Illus. (d); 1872—S. 65; 1861—S. 27.]

[°] The words "the State of Saurashtra" were substituted in illustration (d), for "the Native State of Baroda," by A. L. O., 1950.

[†] Substituted for "Saurashtra", by 2 A. L. O., 1956.

Section 179 — Synopsis (contd.)

4. **Criminal breach of trust or criminal misappropriation.**
5. **Offences committed outside India.**

1. Scope. — (1) The section applies only to cases in which the offender is accused of the offence by reason of some act done by him and some consequence that has ensued from such act. AIR 1938 All 632 (634) = 40 Cri LJ 128 ** AIR 1930 Bom 490 (492) (DB).

(2) Section 179 cannot be read as an exception to the general rule embodied in Section 177 and repeated in Section 7 (2) of the Criminal Law Amendment Act, 1952. AIR 1959 Ker 311 (314) = ILR (1958) Ker 763 = 1959 Cri LJ 1172.

(3) Sections 179-184 are controlled by Section 188 and the alternative jurisdiction conferred by these sections can be exercised on the production of the certificate of the Political Agent according to the special provisions of Section 188. AIR 1930 Bom 155 (157) = 54 Bom 171 = 31 Cri LJ 833 (DB).

(4) In a case falling within Section 6 (1) of the Criminal Law Amendment Act, 1952, Section 7 (2) of that Act cannot be read as excluding the application of Chapter XV (including Section 179) of the Code. AIR 1959 Ker 311 (314) = ILR (1958) Ker 763 = 1959 Cri LJ 1172.

2. Nature of 'consequence' contemplated by section. — (1) Word 'consequence' in this section refers only to a consequence which is an ingredient or part of the offence charged. AIR 1938 All 632 (634) = 40 Cri LJ 128. (Complaint by K against M for cheating in c Court— M arrested at c — M filing complaint under Section 500, Penal Code, against K in Court at c — **Held,** arrest at c was not such a consequence as is contemplated in Section 179 so as to give Court at c jurisdiction to try complaint for defamation.) ** AIR 1959 All 67 (68) = 1959 Cri LJ 14 ** AIR 1966 All 619 (624) = 1956 Cri LJ 1165. (Criminal breach of trust — Non-accounting is not ingredient of offence.) ** AIR 1955 All 363 (364) = 1955 Cri LJ 897. (Complainant's wife removed from his house in Kanpur District and remarried in Gonda District — Kanpur Court has no jurisdiction to try offence of bigamy as the consequence of that offence viz. that the complainant is deprived of the consortium of his wife at his place, is wholly immaterial to the culpability of the accused.) ** AIR 1955 Madh B 200 (202) (DB) ** AIR 1934 All 846 (846, 847) = 36 Cri LJ 490. (Contract of sale entered into at X — Firm at Y affected by cheating ensuing from this contract — Court at Y has jurisdiction to try the case.) ** AIR 1934 All 499 (503) = 35 Cri LJ 982 = 56 All 1047 (FB). (Offence under Section 403, Penal Code, complete at D — Actual loss falling on person at C — Court at C has no jurisdiction.) ** (1906) 8 Bom LR 513 (516) = 4 Cri LJ 54 (DB) ** AIR 1930 Bom 490 (492, 493, 495, 496) (FB). (**Overruling** AIR 1922 Bom 39 = 23 Cri LJ 173 and AIR 1930 Bom 358 = 31 Cri LJ 1155.) ** AIR 1942 Cal 575 (576) = 44 Cri LJ 132 (DB). (Criminal breach of trust — Loss caused is no part of the statutory definition of the offence and is therefore not a 'consequence'.) **

Section 179 — Note 2 (contd.)
(1909) 9 Cri LJ 92 (93) (DB) (Mad). (Offence of falsification of accounts is complete when accounts are falsified with intent to defraud.) ** AIR 1923 Mad 50 (51) = 23 Cri LJ 619 (DB). (Charge under Section 40 of the Income-tax Act (making a false statement in a verification) should be tried in district where the verification is made and not where the petition is presented.) ** AIR 1932 Mad 427 (428) = 33 Cri LJ 452. (Charge under I. P. C., Section 182 (giving false information to public servant) — Information given in T — Consequence in K — Offence cannot be enquired into or tried at K.) ** AIR 1935 Mad 189 (190) = 36 Cri LJ 467. (Public nuisance (Penal Code, Section 290) is committed as soon as act or illegal omission is complete — Consequent annoyance, etc., is not ingredient of offence.) ** AIR 1929 Pat 640 (642) = 30 Cri LJ 765. (Fabricating false evidence at G for purpose of being used in judicial proceedings at M — Ex parte decree obtained in consequence at M — Offence completed in G and cannot be tried at M.) ** (1909) 10 Cri LJ 86 (87) = 5 Low Bur Rul 57. (Penal Code, Section 206, charge under — Execution of fraudulent deed with intent to defeat claim of decree-holder — Execution of deed at T and inability to execute decree at P — Offence is complete at T and P Court has no jurisdiction.) ** AIR 1931 Rang 164 (166) = 32 Cri LJ 1120 (DB) ** AIR 1951 Assam 131 (136) = ILR (1952) 4 Assam 49 = 52 Cri LJ 1388 (FB) ** AIR 1937 Sind 68 (70) = 38 Cri LJ 512 (FB). (AIR 1929 Sind 30 = 30 Cri LJ 249, **Overruled — In view of this decision, the view held by Wild, J. C. in AIR 1928 Sind 166 = 29 Cri LJ 1033 is no longer good law.**) ** AIR 1944 Pesh 25 (27) = 45 Cri LJ 749. (Criminal breach of trust — Loss caused is not 'consequence.') ** AIR 1951 Vindh Pra 17 (33) = 52 Cri LJ 561 ** AIR 1936 Nag 55 (63) = 37 Cri LJ 474 (DB) ** AIR 1948 Nag 80 (81) = ILR (1947) Nag 378 = 49 Cri LJ 121. (AIR 1933 Nag 33, **Dissent.**) ** **AIR 1965 SC 1921 (1922, 1923) = 1965 (2) Cri LJ 822 = (1965) 2 SCWR 784.** (Forged motor transport permit issued at Indore, seized at Nasik — Offence under Section 471, Penal Code (using forged permit) being a desired consequence of offence under Section 474, Penal Code (possessing forged permit), accused could be tried for both offences at Indore.) ** (1967) 8 Guj LR 133 (135, 136). (Offence under Section 494 I. P. C. is committed where second marriage is solemnized — The offence not being a consequence of accused's first marriage, residence of accused or wife or place where they lived together does not confer jurisdiction on the Court of that place.) ** (1966) 32 Cut LT 423 (428) = 9 Orissa JD 24. (Loss of consortium to complainant as a result of second marriage by the spouse is not an ingredient of the offence under Section 494 of I. P. C.) ** AIR 1965 Pat 103 (104) = 1965 (1) Cr LJ 327 (DB). (Consignments of tea sent from Gauhati to Howrah — Chests discovered at Jamalpur (Monghyr) to contain paddy husk — Discovery at Jamalpur cannot be said to be a consequence which has ensued from cheating committed at Gauhati — Court at Monghyr has no jurisdiction to try offence of cheating ** AIR 1963 Guj 234 (237) = 1963 (2) Cri LJ 273 = (1962) 3 Guj LR 409 (DB). (Offence of consuming liquor under Section 66 (1) (b) of Bombay Prohibition Act (25 of 1949) and offence of being found drunk in public place under Section 85 (1) of the same Act are distinct offences. Section 179 does not apply.) ** AIR 1963 Madh Pra 128 (129, 130) = 1963 (1) Cri LJ 445 = 1963 Jab LJ 170. (Offence of cheating by making complainant (agent) to deliver bank draft to accused at Allahabad— Offence of cheating complete — Loss suffered at Jabalpur by principal of complainant (agent) not being essential for offence of cheating Jabalpur court has no jurisdiction to try offence of cheating.) ** AIR 1961 Pat 260 (263, 264) = 1961 (1) Cri LJ 841 = ILR 38 Pat 1251 (DB). (Headquarters of gang in one district — Commission of individual dacoities is the primary and necessary consequence of formation and membership of the gang — Dacoities committed in several districts — Commitment enquiry and trial in district where headquarters were not situated was not irregular.)

[But see AIR 1933 Oudh 215 (221) = 34 Cri LJ 785 ** AIR 1933 Nag 33 (34, 35) = 34 Cri LJ 1038. (Offence under Section 69 (c) (ii) of the Provincial Insolvency Act, 1920 (fraudulently mortgaging property with intent to diminish the sum to be divided among the insolvent's creditors) — Mortgage effected in Bombay — Diminution of sum to be divided among creditors at Yeotmal — Offence can be tried at Yeotmal.) ** (1908) 8 Cri LJ 75 (80, 82) (SB) (Lah) ** AIR 1914 Mad 330 (331) = 15 Cri LJ 207 (DB). (Per Spencer J.) ** 1900 Pun Re (Cr) No. 7, p. 17 (18).]

(2) Section 179 is only applicable where the act and its consequence, both of which have to be proved to constitute the offence, have taken place in two different local areas. 1968 Cri LJ 555 (All) ** AIR 1960 Orissa 126 (128) = 1960 Cri LJ 1116 = ILR (1959) Cut 683. (Repetition of the act at another place is not consequence of the act.)

(3) In a case under Section 494, Penal Code, filed by a wife against her husband the circumstance that the co-respondent gave birth to a child only amounts to evidence of the fact that she had legitimate or illegitimate sexual relationship

Section 179 — Note 2 (contd.)
with a man. It may be a circumstance to support the other evidence of a bigamous marriage if it exists. The birth of this child cannot be considered a consequence within the meaning of Section 179, Cr. P. Code. AIR 1959 All 67 (68) = 1959 Cri LJ 14.

(4) For Section 179 to apply, a proximity of time is essential between the act and the consequence. A consequence which is not so related to the act may at best provide evidence of the act. It does not become part of the act. AIR 1959 All 67 (68) = 1959 Cri LJ 14.

(5) Non-payment of dividend to shareholder by the Company — Shareholder can file a complaint against company at the place of his residence. AIR 1967 All 135 (136) = (1966) Supp SCR 419 = 1967 Cr LJ 305. (What is punishable is not omission to post cheque or warrant but the consequence of the inaction in taking necessary action in that behalf.)

(6) Section 179 neither controls nor is controlled by Section 181. They have a cumulative, effect and are not mutually exclusive. Both can apply in a case. AIR 1961 Pat 260 (263) = 1961 (1) Cri LJ 841 = ILR 38 Pat 1251 (DB).

(7) In absence of proof by prosecution as to place where accused consumed liquor he could not be convicted under Section 66 (1) (b) of Bombay Prohibition Act (25 of 1949) by having resort to Sections 179, 180 and 182. AIR 1963 Guj 234 (238) = 1963 (2) Cri LJ 273 = (1962) 3 Guj LR 409 (DB).

(8) Opium consigned illegally to self from Cawnpur to Berhampur — Magissrate at Berhampur can take cognizance under Section 9 (c), Opium Act, for illegal import of opium. AIR 1961 Orissa 64 (66) = 26 Cut LT 647 = 1961 (1) Cr LJ 539.

3. Consequence forming part of the offence charged, what is. —

Criminal breach of trust and criminal misappropriation. — (1) Where A in x commits criminal breach of trust of moneys belonging to B in v, the loss suffered by B in y in consequence of A's act in x is not a part of the offence of criminal breach of trust committed by A and Court in y has no jurisdiction to try the offence. AIR 1948 Nag 80 (81) = ILR (1947) Nag 378 = 49 Cri LJ 121 ** AIR 1942 Cal 575 (577) = 44 Cri LJ 132 (DB) ** AIR 1916 Mad 438 (439, 440) = 16 Cri LJ 491 (493) (DB). (Loss is part of offence charged but loss occurs at the same place as the conversion.) ** AIR 1969 Raj 266 (268) = 1969 Raj LW 168 = 1969 Cri LJ 1268.

(2) Where alleged offence of receiving stolen property was not a necessary consequence of the first offence of criminal breach of trust, Section 179 was not attracted. AIR 1969 Raj 266 (268) = 1969 Raj LW 168 = 1969 Cri LJ 1268.

(3) Criminal breach of trust by A in x of money belonging to B in y — A under obligation to render accounts or to pay misappropriated amount to B in y — Court in y has no jurisdiction to try offence. AIR 1944 Pesh 25 (27) = 45 Cri LJ 749. (Criminal breach of trust by printer in regard to paper given to him by customer for printing.) ** AIR 1956 All 619 (626) = 1956 Cri LJ 1165. (Non-accounting is no part of the criminal breach of trust — It is really the result or consequence resulting from criminal misappropriation.) ** AIR 1915 Mad 600 (601) = 15 Cri LJ 688 (DB) ** AIR 1930 Bom 490 (494) (FB) ** AIR 1925 Cal 613 (614) = 26 Cri LJ 725 (DB) ** AIR 1921 Pat 85 (87) = 21 Cri LJ 519.

[But see AIR 1921 All 12 (13) = 22 Cri LJ 308 (FB). (Accused, a servant of complainant's firm at M employed in collecting dues, collecting and misappropriating them at A — Plan to misappropriate formed at M— Duty to account at M — Offence can be tried at M.)]

(4) A Court in whose jurisdiction the accused has neither to submit account nor to pay to the complainant the profits of the firm, cannot try the offence of misappropriation of partnership funds. AIR 1927 All 69 (70) = 27 Cri LJ 1104.

Cheating. — (5) A cheats B in x and in consequence C in y suffers a loss. The loss to C does not form an integral part of the offence of cheating; and Court in y has no jurisdiction to try offence. (1908) 7 Cri LJ 394 (396) = 5 All LJ 333 ** AIR 1923 Lah 90 (91) = 23 Cri LJ 447 ** AIR 1931 Sind 94 (96) = 32 Cri LJ 924 (SB). (Drafts induced by accused to be issued on false pretences at P, and money received by accused at P but the drafts honoured in due course at Q — Court at Q has no jurisdiction to try the accused for the offence of cheating inasmuch as the subsequent honouring of the drafts was not a consequence forming part and parcel of the offence.) ** 1968 Cri LJ 280 (280) = 8 Guj LR 551. (Presentation of false bill to bank and causing loss, both taking place at same place — Section 179 has no application.)

[See also AIR 1955 Madh B 200 (202). (Where deception is caused to members of the public and they are induced to make payment of price in respect of a spurious article at one place which ultimately causes loss to the manufacturer of genuine article at another place, it is difficult to call the consequence of such a loss as an ingredient of the offence. It has nothing to do with the matter of deception of the customer.)]

[But see (1908) 8 Cri LJ 75 (80, 82) (DB) (Lah). (Cashing at Mercantile Bank in Bombay forged drafts of Punjab

Section 179 — Note 3 (contd.)
National Bank having its headquarters in Lahore — Latter Bank debited with the sum in the books of the former Bank — Offence may be tried in Lahore — Consequence of loss to Punjab National Bank at Lahore is one completing the accused's act.) ** 1900 Pun Re (Cr) No. 7, p. 17 (18). (Offence of cheating comprises the causing or the likelihood of causing damage in property to the person deceived — Where A sent goods by railway from Karachi to Lahore under a false description, the Court at Lahore could try A for cheating as the loss of freight to the railway company took place at Lahore, the headquarters of the company.)]

(5-A) Receipt of the letter by complainant at Hyderabad, is not by itself an essential act to constitute the offence of cheating and cannot be looked upon as a 'consequence which has ensued' with reference to 'anything which has been done' as contemplated in Section 179. Hence, the Hyderabad Court has no jurisdiction to try the offence concerned in items (1) and (2) and it has got jurisdiction only to try the offence concerned in item (3). AIR 1961 Andh Pra 266 (269, 270, 271, 272) = 1961 (1) Cri LJ 804 = (1961) 1 Andh WR 282.

(6) Sale of drugs by manufacturer at Calcutta intended for transportation to Nasik were found not according to standard specified in Act — Manufacturers at Calcutta held distributed drugs at Nasik and further abetted offence committed by dealer at Nasik — Sections 179 and 180, Criminal P. C., held were applicable — Manufacturers held could be tried at Nasik. AIR 1962 Bom 21 (23) = 1962 (1) Cri LJ 16 = 63 Bom LR 362.

(7) Where A in x dishonestly deceives by means of correspondence B in y and the latter is thereby induced to part with money in y, the inducement of, and the parting with money by B are consequences forming part of the offence of cheating committed by A and he can be proceeded against in x or y. AIR 1924 All 77 (78) = 24 Cri LJ 929 ** (1931) 132 Ind Cas 864 (864) = 32 Cri LJ 996 (Lah). (Debtor in X sending to creditor in Y empty cover by post insuring it for a certain amount with intent to use the postal acknowledgment as evidence of payment — Offence can be tried in Y.) ** AIR 1930 Bom 358 (360) = 31 Cri LJ 1155 (DB). (Value payable articles posted from X to addressee in Y — Addressee taking delivery by paying for article which is found to contain nothing — Offence can be tried at X) ** AIR 1930 All 449 (450) = 31 Cri LJ 865. (Accused at Delhi selling to complainant at Meerut a motor lorry — Delivery to complainant at Meerut — Body was to be built at Meerut — Complainant handing over to accused's driver cheque for price of chassis and of insurance not only of chassis but also of body — On lorry being burnt it was discovered that body had not been insured — Charge of cheating can be tried at both places.) ** AIR 1915 Bom 46 (46) = 16 Cri LJ 433 (DB). (A in Salem deceiving B in Dhulia and inducing him to pay money — "Thing" is done in Dhulia and offence can be tried there.) ** (1899) 26 Cal 746 (747) (DB). (False entries in accounts made in H and accounts submitted in C and amount obtained thereby in C — Court at C has jurisdiction.) ** AIR 1934 All 846 (847) = 36 Cri LJ 490. (A at M deceived B making representations through C as D — A purchasing certain goods in consequence — Offence can be tried at M because cheating takes place at M.) ** **AIR 1960 SC 266 (272) = 1960 Cr LJ 410 = (1960) 2 SCR 89.** (Misrepresentation by A at X — Property delivered at Y — A can be tried for offence of cheating either at X or at Y — B being abettor can also be tried either at X or at Y.) ** AIR 1962 Andh Pra 257 (259) = 1962 (2) Cri LJ 21 = ILR (1960) 2 Andh Pra 358. (Offence under Section 420 read with Section 511, Penal Code — Attempt to cheat insurance company at Bombay by making false claim supported by false certificates — Policy and false certificates fraudulently secured and posted to company at Hyderabad. The case was governed by Section 179. Court at Hyderabad had jurisdiction to try the offence.)

[But see AIR 1949 Mad 3 (6) = 50 Cri LJ 70 (DB). (Lottery tickets sent by V. P. P. from M to T — No lottery held in fact — Offence of cheating was held to be wholly committed at T — Deception and parting with money both took place in T.) ** AIR 1927 Mad 544 (544) = 28 Cri LJ 452. (V. P. sent from M to H — Complainant taking delivery by paying at H — Offence of cheating complete at H and subsequent realisation of money by accused at M is not consequence necessary to complete offence.)]

(8) Where crucial letter by which for the first time the complainant was clearly led to realise that there had been an intention to cheat on the part of the accused was received by him at Baxar — Held that there was jurisdiction to try accused at Baxar. AIR 1924 Pat 708 (708) = 25 Cri LJ 81.

Defamation. — (8A) Where a petition containing defamatory statements is presented to a public officer and it is forwarded to a subordinate officer at a different place for enquiry and report, the publication at the latter place is a consequence of the accused's act which completes his offence and he can be tried there. 1885 Pun Re (Cr) No. 44, p. 92 (101) (DB) ** 1889 Pun Re (Cr) No. 14, p. 59 (60).

Section 179 — Note 3 (contd.)

(9) Where a defamatory letter is posted by the accused at M to another person at T, the publication at T is a consequence of the accused's act which is an ingredient of the offence and he can be proceeded against at T. AIR 1943 Sind 196 (197) = 45 Cri LJ 105 ** AIR 1959 Andh Pra 657 (659) = 1959 Cri LJ 1403. (AIR 1923 Mad 666 and AIR 1924 Mad 340, Rel. on.) ** AIR 1923 Mad 666 (666) = 24 Cri LJ 309.

[See however AIR 1957 Mad 572 (572) = 1957 Cri LJ 983. (AIR 1923 Mad 666 and AIR 1924 Mad 340, Doubted.)]

Also see Notes under Sections 177 and 182.

(10) Printing and publication of books containing alleged defamatory attack completes the offence of defamation — Their dissemination within the jurisdiction of the Magistrate cannot be said to be a consequence arising out of the publication of the same. Section 179 does not apply. AIR 1960 Orissa 126 (128, 129) = 1960 Cri LJ 1116 = ILR (1959) Cut 685.

(11) Where A files a complaint against B for cheating in x Court and on issue of summons B is arrested at y, a complaint by B for defamation will not lie in Court at y, as B's arrest at y is not such a consequence as is contemplated by this section, the offence of defamation being complete when the complaint was made at x. AIR 1938 All 632 (634, 635) = 40 Cri LJ 128.

Other instances. — (12) Where in the case of an offence under Section 5 (2) of the Prevention of Corruption Act, 1947, the act of abusing his position as a public servant by the accused took place within the Kerala State, the Special Judge for Kerala would have jurisdiction under Section 179 to try the offence even if the consequence of obtaining pecuniary advantage for himself (which act makes that act an offence) took place elsewhere. AIR 1959 Ker 311 (315) = ILR (1958) Ker 763 = 1959 Cri LJ 1172.

(13) The offence of cheating can be tried either at the place where the conspiracy to cheat has its origin or at the place where the offence of cheating is completed. AIR 1966 Orissa 217 (222).

(14) A Court trying an accused for an offence of conspiracy is competent to try him for all offences committed in pursuance of that conspiracy irrespective of the fact that any or all the other offences were not commited within its territorial jurisdiction. **AIR 1963 SC 1620 (1625) = 1963 (2) Cri LJ 529 = (1963) Supp 2 SCR 338.** (Cr Rev. R Nos. 304 and 345 of 1961, D/- 16-6-1961 (Bom), **Reversed.**)

4. Criminal breach of trust or criminal misappropriation. — (1) Section 181, sub-section (2), being a specific provision with regard to the offences of criminal misappropriation and criminal breach of trust excludes the application of this section to them. AIR 1951 Assam 131 (136) = ILR (1952) 4 Assam 49 = 52 Cri LJ 1388 (FB) ** AIR 1954 All 648 (649) = 1954 Cri LJ 1356 ** AIR 1940 Cal 367 (368) = 41 Cri LJ 812 (DB) ** AIR 1937 Sind 68 (72, 76) = 38 Cri LJ 512 (FB) ** AIR 1940 All 92 (93) = 41 Cri LJ 325. (The offence of criminal breach of trust cannot be tried at a place where loss is caused as a consequence of the offence by virtue of Section 179 and the question of jurisdiction will be governed by Section 181 (2) of the Cr. P. C.) ** AIR 1924 All 77 (78) = 24 Cri LJ 929 ** AIR 1930 Bom 490 (492) = 32 Cri LJ 331 (FB). (Per Beaumont C. J.) ** AIR 1916 Mad 438 (439, 440) = 16 Cri LJ 491 (493) (DB).

[But see AIR 1930 All 449 (449) = 31 Cri LJ 865 ** AIR 1926 All 466 (467) = 27 Cri LJ 992 ** AIR 1934 All 499 (503) = 35 Cri LJ 982 (FB) ** AIR 1922 Bom 39 (40) = 23 Cri LJ 173 (DB).]

(2) Where the accused was entrusted with money at A and he failed to account for it as he was bound to do, he may be proceeded against at A as being the place where he received the money. AIR 1921 Pat 85 (87) = 21 Cri LJ 519 ** AIR 1932 All 26 (27, 28) = 33 Cri LJ 127.

(3) Where there is no evidence as to the place of the actual commission of the offence it may be presumed to have been committed at the place where the accused was bound to render accounts touching the subject-matter of the offence. AIR 1952 Mad 158 (159) = 1952 Cri LJ 308. (Where the charge is of non-accounting and there is no specific allegation of misappropriation in any particular place the venue of the trial will be the place where the accounting has got to be done and has not been done.) ** AIR 1936 All 193 (197) = 37 Cri LJ 284 (DB). (No charge that accused misappropriated the money at any particular place.) ** AIR 1931 Cal 528 (530, 531) = 32 Cri LJ 1167 (DB) ** AIR 1934 Cal 392 (393) = 35 Cri LJ 734 (DB) ** AIR 1918 Cal 110 (110) = 19 Cri LJ 679 (DB).

[See AIR 1928 Mad 1136 (1138) = 30 Cri LJ 245. (No evidence where offence was committed — Place where failure to deliver as per contract takes place is proper venue.)]

[But see AIR 1955 Cal 498 (499) = 1955 Cri LJ 1257 (DB). (Non-submission of an account being not an integral part of an act of misappropriation it cannot be said that the offence took place not only at the place where the misappropriation took place, but also at the place where the accounts were not rendered.) ** AIR 1942 Cal 575 (576, 577) = 44 Cri LJ 132 (DB). (Place where accounts were due to be rendered is not the venue.)]

Section 179 — Note 4 [contd.]

(4) Even where the place of the actual misappropriation or conversion with dishonest intent is known, the offence can be regarded as having been committed at the place where the accused was bound to submit his accounts. AIR 1936 Oudh 323 (330) = 37 Cri LJ 322 = (Criminal breach of trust.) ** AIR 1928 Rang 217 (219) = 29 Cri LJ 940. (Accused an employee in a firm of Rangoon entrusted with pro-notes and hundies to collect amount due on them in districts — Final tendering of cash account at Rangoon — Appropriation by the accused of a sum out of the collection to his personal expenses — Rangoon Courts have jurisdiction, promissory notes being entrusted in Rangoon and accused being required to account in Rangoon.) ** AIR 1922 Cal 46 (46) = 24 Cri LJ 113 (DB). (Criminal breach of trust in respect of money received at S for which accused to account at C — C Court has jurisdiction.) ** AIR 1921 All 12 (13) = 22 Cri LJ 308 (FB). (The plan to misappropriate was conceived at M and the duty to account was at M — Money received at A and misappropriated there — Offence can be tried at M.)

[See however AIR 1940 All 92 (94, 95) = 41 Cri LJ 325 (DB). (Place of misappropriation known to be X— No specific allegation that accused was to bring the money collected either personally to a particular place or remit it to that place — Mere liability to account at that place does not give to Court at that place jurisdiction — X Court alone has jurisdiction.)]

[But see AIR 1938 Rang 94 (95, 96) = 39 Cri LJ 529 ** AIR 1931 Cal 528 (530, 531) = 32 Cri LJ 1167 (DB) ** AIR 1915 Mad 600 (601) = 15 Cri LJ 688 (DB) ** AIR 1930 Bom 490 (494) = 32 Cri LJ 331 (FB) ** AIR 1931 Cal 521 (521, 522) = 32 Cri LJ 1042 (DB) ** AIR 1931 Cal 532 (533) = 32 Cri LJ 1249 (DB) ** (1928) 108 Ind Cas 901 (902) = 29 Cri LJ 453 (Lah). (Where complainant at L appointed accused his agent for sale of certain commodities at N, and in pursuance of that arrangement, he sent goods to the accused, who, however, in direct contravention of the directions given to him as to the manner in which the goods had to be sold, sold them and misappropriated the proceeds — Held, that a criminal case under Section 409, Penal Code, cannot be instituted at L.)]

(5) Where the accused is under a liability to deliver goods at a particular place and also to render accounts at that particular place and fails to do so by reason of having committed an offence of criminal breach of trust which is alleged against him, the Court, within the local limits of whose jurisdiction that place is situated may enquire into and try the offence under the provision of Section 181 (2), Criminal P. C. AIR 1954 All 648 (649) = 1954 Cri LJ 1356. (It is enough for the purposes of the section if the property which is the subject of the offence was received or retained by the accused at a particular place to give jurisdiction to the Magistrate of that place to try the case.)

(6) Where the accused was bound to pay at a particuar place the balance due on taking accounts, it was held that there was at such a place dishonest retention of the money within Section 181, sub-section (2). 1902 Pun Re (Cr) No. 2, p. 4 (6) (DB).

[But see 1901 Pun LR No. 67, p. 223 (225) (DB).]

(7) Where it is uncertain whether the offence was committed at A where the accounts were to be rendered or at some other place, the offence could under Section 182 be inquired into or tried at A. AIR 1937 Bom 371 (372) = 38 Cri LJ 977 (DB) ** (1910) 11 Cri LJ 372 (373) = 32 All 397.

(8) See also Notes on S. 181.

5. Offences committed outside India. — (1) A, a subject of a Native State kidnapped a minor girl in P, a Native State. He then took the girl to Q, another Native State. While he was thus going to Q with the girl, he was apprehended at a railway station on the way which was in British India. A could not be tried in British India. 1901 Pun Re (Cr) No. 1, p. 1 (3) (DB).

(2) A, a subject of a Native State, assaulted B in Q, a Native State, and as a result one of the legs of B was broken. B then underwent treatment in a hospital in British India for more than twenty days. A could not be tried in British India. (1906) 8 Bom LR 513 (516) = 4 Cri LJ 54 (DB).

(3) A the subject of a Native State, entered into a criminal conspiracy in P, a Native State, to commit the offence of cheating in British India. The offence of cheating was committed in British India in pursuance of the conspiracy. A could not be tried in British India for the offence of criminal conspiracy. AIR 1933 Sind 333 (334, 335, 336) = 35 Cri LJ 585 (DB).

[See also AIR 1946 Nag 128 (130) = ILR (1945) Nag 130. (Subject of Native Indian State, abetting in Native State commission of offence in British India — British Indian Court cannot try offence of abetment.)]

(4) Even if the consequence is of a kind mentioned in the section, this section will not apply if the act of the accused was committed beyond the limits of India under circumstances not coming within Section 188. AIR 1945 Oudh 231 (232) = 20 Luck 370 = 46 Cri LJ 650 ** AIR 1935 Mad 326 (327) = 37 Cri LJ 195 (DB).

180. Place of trial where act is offence by reason of relation to other offence. —When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

Section 179 — Note 5 (contd.)

[But see AIR 1926 All 466 (467) = 27 Cri LJ 992. (Submitted not correct.)]

Also see Notes on Ss. 182 and 183.

(5) If an act is committed outside India under the circumstances mentioned in Section 188 and the act has produced results in India which constitute a consequence within the meaning of this section, the offender may be tried in India or at the place where the consequence of his act has ensued. AIR 1914 Mad 330 (331, 332) = 15 Cri LJ 207 (DB).

(6) Before a person can be proceeded against in India under the provisions of this section read with Section 188, the certificate of the Political Agent or the sanction of the State Government mentioned in the proviso to Section 188 must be obtained. AIR 1932 Cal 465 (467) = 33 Cri LJ 267 (DB).

Also see Notes on S. 188.

[But see AIR 1914 Mad 330 (331, 332) = 15 Cri LJ 207 (DB). (Case prior to amendment — Not good law.)]

(7) Also see Notes on S. 188.

(8) If promotion of prize competetion was not illegal, but other acts were illegal and punishable, and those illegal acts were done outside the territory, the offender could not be tried within the territory. AIR 1964 All 572 (575) = 1964 (2) Cri LJ 632 = 1964 All LJ 581.

Section 180 — Note 1

(1) Sections 179, 180 and 182 are not exceptions to the general rule embodied in Section 177. They are rather amplifications of that rule telling us where exactly an offence must be taken as committed in the several circumstances stated. AIR 1959 Ker 311 (314) = ILR (1958) Ker 763 = 1959 Cri LJ 1172.

(2) It is the relation of one act with the other that brings Section 180, into operation and gives the jurisdiction to the Courts in both the local areas where the offence has occurred. AIR 1963 Guj 234 (236, 237) = 1963 (2) Cri LJ 273 = (1962) 3 Guj LR 409 (DB).

(3) The rules regarding joinder of charges in Chapter XIX of the Code have nothing to do with territorial jurisdiction which has to be determined with reference to the rules in Chapter XV, and, in the case of a special law, also with reference to any special provision in that law in that behalf. AIR 1959 Ker 311 (314) = ILR (1958) Ker 763 = 1959 Cri LJ 1172.

(4) Section 7 (2) of the Criminal Law Amendment Act, 1952, does not make any attempt to supplant Chapter XV of the Code nor is in any way inconsistent with the provisions of that Chapter. AIR 1959 Ker 311 (314) = ILR (1958) Ker 763 = 1959 Cri LJ 1172.

(5) A abets at x the commission of an offence at y and the offence abetted is committed at y. The offence of abetment can be tried either at x or y. AIR 1931 All 55 (56) = 32 Cri LJ 690 ** (1903) 1 Weir 155 (156) ** AIR 1917 Lah 237 (240) = 18 Cri LJ 514 (517) ** (1872) 17 Suth WR (Cr) 15 (16) = 9 Beng LR 36 (SB) ** (1894) 16 All 389 (390) (DB) ** **AIR 1960 SC 266 (272) = 1960 Cri LJ 410 = (1960) 2 SCR 89.** (Principal offence can also be tried either at x or y.) ** 1962 (2) Cr LJ 132 (135) = = 1960 KLT 1350 = 1961 Mad LJ (Cr) 114. (Documents forged in Burma and used in India — Offence under Sec. 471.) ** (1962) 64 Punj LR 193 = 1962 (2) Cri LJ 712 (713).

[See ('77) 1 Bom 610 (612) (DB). (Abetment cannot be tried at a place where neither the abetment nor the offence abetted was committed.)]

(6) Sale of drugs by manufacturer at Calcutta intended for transportation to Nasik — Drugs found not according to standard specified in Act — Manufacturers at Calcutta held distributed drugs at Nasik and further abetted offence committed by dealer at Nasik — Sections 179 and 180, Criminal P. C., held were applicable — Manufacturers held could be tried at Nasik. AIR 1962 Bom 21 (23) = 63 Bom LR 362 = 1962 (1) Cri LJ 16.

(7) A commits theft at x and the stolen property is dishonestly received and retained by B at y. B can be tried for the latter offence either at x or y. AIR 1926 All 167 (167, 168) = 27 Cri LJ 21 ** (1966) 5 Suth WR (Cr) 49 (49) (DB).

(8) A kidnaps at x, a minor, from lawful guardianship. B wrongfully conceals at y, the kidnapped person, knowing him to have been kidnapped. B can be tried at x or y. AIR 1951 Ajmer 68 (70) = 52 Cri LJ 891. (Case of abducted girl.) ** AIR 1947 Pat 17 (20) = 25 Pat 241 = 48 Cri LJ 189 (DB) ** (1896) 18 All 350 (352) (DB).

(9) Where a person is charged under Sections 201 and 368, Penal Code, on the allegation that the offences under these sections had been committed in relation to an offence under Section 498, Penal Code, the former offences can be tried at the place where the latter offence is triable. 1951 All WR (HC) 89 (90, 91).

(10) Court having jurisdiction to try offence of conspiracy has also jurisdiction to try offences committed in pursu-

Illustrations

(a) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

(b) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

(c) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing or by the Court within the local limits of whose jurisdiction the kidnapping took place.

[1882—S. 180; 1872—S. 66; 1861—Ss. 28, 31.]

Section 180 — Note 1 (contd.)

ance of the conspiracy outside its jurisdiction. **AIR 1961 SC 1589 (1593) = 1961 (1) Cri LJ 728 = (1962) 2 SCR 101.** (AIR 1959 Cal 500, **Overruled.**) ** AIR 1959 Ker 311 (316) = ILR (1958) Ker 763 = 1959 Cri LJ 1172. (Conspiracy stands on much the same footing as an abetment.) ** AIR 1957 All 130 (132) = 1957 Cri LJ 333 ** 1951 All WR (HC) 678 (680).

[But see **AIR 1962 SC 1821 (1831) = 1962 (2) Cri LJ 805 = (1963) 1 SCR 253 ** AIR 1961 SC 1601 (1602) = 1960 Cri LJ 736 = (1962) 2 SCR 116. (AIR 1961 SC 1589, Followed.)** ** AIR 1962 Mys 275 (279) = 1962 (2) Cri LJ 765 = 40 Mys LJ 494 (DB).]

(11) Court having jurisdiction to try offences committed in pursuance of the conspiracy, can try the offence of conspiracy even if it was committed outside its jurisdiction. **AIR 1961 SC 1601 (1602) = 1960 Cri LJ 736 = (1962) 2 SCR 116.** (Disapproving AIR 1929 Mad 839 and **Overruling** AIR 1936 Mad 317.) ** AIR 1963 Cal 191 (194) = (1963) 1 Cri LJ 424 (DB).

(12) It cannot be argued that Sec. 180 has no longer any application to cases of abetment by conspiracy as conspiracy itself has been made an offence under Section 120-B, Penal Code. The offence of abetment by conspiracy as defined in Section 107, I. P. Code, was not repealed when Section 120-B, I. P. Code was enacted. AIR 1956 Vindh Pra 30 (33) = 1956 Cri L Jour 1246.

(13) One M wanted to go out of India but the State of Pepsu refused the necessary permission. He, therefore, sought the help of one K who along with others prepared a faked passport with which M tried to go outside India but on suspicion of police was off-landed from plane in the State of Rajasthan. On prosecution for criminal conspiracy and for several other offences committed in pursuance thereof it was urged for K that the conspiracy was complete in Pepsu and therefore the Courts in Rajasthan had no jurisdiction to try the case. **Held,** that the real charge against K was not merely one of Section 120-B, I. P. C., but of abetment of so many offences. Since the offences were alleged to have been committed in Rajasthan, the Courts there had, by virtue of illustration (a) to Section 180, jurisdiction to inquire into the matter. 1957 Cri L Jour 234 (235) (Raj).

(14) This section is applicable to an abetment of an abetment of an offence. AIR 1946 Sind 1 (4) = ILR (1945) Kar 275 = 47 Cri L Jour 455.

(15) Where both the offences under Sections 407 and 411, Penal Code, had been committed outside the jurisdiction of the Courts in the Union territory of Manipur the proceedings taken against the accused in those Courts are without jurisdiction and clearly illegal, in spite of the fact that the property was handed over to the accused within such jurisdiction. This position is also made clear by illustration (b). AIR 1958 Manipur 14 (15) = 1958 Cri L Jour 393.

(16) Offence of receiving or retaining property stolen during a railway journey — Court within whose local limits the property has been so received or retained alone can try the said offence — Magistrate who is enabled to try offence of theft committed during railway journey, under Section 183 cannot try such an offence. AIR 1964 Raj 118 (119, 120) = 1964 (1) Cri LJ 700 = 1963 Raj LW 601. (Section 183 does not control Sections 180 illustration (b) and 181 (3).)

(17) When articles are removed from the French territory, by a stranger, which are or have been the subject of theft in French territory, French Tribunals will have jurisdiction to take cognizance of both the theft and the receipt of stolen goods, and to try the concerned offenders. AIR 1965 Mad 329 (330, 331) = ILR (1964) 2 Mad 290 (DB).

(18) Accused instigating commission of offences of house breaking and theft at Pondicherry, though not bodily present there, arranging for transport of the stolen property and concealing the stolen goods or portions thereof at Mysore — Courts

181. Being a thug or belonging to a gang of dacoits, escape from custody, *etc.*—(1) The offence of being a thug, of being a thug and committing murder, or dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

(2) **Criminal misappropriation and criminal breach of trust.**—The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the offence was committed.

[°][(3) **Theft.**—The offence of theft, or any offence which includes theft or the possession of stolen property, may be inquired into or tried by a Court within the local limits of whose jurisdiction such offence was committed or the property stolen was possessed by the thief or by any person who received or retained the same knowing or having reason to believe it to be stolen.]

(4) **Kidnapping and abduction.**—The offence of kidnapping or abduction may be inquired into or tried by a Court within the local limits of whose jurisdiction the person kidnapped or abducted was kidnapped or abducted or was conveyed or concealed or detained.

[1882—S. 181; 1872—S. 67, Illustration and S. 68; 1861—Ss. 62, 63.]

[°] Sub-section (3) was substituted for the original sub-section (3) by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 42.

Section 180 — Note 1 (contd.)

at Pondicherry had jurisdiction to try accused for the offences with which he was charged. AIR 1965 Mad 329 (330, 331) = ILR (1964) 2 Mad 290 (DB).

(19) Bombay Prohibition Act (25 of 1949) — Prosecution not able to prove place of offence — viz., consumption of liquor under Section 66 (1) (b) — Offence under Section 85 (1) viz., being found drunk in public place not being a consequence of the offence under Section 66 (1) (b), Magistrate trying the second offence has no jurisdiction to try the first one. AIR 1963 Guj 234 (236, 237) = 1963 (2) Cri LJ 273 = (1962) 8 Guj LR 409 (DB).

(20) Property entrusted at place 'B' — Offence of Criminal Breach of Trust in its respect at place J — Offence of receiving stolen property also at J in respect of same — Receiver cannot be prosecuted at B under S. 180. AIR 1969 Raj 266 (268, 269) = 1969 Raj LW 168 = 1969 Cri LJ 1268.

SECTION 181 — SYNOPSIS

1. **Applicability.**
2. **"The person charged is" — Sub-section (1).**
3. **Offence of escape from lawful custody.**
4. **Sub-section (2).**
5. **Property which is the subject of the offence.**
6. **"Received or retained".**
7. **Sub-section (3) — Theft.**
8. **Sub-section (4) — Kidnapping and abduction.**
9. **Effect of a trial in a Court contrary to the provisions of the section.**

1. Applicability. — (1) The section applies as between Courts of different local areas, whose jurisdictions have been limited under Section 12 of the Code and to which the Code applies. It has no application to an offence committed outside India and a Magistrate cannot take cognizance of such an offence except under Section 188. AIR 1917 Cal 612 (612) = 17 Cri L Jour 128 (DB) ** (1912) 13 Cri L Jour 530 (531) = 5 Sind LR 266 (DB) ** (1906) 3 Cri L Jour 247 (248) = 28 All 372 (DB) ** (1882) 5 Mad 23 (24, 25) (DB).

[See also AIR 1923 Lah 487 (487) = 24 Cri L Jour 579.]

2. "The person charged is" — Sub-section (1). — (1) The words "the person charged is" do not mean that such person should be voluntarily present within jurisdiction. The section will apply if he is physically present within jurisdiction, even though such presence is due to the fact that he has been brought under arrest. AIR 1928 Sind 161 (163) = 29 Cri L Jour 1089 (DB) ** (1911) 12 Cri L Jour 356 (356, 357) = 35 Bom 225 (SB) ** (1911) 12 Cri LJ 113 (115 116) = 1911 Pun Re (Cr) No. 1 (DB) ** AIR 1961 Pat 260 (264) = 1961 (1) Cri L Jour 841 = ILR 38 Pat 1251 (DB). (Head-quarters of gang in West Bengal — Dacoities committed in several distincts including Dhanbad — Trial at Dhanbad not irregular.)

3. Offence of escape from lawful custody. — (1) As to what is "lawful custody", see the following cases. (1875) 24 Suth WR (Cr) 45 (46) (DB). (Accused arrested by constable in good faith on a reasonable suspicion of being concern-

Section 181 — Note 3 (contd.)

ed in a cognizable offence — **Held,** that the custody was lawful, although subsequently his offence was determined to be other than that with which he had been charged.) ** (1886) 12 Cal 190 (191) (DB). (Accused escaping while under arrest under a civil process — **Held,** that there was no escape from lawful custody within the meaning of Section 223, Penal Code.) ** (1882) 5 Mad 22 (23) (DB). (Custody held not lawful.)

4. Sub-section (2). — (1) An offence of criminal misappropriation or criminal breach of trust can be tried or inquired into at any place where the offence was committed or the property was received or retained. AIR 1940 All 92 (94, 95) = 41 Cri L Jour 325 ** AIR 1930 Bom 490 (491, 495) = 55 Bom 59 (FB) ** AIR 1940 Cal 367 (368) = 41 Cri L Jour 812 (DB) ** AIR 1969 Raj 266 (269) = 1969 Raj LW 168 = 1969 Cri LJ 1268.

(2) The expression "received or retained" contemplates such reception or retention by virtue of which the offence or criminal breach of trust could possibly be perpetrated. AIR 1956 All 619 (Pr 29) = 1956 Cri L Jour 1165.

(3) Reading sub-section (2) of this section with Section 405 of the Penal Code, it is clear that the delivery of the subject-matter of the offence should be in such a way that the accused may have either dominion over or he may be said to have been entrusted with it. AIR 1956 All 619 (Pr 26) = 1956 Cri L Jour 1165.

(4) Unless any act or even omission is a necessary ingredient of an offence of criminal breach of trust, it cannot give jurisdiction to a Court where that act or omission has been done, though it may be the necessary result or consequence arising therefrom. AIR 1956 All 619 (Pr 21) = 1956 Cri L Jour 1165.

(5) The place where the account was to be rendered is not as such the proper venue for the trial of such offences. AIR 1951 Assam 131 (136, 137) = ILR (1952) 4 Assam 49 = 52 Cri L Jour 1388 (FB) ** AIR 1956 All 619 (Pr 32) = 1956 Cri L Jour 1165.

[See also AIR 1955 Cal 498 (499) = 1955 Cri L Jour 1257 (DB).]

(6) Place of accounting may be regarded as the place where the misappropriation took place in the absence of any allegation as to any specific place where it occurred. AIR 1952 Mad 168 (Pr 8) = 1952 Cri L Jour 308. (AIR 1942 Cal 575, Dissented from.)

See also Section 179.

(7) Where the place of offence is known or can be ascertained, the Courts of the place where the accounts had to be rendered will have no jurisdiction to try it. AIR 1956 All 619 (Pr 34) = 1956 Cri L Jour 1165 ** AIR 1931 Cal 532 (533) = 32 Cri L Jour 1249 (DB) ** AIR 1931 Cal 528 (531) = 59 Cal 92 = 32 Cri L Jour 1167 (DB).

(8) Where a carrier committed a criminal breach of trust in delivering the goods entrusted to him intact, and there is no evidence of actual place of the offence, the place of delivery is to be presumed as the place where the offence took place. AIR 1928 Mad 1136 (1138) = 52 Mad 61 = 30 Cri L Jour 245. (Section 183 is applicable.)

(9) Where it is uncertain whether the offence of embezzlement was committed at B or at N, Section 182 applies and the Court at N, has jurisdiction to inquire into the offence. **AIR 1957 SC 196 (Pr 9) = 1957 Cri L Jour 322 (DB).** (Cri. Revn. No. 209 of 1953- D/- 30-10-1953 (Nag), **Reversed.**) ** 1945 All L Jour 468 (469).

(10) Sub-section (2) does not in any way modify the provisions of Sec. 179. AIR 1926 All 466 (467) = 27 Cri L Jour 992.

(11) As to applicability of Section 179 to the offences of criminal misappropriation and breach of trust, see Sec. 179.

(12) Section 239 extends jurisdiction of Court beyond that provided in Sec. 181 (2). AIR 1969 Raj 266 (270) = 1969 Raj LW 168 = 1969 Cri LJ 1268. (Property received by R at B — Criminal breach of trust in respect of the property by R at J — Offence of receiving that property as stolen property by V at J — As R can be tried at B under Sec. 181 (2) and V can be tried with R under Section 239, both R and V can be tried at B.)

(13) Representative of organisation deputed to go to a place, purchase goods and also sell them there — Offence under Section 409 alleged against that representative — Court in the place where the property should have been delivered by the accused has got jurisdiction to try the case. In this case it is the place of location of organisation that has jurisdiction to try it. 1969 All Cr R 101 (105).

5. Property which is the subject of the offence. — (1) It is only the receipt of the property which is the subject of the offence that determines the venue of trial. Thus, where A was entrusted with a railway receipt for goods at Pegu with instructions to take delivery of the goods at Rangoon and sell the same on the complainant's account, but A sold the goods and misappropriated the sale proceeds, it was held that the property, which was the subject of the offence, was the sale proceeds and not the railway receipt, and that the Pegu Court had no jurisdiction to try the offence. AIR 1917 Low Bur 10 (11) = 18 Cri L Jour 645 (646).

(2) Where the accused has received several items of property on various

Section 181 — Note 5 (contd.)

dates and has subsequently embezzled the entire sum or part thereof, the complainant and the Court can consolidate all the items which the accused has received and frame a charge under Section 222 (2) in respect of only one offence. The combined effect of Sections 222 (2) and 181 (2) is that such person accused with the offence of criminal breach of trust can be tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence is received. AIR 1932 All 26 (27, 28) = 33 Cri L Jour 127.

(3) Trust owning temples in Rajasthan, registered and having head office at Bombay — Trustee sending money from Bombay to accused, managing temples, for repairs and renovations — Complaint against accused for criminal breach of trust for unspent amount — Bombay Court has no jurisdiction. AIR 1962 Bom 78 (79 to 82) = 1962 (1) Cri LJ 401 = 63 Bom LR 609.

6. "Received or retained". — (1) It is not necessary under sub-section (2) that at the time the property is received or retained by the accused person, he should have a dishonest intention to misappropriate it or to commit criminal breach of trust with reference thereto. It is sufficient if the property, which is the subject of the offence, was received or retained by the accused at a particular place, even though it was received quite properly and innocently at that place but misappropriated elsewhere. AIR 1954 All 648 (649) = 1954 Cri L Jour 1356.

(2) Where a person hired a cycle for six hours at Poona but later on pledged the same at Yeola, it was held that Poona Court had jurisdiction to try the offence. AIR 1927 Bom 38 (39) = 28 Cri L Jour 44 (DB).

(3) Where A entrusts to B as his agent a certain property to effect a sale of it and B sells the property and misappropriates the sale proceeds, he can be tried at the place where the property was entrusted to him by A. AIR 1951 Assam 131 (136, 137) = ILR (1952) 4 Assam 49 = 52 Cri L Jour 1388 (FB).

(4) The word "received" in this sub-section cannot be construed to mean "actually received" by the accused. It is wide enough to cover a case where the receipt is through an agent. AIR 1954 All 648 (649) = 1954 Cri L Jour 1356.

(5) Offence of receiving or retaining property stolen during a railway journey — Court within whose local limits the property has been so received or retained alone can try the said offence. AIR 1964 Raj 118 (120) = 1964 (1) Cri LJ 700 = 1963 Raj LW 601.

(6) Property entrusted to R at place B — R committing criminal breach of trust at J — Another person V receiving that property as stolen property at J — As V did not receive or retain the stolen property at B, he cannot be tried at B. AIR 1969 Raj 266 (269) = 1969 Raj LW 168 = 1969 Cri LJ 1268.

7. Sub-section (3) — Theft. — (1) An offence of being in possession of stolen property can be tried in the place where the property was stolen or where it was dishonestly possessed. AIR 1926 All 167 (168) = 27 Cri L Jour 21 ** AIR 1934 All 455 (456) = 35 Cri L Jour 1092.

Also see Illustration to Section 180.

(2) After the amendment of Sec. 410 of the Penal Code in 1882, a person can be punished in India for being in possession of stolen property, though the property was stolen outside India. (1886) 10 Bom 186 (188) (DB) ** AIR 1926 Bom 71 (74, 76) = 27 Cri L Jour 114.

(3) Where a theft is committed in one district in pursuance of conspiracy entered into in a different district, the Court in the latter district can try only the offence of criminal conspiracy but not of theft, even though such Court could have tried both offences jointly, if the theft had been committed within its jurisdiction. AIR 1924 Cal 1034 (1035) = 26 Cri L Jour 207 (DB).

(4) Where property stolen in one district is found in the possession of another person in another district, the thief can be legally tried in the latter district as the latter's possession is the constructive possession of the thief. 1871 Pun Re (Cr) No. 4, p. 5 (5) (DB) ** AIR 1964 Raj 118 (120) = 1964 (1) Cri LJ 700 = 1963 Raj LW 601.

8. Sub-section (4) — Kidnapping and abduction. — (1) The offence of kidnapping from lawful guardianship defined in Section 361 of Penal Code is not a continuing offence and is completed as soon as the minor is removed from the keeping of the guardian. (1911) 12 Cri L Jour 533 (533) (DB) (Mad) ** AIR 1931 Lah 53 (54) = 32 Cri L Jour 615 ** 27 Cal 1041 (1048, 1049) (FB) ** AIR 1926 Pat 493 (494) = 27 Cri LJ 792 (DB) ** AIR 1931 All 55 (55, 56) = 32 Cri L Jour 690 ** (1897) 19 All 109 (110) (DB).

Also see Section 182.

(2) As to whether "abduction" is a continuing offence, see Section 182.

(3) The section expressly provides that the offences of kidnapping and abduction are triable, either at the place where the offence took place or at the place where the minor was conveyed, concealed or detained. The following cases which under the old Code held that the offence of kidnapping should be tried only in the Court within whose jurisdiction the kidnapping took place are not good law. (1880) 3 All 258 (259, 260) ** 1883 All WN 164 (164) (DB) ** (1896) 18 All

182. Place of inquiry or trial where scene of offence is uncertain or not in one district only; or where offence is continuing, or consists of several acts. — When it is uncertain in which of several local areas an offence was committed, or

where an offence is committed partly in one local area and partly in another, or

where an offence is a continuing one, and continues to be committed in more local areas than one, or

where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

[1882 — S. 182; 1872 — S. 67; 1861 — S. 29.]

Section 181 — Note 8 (contd.)
350 (352) (DB) ** 1883 All WN 67 (67) ** 1887 All WN 139 (139).

(4) The words "kidnapping or abduction" in the section do not include the offence of wrongfully concealing or keeping in confinement a kidnapped person, because the latter is a separate offence under Section 368 of the Penal Code. AIR 1924 All 454 (455) = 25 Cri L Jour 552 ** AIR 1947 Pat 17 (20) = 25 Pat 241 = 48 Cri L Jour 189 (DB).

[See 1901 Pun Re (Cr) No. 1, p. 1 (3) (DB). (Minor kidnapped in native State — Accused taking her to another native State — On way accused apprehended at railway station A in British India — Sub-section (4) did not give jurisdction to Court A, no consequence having ensued in British India within meaning of Section 179 and no offence having been committed in British territory, there being no concealment or detention in British India and "conveying" not being separate offence, kidnapping being complete outside British India.)]

(5) Where A having knowledge of the fact that a girl was abducted by B confines her with a view to sell her, he can be tried under Section 368, Penal Code, in the Court within whose jurisdiction the original abduction took place. AIR 1951 Ajmer 68 (70) = 52 Cri L Jour 891. See Illustration C to Section 180.

(6) This sub-section refers only to cases of kidnapping and abduction but does not apply to offences under Chapter XX of the Penal Code. So the offence of enticing away a married woman, under Section 498 of the Penal Code, does not come within the operation of this section and can be tried only at the place where the offence was committed. AIR 1918 Lah 357 (357) = 19 Cri L Jour 438 ** (1881) 3 All 251 (252, 253) (DB).

9. Effect of a trial in a Court contrary to the provisions of the section. — (1) Where a person is tried in a wrong Court, contrary to the provisions of the section, it is only an irregularity within the meaning of Section 531 and the conviction will not be set aside unless there has been a failure of justice. AIR 1924 All 454 (455) = 25 Cri L Jour 552 ** AIR 1918 Cal 305 (306) = 19 Cri L Jour 896 (DB) ** (1906) 4 Cri L Jour 500 (501) = 30 Mad 94 (DB) ** AIR 1931 Rang 164 (168, 169) = 32 Cri L Jour 1120 (DB).

(2) Complaint filed in Court of wrong territorial jurisdiction — High Court can clothe the Court with jurisdiction: 13 Cri LJ 85 and 1939 Mad WN 517 and AIR 1923 Mad 326 in so far as they decide contrary **Held, not good law.** AIR 1960 Mad 64 (71) = 1960 Cri LJ 242 = (1959) 2 Mad LJ 521 (FB).

SECTION 182 — SYNOPSIS

1. **Scope and applicability.**
2. **Uncertainty as to local area in which offence is committed.**
3. **Offences committed partly in one local area and partly in another.**
4. **Continuing offence.**
5. **Offences consisting of several acts.**

1. Scope and applicability. — (1) Section 182 cannot be read as an exception to the general rule embodied in Section 177 and repeated in Section 7 (2) of the Criminal Law Amendment Act, 1952. It is rather amplification of that rule. AIR 1959 Ker 311 (314) = ILR (1958) Ker 763 = 1959 Cri LJ 1172.

(2) Where an offence is committed only in one place and there is no question of any other local area giving rise to jurisdiction, this section has no application. AIR 1952 Sau 35 (37) = 1952 Cri LJ 737. (The offence of drinking liquor.) ** (1889) 16 Cal 667 ** AIR 1963 Guj 234 (237, 238) = 1963 (2) Cri LJ 273 = (1962) 3 Guj LR 409 (DB). (Offence under S. 66 (1) (b), Bombay Prohibition Act (25 of 1949) would be complete on consumption of liquor. Place of offence cannot be uncertain.)

(3) Section 182 is a specific provision and not a general principle of law and was supplemental to the third clause of Section 181 (2). **AIR 1957 SC 196 (198) = 1957 Cri LJ 322.**

(4) In the case of a continuing offence, though it is beyond doubt that the place where the initial offence was committed would be a proper place of trial under the law, the offence can be tried under this section either at such place or at any other place where it continues to be committed. AIR 1922 Nag 40 (42) = 23 Cri LJ 210 (DB).

Section 182 — Note 1 (contd.)

(5) This section has no application where one of the local areas in question is outside India. AIR 1946 Nag 128 (130) = ILR (1945) Nag 130 ** (1889) 16 Cal 667 (675, 676) (DB) ** (1876) 1 Mad 171 (171, 172) (SB) ** (1882) 5 Mad 23 (24, 25) = 1 Weir 1 (DB).

(6) If it is doubtful whether an offence was committed within India, or outside India, this section does not apply so as to give jurisdiction to Indian Court. AIR 1923 Lah 487 (487) = 24 Cri LJ 579. (Benefit of doubt should be given to the accused.)

(7) Where the offence is a continuing offence within the meaning of this section and the initial offence was committed outside India, the fact that the offence was continued in India does not confer jurisdiction on a Court in India to inquire into or try the offence. (1876) 1 Mad 171 (171, 172) (SB).

(8) Where an offence is initiated outside India but completed in India, it has been held that the offence can be tried or inquired into in India. (1912) 13 Cri LJ 426 (427, 428, 429) = 36 Bom 524 (DB).

(9) In cases coming under this section, the Courts having jurisdiction over the several areas in question have concurrent jurisdiction. When a question arises as to which of the Courts ought to try the case, it can be decided by the High Court under Section 185. (1913) 14 Cri LJ 398 (399) (DB) (Cal) ** AIR 1933 Lah 852 (853, 854) = 35 Cri LJ 171.

(10) Section 182 relates only to cases of offences, that is acts which are punishable by law. A case under Section 145 is not a case relating to an offence. Hence, Section 182 does not apply to such a case. (1899) 3 Cal WN 148 (150) ** AIR 1914 All 473 (473, 474) = 15 Cri LJ 520.

(11) The principle underlying this section read with Section 185 has been held to apply to a proceeding in relation to land or to any other criminal or semi-criminal proceeding as contemplated under Chapter XII provided a bona fide dispute with regard to actual jurisdiction does arise in any case. (1954) 33 Pat 927 (937) (DB). (Observations in 3 Cal WN 148, held obiter; AIR 1914 All 473, **Dissented from.**)

(12) In a case falling within Section 6 (1) of the Criminal Law Amendment Act, 1952, Section 7 (2) of that Act cannot be read as excluding the application of Chapter XV (including Section 180) of the Code. AIR 1959 Ker 311 (314) = ILR (1958) Ker 763 = 1959 Cri LJ 1172.

2. Uncertainty as to local area in which offence is committed. — (1) A person is charged with the offence of criminal breach of trust. Though it is clear that he must have committed the embezzlement either at Calcutta, Burdwan or Murshidabad, it is uncertain at which particular place he actually committed the offence. He may be tried at any of these places. 1945 All LJ 468 (469) ** **AIR 1957 SC 196 (199) = 1957 Cri LJ 322.** (Cri. Revn. No. 209 of 1953, D/- 30-10-1953 (Nag), **Reversed.**) ** AIR 1918 Cal 110 (110) = 19 Cri LJ 679 (DB) ** AIR 1937 Bom 371 (372) = 38 Cri LJ 977 (DB) ** AIR 1934 All 499 (505) = 35 Cri LJ 982 (FB) ** AIR 1963 Guj 234 (237) = 1963 (2) Cri LJ 273 = (1962) 3 Guj LR 409 (DB).

(2) Where there is doubt as to whether the criminal conspiracy was hatched at N or at A, Section 182 applies and N Court would have jurisdiction to try all the accused persons for criminal conspiracy. AIR 1956 Vind Pra 30 (33) = 1956 Cri LJ 1246.

(3) This section applies to cases where there is no doubt that the occurrence in question took place at a particular locality A, but it is uncertain whether A is in district B or C. (1898) 25 Cal 858 (859, 860) (DB). (Uncertainty as to which district the scene of offence belonged — Expression 'local areas' includes a 'district'.) ** AIR 1929 Cal 204 (205) = 30 Cri LJ 401 (DB).

(4) Where there is a doubt as to whether an offence is committed at B where the accused's act is done, or at Y where the consequence of his act ensues, the offence can be tried at either place. AIR 1933 Nag 33 (35) = 34 Cri LJ 1038.

3. Offences committed partly in one local area and partly in another. — (1) A at p posts certain value-payable articles at the post-office at p to B at h. B at h takes delivery of the parcels on paying for them. The parcels on being opened are found to contain nothing but waste paper. A can be prosecuted for cheating at p or h. AIR 1930 Bom 358 (359, 360) = 31 Cri LJ 1155 (DB).

(2) Bag of adultered turmeric sent from Bombay to Nasik — Offence under Section 7 (v) of Prevention of Food Adulteration Act (1954) committed partly at Bombay and partly at Nasik — Accused could be tried at either place. **AIR 1966 SC 128 (130) = 1966 Cri LJ 106 = (1965) 2 SCWR 561 = 68 Bom LR 90.**

(3) A at m deceived by E at c by means of certain letters written by E at c and received and read by A at m — By means of such deception A induced to send by insured post certain currency notes to E at c —E was prosecuted for cheating under Section 417, I. P. C. — Held that the offence was complete at m and he could be tried there and that even if there was room for argument that the offence was not complete until the currency notes reached the addressee, the offence could be tried at m under S. 182. AIR 1914 All 373 (373, 374) = 15 Cri LJ 719.

Section 182 — Note 8 [contd.]

(4) Life policy effected at C through fraud — Head office of insurance company at G — Offence may be tried at either place. (1913) 14 Cri LJ 398 (399) (DB) (Cal).

(5) Accused charged under Sections 417, 418, Penal Code — Monies received from complainant's firm at C and false accounts rendered at C — Held that Court at C had jurisdiction. (1899) 26 Cal 746 (747) (DB).

(6) A defamatory letter is posted at a to be read at b. The offence of defamation can be tried at a or b. AIR 1923 Mad 666 (666) = 24 Cri LJ 309 ** AIR 1959 Andh Pra 657 (659) = 1959 Cri LJ 1403.

[See however AIR 1957 Mad 572 (572) = 1957 Cri LJ 983. (AIR 1923 Mad 666 and AIR 1924 Mad 340, Doubted.)

(7) A at c enters into a conspiracy with X, Y and Z who are at p for the the commission of an offence; and the further act in pursuance of the conspiracy, which is necessary under Section 107 of the Penal Code to complete the offence of abetment by conspiracy is committed at p. A can be tried at c or p. (1872) 17 Suth WR 15 (16, 17) = 9 Beng LR 36 (SB). (Conspiracy.)

(8) Offence initiated by foreigner in foreign country, completed in British territory — He is, if found within British territory, liable to be tried by the British Court within whose jurisdiction the offence is committed. (1912) 13 Cri LJ 426 (427) = 36 Bom 524 (DB).

(9) Accused charged under S. 121-A, I. P. C., found to have been corresponding with a conspirator residing at C — C found to be one of the centres of conspiracy — **Held** that Court at C had jurisdiction to try accused. AIR 1933 All 498 (500) = 35 Cri LJ 768.

[See also AIR 1956 Vindh Pra 30 (33) = 1956 Cri LJ 1246. (Where the allegations made in the challan leave no doubt that N was an important centre of the conspiracy, the Court at N has jurisdiction to try all the accused persons for the offence under Section 120-B, Penal Code.)]

(10) N sends a false complaint to the Inspector-General of Police from h and it is received by the addressee at a. N is prosecuted for an offence under Section 182, Penal Code. N can be tried at h or a, as the offence is committed partly at h and partly at a. AIR 1936 All 105 (107) = 37 Cri LJ 157 (DB).

[But see AIR 1932 Mad 427 (427, 428) = 33 Cri LJ 452 ** AIR 1948 Mad 292 (293) = ILR (1948) Mad 893 = 49 Cri LJ 335.]

(11) Accused at N ordering by letters goods from merchants at B and after receiving the goods, absconding without paying for them as promised in his letters — He can be tried at N for cheating. AIR 1943 Bom 183 (184) = 44 Cri LJ 664 (DB).

(12) Accused 3 and 4 alleged to have cheated complainant by giving spurious gold pieces in return for money in District R — Accused 5 getting amount from complainant in District T — Transaction, though completed only in District R as complainant parted with money in T, Court at T held had jurisdiction to try case. AIR 1940 Mad 649 (649).

(13) Accused convicted under Section 32 (4), Companies Act, for default punishable under Section 32 — Default taking place in Calcutta— Accused residing at Darjeeling and office of company situated there — **Held,** that even if that was so, the accused was triable in Calcutta. AIR 1917 Cal 2 (2) = 18 Cri LJ 787 (DB).

(14) Presidency Magistrate, Calcutta, has jurisdiction to try charge under Section 134, Companies Act, even though company is situate outside Calcutta as office of Registrar with whom balance sheet should be filed is in Calcutta. AIR 1917 Cal 1 (1) = 18 Cri LJ 787 (788) (DB).

(15) Criminal breach of trust — Offence is complete where the dishonest misappropriation takes place — No part of the offence takes place at the place where the loss to the principal occurs in consequence. AIR 1914 All 373 (374) = 15 Cri LJ 719.

(16) Property entrusted at place B, misappropriated at place J — Offence under Section 411 Penal Code in respect of same property at J — Receiver cannot be prosecuted at B. AIR 1969 Raj 266 (269) = 1969 Cri LJ 1268 = 1969 Raj LW 168.

(17) A at Surat committing breach of trust in respect of a cheque by cashing it at Surat — Loss in consequence suffered by B at Akola — Offence not committed at Akola — Surat Court alone has jurisdiction. AIR 1948 Nag 80 (81) = ILR (1947) Nag 378 = 49 Cri LJ 121.

(18) Where the charge mentions only one of the two places where the offence is committed but the accused has not been misled in his defence, the omission does not affect the conviction. AIR 1936 Pat 358 (360) = 37 Cri LJ 862 (DB).

(19) Goods obtained under actual User's licence under Imports and Exports (Control) Act 1947 — Goods offered for sale from Bombay and delivered to purchaser at Delhi— Agreement to sell being completed at Delhi, part of the offence of selling in contravention of the licence was committed at Delhi — Under Section 182 read with Section 177 Delhi Court has jurisdiction. AIR 1967 Delhi 88 (91) = 1967 Cri LJ 1300 = 69 Pun LR (D) 112.

(20) Corporation in Madras — Factories outside Madras committing default in making contributions under Section 39

Section 182 — Note 3 (contd.)

of Employees' State Insurance Act (1948) to the Corporation payable at Madras — Fact that different parts of the offence were committed in a different jurisdiction makes no difference — Chief Presidency Magistrate has territorial jurisdiction to enquire into matter. AIR 1960 Mad 64 (70, 72) = 1960 Cri LJ 242 = (1959) 2 Mad LJ 521 (FB).

(21) See also Ss. 177 and 179 and Notes thereon.

4. Continuing offence. — (1) Abduction is a continuing offence and continues to be committed so long as the abducted person is being removed from one place to another. AIR 1933 Oudh 45 (47, 48) = 34 Cri LJ 220 (DB) ** AIR 1931 All 55 (55, 56) = 32 Cri LJ 690 ** AIR 1914 All 17 (17) =15 Cri LJ 154.

(2) Abettor of offence under Section 366, Penal Code which is a continuing offence, can be tried with principal offender at place where principal offence was committed. 1962 (2) Cri LJ 712 (714, 715) = 64 Pun LR 193.

(3) It cannot be held as matter of law that abduction is always a continuing offence. The question has to be decided on the facts of each case. So far as the original abductor is concerned his offence may be said to be a continuing one so long as he keeps moving the woman from place to place. But where some persons join the original abductor later on they cannot be joined in the same trial unless it can be alleged that the offences committed by all the persons were in the course of the same transaction. AIR 1947 Pat 17 (19, 23) = 25 Pat 241 = 48 Cri LJ 189 (DB).

(4) Possession of goods with counterfeit trade mark for purposes of trade — Goods on their way to another destination where they were to be sold — Possession of goods at any place on the way is also offence and offence can be tried there and not only at the place where the goods were ultimately intended to be sold. (1898) 25 Cal 639 (640, 641) (DB).

(5) Rioting — Railway line dividing two jurisdictional areas — Rioters creating disturbance first on one side and after being dispersed, re-assembling and causing trouble from the other side — Offence held to be continuing one. AIR 1949 Mad 94 (94) = 50 Cri LJ 106.

(6) Accused charged with offence of abetment of waging war against the Queen — Abetment by aiding by sending money from C to P — Sending is continuing offence and can be tried at P where the money is received. (1872) 17 Suth WR (Cr) 15 (17) = 9 Beng LR 36 (SB).

(7) Enticing and detaining married woman — Offence is a continuing one. (1909) 9 Cri LJ 581 (582) = 5 Low Bur Rul 17.

(8) Kidnapping from lawful guardianship is not a continuing offence. (1923) 75 Ind Cas 297 (298) = 24 Cri LJ 921 (Pesh) ** AIR 1916 All 210 (212) = 17 Cri LJ 498 (499, 500) ** (1913) 14 Cri LJ 93 (94) = 15 Oudh Cas 351 ** AIR 1921 Oudh 226 (226) = 23 Cri LJ 58 ** (1903) 26 Mad 454 (455, 456) = 2 Weir 296 (DB) ** AIR 1931 All 55 (55) = 32 Cri LJ 690.

[See also 3 All 251 (253) (DB). (An offence under the first part of Section 498, Penal Code, is not a continuing offence.) ** AIR 1928 Bom 530 (530, 531) = 30 Cri LJ 54 (DB). (Offence of adultery is not a continuing offence.)]

(9) Independently of this section, the offence of kidnapping can, under sub-section (4) of Section 181, be tried by a Court within the local limits of whose jurisdiction the person was kidnapped or was conveyed or concealed or detained.

(10) Theft is not a continuing offence and does not continue to be committed so long as the thief is in possession of the stolen goods. (1906) 3 Cri LJ 247 (248, 249) = 28 All 372 (DB) ** (1907) 7 Cri LJ 188 (190) = 35 Cal 361 (DB).

(11) Under Section 181, sub-section (3), the offence of theft can be inquired into or tried by any Court within whose jurisdiction the offence was committed or the stolen property was possessed by the thief.

(12) Circumstances may arise in which a conspiracy is a continuing offence within the purview of this section, while it is in the process of being hatched, and any agreement to participate in the object of the conspiracy by each of the conspirators whose assistance is subsequently invoked does not constitute an overt act committed in pursuance of the conspiracy but is an integral part of the conspiracy itself. AIR 1946 Sind 1 (7) = ILR (1945) Kar 275 = 47 Cri LJ 455. (Each case must depend on its own facts.)

(13) Failure to obtain license to continue a factory by using motor of greater horse power than the one allowed under the previous license or not getting the previous license amended under Rule 3 of the Madras Rules framed under the Factories Act, 1948, is a specific and not a continuing offence. AIR 1958 Mad 155 (156) = ILR (1958) Mad 321 = 1958 Cri LJ 524.

(14) Word 'enter' in Section 182 means initial stepping into and includes travel within the territory. This offence of entering within meaning of Rule 3 of the Passport Rules 1950 includes passing or travelling through boundaries of India to reach Kanpur and is a continuing offence within meaning of Section 182. Kanpur Court could try the case. AIR 1965 All 158 (159) = 1965 (1) Cri LJ 410 = 1963 All WR (HC) 571.

183. Offence committed on a journey.—An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

[1882—S. 183; 1872—S. 67, Illus. (a); 1861—S. 30.]

Section 182 — Note 4 (contd.)

(15) Offences under Sections 471 and 474, Penal Code — Possessing and using a forged permit knowing it to be forged is a continuing offence. **AIR 1965 SC 1921 (1922) = 1965 (2) Cri LJ 822 = (1965) 2 SCWR 784.**

(16) Also see S. 181.

5. Offences consisting of several acts.—(1) A at h obtained a false railway receipt and sent it through an agent to K at b. The agent presented it to K and the latter was thereby deceived and induced to part with money. It was held that A by taking the railway receipt did more than merely prepare for cheating K, that he did what was in the circumstances an act essential to causing the deception and that the Court at h had jurisdiction to try him for cheating. AIR 1922 Nag 40 (41, 42) = 23 Cri LJ 210 (DB).

(2) Offence consisting of several acts done in different local areas — It may be enquired into or tried by a court having jurisdiction over any of such local areas. AIR 1960 Mad 64 (70) = 1960 Cri LJ 242 = (1959) 2 Mad LJ 521 (FB).

(3) Conspiracy and acts done in pursuance thereof constitute one transaction and come within scope of this section. Conspiracy may be tried at any place where any of acts in pursuance of the conspiracy are committed. AIR 1962 Mys 275 (279) = 1962 (2) Cri LJ 765 = 40 Mys LJ 494 (DB).

(4) Where the acts alleged do not amount to one offence but to several distinct offences, some of which are committed outside the jurisdiction, the mere fact that if they had been committed within jurisdiction, they could have been tried jointly under Section 239, does not make this clause applicable to the case. AIR 1924 Cal 1034 (1034, 1035) = 26 Cri LJ 207 (DB).

[See also AIR 1959 Ker 311 (314) = ILR (1958) Ker 763 = 1959 Cri LJ 1172. (The fact that several offences can be charged and tried together cannot invest the Court with territorial jurisdiction where otherwise it has none. The court must have territorial jurisdiction to try each of them.)

(5) Possessing a domicile under Section 4 (b), Bombay Prevention of Hindu Bigamous Marriages Act in the State of Bombay cannot be regarded as one of the several acts constituting the offence under Section 5 of that Act within the meaning of Section 182. The criminal act is the marriage and not the possession of the Bombay State domicile. When such a marriage is performed outside the Bombay State, no part of the offence can be said to have taken place in the Bombay State. AIR 1955 Bom 439 (447) = ILR (1955) Bom 1039 = 1955 Cri LJ 1564 (DB).

(6) Documents forged in Burma anc used in India — Offence under Sectior 471, Penal Code can be tried by Cour in India. 1960 Ker LT 1350 = 1961 Mac LJ (Cr) 114 = 1962 (2) Cri LJ 132 (135).

(7) Accused charged under Section 400, Penal Code, with offence of belonging to gang of dacoits — Headquarters of gang in one district — Each one of the dacoities is one of the acts done by the gang — Hence commitment and trial in any district where a dacoity was committed would be covered by Section 182. AIR 1961 Pat 260 (264) = 1961 (1) Cri LJ 841 = ILR 38 Pat 1251 (DB).

Section 183 — Note 1

(1) A, while performing a railway journey from Delhi to Bhatinda, commits an offence. In the course of the journey the train passes through Ferozepore District. A can be tried for the offence in Ferozepore District. AIR 1924 Lah 351 (351, 352) = 24 Cri LJ 253.

(2) A, while performing a railway journey from Shikarpur to Jacobabad, commits an offence at some place between Sultan Kot and Hamayun. A can be tried for the offence at Jacobabad though the Court there has no jurisdiction over the area in which the offence was committed. AIR 1925 Sind 177 (177) = 25 Cri LJ 439 ** 1882 Rat 181 (181, 182) (DB).

[But see (1863) 1 Mad HCR 193 (196) (DB). (Case under Section 35, Act 18 of 1862).]

(3) A, while performing his journey from Dacca in East Pakistan to Ajmer in India crossed the Indian border without a valid permit in order to reach Ajmer. A can be tried at Ajmer for an offence under Section 3, Influx from Pakistan (Control) Act, 1949, though the offence was committed on the Indian border. AIR 1952 Ajmer 5 (6) = 1952 Cri LJ 151.

(4) It is necessary, that the parties or the subject-matter of the offence should have passed through the jurisdiction of

184. Offences against Railway, Telegraph, Post-office and Arms Act. — All offences against the provisions of any law for the time being in force relating to Railways,[*] Telegraph,[†] the Post-office[‡] or Arms and Ammunition[§] may be inquired into or tried in a presidency-town,[*†] whether the offence is stated to have been committed within such town or not:

Section 183 — Note 1 (contd.)

the Court proposing to hold the inquiry or trial, in the course of the same journey or voyage in which the offence was committed. Such journey or voyage must be continuous from one place to another, regard being had, for the purpose of estimating the continuity, to all the ordinary incidents affecting the journeys or voyages of the particular kind, which may be under consideration. (1874) 21 Suth WR (Cr) 66 (67) = 13 Beng LR (App) 4 (DB).

(5) The complainant and the accused were travelling by the same train from Bombay to Calcutta via Allahabad. They broke their journey at Allahabad for a day or two and then proceeded to Calcutta. The accused was alleged to have criminally intimidated the complainant while they were at Allahabad. The stoppage at Allahabad was not due to the nature of the journey itself because the journey might have been completed without any appreciable stoppage simply by continuing in the train in which they were passengers before they came to Allahabad. It was held that the offence could not be tried or inquired into at Calcutta. (1874) 21 Suth WR (Cr) 66 (66, 67, 68) = 13 Beng LR (App) 4 (DB).

(6) If the halt in the course of a journey or voyage is incidental to it, the halt does not affect the continuity of the journey or voyage for the purpose of this section. Hence, an offence committed during such a halt can be inquired into or tried at the place of destination. (1876) 25 Suth WR (Cr) 45 (45) (DB).

(7) The journey or voyage referred to in this section is the journey or voyage which the offender was performing at the time of committing the offence. Hence, a Court has no jurisdiction to inquire into or try an offence under this section unless the parties or the subject-matter of the offence passed within its jurisdiction in the course of the journey or voyage, which the offender was making at the time of committing the offence. (1905) 2 Cri LJ 411 (412, 413) (DB) (Cal).

(8) A desiring to go from s to k, purchases a through ticket at s and proceeds by train from s to g and by steamer from g to k. B makes a voyage from g to k in the same steamer and in the course of the voyage he commits an offence against A. B cannot be proceeded against at s because A did not pass through s in the course of the journey which B was making at the time of committing the offence. (1905) 2 Cri LJ 411 (412, 413) (DB) (Cal).

(9) A committed a theft on a running train by dropping some bales of cloth at a place in x district before the other district y was reached. There was no evidence to show that A who was a resident of x district, passed through y district. It was held that A could be tried in x district and not in y district. 1951 All WR (HC) 256 (257).

(10) A, a resident of Karachi, went from Karachi to Dacca under a transit permit valid for 15 days and later arrived at Ajmer without a valid permit. A had failed to surrender his transit permit at Calcutta before entering East Pakistan. The Ajmer Court has no jurisdiction to try the offence of not surrendering the permit as the presence of the accused at Ajmer cannot be said to be in the course of his journey to East Pakistan during which the offence was committed. AIR 1952 Ajmer 5 (5) = 1952 Cri LJ 151.

(11) As the Code extends only to India, this section applies only to offences committed in India. Hence, an offence committed outside India in the course of a journey cannot be tried or inquired into in India although a part of the journey was made in India. AIR 1923 Lah 487 (488) = 24 Cri LJ 579 ** (1882) 5 Mad 23 (25) (DB) ** AIR 1928 Mad 1136 (1137) = 30 Cri LJ 245.

(12) This section as also Sections 177 to 181 should be read with section 531. Consequently if the offence is tried by a Court having no jurisdiction and there is no failure of justice, a finding, sentence or order will not be set aside. (1906) 4 Cri LJ 500 (501) = 30 Mad 94 (DB).

Also see S. 531.

(13) As to the offences committed on the high seas, see Notes on Section 188.

(14) Offence of receiving or retaining property stolen during a railway journey — Magistrate who is enabled to try offence of theft committed during railway journey, under Section 183 cannot try such an offence — Section 183 does not control Sections 180 (b) and 181 (3). AIR 1964 Raj 118 (119, 120) = 1964 (1) Cri LJ 700 = 1963 Raj LW 601.

(15) Section 183 does not control Section 180 (b) or 181 (3). AIR 1964 Raj 118 (119, 120) = 1964 (1) Cri LJ 700 = 1963 Raj LW 601.

Provided that the offender and all the witnesses necessary for his prosecution are to be found within such town.

[1882 — S. 184; 1872 and 1861 — Nil.]

[*] See the Indian Railways Act, 1890 (IX of 1890), Chap. IX (Ss. 87 to 134), the Railway Companies (Emergency Provisions) Act, 1951 (LI of 1951), Section 9, the Railway Protection Force Act, 1957 (XXIII of 1957), Section 17.

[†] See the Indian Telegraph Act, 1885 (XIII of 1885), Part IV (Sections 20-32) the Telegraph Wires (Unlawful Possession) Act, 1950 (LXXIV of 1950), Secs. 5, 6 and 7.

[‡] See the Indian Post-Office Act, 1898 (VI of 1898), Chap. X (Secs. 49-72).

[§] See the Arms Act, 1959 (LIV of 1959), Chap. V (Ss. 25-33).

[*†] For definition of presidency town, see General Clauses Act, 1897 (X of 1897) S. 3 (44).

STATE AMENDMENT

Gujarat

In its application to the City of Ahmedabad, in the Code of Criminal Procedure, 1898, for the words "presidency-town" wherever occurring, substitute the words "City of Ahmedabad". — Guj. Act XIX of 1961, Section 15. (4-11-1961.)

*[**185. High Court to decide, in case of doubt, district where inquiry or trial shall take place.** — (1) Whenever a question arises as to which of two or more Courts subordinate to the same High Court ought to inquire into or try any offence, it shall be decided by that High Court,

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SECTION 185 — SYNOPSIS

1. **Scope and applicability.**
2. **Sub-section (1) — Courts subordinate to the same High Court — Question as to which Court should dispose of case.**
3. **Sub-section (2) — Case where same offence is taken cognizance of by two different Courts subordinate to different High Courts.**

1. Scope and applicability. — (1) Where two Courts have concurrent jurisdiction to try a case, the mere fact that one of them has taken cognizance of the offence does not preclude the other Court from taking cognizance of the same offence. In such cases, the High Court might interfere under the provisions of this section to declare in which of the two Courts the proceedings should be continued. AIR 1933 Lah 852 (853) = 35 Cri LJ 171.

(2) The section applies only to cases of offences. Hence, it does not apply to a proceeding under Chapter XII. AIR 1914 All 473 (473, 474) = 15 Cri LJ 520. [But see (1954) 38 Pat 927 (938, 939) (DB). (AIR 1914 All 473 = 15 Cri LJ 520, Dissented from.)]

(3) See also Ss. 526 and 527.

2. Sub-section (1) — Courts subordinate to the same High Court — Question as to which Court should dispose of case. — (1) The section applies notwithstanding there is no doubt raised as to the jurisdiction of different Courts, but only as to the greater convenience and desirability of inquiring into or trying a case in one Court or another. See AIR 1917 Cal 137 (141) = 18 Cri L Jour 81 (82, 88, 93, 94) (FB). (**Overruling** AIR 1914 Cal 386 = 15 Cri L Jour 48.) ** AIR 1918 Mad 1183 (1184) = 18 Cri L Jour 148 (150) (DB) ** AIR 1917 Lah 237 (241) = 18 Cri L Jour 514 (518).

(2) The jurisdiction which the High Court exercises under this sub-section is one of very great responsibility. Therefore, in making a reference under this sub-section to the High Court proper steps should be taken to supply to the High Court with at least all the available official records and authentic materials on the point so as to facilitate the work of the High Court in coming to a right decision on the point. AIR 1952 Cal 563 (564) = 1952 Cri L Jour 1253 (DB).

(3) Provisions of Section 185 (1) do not fetter in any way discretion of the High Court for deciding as to in which of the two or more courts, subordinate to the same High Court, the enquiry or trial shall proceed. AIR 1970 Cal 81 (83) = 1970 Cri LJ 208.

(4) In exercising the discretion under Section 185 (1), the factum of earlier commencement, convenience of the parties, nature of the case and facts thereof may be taken into consideration. Inconvenience to the accused and not to the complainant has to be considered. AIR 1970 Cal 81 (84) = 1970 Cri LJ 208.

3. Sub-section (2) — Case where same offence is taken cognizance of by two different Courts subordinate to different High Courts. — (1) Where only one Court has taken cognizance of an offence, the High Court has no jurisdiction

(2) Where two or more Courts not subordinate to the same High Court have taken cognizance of the same offence, the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced may direct the trial of such offender to be held in any Court subordinate to it, and if it so decides all other proceedings against such person in respect of such offence shall be discontinued. If such High Court, upon the matter having been brought to its notice, does not so decide, any other High Court, within the loca limits of whose appellate criminal jurisdiction such proceedings are pending may give a like direction, and upon its so doing all other such proceedings shall be discontinued.]

[1882—S. 185; 1872—S. 69; 1861—S. 34.]

[°] This section was substituted for the original section by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), Section 43.

186. Power to issue summons or warrant for offence committed beyond local urisdiction, Magistrate's procedure on arrest. — (1) When a Presidency Magistrate, a District Magistrate, a Sub-Divisional Magistrate, or, if he is specially empowered in this behalf by the °[State Government], a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without †[India]) an offence which cannot, under the provisions of Sections 177 to 184 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under some law for the time being in force triable in †[India], such

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Section 185 — Note 3 (contd.)

to interfere under sub-section. AIR 1933 Oudh 45 (48) = 34 Cri LJ 220 (DB).

(2) In the following case, the High Court refused to interfere at an interlocutory stage and held that it was desirable that a case pending in a Court subordinate to it should be proceeded with as it dealt with every offence said to have been committed in the entire transaction. 1951 RD (HC) 48 (51).

(3) Theft in Assam — Stolen articles recovered from accused in Punjab — Case under Section 380, Penal Code registered and investigation started in Assam — Subsequently case under Section 411, Penal Code, started in Punjab — Trial under Section 380, Penal Code, should get priority — Trial under Section 411, Penal Code had no independent existence. AIR 1959 Assam 20 (Prs 4, 5) = 1959 Cri LJ 169.

(4) The principle of earlier commencement in Section 185 (2) is enjoined to eliminate possible confusion and conflict, irrespective of any ground of general inconvenience or any other sufficient reason. AIR 1970 Cal 81 (83) = 1970 Cri LJ 208.

Section 186 — Note 1

(1) In order that this section may apply the Magistrate must have reason to believe that an offence has been committed outside the local limits of his jurisdiction, whether within or without India. AIR 1923 Cal 401 (401, 402) = 25 Cri LJ 184 (DB) ** AIR 1968 Cal 220 (226) = 71 Cal WN 508 = 1968 Cri LJ 604.

(2) Where an offence is triable within the local limits of the Magistrate's jurisdiction, though committed outside such limits, this section does not apply. See 1875 Rat 97 (98) (DB). (Case under the Code of 1872.)

(3) The powers conferred by this section are conferred only on certain specified Magistrates and not on all Magistrates. See 1896 Rat 849 (849) (DB).

(4) Section 186 does not override the provisions of Sections 75 to 86 which deal with the execution of warrants of arrest. AIR 1940 Bom 397 (398) = 42 Cri LJ 205.

(5) Chief Presidency Magistrate, Calcutta merely forwarding a warrant for arrest sent to him by City Magistrate, Shrinagar, for execution to Commissioner of Police Calcutta as accused was not residing within local limits of his jurisdiction — Section 186 does not apply. AIR 1955 Cal 277 (278) = 1955 Cri LJ 791 (DB).

(6) It is not necessary that a Magistrate issuing a warrant under this section should be present within the local limits of his jurisdiction at the time of issuing it. It is enough that at such time the offender is found within such limits though the Magistrate himself is outside such limits. (1876) 1 Bom 340 (341) (DB).

[See however (1910) 11 Cri LJ 570 (571) = 1910 Pun Re (Cr) No. 23 (DB). (Search warrant signed by the Magistrate at a place outside his jurisdiction is illegal— Magistrate holding powers within certain local limits cannot exercise those powers from a place beyond such local limits — (1876) 1 Bom 340, Distinguished and Explained.)]

(7) When the facts of a case fall within this section not only can the

Magistrate may inquire into the offence as if it had been committed within such local limits and compel such person in manner hereinbefore provided to appear before him and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond with or without sureties for his appearance before such Magistrate.

(2) When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent or bound to appear, the case shall be reported for the orders of the High Court.

[1882—S. 186; 1872—Ss. 157, 174; 1861—Ss. 74, 88.]

[*] Substituted for 'Provincial Government' by A. L. O., 1950.

[†] Substituted for "the States", by the Code of Criminal Procedure (Amendment) Act, 1951 (I of 1951), Section 2 (1-4-1951).

STATE AMENDMENTS

Gujarat

In its application to the State of Gujarat, the amendment made in Section 186 is the same as that made in Maharashtra. — See Cent. Act XI of 1960, Section 87.

Note.—Magistrates appointed for the City of Ahmedabad, have the powers and exercise the jurisdiction of a Presidency Magistrate. — See Guj. Act XIX of 1961, Section 14 (3) (4-11-1961).

Maharashtra

(1) In its application to the State of Maharashtra, in sub-section (1) of Section 186 for the words "a District Magistrate, a Sub-Divisional Magistrate, or, if he is specially empowered in this behalf by the State Government, a Magistrate of the first class" substitute the words "or a Magistrate of the first class specially empowered in this behalf by the State Government in consultation with the High Court." — Bom. Act XXIII of 1951, Section 2 and Schedule. (1-7-1953).

(2) After the reorganization of the State of Bombay in 1956, the amendment made in Section 186 by the above-mentioned Bom. Act is extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Mysore

In its application to the State of Mysore, in sub-sec. (1) of S. 186, for the words "a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or if he is specially empowered in this behalf by the State Government, a Magistrate of the first class" substitute the words "a Judicial Magistrate". — Mys. Act XIII of 1965, Sec. 32 (1-10-1965).

Punjab, Haryana and Chandigarh

In its application to the States of Punjab and Haryana and Union territory of Chandigarh, in sub-section (1) of Section 186, for the words "a Presidency Magistrate, a District Magistrate, a Sub-divisonal Magistrate or, if he is specially empowered in this behalf by the State Government a Magistrate of the first class," substitute the words, "a District Magistrate, a Chief Judicial Magistrate, a Sub-divisional Magistrate, or, if he is specially empowered in this behalf by the State Government or the High Court, as the case may be, an Executive or a Judicial Magistrate of the first class." — Punj. Act XXV of 1964, Section 2 and Schedule Pt. I, Item (43) (2-10-1964) and Act 31 of 1966, Sections 29 and 88 (1-11-1966).

Section 186 — Note 1 (contd.)

Magistrate follow the procedure laid down therein but also the High Court can, under clause 29 of the Letters Patent (Madras), direct a Magistrate to hold a preliminary inquiry and commit the case to the sessions if a prima facie case is made out. But the High Court will not make such an order unless the case is of an extremely exceptional character; and ordinarily the Magistrate must be allowed to follow the procedure laid down in this section. (1901) 2 Weir 146 (146, 147) (DB).

(8) Warrant of arrest against fugitive offender living outside India — Warrant sent directly to Government of India for extradition of offender — Warrant is not proper and valid. AIR 1968 Cal 220 (228) = 71 Cal WN 508 = 1968 Cri LJ 604.

Rajasthan

Abu area. — In its application to the Abu area of the State of Rajasthan, the amendment made in Section 186 is the same as that made in (1) of Maharashtra. — See Cent. Act XXXVII of 1956, Section 119 (1-11-1956).

Union territories (except Chandigarh)

In its application to the Union territories, in sub-section (1) of Section 186, for the words "a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate, or, if he is specially empowered in this behalf by the State Government, a Magistrate of the first class", substitute the words "a District Magistrate, a Sub-divisional, or, if he is specially empowered in this behalf by the State Government, an Executive Magistrate of the first class, or, if he is specially empowered in this behalf by the State Government, in consultation with the High Court, a Judicial Magistrate of the first class". — Act 19 of 1969, Section 3 and Schedule, Item 45. (In Delhi, on 2-10-1969.)

West Bengal

In its application to the State of West Bengal, in sub-section (1) of Section 186, for the words beginning with 'a District Magistrate' and ending with 'a Magistrate of the first class', substitute the words "Sub-divisional Judicial Magistrate, or, if he is specially empowered in this behalf by the State Government, in consultation with the High Court, a Judicial Magistrate of the first class". — W. B. Act 8 of 1970, Section 2 and Schedule, Item 63.

187. Procedure where warrant issued by subordinate Magistrate. — (1) If the person has been arrested under a warrant issued under Section 186 by a Magistrate, other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District or Sub-Divisional Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the police-officer executing such warrant or shall be sent to the Magistrate by whom such warrant was issued.

(2) If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under Section 186, such Magistrate shall send such person to such Court.

[1882—S. 187; 1872—S. 175; 1861—S. 89.]

STATE AMENDMENTS

Gujarat

In its application to the State of Gujarat, the amendment made in Section 187 is the same as that made in Maharashtra — See Cent. Act XI of 1960, Section 87.

Magistrates in the City of Ahmedabad exercise the jurisdiction and have the powers of a Presidency Magistrate. — See Guj. Act XIX of 1961, Section 14 (3).

Maharashtra

(1) In its application to the State of Maharashtra, in sub-section (1) of Section 187, for the words "by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District or Sub-divisional Magistrate" substitute the words "the Magistrate issuing the warrant shall send the person arrested to the Sessions Judge". — Bombay Act XXIII of 1951, Section 2 and Schedule. (1-7-1953).

(2) After the reorganisation of the State of Bombay in 1956, the amendment made in Section 187 by the above mentioned Bombay Act is extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Mysore

In its application to the State of Mysore, in sub-section (1) of Section 187, for the words "by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District or Sub-divisional Magistrate" substitute the words "the Magistrate issuing the warrant shall send the peron arrested to the Sessions Judge". — Mys. Act XIII of 1965, Section 33 (1-10-1965).

Punjab, Haryana and Chandigarh

In its application to the States of Punjab and Haryana and the Union territory of Chandigarh, in sub-section (1) of Section 187, for the words "a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District or Sub-divisional Magistrate", substitute the words, "a District Magistrate or Chief Judicial Magistrate, such Magistrate shall send the person arrested to the District or Sub-divisional Magistrate, or, as the case may be, to the Chief Judicial Magistrate". — Punj. Act XXV of 1964, Section 2 and Schedule, Pt. I, Item (44) (2-10-1964) and Act 31 of 1966, Sections 29 and 88 (1-11-1966).

Rajasthan

Abu area. — In its application to the Abu area of the State of Rajasthan, the amendment made in Section 187 is the same as that made in (1) of Maharashtra. — See Cent. Act XXXVII of 1956, Section 119. (1-11-1956).

Union territories (except Chandigarh)

In its application to the Union territories, in sub-section (1) of Section 187, for the words "a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District or Sub-divisional Magistrate", substitute the words "a District Magistrate or Chief Judicial Magistrate, such Magistrate shall send the person arrested to the District or Sub-divisional Magistrate, or as the case may be to the Chief Judicial Magistrate". — Act 19 of 1969, Section 3 and Schedule, Item 46. (In Delhi on 2-10-1969).

West Bengal

In its application to the State of West Bengal in Sub-section (1) of Section 187, for the words "District Magistrate, such Magistrate shall send the person arrested to the District or Sub-divisional Magistrate", substitute the words, "Sub-divisional Judicial Magistrate, such Magistrate shall send the person arrested to the Sub-divisional Judicial Magistrate". — W. B. Act 8 of 1970, Section 2 and Schedule, Item 64.

188. Liability of Indian citizens for offences committed out of India. — *[When an offence is committed by—

(a) any citizen of India in any place without and beyond India; or

(b) any person on any ship or aircraft registered in India, wherever it may be];

he may be dealt with in respect of such offence as if it had been committed at any place within †[India] at which he may be found:

SECTION 188 — SYNOPSIS

1. Scope and applicability.
2. "India". — See S. 1
3. Transfer of territory from one State to another after commission of offence — Effect — See S. 177.
4. Liability of citizens of India for offences committed outside India.
5. "At which he may be found."
6. Certificate of Political Agent or sanction of State Government — Proviso
7. Offences committed on the high seas.
8. Offences under the Child Marriage Restraint Act, 19 of 1929.

1. Scope and applicability. — (1) This section provides for the extra-territorial jurisdiction of the Courts in India in certain cases. It deals with procedure only and has its counterpart so far as the substantive law is concerned in Section 4 of the Penal Code. AIR 1936 Bom 437 (437, 438) = 37 Cri LJ 211 (DB) = AIR 1950 Mad 22 (24) = 51 Cri LJ 231.

Political Agents to certify fitness of inquiry into charge.—Provided that ‡[notwithstanding anything in any of the preceding sections of this chapter] no charge as to any such offence shall be inquired into in †[India] unless the Political Agent, if there is one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in †[India]; and, where there is no Political Agent, the sanction of the §[State Government] shall be required:

Provided, also, that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in †[India] shall be a bar to further proceedings against him under *†[the Indian Extradition Act, 1903], in respect of the same offence*‡ in any territory beyond the limits of †[India].

[1882—S. 188; 1872 and 1861—Nil.]

[*] Substituted for certain words, by A. L. O., 1950.

[†] Substituted for "the States", by the Code of Criminal Procedure (Amendment) Act, 1951 (I of 1951), Section 2 (1-4-1951).

[‡] Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), Section 44.

[§] Substituted for 'Provincial Government' by A. L. O., 1950.

[*†] Substituted by Act 10 of 1927. However, the said Act of 1903 has now been repealed and replaced by the Extradition Act, 1962 (XXXIV of 1962), (1-1-1963).

[*‡] For rule against 'double jeopardy', see Article 20 (2) of the Constitution of India.

Section 188 — Note 1 (contd.)

(2) Under Section 4, I. P. C. and this section the Courts in India are empowered to deal with offences alleged to be committed outside India. AIR 1952 Punj 178 (179) = ILR (1952) Punj 326 = 1952 Cri LJ 744 ** **AIR 1955 SC 36 (38) = 1955 SCR 697 = 1955 Cri LJ 152.**

(3) The section provides that the offender can be dealt with in respect of the offence as if it was committed at any place in India at which he may be found. See AIR 1951 Vind Pra 17 (33) = 52 Cri LJ 561.

(4) The rule enunciated in this section is based on the principle that qua citizens the jurisdiction of Courts is not lost by reason of the venue of the offence. **AIR 1955 SC 36 (38) = 1955 Cri LJ 152 = 1955 SCR 697.**

(5) The section imposes as a condition for the trial of an offender under it that the certificate of the Political Agent for the area in which the offence was committed, or, where there is no Political Agent, the sanction of the State Government should be obtained. The object of such a provision is to prevent the accused being tried over again for the same offence in two different places. AIR 1934 Sind 96 (99) = 36 Cri LJ 240 (DB) ** AIR 1952 Punj 178 (179) = ILR (1952) Punj 326 = 1952 Cri LJ 744.

(6) Where an offence is committed within India, the mere fact that it is connected with other criminal acts done outside India does not make the section applicable. AIR 1932 Cal 465 (467) = 33 Cri LJ 267 (DB) ** AIR 1933 Lah 977 (984) = 35 Cri LJ 322 (DB) ** AIR 1933 Mad 461 (461) = 34 Cri LJ 545 ** AIR 1933 All 498 (500) = 35 Cri LJ 768 ** (1906) 3 Cri LJ 247 (248, 249) = 28 All 372 (DB) ** (1895) 19 Bom 105 (109) (DB).

[See also AIR 1938 Mad 858 (861) = 40 Cri LJ 355.]

(7) Offences committed outside India by persons or in places not covered by the section cannot be tried in India under the section. (1897) 25 Cal 20 (30) = 24 Ind App 137 = 1897 Pun Re No. 6 (PC) ** AIR 1927 All 80 (81) = 27 Cri LJ 991 ** AIR 1914 Cal 725 (725, 726) = 15 Cri LJ 537 (DB) ** (1967) 3 Mad HCR 354 (362) (SB) ** AIR 1933 Sind 333 (334, 335) = 35 Cri LJ 585 (DB).

(8) Where an objection is raised as to the jurisdiction of the Court on the ground that the offence was committed outside India, the question must be investigated by the Court and a decision arrived at on the facts. (1968) 9 Suth WR (Cr) 29 (29) (DB).

(9) As to submission to jurisdiction, see the following case. (1882) 6 Bom 622 (626) (DB).

(10) Where an offence is committed within India it can, under Section 177 and the general principle be tried in India notwithstanding that the offender is a foreigner. (1936) 37 Cri LJ 757 (757) (DB) (Cal) ** 1894 Pun Re (Cr) No. 30 p. 100 (101) (DB) ** (1886) 10 Bom 186 (188) (DB).

(11) Though the section empowers the Courts in India to try offences committed outside India in the cases specified therein, it does not affect the liability of the offender in such cases to be

Section 188 — Note 1 (contd.)

dealt with in the country wherein the offence was committed. (1910) 11 Cri LJ 390 (391) = 1910 Pun Re (Cr) No. 14 (DB).

(12) A judgment of acquittal or conviction passed by a foreign Court in such a case will be a bar to proceedings being started against the alleged offender under this section in India. AIR 1924 Lah 238 (239) = 24 Cri LJ 715.

(13) See also the following case. **AIR 1953 SC 394 (Pr 24) = 1953 SCR 1188 = 1953 Cri LJ 1480.**

Extradition. — (14) Where a person commits an offence outside India and is later on found in India, there are two courses open. He can be tried in India under this section if the case falls within its purview. Or, he can be arrested and sent to the place where he committed the offence to take his trial there. This is called extradition. As to the rules and principles governing the subject of extradition see inter alia the Indian Extradition Act (15 of 1903), and the undermentioned cases. (1906) 4 Cri LJ 49 (52) (DB) ** 1873 Pun Re (Cr) No. 14 p. 16 (17) (DB) ** AIR 1920 Cal 636 (638) = 20 Cri LJ 739 (DB).

(15) Under the second proviso, extradition proceedings will be barred if the offender has been tried in India for the same offence. See AIR 1952 Punj 178 (179) = ILR (1952) Punj 326 = 1952 Cri LJ 744.

2. "India." — See Section 1.

3. Transfer of territory from one State to another after commission of offence — Effect. — See Section 177.

4. Liability of citizens of India for offences committed outside India. — (1) The section enables an Indian Court to try an offence committed abroad by an Indian citizen. But the accused must have been an Indian citizen at the time when he committed the offence. Where at that time he was not an Indian Citizen but migrated subsequently to India and became an Indian citizen the section will not apply. AIR 1952 Punj 178 (179) = ILR (1952) Punj 326 = 1952 Cri L Jour 744 ** **AIR 1955 SC 36 (38, 41) = 1955 Cri L Jour 152 = 1955 SCR 697.**

(2) Where persons who were British Indian subjects and after the partition became subjects of the Indian Dominion, commit an offence at a place without and beyond the limits of the Provinces but which place was according to agreement with India and the foreign Country administered by Indian Government the Courts in India have jurisdiction to try such offence as if it had been committed within the Provinces of India. AIR 1954 Punj 37 (39) = 1954 Cri L Jour 302 = ILR (1954) Punj 649 (DB).

(3) Offence committed by Indian citizen in 1953 in Daman — Complaint filed in Bombay Court on 5-11-1962 — Accused appearing in Court on process issued — Bombay Court had jurisdiction to try the case under this section. AIR 1964 Bom 264 (266) = 66 Bom LR 225 = 1964 (2) Cri LJ 533.

(4) Accused charged for cheating in 1942 — Misrepresentation made at Simla and accused was paid money at Lahore at his request — Mere posting of cheque at Kolhapur (then a Native State) held could not be considered as delivery of the cheque to the accused at Kolhapur — No part of offence of cheating was committed outside British India — Sec. 188 did not apply. **AIR 1960 SC 266 (270, 271) = 1960 Cri LJ 410 = (1960) 2 SCR 89 = 1960 SCJ 863.**

5. "At which he may be found". — (1) The expression is not restricted to cases where a person can be said to be "discovered" in India. It includes cases where the accused is brought by the police to a place in India from a place outside. AIR 1936 Nag 152 (153) = 37 Cri LJ 979 ** (1882) 6 Bom 622 (625).

(2) The illegality of the arrest under which the accused is brought into India from a foreign place does not affect the jurisdiction of Indian Courts under this section. (1911) 12 Cri L Jour 350 (357, 358) = 35 Bom 225 (SB) ** AIR 1948 Nag 251 (252) = ILR (1948) Nag 334 = 49 Cri L Jour 376.

(3) "Found" means found by the Court at the time when the matter comes up for trial. Any Court which is otherwise competent to try the offence can take seisin the moment the accused appears before it. AIR 1948 Nag 251 (252) = ILR (1948) Nag 334 = 49 Cr. L Jour 376.

(4) Accused appearing in Court on process being issued to him — Accused must be said to be 'found' within the meaning of Section 188. AIR 1964 Bom 264 (267) = 66 Bom LR 225 = ILR (1964) Bom 471 = 1964 Mah LJ 339 = 1964 (2) Cri LJ 533.

6. Certificate of Political Agent or sanction of State Government — Proviso 1. — (1) The word "charge" used in this section means "accusation" and is not limited to a formal charge as in a warrant case. AIR 1940 Nag 245 (246 = 41 Cri L Jour 645 (646).

(2) The certificate or the sanction prescribed by Proviso 1 is essential to the jurisdiction of the Court to proceed with the matter and an inquiry or trial held without such sanction or certificate is void. AIR 1945 Oudh 231 (232) = 20 Luck 370 = 46 Cri L Jour 650 ** AIR 1930 Pat 501 (503) = 31 Cri L Jour 364 (DB) ** AIR 1933 Mad 461 (461) = 34 Cri L Jour 545 ** AIR 1932 Cal 229 (231) = 33 Cri L Jour 322 (DB) ** 1964 Cur LJ 266 = 66 Punj LR 664

[See also (1913) 14 Cri L Jour 298 (298) = 6 Sind LR 260.]

Section 188 — Note 6 (contd.)

[But see 1889 Pun Re (Cr) No. 30, p. 108 (111) (DB) ** AIR 1934 Lah 827 (829) = 36 Cri LJ 430.]

(3) A Court is not debarred from taking cognizance of an offence in the absence of a certificate even though the further progress of the case depends upon the production of the certificate. AIR 1940 Nag 245 (246, 247) = 41 Cri L Jour 645 (647).

(4) The requirement of the certificate or sanction applies to preliminary inquiries with a view to commitment to the sessions. (1896) 19 All 109 (110) (DB) ** AIR 1926 Lah 582 (582) = 27 Cri L Jour 1168 (DB) ** (1896) 13 Mad 423 (425) (DB).

(5) The obtaining of sanction ex post facto after the commitment has been made does not validate the commitment. (1890) 13 Mad 423 (425, 426) (DB).

[See also AIR 1926 Lah 609 (611) = 27 Cri L Jour 942.]

(6) The certificate obtained pending an inquiry, is sufficient. (1910) 11 Cri L Jour 543 (544) (DB) (Bom) ** AIR 1924 Bom 51 (52) = 25 Cri L Jour 333 (DB) ** (1906) 4 Cri L Jour 49 (52, 53) (DB) (Bom) ** AIR 1925 Sind 88 (88, 89) = 26 Cri L Jour 620 (DB) ** AIR 1964 Bom 264 (266, 267) = 1964 (2) Cri LJ 533 = 66 Bom LR 225.

[But see (1902) 24 All 256 (257).]

(7) The introduction of the words "notwithstanding anything in any of the preceding sections of this chapter" into the proviso by the amendment of 1923 makes it clear that the fact that an offence committed outside "India" falls also within the purview of any of the previous sections of the chapter does not dispense with the certificate or sanction prescribed by this proviso. AIR 1932 Cal 465 (467) = 33 Cri L Jour 267 (DB) ** AIR 1947 Mad 352 (353) ** AIR 1925 Sind 88 (89) = 25 Cri L Jour 620 (DB) ** AIR 1935 Mad 326 (327) = 37 Cri L Jour 195 (DB).

(8) A formal or express certificate or sanction is necessary under the proviso. Thus, the mere fact that the Magistrate who initiated the proceeding is himself the Political Agent for the area in which the offence was committed does not dispense with the necessity for the certificate. (1890) 13 Mad 423 (426) (DB).

[See also 1884 All WN 85 (85).]

(9) The mere fact that an agreement had been entered into between the executive authorities of the British Indian Government and the State, wherein the offence was committed, to the effect that Native Indian subjects committing offences in such State should be triable in British India did not dispense with the certificate or sanction. AIR 1919 All 44 (45) = 20 Cri L Jour 700.

(10) The mere fact that a charge was framed against the accused in the alternative so as to include an offence committed inside British India did not dispense with the certificate with reference to the offence alleged to have been committed outside British India. AIR 1930 Bom 155 (157) = 31 Cri L Jour 833 (DB).

(11) But there is no particular form in which the certificate or the sanction must be issued. In each case it must be found as a fact that the certificate or the sanction was issued by the proper authority. AIR 1926 Lah 609 (610, 611) = 27 Cri L Jour 942 ** AIR 1934 Bom 41 (42, 43) = 35 Cri L Jour 629 (DB).

(12) The certificate need not be signed by the Political Agent himself. Signature by some person who is authorised to communicate the Political Agent's opinion is enough. AIR 1926 Lah 609 (611) = 27 Cri L Jour 942 ** AIR 1934 Bom 41 (42, 43) = 35 Cri L Jour 629 (DB).

(13) A mere letter from the Secretary of the Political Agent that in his (the Secretary's) opinion the case was a fit one to be tried in India cannot justify a Magistrate in presuming that the Political Agent himself had certified that the case should be tried in India. AIR 1926 Lah 609 (610) = 27 Cri L Jour 942.

[See also AIR 1934 Bom 41 (42) = 35 Cri L Jour 629 (DB).]

(14) Where the Political Agent has in fact passed an order that the case should be tried in India, the mere fact that it was not communicated to the Magistrate does not vitiate his proceedings. See AIR 1926 Lah 609 (611) = 27 Cri L Jour 942.

(15) A certificate issued under this proviso is not bad merely because it does not specify the section under which the accused must be tried. It is enough if it sanctions the prosecution of the accused for the offence alleged. (1910) 11 Cri L Jour 531 (531, 532) (DB) (Mad).

(16) A certificate issued under the section will authorise the trial of the accused for any offence disclosed in the proceedings; the trying Magistrate is not bound to confine himself to the section specified in the certificate. (1911) 12 Cri L Jour 359 (360) = 33 All 514.

(17) A certificate of the Political Agent issued under this proviso cannot be revoked by him. (1912) 13 Cri L Jour 537 (537, 538) (DB) (Bom).

(18) The Political Agent can issue a certificate under this proviso even after the issue of a warrant for the arrest of the accused under the extradition law. (1912) 13 Cri L Jour 537 (537, 538) (DB) (Bom).

(19) Where a commitment is quashed or an accused is discharged for want of a certificate under the proviso fresh proceedings can be started after obtaining such certificate. Such proceedings are not a revival or continuation of the previous proceedings against the accused.

189. Power to direct copies of depositions and exhibits to be received in evidence. — Whenever any such offence as is referred to in Section 188 is being inquired into or tried, the [*][State Government] may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent[†] or a judicial officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

[1882—Ss. 189 and 190; 1872 and 1861—Nil.]

[*] Substituted for "Provincial Government" by A. L. O., 1950.

[†] For definition of Political Agent, see General Clauses Act (X of 1897), Sec. 3 (43).

B.—Conditions requisite for initiation of proceedings.

190. Cognizance of offences by Magistrates. — (1) Except as hereinafter provided, any Presidency Magistrate, District Magistrate or Sub-divisional Magistrate,

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Section 188 — Note 6 (contd.)
(1890) 13 Mad 423 (426) (DB) ** AIR 1926 Lah 582 (582) = 27 Cri L Jour 1168 (DB) ** AIR 1933 Lah 659 (660) = 34 Cri L Jour 578.

(20) For definition of "Political Agent", see the General Clauses Act, 1897, Section 3, Clause 43, as adapted by Adaptation of Laws Order, 1950, and the following cases. AIR 1934 Lah 827 (828) = 36 Cri L Jour 430. (His Britannic Majesty's Minister at Kabul is not "Political Agent".) ** AIR 1956 Pat 46 (47) = 1956 Cri L Jour 99. (In view of Section 3 (43), General Clauses Act, as amended, the word 'Political Agent' must now mean the Principal Officer representing the Central Government in Nepal. The Principal Officer representing the Central Government in Nepal is the Ambassador Extraordinary and Plenipotentiary of India. AIR 1954 Pat 475 (476) = 1954 Cri L Jour 1464 (DB). (Ambassador of India in Nepal is not a Political Agent.) ** AIR 1934 Sind 96 (99) = 36 Cri L Jour 240 (DB). (British Vice-Consul is not "Political Agent".)

7. Offences committed on the high seas. — (1) A Native Indian subject committing an offence on the high seas was amenable to the jurisdiction of British Indian Courts by virtue of the first paragraph of this section (as it stood prior to its amendment by the A. L. O., 1950). AIR 1917 Bom 280 (281, 282) = 18 Cri LJ 782 (DB).

(2) The proviso to the section does not apply to offences committed by Indian subject on high seas as it applies only to offences committed in a territory. AIR 1917 Bom 280 (281, 282) = 18 Cri L Jour 782 (DB) ** (1911) 12 Cri L Jour 198 (204) = 5 Low Bur Rul 221 (FB).

(3) This section does not apply to cases to be tried by Court in its admiralty jurisdiction; nor does it apply to an offence committed not in the territory of a foreign State but on a merchant ship entering its territorial waters and over which the State exercises only a quasi-territorial jurisdiction. AIR 1936 Sind 3 [illegible] ** = (37) Cri L Jour 314 (DB).

(4) See also Section 177, and the undermentioned cases. (1911) 12 Cri L Jour 198 (204) = 5 Low Bur Rul 221 (FB) ** AIR 1927 Mad 688 (688) = 28 Cri L Jour 543 (DB).

8. Offences under the Child Marriage Restraint Act, 19 of 1929. — (1) After the amendment of Act 19 of 1929, by Act 7 of 1938, an offence committed under this Act outside British India by British Indian subjects could not be inquired into in British India without the certificate of the Political Agent or the sanction of the Provincial Government. AIR 1939 Mad 577 (577) = 40 Cri L Jour 822.

[See AIR 1940 Nag 245 (246, 247) = 41 Cri L Jour 645 (647).]

(2) Where the allegation was that the accused was living in British India and arranged in British India for the marriage to take place out of British India, it was held that the offence under the Act was committed inside British India and no certificate under this section was necessary. 1939 AMLJ 130 (131).

SECTION 189

1. "Any case" in which such Court might issue a commission for taking evidence". — See Sections 503 to 508.

SECTION 190 — SYNOPSIS

1. **Scope.**
2. **Taking cognizance of an offence, what is.**
3. **Whether and when cognizance has been taken.**
4. **Taking cognizance, if refers to the particular individual who is charged for the time being.**
5. **Taking cognizance refers to the particular offence charged for the time being.**
6. **Initiation of proceedings with reference to one offence — Some other offence appearing to be involved in the transaction — Action with reference to such offence is not under this section.**

and any other Magistrate specially empowered in this behalf, may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

°[(b) upon a report in writing of such facts made by any police-officer;]

(c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

(2) The †[State Government], or the District Magistrate subject to the general or special orders of the †[State Government], may empower any Magistrate to take cognizance under sub-section (1), clause (a) or clause (b), of offences for which he may try or commit for trial.

(3) The †[State Government] may empower any Magistrate of the first or second class to take cognizance under sub-section (1), clause (c), of offences for which he may try or commit for trial.

[1882—S. 191; 1872—Ss. 141, 142; 1861—Nil.]

[°] Substituted for the original clause (b) by the **Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), Section 45.**

[†] Substituted for "Provincial Government" by **A. L. O., 1950.**

Section 190 — Synopsis (contd.)

7. Initiation of proceedings against one person — Another person found implicated in the criminal transaction under inquiry — Action against such person.

8. Cognizance in cases where the facts disclose a graver as well as minor offence.

9. Cognizance in cases where previous sanction or complaint of particular person or Court is necessary for prosecution of offence.

10. Taking cognizance, a judicial act.

11. "Except as hereinafter provided."

12. Who can take cognizance under this section.

13. "May take cognizance."

14. "Upon receiving a complaint of facts which constitute such offence."

15. "Upon a report in writing of such facts made by any police officer" — Clause (i) (b).

16. Complaint by police-officer.

17. Power of Magistrate to order police to charge-sheet any person.

18. "Upon information .... that such offence has been committed" — Clause (i) (c).

19. Clauses of section alternative but not mutually exclusive.

20. Revision.

1. Scope.— (1) Under the scheme of the Code two parallel agencies have been set up for taking to Court of criminal offences; the police and the private aggrieved party are placed on a parallel footing. The object is to ensure the freedom and safety of the subject. AIR 1955 Mad 534 (535) = 1955 Cri LJ 1264.

(2) This section is not exhaustive of the Courts that can take cognizance, or of the materials on which cognizance can be taken. See (1909) 10 Cri LJ 303 (305, 306) = 5 Nag LR 113 ** AIR 1968 Pat 258 (268) = 1968 Cri LJ 958 (DB).

(3) Where a Court has not yet become seized of a case relating to a criminal transaction, judicial proceedings with reference to an offence involved therein can only be initiated under this section. AIR 1944 Sind 103 (105) = 45 Cri LJ 510 (DB).

(4) Article 361 (2) of the Constitution provides that no criminal proceedings whatsoever shall be instituted or continued against the President or the Governor or Rajpramukh of a State, in any Court during his term of office. The complaint by the victim contemplated by Section 198 is a complaint made under Section 190 (1) (a). It is therefore wrong to think that Section 198 either confers a power or provides a remedy. AIR 1959 Ker 100 (105) = ILR (1959) Ker 195 = 1959 Cri LJ 464 (DB).

2. Taking cognizance of an offence, what is.— (1) Before it can be said that any Magistrate has taken cognizance of any offence under Section 190, he must have applied his mind to the offence for the purpose of proceeding in a particular way as indicated in the subsequent provisions of the chapter — proceeding under Section 200 and thereafter sending it for enquiry and report under Section 202. **AIR 1951 SC 207 (210) = 1951 SCR 312 = 52 Cri LJ 775.** (AIR 1950 All 626, **Affirmed;** AIR 1950 Cal 437, **Approved.**) ** **AIR 1959 SC 1118 (1128) = 1959 Cri LJ 1368** ** AIR 1959 Assam 28 (51) (DB) ** AIR

STATE AMENDMENTS

Gujarat

In its application to the State of Gujarat, the amendments made in Section 190 are the same as those made in Maharashtra. — See Cent. Act XI of 1960, Section 87.

Note.—Magistrates appointed for the City of Ahmedabad, have the powers and exercise the jurisdiction of a Presidency Magistrate. — See Guj. Act XIX of 1961, Section 14 (3).

Maharashtra

(1) In its application to the State of Maharashtra, in Section 190—

(i) in sub-section (1)—

(a) delete the words "District Magistrate or Sub-Divisional Magistrate";

(b) for the words "any other" substitute the words "any Judicial"; — Bom. Act XXIII of 1951, Section 2 and Schedule (1-7-1953).

(c) for the words "in this behalf" substitute the words "in that behalf under Section 37"; — Bom. Act XXXIV of 1953, Section 8 (1-7-1953)

(ii) in sub-section (2) delete the words "or the District Magistrate subject to the general or special orders of the State Government";

(iii) in sub-section (3) after the words "the State Government may" insert the words "in consultation with the High Court". — Bom. Act XXIII of 1951, Section 2 and Schedule (1-7-1953).

(2) After the reorganization of the State of Bombay in 1956, the amendments made in Section 190 by the above-mentioned Bombay Acts were extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Section 190 — Note 2 (contd.) 1959 Bom 437 (442, 443) = ILR (1959) Bom 1088 = 1959 Cri LJ 1153 (DB) ** **AIR 1964 SC 1541 (1544) = 1964 (2) Cri LJ 468 = (1964) 5 SCR 37** ** 1968 All Cri R 483 (488) = (1968) All WR (HC) 783 ** 1968 Cri LJ 816 (818) (Cal) (DB) ** ILR (1967) 2 Punj 103 (116 to 118). (Initiation of proceedings is not equivalent to taking cognizance.) ** AIR 1966 Andh Pra 377 (382) = (1966) 1 An WR 76 = 1966 Cri LJ 1377 ** AIR 1966 Pat 473 (479) = 1967 Cri LJ 111 = ILR 46 Pat 138 (DB) ** AIR 1965 Him Pra 37 (40) = 1965 (2) Cri LJ 99 ** (1963) 65 Pun LR 667 (671) ** AIR 1963 Raj 48 (49, 50) = 1963 (1) Cri LJ 318 = 1962 Raj LW 539 ** AIR 1960 Cal 570 (571) = 1960 Cri LJ 1198. (Issue of summons under Section 204, Cr. P. C. is taking cognizance.)

(2) The word "cognizance" has no esoteric or mystic significance in criminal law or procedure. It merely means become aware of and when used with reference to a Court or Judge, to take notice of judicially. **AIR 1963 SC 765 (770) = 1963 (1) Cri LJ 797 = (1963) Supp 1 SCR 953** ** ILR (1967) 2 Punj 103 (116 to 118).

(3) It was held 'taking cognizance' occurs as soon as a Magistrate as such applies his mind to the suspected commission of an offence. (1910) 37 Cal 412 (418) = 11 Cri LJ 217 (DB) ** 1946 Rang LR 306 (307) ** AIR 1948 Pat 25 (27) = 48 Cri LJ 347 ** AIR 1940 Nag 245 (247) = 41 Cri LJ 645 ** **AIR 1963 SC 765 (770) = 1963 (1) Cri LJ 797 = (1963) Supp 1 SCR 953** ** 1968 Cri LJ 816 (818) (Cal) (DB) ** 1968 Cri LJ 1246 (1250) = 33 Cut LT 1172 ** AIR 1966 Mad 349 (352) = 1966 Cri LJ 1141 = 1966 Mad LW (Cri) 12 ** 1959 BLJR 494 (498).

(4) The judicial proceedings commence only on the accused being made a party before the Court by issue of process for his appearance or other similar step. AIR 1943 Pat 245 (251) = 45 Cri LJ 177 (SB) ** AIR 1969 Andh Pra 281 (283, 284) = 1969 Cri LJ 1025 = (1968) 2 Andh WR 122 (DB).

(5) It has been held that the taking of cognizance is a continuous act which commences as soon as a Magistrate applies his judicial mind to a case and only ends when the Magistrate no longer has seisin of it. AIR 1953 Tripura 1 (2) = 1953 Cri LJ 1463 ** AIR 1939 Lah 479 (485) = 41 Cri LJ 65 (DB).

(6) Section 190 does not make incumbent that the provisions of any law should be quoted by a Magistrate in taking cognizance. An error, therefore, in the mention of the particular provision does not vitiate the cognizance itself. AIR 1958 Andh Pra 318 (319) = 1958 Cri LJ 606.

(7) Jurisdiction is given to Courts by the statutes which create them. Cognizance of an offence or a case is something quite different from jurisdiction to deal with that case. AIR 1957 Madh

Mysore

In its application to the State of Mysore, in Section 190,

(1) in sub-section (1),

(a) omit the words "District Magistrate or Sub-Divisional Magistrate"; and

(b) for the words "any other Magistrate", substitute the words "any Magistrate of the first class, or any Magistrate of the second or third class"; — Mys. Act XIII of 1965, Section 34 (1-10-1965)

(2) Omit sub-sections (2) and (3).

Punjab, Haryana: Chandigarh

In its application to the States of Punjab and Haryana and the Union territory of Chandigarh, in Section 190,

(i) in sub-section (1), for the words "any Presidency Magistrate, District Magistrate or sub-divisional Magistrate, and any other Magistrate", substitute the words, "any Chief Judicial Magistrate and any other Judicial Magistrate";

(ii) in sub-section (2), for the words "State Government or the District Magistrate subject to the general or special orders of the State Government, may empower any Magistrate," substitute the words "High Court, or the Chief Judicial Magistrate subject to the general or special orders of the High Court, may empower any other Judicial Magistrate"; and

(iii) in sub-section (3), for the words "State Government may empower any Magistrate," substitute the words "High Court may empower any Judicial Magistrate". — Punj. Act XXV of 1964, Section 2 and Schedule Pt. I, Item (45) (2-10-1964) and Act 31 of 1966, Sections 29 and 88 (1-11-1966).

Section 190 — Note 2 (contd.)

B 115 (117) = 1957 Cri LJ 449. (AIR 1945 All 340, **Rel. on.)** ** AIR 1961 Cal 560 (564) = 1961 (2) Cri LJ 617 = 65 Cal WN 977 (FB). (There can be no cognizance if there be no prior jurisdiction.) ** AIR 1966 Mad 349 (352) = 1966 Cri LJ 1141 = 1966 Mad LW (Cri) 12.

3. **Whether and when cognizance has been taken**.— (1) As to when cognizance is taken of an offence will depend upon the facts and circumstances of each case and it is impossible to attempt to define what is meant by taking cognizance. **AIR 1959 SC 1118 (1123) = 1959 Cri LJ 1368** ** AIR 1966 Pat 473 (479) = 1967 Cri LJ 111 = ILR 46 Pat 138 (DB) ** 1963 (2) Cri LJ 713 (714) = (1964) 5 Guj LR 263. (Where upon receiving a report in writing made by a police officer the Magistrate fixes dates for a committal inquiry, he takes cognizance of the offence referred to in the charge-sheet.) ** AIR 1963 Raj 48 (49, 50) = 1962 Raj LW 539 = 1963 (1) Cri LJ 318 ** 1959 BLJR 494 (497).

(2) Under the Code a Court can take cognizance of an offence only if the conditions requisite for initiation of proceedings before it is set out in Part B of Chapter XV are fulfilled. **AIR 1966 SC 69 (71) = 1966 Cri LJ 75 = (1965) 3 SCR 467.**

(3) No formal action or action of any kind whatever is necessary in order to take cognizance. AIR 1943 Pat 245 (251) = 45 Cri LJ 177 (SB) ** AIR 1955 Trav-Co 74 (79) = ILR (1954) Trav-Co 1217 = 1955 Cri LJ 740 (DB) ** AIR 1940 Nag 245 (247) = 41 Cri LJ 645 ** (1901) 37 Cal 412 (416) = 11 Cri LJ 217 (DB) ** **AIR 1963 SC 765 (770) = (1963) (1) Cri LJ 797 = (1963) Supp 1 SCR 953** ** 1968 Cri LJ 1246 (1250) = 33 Cut LT 1172 ** AIR 1966 Mad 349 (352) = 1966 Cri LJ 1141 = 1966 Mad LW (Cri) 12 ** 1963 Raj LW 30 (32).

(3a) Magistrate examining complainant on oath on receiving complaint — This amounts to taking cognizance of a case instituted on private complaint. (1969) 35 Cut LT 105 (110).

(4) Cognizance is taken of an offence as soon as a Court, competent for the purpose, applies its mind to the offence with the intention of initiating judicial proceedings against the offenders in respect of the offence. AIR 1950 Cal 437 (438) = 52 Cri LJ 806 ** AIR 1956 Mad 392 (394) = 1956 Cri LJ 1000 (2) ** AIR 1956 Orissa 129 (135) = ILR (1956) Cut 267 = 1956 Cri LJ 909 (DB) ** **AIR 1951 SC 207 (210) = 1951 SCR 312 = 52 Cri LJ 775 ** AIR 1963 SC 765 (770) = 1963 (1) Cri LJ 797 = (1963) Supp 1 SCR 953 ** AIR 1961 SC 986 (988, 989) = 1961 (2) Cri LJ 39 = (1961) 1 SCJ 573** ** AIR 1970 Pat 159 (160) ** 1968 All WR (HC) 783 = 1968 All Cri R 483 (488) ** 1968 Pat LJR 618 (620) = 1969 BLJR 289 ** AIR 1968 Tripura 39 (46) = 1968 Cri LJ 1307 ** AIR 1967 Mys 243 (246) = 1967 Cri LJ 1667 = (1967) 2 Mys LJ 105 ** AIR 1965 Madh Pra 53 (54) = 1965 (1) Cri LJ 298 = 1966 MPLJ 1189 ** AIR 1964 Tripura 65 (66, 67) = 1965 (1) Cri LJ 84 ** (1963) 65 Pun LR 667 (671) ** AIR

Rajasthan

Abu area. — In its application to the Abu area of the State of Rajasthan, the amendments made in Section 190 are the same as those made in (1) of Maharashtra. — See Cent. Act XXXVII of 1956, Section 119 (1-11-1956).

Union territories (except Chandigarh)

In its application to the Union territories in Section 190,

(i) in sub-section (1), for the words "any Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, and any other Magistrate", substitute the words "any Chief Judicial Magistrate, and any other Judicial Magistrate";

(ii) in sub-section (2), for the words "The State Government, or the District Magistrate subject to the general or special orders of the State Government, may empower any Magistrate", substitute the words "The State Government, in consultation with the High Court or the Chief Judicial Magistrate, subject to the general or special orders of the High Court may empower any other Judicial Magistrate"; and

(iii) in sub-section (3), for the words "State Government may empower any Magistrate", substitute the words "State Government, in consultation with High Court, may empower any Judicial Magistrate". — Act 19 of 1969, Section 3 and Schedule, Item 47. (In Delhi, on 2-10-1969.)

Section 190 — Note 3 (contd.)

1963 Raj 48 (49, 50) = 1963 (1) Cri LJ 318 = 1962 Raj LW 539 ** AIR 1960 Cal 570 (571) = 1960 Cri LJ 1198 ** 1959 BLJR 494 (498).

(5) Ordering investigation under Section 156 (3) or issuing of a search warrant for the purpose of an investigation or of a warrant of arrest for that purpose cannot by themselves be regarded as acts by which cognizance was taken of an offence. **AIR 1959 SC 1118 (1123) = 1959 Cri LJ 1366 ** AIR 1951 SC 207 (210) = 1951 SCR 312 = 52 Cri LJ 775** ** AIR 1959 Assam 28 (51) (DB) ** AIR 1959 Bom 437 (443) = ILR (1959) Bom 1088 = 1959 Cri LJ 1153 (DB) ** **AIR 1964 SC 1541 (1544) = 1964 (2) Cri LJ 468 = (1964) 5 SCR 37 ** AIR 1961 SC 986 (988, 989) = 1961 (2) Cri LJ 39** ** AIR 1970 Pat 159 (160) ** 1968 Cri LJ 816 (818) (Cal) (DB) ** AIR 1966 Andh Pra 377 (382) = 1966 Cri LJ 1377 = (1966) 1 Andh WR 76 (DB) ** AIR 1965 Mad 453 (454) = 78 Mad LW 455 = 1965 (2) Cri LJ 515 ** AIR 1964 Tripura 65 (66, 67) = 1965 (1) Cri LJ 84 ** AIR 1962 Mad 495 (496) = 1962 (2) Cri LJ 762 = (1962) 2 Mad LJ 91 ** 1959 BLJR 494 (498).

(6) Parrot-like order of remand containing mere reference to Section 344 Cr. P. C. does not amount to taking cognizance of the case. AIR 1966 Mad 349 (352, 354) = 1966 Cri LJ 1141 = 1966 Mad LW (Cri) 12.

(7) A mere order by S. D. M. stating that the case cannot be tried by him as he is informant does not show that he has applied his mind for proceeding with the case under Chapter 17. AIR 1964 Tripura 65 (66, 67) = 1965 (1) Cri LJ 84.

(7a) The date on which the judicial proceedings are actually commenced against the offender need not necessarily be the date on which the cognizance is taken. AIR 1924 Pat 597 (599) = 26 Cri LJ 241.

(8) A case can be said to be instituted in Court only when the Court takes cognizance of the offence alleged therein. **AIR 1964 SC 1541 (1563) = 1964 (2) Cri LJ 468 = (1964) 5 SCR 37** ** AIR 1969 Ker 97 (98) = 1969 Cri LJ 482 = 1968 Ker LT 547. (AIR 1967 All 468 and 1968 Ker LT 57 **held no longer good law** in view of **AIR 1964 SC 1541.)** ** 1966 Cri LJ 339 (2) (341, 342) = 1965 BLJR 278 (DB).

(9) Magistrate who takes cognizance of an offence may without anything further transfer the case under Section 192 to another Magistrate. AIR 1926 Cal 470 (477) = 27 Cri LJ 385 (FB) ** AIR 1965 Madh Pra 53 (54) = 1965 (1) Cri LJ 298 = 1966 MPLJ 1189. [See AIR 1934 Pat 467 (468) = 36 Cri LJ 641 (DB).]

(10) The examination of the complainant, in cases where cognizance is taken on a complaint, is not necessary to complete the taking of cognizance. AIR 1940 Nag 245 (247) = 41 Cri LJ 645 ** AIR 1924 Mad 587 (587) = 25 Cri LJ 730 (DB).

[See also AIR 1929 Pat 473 (475) = 30 Cri LJ 1056 (FB).]

[But see AIR 1920 Pat 670 (672) = 20 Cri LJ 481. (Submitted not correct.) ** 1964 All WR (HC) 503 (504).]

(11) Where a Magistrate receiving a complaint ordered a preliminary inquiry without examining the complainant, it was held that he did not take cognizance of the offence on the complaint.

West Bengal

In its application to the State of West Bengal, in S. 190,

(i) in sub-section (1), for the words "District Magistrate or Sub-divisional Magistrate, and any other", substitute the words, "Sub-divisional Judicial Magistrate, and any other Judicial";

(ii) after sub-section (1), insert the following as sub-section (1A),

"(1A) Any District Magistrate or Sub-divisional Executive Magistrate or any other Executive Magistrate of the First or Second Class specially empowered in this behalf by the State Government may take cognizance of any offence upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed";

(iii) For sub-section (2), substitute the following, namely:—

"(2) The State Government, in consultation with the High Court, or the Sessions Judge subject to the general or special orders of the State Government in consultation with the High Court, may empower any Judicial Magistrate to take cognizance under sub-section (1), clause (a) or clause (b), of offences for which he may try or commit for trial"; and

(iv) in sub-section (3), for the words "State Government may empower any" substitute the words "State Government, in consultation with the High Court, may empower any Judicial." — **W. B. Act 8 of 1970, Section 2 and Schedule, Item 65.**

Section 190 — Note 3 (contd.)

AIR 1929 Pat 473 (475) = 30 Cri LJ 1056 (FB) ** AIR 1914 Lah 165 (166) = 15 Cri LJ 261.

(12) As a general rule, where a Magistrate does any act which he is authorized to do only after taking cognizance, he will be deemed to have taken such cognizance provided he is competent to take such cognizance. See AIR 1951 Raj 146 (146) = 52 Cri LJ 1174 ** 1946 Rang LR 306 (307) ** (1965) 69 Cal WN 306 (308) (DB) ** 1961 (2) Cri LJ 502 (504) (Manipur).

(13) A, a Magistrate who is competent to take cognizance of an offence, transfers a case under Section 192 to B. A must be deemed to have taken cognizance of the offence. (1905) 2 Cri LJ 582 (583) (DB) (Bom).

(14) A, a Magistrate who is competent to take cognizance of an offence on complaint, received a complaint and examined the complainant on oath. A must be deemed to have taken cognizance of the offence. AIR 1953 Assam 1 (2, 11) = ILR (1952) 4 Assam 458 = 1953 Cri LJ 168 (DB) ** AIR 1931 Oudh 392 (393) = 32 Cri LJ 991 ** **AIR 1964 SC 1541 (1544) = 1964 (2) Cri LJ 468 = (1964) 5 SCR 37** ** ILR (1967) Cut 73 (80).

(15) A, a Magistrate who is competent to take cognizance of an offence on complaint, received a complaint from a public servant, and held a preliminary inquiry himself under Section 202. A must be deemed to have taken cognizance of the offence. AIR 1930 Pat 30 (30, 32) = 30 Cri LJ 554.

(16) Complaint sent for report by police without examining complainant under Section 200 — On receipt of report Magistrate proceeding under Sections 204 and 252 = Cognizance held had been taken under Section 190 (1) (a). 1963 (2) Cri LJ 464 (2) (466) (Manipur).

(17) Where a Magistrate in accordance with Section 207-A started proceedings for commitment ordered supplies of copies of documents and summoned prosecution witnesses for giving evidence, various steps taken by him amounted to taking cognizance. ILR (1967) 2 Punj 103 (118).

(18) Complaint against six accused — Process issued in piecemeal — Magistrate cannot be deemed to have taken cognizance of the case against them without a complaint. Mere fact that the Magistrate had issued process piecemeal could not by itself convert the taking of cognisance of the case from S. 190 (1) (a) to Section 190 (1) (c). 1959 Raj LW 475 (475).

(19) A, a District Magistrate while holding an inquiry under the Land Revenue Code, came to the conclusion that X had committed an offence. He recorded an order directing his prosecution and transferred the case to B, a subordinate Magistrate. It was held that A must be deemed to have taken cognizance of the offence. (1905) 2 Cri LJ 582 (583) (DB) (Bom).

(20) Where the District Magistrate while holding an inquiry under Land Revenue Code records an order that X had committed an offence without

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applying his mind with a view to initiate judicial proceedings against X and then transfers the case to the subordinate Magistrate, it was held that it was the subordinate Magistrate who must be deemed to have taken cognizance of the offence. (1910) 11 Cri LJ 602 (603) (Lah)

(21) Where a Magistrate who obtains information or suspects the commission of an offence, takes proceedings for verification, or confirmation, those proceedings do not amount to taking cognizance of the offence for the purposes of the Code. See **AIR 1951 SC 207 (210) = 1951 SCR 312 = 52 Cri LJ 775** ** AIR 1950 Cal 437 (438) = 52 Cri LJ 806 (DB)

(22) In acquitting an accused person X, a Magistrate was inclined to suspect Y as being guilty of the offence. But before proceeding against Y he wished to ascertain clearly whether there were sufficient grounds for taking cognizance under sub-section (1), clause (c) of this section. He accordingly examined X and thereupon summoned Y to answer a charge for an offence. It was held that when examining X the Magistrate had not taken cognizance of the offence against Y. (1900) 27 Cal 455 (456, 457) (DB).

(23) A District Magistrate received a petition stating that the jurors in a sessions case had been bribed and praying that he should take steps for an appeal being filed against the acquittal in the case. The District Magistrate thereupon directed a subordinate Magistrate to inquire into the matter and report to him. On receipt of the report he proceeded against a certain person for the offence of attempting to bribe the jurors. It was held that he did not take cognizance of the offence when ordering the inquiry by the subordinate Magistrate but only did so under subsection (1), clause (c) on receipt of the report. (1899) 3 Cal WN cclxii (cclxiii).

(24) A Magistrate received by post information that an offence had been committed by certain persons. He sent the papers to the police for investigation and report, and on receipt of the report he directed the issue of process against the accused. It was held that he did not take cognizance on the information received by post but only took cognizance on the police-report. (1913) 14 Cri LJ 218 (218, 219) (All).

[But see (1912) 13 Cri LJ 691 (691) (DB) (Cal).]

(25) A Magistrate who suspected the commission of an offence by a certain person directed the police to charge-sheet him, and on the receipt of the charge-sheet tried him for the offence. It was held that the Magistrate took cognizance on the police charge-sheet and not under sub-s. (1), clause (c) of this section. AIR 1921 Bom 365 (365) = 22 Cri LJ 603 (DB).

(26) While a Sub-divisional Magistrate was on a visit to a village, a case of theft was reported to him. Thereupon he and the proprietor of the village made a search and found the stolen property in the house of the accused. The next day a formal complaint was filed before him about the theft and thereupon proceedings were started against the accused. It was held that under the circumstances, the Magistrate did not take cognizance on the previous day when he was in the village but only on the next day when the complaint was received. AIR 1927 All 101 (101, 102) = 27 Cri LJ 1406.

(27) An order for investigation by a Magistrate, or his order for arrest and jail custody of the accused or an order granting bail does not by itself amount to taking cognizance. **AIR 1951 SC 207 (210) = 1951 SCR 312 = 52 Cri LJ 775** ** AIR 1950 All 626 (629, 630) ** AIR 1950 Cal 437 (438) = 52 Cri LJ 806 (DB) ** AIR 1962 Mad 495 (496) = (1962) 2 Mad LJ 91 = 1962 (2) Cr LJ 782.

(28) A Magistrate issuing a warrant under Section 3 of the Prevention of Corruption Act cannot be said to have taken cognizance of the offence but does so when the charge-sheet is filed before him. **AIR 1951 SC 207 (209, 210) = 1951 SCR 312 = 52 Cri LJ 775.**

(29) Where a Magistrate is not empowered to take cognizance under clause (c), it may be presumed that he did not intend to take cognizance under that clause. AIR 1914 Sind 121 (121) = 15 Cri LJ 657 (DB) ** 1 Upp Bur Rul 55 (55).

(30) Where a complaint was made to a Magistrate, and he endorsed thereon the remark that he took cognizance under clause (c), it was held that "information" under clause (c) only referred to such information as did not constitute a complaint or the report of a police-officer, and that, therefore, the Magistrate could not have taken cognizance under clause (c) but must be held to have done so only under clause (a). (1908) 8 Cri LJ 505 (510) = 4 Low Bur Rul 300 (FB).

(31) Mere order of transfer by District Magistrate under Section 528 does not amount to taking cognizance, 2 Cri LJ 582 (Bom) distinguished as being a case of transfer under Section 192. AIR 1950 Him Pra 42 (43).

(32) Order by which accused is remanded to custody to enable police investigation to be completed does not amount to taking cognizance. AIR 1924 Cal 476 (479) = 25 Cri LJ 732 (DB).

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(33) Departmental enquiry by District Magistrate into allegations against public servants is not taking cognizance. (1895) 19 Bom 51 (60) (DB).

(34) Information to police about commission of offence — Police reporting case to be one of accident — Magistrate ordering entry to be made regarding the case as 'mistake of fact' — **Held,** Magistrate did not take cognizance on police report. AIR 1921 Pat 302 (303) = 22 Cri LJ 735.

(35) Action of the Magistrate by which he again refers the matter to the police for a fresh final report does not amount to "taking cognizance." AIR 1932 Mad 673 (675) = 33 Cri LJ 785.

(36) Cantonment Magistrate warning accused that he must not tie his buffaloes at a certain spot in cantonment — Accused persisting in doing so and on Cantonment Magistrate going out one morning finding the spot in a filthy state — Accused sent for and fined — **Held** that cognizance was taken under Clause (c). 1905 Pun Re (Cr) No. 8 p. 16 (17).

(37) Order of Magistrate categorically stating that cognizance was taken under certain sections of Penal Code — Nothing more is required to show that Magistrate took cognizance of offence. (1955) 21 Cut L Tim 465 (466).

(38) Where the Magistrate had before him the charge-sheet against the petitioners some of whom he removed from the category of witnesses to the category of accused persons and enlarged the petitioners on bail and decided that they were to be tried for offences under Section 161, Penal Code and Section 5 (2) of the Prevention of Corruption Act and sanction was thereafter given: **Held,** that the Magistrate took cognizance of the offences without the necessary sanction. AIR 1953 Pat 225 (227) = 1953 Cri LJ 1289.

4. Taking cognizance, if refers to the particular individual who is charged for the time being.— (1) Where in the course of a sessions trial one of the prosecution witnesses was suspected of being involved in the offence under trial and he was thereupon transferred from the witness-box to the dock and tried along with the person originally committed to the sessions, it was held that such a proceeding amounted to "taking cognizance of an offence" and was, therefore, precluded under S. 193. (1892) 15 Mad 352 (353) (DB) ** (1895) 22 Cal 50 (71) (DB) ** 1884 Pun Re (Cr) No. 42 p. 92 (95) (DB).

(2) A Court takes cognizance of an offence and not of an offender and therefore, when proceedings are commenced against a new accused by a Court having seisin of a case, it does not take cognizance of any offence. AIR 1945 Sind 1 (3) = 46 Cri LJ 192= ILR (1944) Kar 300 (DB) ** 1955-2 Mad LJ 316 (318) ** AIR 1944 Pat 210 (211) = 46 Cri LJ 168 ** AIR 1924 Sind 71 (72, 73, 74) = 26 Cri LJ 181 (FB) ** AIR 1923 Rang 31 (35, 37) = 24 Cri LJ 519 (FB) ** **AIR 1967 SC 1167 (1169) = 1967 Cri LJ 1081 = (1967) 1 SCWR 465.** (Summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence.) ** 1970 Cri LJ 778 (780) (Andh Pra) ** AIR 1968 Raj 116 (120) = 1968 Cri LJ 648 = 1968 Raj LW 47 ** AIR 1967 Bom 126 (130) = 1967 Cri LJ 605 = 68 Bom LR 689 ** AIR 1964 Pat 487 (488, 489) = 1964 BLJR 452 = 1964 (2) Cri LJ 569 (DB) ** AIR 1964 Punj 351 (352, 353, 354) = 66 Punj LR 548 = 1964 (2) Cri LJ 204 (DB). (1961 Cur LJ (Part 1) Cr 1 (Punj), **Dissent. from.**) ** 1963 (2) Cri LJ 66 (67) (All) ** AIR 1962 Cal 133 (134, 135) = 1962 (1) Cri LJ 283 (DB).

(3) Cognizance is taken of case, not of persons, and there seems to be nothing in theory to prevent a Magistrate from taking cognizance of a case even where the offenders are unknown. The fact that a Magistrate has taken cognizance does not necessarily mean that there will be judicial proceedings against any one. Therefore, cognizance is something prior to and does not necessarily mean the commencement of judicial proceedings against any one. AIR 1943 Pat 245 (251) = 45 Cri L Jour 177 (SB).

5. Taking cognizance refers to the particular offence charged for the time being.— (1) The expression "taking cognizance of an offence" has reference to a specific offence. (1898) 1 Weir 720 (720) (DB) ** 1959 BLJR 494 (498).

(2) A Court takes cognizance of an offence of rape. In the course of the proceedings it is found that the offence really amounts to adultery and not rape. If the Court takes action against the accused with reference to the offence of adultery it would be taking cognizance of that offence. (1883) 5 All 233 (235).

(3) A Court takes cognizance of an offence under Sections 352 (assault) and 504 (insult) of the Penal Code. In the course of the proceedings it appears that the offence really committed by the accused was defamation (Sec. 500). If the Court takes action against the accused with reference to defamation, it would be taking cognizance of the offence. (1887) 10 All 39 (43).

(4) Prosecution commencing under Section 225, I. P. C. — Offence committed found to be one under Sec. 173, I. P. C. — Proceedings with reference to latter offence is taking cognizance

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within Section 195. AIR 1925 All 129 (130) = 26 Cri L Jour 446.

(5) Magistrate dealing with new offences disclosed does not take cognizance under Sec. 190 (1), Clause (c). AIR 1933 Pat 297 (298, 300) = 34 Cri L Jour 942 (DB).

(6) Before starting a prosecution for an offence under Section 186, Penal Code, a compliance with the provisions of Section 195 (1) as a condition precedent to the Court assuming jurisdiction and failure to comply with these provisions will vitiate the entire trial as without jurisdiction. AIR 1955 Sau 10 (11) = 1955 Cri L Jour 52 (DB).

6. Initiation of proceedings with reference to one offence — Some other offence appearing to be involved in the transaction — Action with reference to such offence is not under this section.— (1) Where proceedings are started with reference to one offence but it subsequently appears that a different offence or an additional offence has been committed in the course of the same transaction, the Court can proceed with reference to such offence against any person who appears to be implicated in it. In taking action the Court takes cognizance of such offence by virtue of its being seised of the case. **AIR 1927 PC 44 (46) = 28 Cri L Jour 259** ** AIR 1949 Pat 47 (56) = 26 Pat 479 = 49 Cri L Jour 612 (DB) ** AIR 1950 Pat 500 (502) ** AIR 1938 Mad 815 (816) = 39 Cri L Jour 958. (AIR 1936 Mad 341 = 37 Cri L Jour 501, **Dissented from.**) ** AIR 1936 Bom 379 (381) = 38 Cri L Jour 9 (DB) ** AIR 1968 Mad 60 (60, 61) = 1968 Cri LJ 183 = 1967 Mad LW (Cri) 176 ** AIR 1961 Cal 240 (246) = 1961 (1) Cri LJ 488 = ILR (1961) 1 Cal 598 (DB).

[See however AIR 1936 Mad 341 (341, 342) = 37 Cri L Jour 501.]

(2) Proceedings are instituted on a complaint against A and B in respect of offences under Sections 352 and 354 of the Penal Code. In the course of the proceedings it is found that an offence has been committed under Section 193 and that C also is involved in it. The Court can proceed under Section 193 against C as well as against A and B. (1899) 26 Cal 786 (789) (DB).

(3) A complaint is filed against A under Sections 342 and 363 of the Penal Code. On evidence being taken it is found that A did not commit any offence but that B committed offences under Sections 342, 352 and 363. The Court can proceed against B in respect of these offences. AIR 1914 Cal 801 (804) = 15 Cri L Jour 546 (547, 548) (DB).

[But see (1905) 28 All 212 (224). (Distinguished in AIR 1927 PC 44 (46) = 28 Cri L Jour 259.)]

(4) Where the offence subsequently disclosed pertains to a distinct transaction, cognizance can be taken of such offence only under this section. (1902) 6 Cal WN 202 (203) (DB).

7. Initiation of proceedings against one person — Another person found implicated in the criminal transaction under inquiry — Action against such person.— (1) Suppose in the course of proceedings initiated against A it transpires that B is implicated in the criminal transaction under inquiry. In such a case, the Court can add or substitute B as an accused person in the case and proceed against him provided it is otherwise open to the Court to do so. AIR 1933 Pat 244 (246) = 35 Cri L Jour 533 (DB) ** AIR 1949 Pat 47 (56) = 26 Pat 479 = 49 Cri L Jour 612 (DB) ** AIR 1932 Pat 65 (65, 66) = 10 Pat 847 = 33 Cri L Jour 232 ** AIR 1938 Nag 133 (134) = 38 Cri L Jour 717 ** (1908) 7 Cri L Jour 414 (415, 416) = 4 Low Bur Rul 137 ** AIR 1969 Ker 29 (30) = 1968 Ker LT 500 = 1969 Cr LJ 116 ** AIR 1968 Bom 400 (411) = 1968 Cr LJ 1584 = 69 Bom LR 808 (DB) ** AIR 1968 Raj 116 (120) = 1968 Cri LJ 648 = 1968 Raj LW 47 ** (1967) 8 Guj LR 350 (354) (DB) ** AIR 1964 Pat 487 (488, 489) = 1964 BLJR 452 = 1964 (2) Cri LJ 569 (DB).

[See also AIR 1934 Pat 467 (469) = 36 Cri L Jour 641 (DB). (Police sending report to Magistrate recommending prosecution of certain persons — Such Magistrate transferring case to another Magistrate — Latter in addition also convicting other persons appearing to be guilty — **Held** that such other persons were not tried without jurisdiction.)]

(2) By force of Section 193 a Sessions Court cannot add B as an accused person in the absence of an order of commitment by a duly empowered Magistrate. AIR 1942 Sind 161 (162) = 44 Cri L Jour 137 (DB) ** (1892) 15 Mad 352 (353) (DB) ** (1895) 22 Cal 50 (51) (DB) ** 1884 Pun Re (Cr) No. 42, p. 95 (DB).

(3) The fact that B is implicated may appear from the evidence in the case or otherwise. Thus, the fact of B's implication may be learnt by the Court on a perusal of the police diaries in the case. AIR 1933 Pat 244 (246) = 35 Cri L Jour 533 (DB) ** AIR 1931 All 273 (274, 275) = 32 Cri L Jour 370 ** (1904) 1 Cri L Jour 844 (845) (DB) (Cal) ** AIR 1969 Ker 29 (30) = 1969 Cri LJ 116 = 1968 Ker LT 500.

[See also AIR 1924 Sind 71 (72) = 26 Cri L Jour 181 (FB).]

(4) The fact of B's implication in the case against A may be brought to the notice of the Court by an application

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for issue of warrant against him. (1900) 27 Cal 979 (980) (DB).

[See however 1933 Mad WN 916 (917).]

(5) If the fact that B is implicated appears from the evidence in the case against A and if B is present in Court, Section 351 would apply and the Court can detain him in custody and proceed against him under that section. AIR 1942 Sind 161 (162) = 44 Cri L Jour 137 (DB) ** AIR 1941 Rang 30 (31) = 42 Cri L Jour 244 ** (1909) 10 Cri L Jour 303 (305) = 5 Nag LR 113 ** (1911) 12 Cri L Jour 399 (399) = 4 Sind LR 258 (DB) ** AIR 1923 Rang 31 (37) = 24 Cri L Jour 519 (FB).

But in the following cases, the practice of proceeding against a witness immediately was deprecated as such a course was likely to intimidate the other witnesses in the case:—
(1905) 2 Cri L Jour 448 (449) (DB) (Bom) ** 1889 Rat 477 (477, 478) (DB) ** (1871) 8 Bom HCR (Cri) No. 126 (154, 155) (DB) ** 1965 Cur LJ 859 = 68 Pun LR 78 (82 to 84).

[See (1967) All WR (HC) 702 (703).]

(6) In other cases, the Court can take such steps to compel B's appearance as may be open to it under the law. (1913) 14 Cri L Jour 290 (291) = 9 Nag LR 65 ** AIR 1924 Sind 71 (72, 73) = 26 Cri L Jour 181 (FB).

(7) Clause (c) of this section does not apply to such cases. AIR 1923 Rang 31 (35) = 24 Cri L Jour 519 (FB) ** AIR 1951 Assam 151 (161) = ILR (1951) 3 Assam 439 = 52 Cri L Jour 1457 ** AIR 1949 Pat 47 (56) = 26 Pat 479 = 49 Cri L Jour 612 (DB) ** AIR 1938 Nag 133 (134) = 38 Cri L Jour 717 ** AIR 1933 Pat 244 (246) = 35 Cri L Jour 533 (DB) ** AIR 1932 Pat 65 (65, 66) = 10 Pat 847 = 33 Cri L Jour 232 ** AIR 1924 Sind 71 (72, 73) = 26 Cri L Jour 181 (FB) ** AIR 1967 Punj 35 (37) = 1967 Cri LJ 248 = 68 Pun LR 78 ** 1965 Cur LJ 859 = 68 Pun LR 78 (82 to 84).

[But see AIR 1950 Cal 138 (139) = 51 Cri L Jour 636 (DB) ** AIR 1931 All 273 (274, 275) = 32 Cri L Jour 370.]

(8) Where subsequent to the initiation of proceedings against one person in regard to a criminal transaction it is alleged that another person is implicated in such transaction, no Court other than the one which already has seisin of the case relating to the transaction can proceed against such person. 27 Cal 979 (980) (DB) ** AIR 1957 Cal 376 (378) = 1957 Cri L Jour 710 ** (1903) 30 Cal 449 (452) (DB) ** AIR 1933 Pat 224 (246) = 35 Cri L Jour 533 (DB) ** 4 Cal WN 242 (244) (DB).

(9) The inquiry by a Court into one criminal conspiracy discloses the existence of another conspiracy. Proceedings in respect of the latter conspiracy can be initiated before a different Court. AIR 1935 Pat 91 (93) = 36 Cri L Jour 500 (DB).

(10) The offence in respect of which a new accused is added or substituted under the above power may be the same as that in respect of which proceedings were originally initiated. AIR 1933 Pat 244 (246) = 35 Cri L Jour 533 (DB).

(11) A Magistrate has jurisdiction to entertain separate complaints against the several accused persons involved in an offence. AIR 1949 Pat 47 (57) = 26 Pat 479 = 49 Cri Jour 612 (DB).

8. Cognizance in cases where the facts disclose a graver as well as a minor offence.— (1) Where the same facts disclose a graver offence as well as a minor offence, the prosecution must ordinarily be for the graver offence. AIR 1931 Rang 12 (14) = 32 Cri L Jour 202 (DB) ** (1901) 5 Cal WN 252 (253). (Prosecution under Section 182, Penal Code, is improper, offence under Section 211, Penal Code, having also been committed.) ** AIR 1931 Mad 702 (703) = 32 Cri L Jour 1215 (DB) ** AIR 1929 Mad 21 (23) = 30 Cri L Jour 322. (Fabricating evidence and forgery — Former must be given preference.) ** (1901) 5 Cal WN 727 (728).

(2) Facts disclosing graver as well as minor offence — Conviction for the minor offence will not be illegal. AIR 1944 Mad 166 (168) = 45 Cri L Jour 508.

(3) After the commencement of the trial for a minor offence under a summons case procedure the accused should not be permitted to challenge the validity of the trial on the ground that the trial should have been for a major offence triable as a warrant case. AIR 1966 Raj 115 (117, 118) = 1966 Cri LJ 579 = 1965 Raj LW 467.

9. Cognizance in cases where previous sanction or complaint of particular person or Court is necessary for prosecution of offence.— (1) Where an offence under Section 211, Penal Code, appears to have been committed in relation to a proceeding in a Court, but no complaint has been preferred by the Court concerned (which is a pre-requisite for taking cognizance of the offence) but the facts of the case disclose an offence under Section 182, Penal Code, in addition to an offence under Section 211, it is clear that the Court cannot take cognizance of the offence under Sec. 211. But it can take cognizance of the offence under Section 182. AIR 1951 Cal 581 (583) = 52 Cri L Jour 1480 (DB) ** AIR 1925 Pat 717 (719) = 26 Cri L Jour 1269 (DB) ** AIR 1928 All 765 (766) = 29 Cri L Jour 938.

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[See AIR 1931 Rang 12 (14) = 32 Cri L Jour 202 (DB).]

[But see AIR 1928 Rang 254 (255) = 30 Cri L Jour 342 ** AIR 1928 Rang 243 (244) = 29 Cri L Jour 1044 ** (1901) 5 Cal WN 727 (728) ** AIR 1931 Mad 702 (703) = 32 Cri L Jour 1215 (DB).

(2) Where in a single transaction distinct offences are committed for some of which a complaint is necessary under Section 195 (1) (a), Criminal P. C., the Court is not precluded from taking cognizance of offences for which no such special complaint is necessary. ILR (1962) Cut 610 = 28 Cut LT 417 (420, 421) ** 1969 Cri LJ 1459 (1461) = (1969) 2 Mys LJ 608.

(3) Charge of Criminal conspiracy and also specific offence — Offences under Electricity Act, Sections 39 and 44 (c) made out on same facts — Charge and conviction only under Sec. 39 is not bad. **AIR 1938 PC 130 (135) = 39 Cri L Jour 452.**

(4) Offence under Section 20 Prevention of Food Adulteration Act (1954) — Complaint by Calcutta Municipal Corporation — Complaint to be signed by the Commissioner — Rubber stamp impression of signature not enough — Complaint not being properly authorised Magistrate cannot take cognizance. AIR 1970 Cal 120 (122) = 1970 Cri LJ 340.

(5) Where the offence for which prosecution is started is one in respect of which sanction to prosecute is necessary and where such sanction is lacking, the proceedings are illegal and are not legalised by the fact that the ultimate conviction is for an offence in regard to which sanction to prosecute is not necessary. AIR 1951 Pat 513 (513) = 52 Cri L Jour 710. (AIR 1932 Mad 253 = 33 Cri L Jour 361 and AIR 1925 All 129 = 26 Cri L Jour 446, Rel. on.)

(6) Where a sanction is given, it confers jurisdiction on a competent Court to try the offender for an offence meaning thereby the alleged illegal act or omission and not merely to try him under that particular label which is given to it by the sanctioning authority. AIR 1958 All 481 (487, 488) = ILR (1958) 1 All 133 = 1958 Cri L Jour 827.

(7) Want of sanction affects the competency of the Court and is not curable under Section 537. AIR 1957 Mad 442 (448) = 1957 Cri L Jour 765.

(8) Irregularities in the sanction granted are curable to the extent permissible under Section 537. AIR 1957 Mad 442 (448) = 1957 Cri L Jour 765.

(9) The sanction is required at the time when the Magistrate took cognizance, and not before. AIR 1956 Mad 392 (395) = 1956 Cri L Jour 1000 (2).

10. Taking cognizance, a judicial act.— (1) The word "cognizance" means become aware of and when used with reference to a Court or judge, to take notice of judicially. **AIR 1963 SC 765 (770) = 1963 (1) Cr LJ 297 = (1963) Supp 1 SCR 953** ** ILR (1967) 2 Punj 103 (116 to 118).

(2) Taking cognizance of an offence is a judicial act though it may be only with a view to initiate such proceedings. AIR 1941 Pat 395 (397) = 42 Cri L Jour 504 ** AIR 1956 Orissa 129 (135) = ILR (1956) Cut 267 = 1956 Cri L Jour 909 (DB) ** AIR 1924 Cal 476 (479) = 25 Cri L Jour 732 (DB) ** (1868) 5 Bom HCR 29 (30, 31) (DB) ** AIR 1966 Mad 349 (352) = 1966 Cri LJ 1141 = 1966 Mad LW (Cri) 12 ** AIR 1966 Pat 473 (477) = 1967 Cri LJ 111 = ILR 46 Pat 138 (DB) ** AIR 1964 Mys 129 (129) = 1964 (2) Cri LJ 41 = (1963) 2 Mys LJ 41. **(Overruled** on another point by **AIR 1964 SC 1541** as interpreted AIR 1969 Mys 184.)

[But see AIR 1926 Cal 470 (479) = 27 Cri L Jour 385 (FB).

(3) Acts of a Magistrate before taking cognizance of an offence, would not be judicial acts with reference to the offence. AIR 1932 Mad 673 (675) = 33 Cri L Jour 785 ** (1912) 13 Cri L Jour 480 (480) (DB) (Mad) ** 1970 Cri LJ 922 = 1970 MPLJ 171.

[But see AIR 1928 Pat 585 (586) = 29 Cri L Jour 942.]

11. "Except as hereinafter provided."— (1) As instances of the exceptions to the general power conferred by this section, reference may be made to the restrictions imposed by Sections 195, 196, 196-A, 197, 198 and 199. AIR 1952 All 560 (560) = 1952 Cri L Jour 1034 ** **AIR 1967 SC 528 (532) = 1967 Cri LJ 528.** (AIR 1927 Sind 10 **overruled** on another point.) ** AIR 1969 Andh Pra 281 (284) = 1969 Cri LJ 1025 = (1968) 2 Andh WR 122 (DB) ** (1969) 2 An WR 449 = 1969 MLJ Cri 821 (825) ** 1969 Cri LJ 567 (568) = 9 Guj LR 963. (No cognizance can be taken of offences under Sections 493, 494, 495 and 496 merely on charge-sheet when there was no complaint by aggrieved parties to Magistrate as required by Section 198.) ** 1969 Cri. LJ 1459 (1461) (Mys) = (1969) 2 Mys LJ 608.

[See AIR 1951 Orissa 138 (139) = ILR (1950) Cut 476 (DB). (The opening words indicate that this section is to be read subject to the other sections of the Code and is controlled by Section 195.)]

(2) Section 195, however does not debar the S. D. M. from taking cognizance of an offence under the general proce-

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dure provided, say in Clause (a) of Section 190 (1). AIR 1968 Pat 88 (90) = 1968 Cri LJ 352.

(3) By virtue of Section 1 and Sec. 5, sub-section (2), the provisions of this section must also be held to be subject to any special enactments that may be in force for the time being as to the institution of proceedings in regard to offences under such enactments. 1883 Pun Re (Cr) No. 28, p. 74 (75) (DB) ** 1969 All WR (HC) 173.

[See 1969 Ker LT 18 (21, 22) ** AIR 1964 All 270 (274) = 1964 (1) Cri LJ 626.]

(4) Magistrate cannot take cognizance of the report of a police officer other than Special Police Officer with regard to commission of an offence under Suppression of Immoral Traffic in Women and Girls Act (1956). AIR 1965 All 372 (373) = 1964 All LJ 61 = 1965 (2) Cri LJ 179.

(5) The power of the Magistrate to take cognizance of an offence under Section 190 has not been taken away by any provision of the Criminal Law Amendment Act. AIR 1967 Pat 416 (422) = 1967 BLJR 411 = 1967 Cri LJ 1677 ** AIR 1966 Pat 15 (17) = 1966 Cri LJ 50 = 1965 BLJR 485 (DB).

(6) The Judge of the Special Court appointed under Section 2 of the W. B. Criminal Law Amendment (Special Courts) Act (21 of 1949) is not required under Section 190 (1) to comply with its requirements before he can "take cognizance of an offence". AIR 1963 SC 765 (768) = 1963 (1) Cri LJ 797 = (1963) Supp 1 SCR 953 ** AIR 1961 Cal 560 (564) = 1961 (2) Cri LJ 617 = 65 Cal WN 977 (FB).

(7) Section 6 of the West Bengal Special Courts Ordinance (3 of 1949) provides that a Court constituted under the Ordinance, may take cognizance of offence without the accused being committed to the Court of Session for trial. As no commitment is necessary it is not necessary that any Magistrate should take cognizance of the offence under S. 190 (1). (1950) 54 al WN 753 (754, 755) (DB).

(8) A complaint was preferred against a receiver appointed by the High Court. Leave of the High Court had been asked for but had not been granted. It was held that assuming that the Magistrate had jurisdiction to entertain the complaint it would not be proper to do so in the absence of the leave of the High Court. AIR 1939 Cal 701 (702, 703) = 41 Cri L Jour 52 (DB).

[See also AIR 1960 Cal 444 (445) = 1960 Cri LJ 902 (DB).]

(8) Magistrate cannot take cognizance of offence under S. 62 (a) of Bihar Panchayat Raj Act, 1948 on police report or complaint in view of Sec. 68 (1) in the absence of order to the contrary by concerned Magistrate. 1965 BLJR 661 (667) (DB).

12. Who can take cognizance under this section.— (1) Proceedings initiated by a Magistrate who is not duly empowered to take cognizance under this section are liable to be set aside. (1906) 3 Cal L Jour 87 (89) = 3 Cri L Jour 209 (DB).

(2) Under Section 529 (e), if a Magistrate not empowered to take cognizance of an offence under Clause (a) or Cl. (b) of this section erroneously does so in good faith, his proceedings cannot be set aside merely on the ground of his want of authority. AIR 1954 SC 700 (702) = 1954 Cri L Jour 1751 ** AIR 1931 Bom 517 (519) = 33 Cri L Jour 68 (DB) ** AIR 1926 Cal 470 (473) = 27 Cri L Jour 385 (FB) ** 1964 (1) Cri LJ 486 (488) (Tripura). (Commandant of Battalion of Assam Rifles — Order made appointing him first class Magistrate — Power to enquire into and try case given but not power to take cognizance of offence — Cognizance of taken by him and offender tried — Cognizance taken erroneously in good faith is mere irregularity.)

(3) If the Magistrate has 'taken cognizance' under Clause (c) without having the power to do so, his proceedings are under Section 530 (k) void. 1891 Rat 554 (554) (DB).

[See also (1895) 22 Cal 131 (135) (DB).]

(4) The power to take cognizance of an offence under Section 190 is ordinary powers of a Sub-Divisional Magistrate and a District Magistrate. As regards Magistrate of First, Second or Third Class, this is an additional power with which he can be invested subject to provisions of Fourth Schedule. AIR 1969 Ker 111 (116) = 1969 Cri LJ 486 = 1969 Ker LT 351 (DB).

(5) Power on Magistrate concerned can be conferred under sub-sections (2) and (3) only in respect of offences which the Magistrate in question can try or commit for trial. AIR 1926 Pat 400 (400) = 27 Cri L Jour 704 (DB) ** AIR 1969 Ker 111 (118) = 1968 Ker LJ 335 = 1969 Cri LJ 486 (DB). (Magistrate having no power to try accused or to commit him for trial is not competent to take cognizance — AIR 1952 All 873 and AIR 1967 Pat 416 and AIR 1959 Bom 437, Diss from.)

[See also 1961 MPLJ 117 (118).]

(6) A Third Class Magistrate cannot be empowered to take cognizance under Clause (c) of the section. (1902) 26 Bom 150 (155) (FB).

(7) The power to take cognizance on private complaint under Section 190

Section 190 — Note 12 (contd.)

(1) (a) is vested both in the executive and judicial Magistrates. 1968 Cri LJ 1246 (1248) = 33 Cut LT 1172.

(8) Additional Sub-Divisional Magistrate can take cognizance of offence under Section 29, Police Act on complaint of the Superintendent of Police — Police Regulations no bar. AIR 1965 All 415 (416) = 1965 (2) Cri LJ 330.

(9) A power specially conferred upon a Magistrate under this section continues until it is duly withdrawn by the proper authority and remains personal to him irrespective of the local area wherein he may be serving for the time being. AIR 1931 Bom 517 (520) = 33 Cri L Jour 68 (DB) ** AIR 1954 All 721 (722) = 1954 Cri L Jour 1480.

(10) It was held that a power to take cognizance on information does not extend to taking cognizance on the Magistrate's own knowledge or suspicion. 1901 Pun Re (Cr) No. 20, p. 51.

(11) It is proper for inquiry Magistrate to take cognizance on basis of his own inquiry report. 1967 BLJR 661 (663).

(12) A special power conferred on a Magistrate to take cognizance of offences on complaint is sufficient to enable him to take cognizance of complaints under Section 20 of the Cattle-Trespass Act. AIR 1920 Bom 85 (85) = 21 Cri L Jour 95 (DB) ** AIR 1959 Orissa 116 (117) = ILR (1958) Cut 549 = 1959 Cri L Jour 884 (DB). (AIR 1951 Orissa 40 **held no longer good law.**)

(13) A special Magistrate was appointed to try a case. It was held that the power to try would necessarily include the power to take cognizance. AIR 1931 Bom 517 (518) = 33 Cri L Jour 68 (DB).

(14) A Magistrate duly empowered under this section can take cognizance of even offences triable by a Special Judge. AIR 1959 Bom 437 (440) = ILR (1959) Bom 1088 = 1959 Cri L Jour 1153 (DB) ** AIR 1969 Delhi 26 (42) = 1969 Cri LJ 168 (DB).

(11) Rule 3 of Kerala Panchayats (Trial of Offences by Magistrates) Rules 1964 (before amendment of 1967) which provided that a Second Class Magistrate alone would be competent to take cognizance of any Panchayat offence or try such offence held not void on ground of repugnancy to provisions of Section 190 within meaning of Article 254 (2) of Constitution. AIR 1969 Ker 111 (114, 115) = 1969 Cri LJ 481 = 1969 Ker LT 351 (DB).

13. "May take cognizance."— (1) When a Magistrate duly empowered to take cognizance of offences on a complaint receives a complaint, the allegations in which prima facie show that an offence has been committed by a person, the Magistrate is not bound to take cognizance on such complaint and proceed to examine the complainant on oath. **AIR 1951 SC 207 (210) = 1951 SCR 312 = 52 Cri L Jour 775** ** AIR 1957 Andh Pra 864 (865) = 1957 Cri L Jour 1212 (2) ** AIR 1956 Cal 76 (77) = 1956 Cri L Jour 505 (2) (DB) ** AIR 1929 Pat 473 (475) = 30 Cri L Jour 1056 (FB) ** AIR 1953 Orissa 83 (84) = 1953 Cri L Jour 655 ** **AIR 1961 SC 986 (988, 989) = (1961) 1 SCJ 573 = 1961 (2) Cri LJ 39** ** 1968 All Cri R 483 (487) = 1968 All WR (HC) 783.

[But see **AIR 1968 SC 1 = 1968 Cri LJ 82 = 1968-1 SCR 205.** (The words "may take cognizance" in the context means "must take cognizance". He has no discretion in the matter, otherwise that section will be violative of Article 14 of the Constitution.) ** AIR 1952 All 455 (456) = ILR (1950) All 1284 = 1952 Cri L Jour 827 ** AIR 1950 Cal 340 (341) = 51 Cri L Jour 1290 ** AIR 1949 Cal 197 (199) = 50 Cri L Jour 368 ** AIR 1949 Cal 58 (58) = ILR (1957) 2 Cal 208 = 49 Cri L Jour 647 ** (1887) 14 Cal 707 (711) (FB) ** AIR 1926 Cal 470 (479) = 27 Cri L Jour 385 (FB).]

(2) Magistrate is not bound to take cognizance on the report of a police-officer. (1904) 1 Cri L Jour 980 (982) (All) ** (1913) 14 Cri L Jour 218 (218, 219) (All) ** AIR 1966 Guj 283 (287) = (1966) 7 Guj LR 130 = 1966 Cr LJ 1420 (FB).

[But see **AIR 1968 SC 1 (5) = 1968 Cri LJ 82 = (1968) 1 SCR 205.** ('May' means 'must' — Magistrate has no discretion.) ** 1888 Rat 375 (375) (DB).]

(3) Magistrate cannot refuse to take cognizance on police report so far as warrant cases are concerned in view of express provision of Section 251-A (2), Cr. P. C. ('63) 29 Cut LT 157 (159) = (1962) 4 Orissa JD 353.

(4) Magistrate is not bound to take cognizance under Clause (c) on his own knowledge or suspicion or on information not amounting to a complaint. AIR 1914 Cal 456 (464) = 15 Cri L Jour 385 (DB) ** (1902) 6 Cal WN 926 (926, 927) (DB).

[See also (1887) 14 Cal 707 (712) (FB).]

(5) Where cognizance of an offence has been taken by a Magistrate upon a complaint under Clause (a) and subsequently a report under Clause (b) in respect of the same offence is submitted by the police, it is not obligatory upon the Magistrate to register a case on the basis of such police report separately. AIR 1947 Oudh 68 (71) = 47 Cri L Jour 887 = 21 Luck 593 ** AIR 1965 Him Pra 37 (40) = 1965 (2) Cri LJ 99.

[See ILR 1967 Cut 73 (80).]

[See also AIR 1969 Mys 184 (185, 186)

Section 190 — Note 13 (contd.)
= 1969 Cri LJ 754 = (1968) 2 Mys LJ 604. (Observation in AIR 1964 Mys 129 held overruled by AIR 1964 SC 1541.)]

(6) Cognizance taken by Magistrate is of offences and not complaints or police reports. Therefore, even if a Magistrate has taken cognizance of an offence, he can entertain and take cognizance of other complaints, applications or police reports with regard to that offence if made during pendency of trial. AIR 1965 All 131 (134, 135) = 1965 (1) Cri LJ 275 = 1964 All LJ 335.

(7) Even in a case where the police investigate a cognizable offence in respect of the information received by them and submit a final report under Section 173, Cr. P. Code of which the Magistrate having jurisdiction takes cognizance by virtue of Section 190 (1) (b), Cr. P. Code, there is no bar for the Magistrate taking cognizance of a complaint filed by a party in respect of the same facts under Section 190 (1) (a), Cr. P. Code, and proceed with the enquiry or the trial, as the case may be or the both. AIR 1969 Mad 177 (179, 180) = 1969 Cri LJ 618 = (1968) 2 Mad LJ 321.

(8) It would be irregular for the Magistrate, who has sent the case for enquiry not being prima facie satisfied with the truth or otherwise of the case as stated in the complaint petition and as disclosed in the initial deposition of the complainant, to still act upon the same later on, in face of the enquiry report which negative the truth of the prosecution case. (1968) 34 Cut LT 411 (414, 415).

(9) Where proceedings have been started in respect of one offence alleged to be involved in a criminal transaction and subsequently it is proposed to start proceedings in respect of the other offences involved in such transaction, it is not regular for any Court other than the one which is already in seisin of the case relating to the transaction to start such proceedings. AIR 1929 Pat 710 (712) = 31 Cri L Jour 472.

(10) Where the complaint against a person is pending when the second complaint is preferred the second complaint could not be proceeded with. AIR 1954 Ajmer 56 (2) (56) = 1954 Cri L Jour 1234.

(11) The fact that cognizance of an offence has been taken by one Court does not (by itself) preclude any other Court from taking cognizance of the same offence. AIR 1923 Cal 652 (653) = 24 Cri L Jour 710 (DB) ** AIR 1931 Pat 50 (52) = 32 Cri L Jour 548 ** AIR 1933 Lah 852 (853) = 35 Cri L Jour 171.

(12) Where a case pending before one Court is transferred to another Court, the latter can take cognizance of any offence involved in the case and proceed against any person implicated therein. (1901) 5 Cal WN 488 (489).

(13) The transferee Magistrate cannot on the strength of the complaint transferred to him, take cognizance of a totally different offence. AIR 1958 Manipur 14 (15) = 1958 Cri L Jour 393.

(14) The order of a Magistrate declining to take cognizance of an offence does not operate as autrefois acquit and does not preclude cognizance being taken of the same offence again. (1950) 54 Cal WN (2 DR) 71 (84) (DB) ** AIR 1933 Pat 242 (243) = 34 Cri L Jour 1198 (DB).

(15) After repeated adjournments police failing to put up charge-sheet — Magistrate releasing accused from his bail bond — Accused cannot be said to have been discharged under Sec. 253, Cr. P. C. — Magistrate is competent to take charge-sheet filed later on and direct issue of process. AIR 1953 Orissa 84 (85) = ILR (1952) Cut 323 = 1953 Cri L Jour 672.

(16) Previous complaint dismissed — Complainant filing second complaint — Magistrate not to dismiss second complaint solely on ground that previous complaint on same allegations had been dismissed — Fact that remedy under Section 436 is open to complaint is no bar. AIR 1952 All 455 (456, 457, 458, 459) = ILR (1950) All 1284 = 1952 Cri L Jour 827.

(17) Complaint for offence dismissed — Subsequent complaint to police for same offence — Informant different — Accused different — Cognizance on charge-sheet not illegal. (1963) 1 Cri LJ 555 (557, 558) = 1962 BLJR 288 (Pat).

(18) Where there is neither revival of the complaint nor a fresh complaint is filed nor is the order dismissing the original complaint moved against or set aside, the entire proceedings are without any foundation and the conviction must be void in law. ILR (1948) 1 Cal 407 (412).

(19) One Magistrate not taking action — His successor is not barred from taking cognizance of same offence. AIR 1941 Pat 395 (397) = 42 Cri L Jour 504.

(20) After police-report stating that there is no case and the acceptance of such report by a Magistrate competent to take cognizance, the District Magistrate cannot order the police to charge-sheet. AIR 1928 Pat 585 (586) = 29 Cri L Jour 942.

(21) The pendency of civil proceedings concerning the matter involved is no bar to the initiation of criminal proceedings under this section. (1968) 9 Suth WR (Cr) 22 (22) (DB).

Section 190 — Note 13 (contd.)

[See also AIR 1959 All 332 (337) = 1959 Cri L Jour 663 (DB).]

(22) It is no objection to proceedings under this section that a civil action is maintainable in respect of the matter. (1968) 10 Suth WR (Cr) 40 (40) (DB).

(23) The fact that the accused (a soldier) has been departmentally punished for his misdeed is no bar to his criminal prosecution. 1887 Rat 318 (319) (DB) ** AIR 1954 Kutch 33 (37) = 1954 Cri L Jour 1086.

(24) A defect or illegality in investigation has no direct bearing on the competence to take cognizance by Court or other procedure for trial. AIR 1969 Andh Pra 99 (102) = (1968) 2 Andh LT 388 = 1969 Cr LJ 368.

(25) Illegalities or irregularities in regard to the arrest of the accused person do not affect the jurisdiction of the Court to take cognizance of the case against him. AIR 1941 Nag 338 (339) = 43 Cri L Jour 89 ** (1903) 26 Mad 124 (125) (DB) ** (1911) 12 Cri L Jour 356 (356) = 35 Bom 225 (SB) ** AIR 1932 Bom 610 (612, 613) = 33 Cri L Jour 733 (DB).

[But see AIR 1925 Bom 131 (133, 134) = 26 Cri L Jour 441 (DB).]

(26) There is no legal objection to proceedings being dropped by a Magistrate if he finds that he ought not to have taken cognizance of an offence. AIR 1942 Mad 283 (284) = 43 Cri L Jour 785.

14. "Upon receiving a complaint of facts which constitute such offence."— (1) Petition to Magistrate — Magistrate asked to take administrative action — Petition is not complaint and the Magistrate cannot take cognizance on its basis. AIR 1949 Cal 55 (56) = 49 Cri L Jour 635.

(2) Protest-petition that investigating officer was not investigating case properly and the accused be summoned and put on trial — Protest-petition can be treated as petition of complaint. AIR 1966 Pat 473 (478) = 1967 Cri LJ 111 = ILR 46 Pat 138 (DB).

(3) The complaint of facts constituting the offence need not be in writing. Nor need it reach the Court directly through the complainant. AIR 1965 Madh Pra 53 (54) = 1965 (1) Cri LJ 298 = 1966 MPLJ 1189.

(4) A Magistrate can take cognizance of an offence on a complaint by whomsoever the complaint may be presented. AIR 1947 All 139 (141) = ILR (1947) All 297 = 48 Cri L Jour 282 ** 1963 All LJ 238 = 1963 (2) Cri LJ 543 (545) (All) ** AIR 1963 Madh Pra 101 (101) = 1962 MPLJ 1136 = 1963 (1) Cri LJ 295 ** 1962 Ker LT 639 (641) ** 1962 (1) Cri LJ 702 (702) = 1962 Mad WN 288 = 75 Mad LW 224 ** AIR 1961 All 633 (635, 636) = 1961 (2) Cri LJ 754 (DB) ** AIR 1960 Ker 350 (350) = 1960 Ker LT 588 = 1960 Cri LJ 1466 ** 1960 Ker LT 1004 (1005). (Cognizable offence — Cognizance of, by Magistrate on complaint by public official instructed by State Government instead of on police report under Section 173 — Not against law.)

(5) A complaint filed by the Labour Officer under Section 45 of the Travancore-Cochin Shops and Establishments Act, 1125, can be considered as a complaint of facts constituting the offence under Section 190 (1) (a). AIR 1957 Ker 55 (57) = ILR (1957) Ker 353 = 1957 Cri L Jour 637 (DB).

(6) Offence under Companies Act — Private person can file complaint — Government Notifications, G. O. Nos. 518 of 6th June 1916 and 3070 of 23rd August 1932, permitting the Registrar of Joint Stock Companies to file complaints, do not restrict the Magistrate in the exercise of his powers under Section 190. AIR 1942 Mad 283 (284) = 43 Cri L Jour 785.

(7) Private complaints for offences under Bombay Prohibition Act not barred. AIR 1968 Bom 39 (41) = 1968 Cri LJ 27 = 69 Bom LR 636.

(8) Complaint of offence by Judge in a case in which under a mistaken view of the law he was supposed to have jurisdiction — Magistrate can take cognizance of offence. AIR 1947 All 173 (174) = ILR (1947) All 411 = 48 Cri L Jour 706.

(9) A Magistrate can prefer a complaint to himself and can take cognizance of such complaint. AIR 1926 Cal 470 (477, 479) = 27 Cri L Jour 385 (FB).

(10) The motive of the complainant in making a complaint is immaterial. ('92) 15 Mad 63 (64) (DB) ** 1891 Rat 549 (550) (DB).

(11) A complaint on which a Magistrate can take cognizance under this section must state the facts which constitute the offence charged. 27 Cal 985 (988) (DB) ** AIR 1930 Bom 372 (373) = 31 Cri L Jour 1142 (DB) ** AIR 1925 Mad 1157 (1157) = 26 Cri L Jour 1589 (DB) ** (1912) 13 Cri L Jour 691 (692) (DB) (Cal) ** 1891 Pun Re (Cr) No. 8, p. 19 (21) (DB) ** 1968 Cri LJ 117 (119, 121) = 8 Guj LR 290 (DB).

(12) If the facts stated in the complaint do not constitute any offence, the Magistrate cannot take cognizance on such complaint. 1884 Rat 206 (206) (DB).

[See however AIR 1953 Tripura 1 (2) = 1953 Cri L Jour 1463.]

(13) The complaint need not state all the facts on which the accused is to be charged. (1909) 9 Cri L Jour 108 (111) = 32 Mad 8 (DB).

Section 190 — Note 14 (contd.)

(14) It is not essential that a complaint should specify the facts which would confer territorial jurisdiction on the Magistrate to take cognizance of the offence. 1961 Ker LT 753 (754).

(15) Complainant may indicate some of the facts of his complaint by way of annexures, and that does not invalidate the petition of complaint. 1961 (2) Cri LJ 218 (220) (DB).

(16) Any defect in the complaint due to the insufficiency of facts stated therein is curable under Section 529 (e). AIR 1932 Bom 610 (612) (DB).

(17) In taking cognizance on a complaint, a Magistrate is not confined to the sections mentioned in the complaint. AIR 1948 Mad 95 (95) = 49 Cri L Jour 30 ** AIR 1947 All 139 (141) = ILR (1947) All 297 = 48 Cri L Jour 282 ** (1903) 25 All 209 (211) ** (1899) 26 Cal 786 (789, 790) (DB) ** 1895 Pun Re (Cr) No. 23, p. 65 (66) (DB) ** 1967 BLJR 227 (235).

(18) If on taking cognizance on a complaint the Magistrate finds that the complainant had no locus standi to file the complaint and he ought not to have taken cognizance of the offence he can drop the proceedings. AIR 1942 Mad 283 (284) = 43 Cri L Jour 785.

(19) Where a complaint purports to be made under Section 476 but the case is one to which Section 476 does not apply and the proceedings under that section have been illegally held, this does not affect the validity of the complaint or the jurisdiction to take cognizance of the offence on its basis. AIR 1943 Lah 208 (209) = 44 Cri L Jour 666 ** AIR 1947 All 173 (174) = ILR (1947) All 411 = 48 Cri L Jour 706.

(20) Section 476 does not preclude the officer presiding over a Court from himself preferring a complaint and the jurisdiction of the Magistrate before whom the complaint is laid to try it like any other complaint is not taken away by that section. AIR 1965 Orissa 180 (182) = 1965 (2) Cri L Jour 525 = 31 Cut LT 1036.

(21) Under the U. P. Encumbered Estates Act (25 of 1934) a liquidation officer is not prevented by any rule of law from making a complaint if he considers that a party in a proceeding pending before him has committed an offence. The fact that he could not have taken any action under Section 476 in his capacity as a Court does not debar him from taking any action in his capacity, as a public officer or authority. AIR 1949 All 692 (695) = ILR (1950) All 571 = 51 Cri L Jour 199 (DB).

(22) Sections 480 and 482 do not derogate from the power of a Court to take cognizance of the offence under Section 190 (1) (a) on complaint under Section 195. AIR 1959 All 693 (694) = 1959 Cri L Jour 1261 ** AIR 1969 Pat 323 (329) = 1969 Cri LJ 1262 = 1969 BLJR 836.

(23) Where the facts stated constitute an offence under two or more statutes, the Magistrate will take cognizance of all such offences. AIR 1959 Cal 32 (34) = 1959 Cri L Jour 38 (DB).

(24) The Official Secrets Act provides for a special procedure of complaint. The Magistrate takes cognizance of offence thereunder only under Sec. 190 (1) (a) and not under Section 190 (1) (b). AIR 1969 Cal 535 (537, 538) = 1969 Cri LJ 1361 (DB).

(25) Special Court under W. B. Criminal Law Amendment (Special Courts) Act, 1949 can take cognizance of offence on complaint of investigating officer even before Amendment of Sec. 5 (1) in 1960. AIR 1969 Cal 481 (487) = 1969 Cri LJ 1224 (DB).

(26) Report of officer of Railway Protection Force under Section 8 of Railway Property (Unlawful Possession) Act, 1966, to Magistrate is complaint on which cognizance is taken. AIR 1969 Cal 594 (601) = 1969 Cri LJ 1480.

(27) Jurisdiction to take cognizance — Complaint lodged by director of enforcement — Complaint disclosing commission of offence under Penal Code also — Magistrate can take cognizance thereof. (1969) Mad LW (Cr) 274 (Mad).

15. "Upon a report in writing of such facts made by any police officer" — Clause (1) (b).— (1) The words "report in writing of such facts made by a police officer" in Clause (b) would include a report by the police in any case which they can investigate under Chapter XIV, i.e., the report by the police in a cognizable case or in a non-cognizable case which they have been ordered by a Magistrate to investigate. AIR 1938 Rang 257 (258) = 39 Cri LJ 776 ** AIR 1956 Ajmer 24 (24) = 1956 Cri LJ 167 ** AIR 1948 Bom 163 (169) = 49 Cri LJ 196 (DB) ** AIR 1947 Oudh 68 (71) = 47 Cri LJ 887 = 21 Luck 593 ** AIR 1930 Bom 372 (372) = 31 Cri LJ 1142 (DB) ** AIR 1927 Bom 440 443, 444) = 28 Cri LJ 939 (DB) ** AIR 1967 Delhi 151 (153) = 1967 Cri LJ 1630 = 69 Pun LR (D) 207.

(2) The words in Clause (b) include any report of a police-officer as to an offence whether the case is one which he can investigate or not. AIR 1953 Trav-Co 43 (44) = 1953 Cri LJ 288 ** AIR 1959 Cal 640 (642) = 1959 Cri LJ 1163 ** AIR 1957 Mys 40 (42) = ILR (1956) Mys 321 = 1957 Cri LJ 464 ** 1957 Cri LJ 149 (151) (Pat) ** AIR 1952 Him Pra 74 (79) = 1952 Cri LJ 1712.

[See AIR 1948 Bom 163 (166) = 49 Cri LJ 196 (DB).]

Section 190 — Note 15 (contd.)

[But see AIR 1955 Sau 42 (44) = 1955 Cri LJ 839 (DB) ** 1933 Mad WN 876 (878) ** AIR 1938 Rang 257 (258) = 39 Cri LJ 776 ** AIR 1927 Bom 440 (443, 444) = 28 Cri LJ 939 (DB) ** AIR 1925 Bom 131 (134) = 26 Cri LJ 441 (DB) ** AIR 1925 Lah 237 (238) = 25 Cri LJ 1361 ** **AIR 1965 SC 1185 (1186, 1187) = 1965 (2) Cri LJ 250 = (1965) 1 SCR 269** ** AIR 1969 All 123 (128) = 1969 Cr LJ 354 ** (1969) 2 An WR 449 ** 1968 All LJ 765 (DB). (1965 All LJ 68 and **AIR 1961 All 377, Overruled.)** ** AIR 1967 Mad 4 (4) = 1967 Cri LJ 84 = (1966) 1 Mad LJ 331 ** AIR 1966 Punj 465 (466) = 1966 Cri LJ 1324 = 68 Pun LR 432 ** AIR 1962 Raj 94 (95) = 1961 Raj LW 515 = 1962 (1) Cri LJ 467 ** AIR 1960 All 509 (510) = 1960 Cri LJ 1059 ** AIR 1960 Raj 150 (151, 152) = 1960 Cri LJ 853 = 1960 Raj LW 42.

[But see AIR 1967 Mad 390 (391) = 1967 Cr LJ 1525 = (1967) 1 Mad LJ 108 ** 1961 (2) Cri LJ 53 = AIR 1961 Cal 377 ** 1961 (1) Cri LJ 496 (1) = AIR 1961 Cal 257 (258) = 64 Cal WN 1026.]

(3) Present clause includes not only the final report under Section 173, but also other reports made by the police. AIR 1953 Orissa 83 (83) = 1953 Cri LJ 655 ** AIR 1959 Raj 191 (193) = ILR (1959) 9 Raj 86 = 1959 Cri LJ 1112 ** AIR 1956 Orissa 129 (135) = ILR (1956) Cut 267 = 1956 Cri LJ 909 (DB) ** AIR 1952 Him Pra 81 (87) = 1952 Cri LJ 1720 ** **AIR 1965 SC 1185 (1187) = 1965 (2) Cri LJ 250 = (1965) 1 SCR 269** ** (1969) 2 An WR 449.

[See AIR 1957 Cal 379 (381) = 1957 Cri LJ 713.]

[See also 1968 All LJ 765 (767) (DB).]

(4) The words "police report" in Section 251A and "report by a police officer" in Section 190 (1) (b) mean the same thing and that in both cases the words include any report by a police officer whether falling under S. 173 or not. **AIR 1965 SC 1185 (1186) = 1965 (2) Cri LJ 250 = (1965) 1 SCR 269, (AIR 1958 Cal 213, Overruled.)** ** AIR 1967 Cal 352 (354) = 1967 Cri LJ 858 ** 1963 Raj LW 206 (207).

[But see AIR 1965 Hima Pra 37 = 1965 (2) Cri LJ 99.]

(5) Police report mentioned in Section 207 (a) is report mentioned in Section 190 (1) (b). **AIR 1967 SC 1167 (1169) = 1967 Cri LJ 1081 = (1967) 1 SCWR 465.**

(6) In order to constitute a report of a police-officer the allegation must be made by a police-officer as such and not as a private person. (1904) 1 Cri LJ 193 (199) = 2 Low Bur Rul 146 (SB). (Per Berks J.) ** AIR 1967 Guj 228 (228) = 1967 (1) Cri LJ 1328.

(7) If cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. **AIR 1955 SC 196 (203, 204) = 1955 Cri LJ 526 = ILR (1955) Punj 135 = 1955 SCR 1150** ** AIR 1959 All 82 (87) = 1959 Cri LJ 113 ** AIR 1959 Raj 191 (193) = ILR (1959) 9 Raj 86 = 1959 Cri LJ 1112 ** AIR 1958 Tripura 1(7) = 1958 Cri LJ 97 ** AIR 1969 All 123 (128) = 1969 Cri LJ 354 ** 1969 Ker LT 18 (21, 22) = (1969) MLJ (Cr) 189 ** AIR 1964 Raj 237 (239, 240) = 1964 Raj LW 275 = (1964) (2) Cri LJ 581 ** AIR 1962 Bom 263 (267) = 64 Bom LR 274 = 1962 (2) Cri LJ 598 (DB) ** AIR 1962 Bom 205 (211, 213) = 64 Bom LR 188 = (1962) (2) Cri LJ 326 (DB) ** 1962 (2) Cri LJ 544 (545) (J and K) = (1962) Kash LJ 127 ** (1962) 28 Cut LT 47 (52).

(8) If the police officer has taken up investigation in a cognizable offence, the inevitable consequance of such an investigation being a report under Section 173 Cri. P. C. such a report in spite of irregularities and breaches committed by the police officer, must be deemed to be a report under Section 173 and the Magistrate has to take cognizance of such a report only under Section 190 (1) (b). 1969 Mad LW (Cr) 90 (97).

(9) The word 'any' in Clause (b) of Section 190 (1) is comprehensive enough to include a report lodged by a police officer other than the police-officer who could make investigation under Section 156. AIR 1959 All 82 (87) = 1959 Cri LJ 113 ** AIR 1969 Bom 285 (291) = 1969 Cri LJ 1038 = 70 Bom LR 778 ** AIR 1963 Raj 48 (49, 50) = 1963 (1) Cri LJ 318 = 1962 Raj LW 539.

(10) Where the illegality in the investigation has been brought to the notice of the Court during the trial, the Court, while not declining to take cognizance, will have to take the necessary steps to have the illegality cured and the defect rectified. AIR 1959 Mad 389 (391) = ILR (1959) Mad 345 = 1959 Cri LJ 1085 ** AIR 1962 Cal 189 (191) = 1962 (1) Cri LJ 405 = (1961) 2 Cal 462 (DB).

(11) A report of a police-officer on which cognizance can be taken under this clause must give the facts constituting the offence charged. AIR 1952 Him Pra 74 (79) = 1952 Cri LJ 1712 ** AIR 1955 Bhopal 20 (21) = 1955 Cri LJ 1561 ** AIR 1955 Trav-Co 74 (79) = ILR (1954) Trav-Co 1217 = 1955 Cri LJ 740 (DB) ** 1952 Raj LW 297

Section 190 — Note 15 (contd.)

(298) ** AIR 1937 Pat 160 (163) = 38 Cri LJ 94 ** 1966 All WR (HC) 409 (411).

[See also AIR 1956 Bom 195 (195) = 1956 Cri LJ 481 (DB).]

(12) When a Magistrate takes cognizance of offences under Section 190 (1) (b) he takes cognizance of all offences constituted by the facts reported by police officer and not only of some of such offences. **AIR 1960 SC 810 (812) = 1960 Cri LJ 1165 = (1960) 3 SCR 245.** (Magistrate after making order of discharge in respect of offence triable as warrant case can still proceed for offence triable as summons case.)

(13) Where the facts stated constitute an offence under two or more statutes, the Magistrate will take cognizance of all such offences. AIR 1959 Cal 32 (34) = 1959 Cri LJ 38 (DB).

(14) If the facts recited in the report do not constitute any offence, the Magistrate cannot take cognizance of such offence on it. AIR 1922 Cal 538 (539) = 24 Cri LJ 1 (DB).

(15) Where the police report does not allege facts which constitute an offence or repudiate the correctness of the allegation as to the existence of such facts, the cognizance taken by the Magistrate must be referred to his powers under Section 190 (1) (c). and not under Section 190 (1) (b). 1966 All WR (HC) 409 (411).

(16) Information of a cognizable and non-cognizable offence — Police reporting the case as non-cognizable — Magistrate's acceptance of the report — Magistrate's subsequent order calling for a charge-sheet from the police for the cognizable offence is illegal. (1907) 6 Cri LJ 34 (36) (DB) (Cal).

(17) Report need not state what each prosecution witness named therein is going to depose. AIR 1922 Pat 294 (296) = 23 Cri LJ 69 (DB).

(18) Until the charge sheet has been filed a Magistrate cannot be said to have taken cognizance of an offence under Clause (b) of sub-section (1). **AIR 1951 SC 207 (208) = 1951 SCR 312 = 52 Cri LJ 775** ** AIR 1953 Orissa 84 (85) = ILR (1952) Cut 323 = 1953 Cri LJ 672 ** AIR 1950 All 626 (629, 630).

(19) Where a person gives information to the police of the commission of a cognizable offence and the police after investigation find that the information is maliciously false and make a report recommending the prosecution of the informer, the Magistrate can take cognizance of the offence of bringing a false charge under Section 211 of the Penal Code as on the report of the police, provided that it is otherwise open to him to do so. AIR 1919 Pat 319 (320) = 20 Cri LJ 413 ** AIR 1929 Pat 514 (515, 516) = 31 Cri LJ 55.

(20) If in the opinion of the Magistrate the facts stated in the report of a police-officer amount to an offence, he can take cognizance of such offence on such report although, in the opinion of the police-officer, the facts do not amount to such offence. AIR 1933 Pat 50 (51) = 34 Cri LJ 303 ** **AIR 1968 SC 117 (123) = 1968 Cri LJ 97 = (1967) 3 SCR 668** ** AIR 1966 Guj 283 (288, 292) = (1966) 7 Guj LR 130 = 1966 Cr LJ 1420 (FB). (AIR 1952 Pepsu 29 and AIR 1952 Pepsu 38, Diss.) ** AIR 1962 Cal 135 (145) = 1962 (1) Cri LJ 285 = 66 Cal WN 697 (FB). (AIR 1952 Pepsu 29; AIR 1952 Pepsu 38 and AIR 1960 Bom 240, **dissented from.**) ** 1966 All WR (HC) 409 (411) ** AIR 1966 Raj 233 (235 to 237) = 1966 Cri LJ 1202 = 1965 Raj LW 352 (DB) ** AIR 1960 Mys 237 (238) = 38 Mys LJ 490 = 1960 Cri LJ 1226 (1) ** 1957 Cri LJ 231 (232) = ILR (1956) 6 Raj 469.

[See also AIR 1961 Orissa 64 (65, 66) = 1961 (1) Cri LJ 539 = 26 Cut LT 647 ** AIR 1952 Pepsu 38 (39, 40) = 1952 Cri LJ 474 ** AIR 1952 Pepsu 29 (30, 31) = 3 Pepsu LR 184 = 1952 Cri LJ 482 (DB). (Note :— No longer good law in view of **AIR 1968 SC 117**—Ed.]

(21) Magistrate can take cognizance of an offence on the facts contained in the report of a police-oficer although in the opinion of such officer there is not sufficient evidence to justify taking further action. (1878) 2 Weir 119 (119) ** AIR 1924 Sind 71 (72) = 26 Cri LJ 181 (FB). (Overruling 12 Cri LJ 92.) ** (1907) 5 Cri L Jour 275 (276) ** AIR 1917 All 133 (134) = 18 Cri LJ 425 (426).

[But see AIR 1932 Mad 673 (674) = 33 Cri LJ 785.]

(22) Cognizance on police report — Name of accused amongst others mentioned in F. I. R. — Charge-sheet omitting to mention such accused — Perusal by Court of case diaries — Issue of summons to such accused — Cognizance is taken under Section 190 (1) (b) and not under Section 190 (1) (c). 1962 (1) Cri LJ 96 (97, 98) (Tripura).

(23) Section 11 of the Essential Commodities Act, 1955, provided that no Court should take cognizance of the offence under that Act, except on a report in writing. Cognizance taken on F. I. R. drawn on a letter sent by a Police Sub-Inspector is not legal cognizance taken on a report in writing. AIR 1958 Cal 612 (613) = 1958 Cri LJ 1386.

(24) Where a Magistrate takes cognizance of an offence on the statement of a police-officer which does not amount to a "report in writing of a police-officer" within this clause, the

Section 190 — Note 15 (contd.)

case is covered by the provisions of Section 529 (e) so that if the Magistrate has acted in good faith, the proceedings initiated by him are not affected. AIR 1928 Lah 66 (68) = 29 Cri LJ 65 (DB) ** AIR 1948 Bom 163 (166) = 49 Cri LJ 196 (DB) ** AIR 1926 Mad 865 (871) = 27 Cri LJ 1031 (FB).

(25) Suppose a Magistrate has taken cognizance with reference to certain accused persons on the basis of a preliminary report of the police. If in the final report or charge-sheet, the names of some of the accused persons are omitted, the Court is not bound to drop further proceedings against them on this ground. AIR 1924 Pat 597 (602) = 26 Cri LJ 244 (DB).

(26) After the Magistrate has taken cognizance of an offence on the basis of a police report, further investigation into that offence by the police is not legal. AIR 1969 Cal 316 (320) = 1969 Cri LJ 723.

(27) Under Section 14 (1) of Hoarding and Profiteering Prevention Ordinance (35 of 1943) (since repealed by Act 2 of 1948), the sanction of the proper authority was an essential preliminary to the institution of a prosecution. Therefore, where cognizance was taken by a Magistrate on a police-report without such previous sanction the prosecution was held to be bad for want of such sanction and it could not be validated by accord of a subsequent sanction. AIR 1945 Oudh 180 (182) = 47 Cri LJ 40.

(28) Police-reports are not in themselves evidence and ought not to be treated as such. 1900 Pun LR (Cri) 71 (73) (DB).

(29) This Clause applies only to the report of a police officer but under special statutory provisions the report of any other officer also may be treated as a report of a police officer for the purposes of this section. **AIR 1965 SC 1185 (1187) = 1965 (2) Cr LJ 250 = (1965) 1 SCR 269.** (Report under Section 11, Essential Commodities Act (1955).) ** AIR 1970 Pat 159 (160). (Report under Section 11 of Essential Commodities Act, 1955.) ** AIR 1969 Pat 253 (255). (A report by an Excise Officer under Bihar and Orissa Excise Act.) ** AIR 1968 Guj 23 (29) = 1968 Cri LJ 156 = 9 Guj LR 201 (DB). (Charge-sheet forwarded by police officer under Rule 12 (9) (a) of the Defence of India Rules, 1962.) ** AIR 1968 Pat 392 (393). (Report of Excise Officer under Bihar and Orissa Excise Act (2 of 1915).) ** AIR 1968 Pat 342 (344) = 1968 Cr LJ 1195. (Report by Excise Officer under Bihar and Orissa Excise Act. (2 of 1915).) ** AIR 1963 Madh Pra 337 (339) = (1963) (2) Cri LJ 629 = 1965 MPLJ 329 (DB). (Report of Excise Officer under Opium Act is police report under Section 190 (1) (b) but not within Section 251-A — AIR 1958 Madh Pra 285 and AIR 1961 Madh 13, **Overruled.)** ** AIR 1962 Cal 410 (410) = 1962 (2) Cri LJ 178 (DB). (Report under Section 11 of the Essential Commodities Act, 1955.) ** (1962) 28 Cut LT 47 (50). (Report of Excise sub-Inspector under Section 78 (4) of Bihar and Orissa Excise Act (1915).) ** AIR 1961 Orissa 64 (66) = 1961 (1) Cri LJ 539 = 26 Cut LT 647. (Report of Excise Officer under Section 204, Opium Act comes under Section 190 (1) (b) but not under S. 251-A.) ** AIR 1958 Madh Pra 54 (54) = 1958 Cri LJ 189 (DB). (Report of Excise Officer under M. B. Excise Act.) ** AIR 1956 Ajmer 24 (24) = 1956 Cri LJ 167. (Report for an offence under Section 33, (Ajmer) Excise Regulation (1 of 1915).) ** AIR 1954 Madh B 101 (105) = 1954 Cr LJ 966. (Report of an officer of Delhi Special Police Establishment.) ** AIR 1927 Cal 405 (406) = 28 Cri LJ 316 (DB). (Report of Excise Sub-Inspector under Section 74 (4) of Bengal Excise Act 15 of 1909).)

(30) A police officer for purposes of Section 190 (1) (b) can only be a police officer properly so called. The Central Excise officer is not a police officer. **AIR 1966 SC 1746 (1750) = 1966 Cri LJ 1353 = (1966) 3 SCR 698. (AIR 1962 SC 276,** Foll. Conflict of views expressed in AIR 1927 Bom 4 (FB) and AIR 1932 Pat 293 (SB) not resolved.)

(31) Offence under S. 26 of Maharashtra Municipalities Act (46 of 1965), is cognizable. Once the police officer arrests the person committing such offence, complaint by Municipal Chief Officer under Section 296 of that Act is not necessary for taking cognizance. AIR 1970 Bom 240 (Prs 5, 6, 7).

16. Complaint by police-officer.— (1) Report of a police-officer whether in a cognizable or non-cognizable case does not amount to a complaint. AIR 1950 Nag 38 (44) = ILR (1950) Nag 87 = 51 Cri LJ 427 ** AIR 1936 Nag 86 (87) = 37 Cri LJ 587 ** AIR 1968 Cal 540 (544) = ILR (1969) 2 Cal 161 = 1968 Cri LJ 1411 ** AIR 1967 Delhi 151 (153) = 1967 Cr LJ 1630 = 69 Pun LR (D) 207 ** AIR 1963 Cal 191 = (1963) 1 Cri LJ 424 (DB) ** AIR 1960 Raj 150 (151, 152) = 1960 Raj LW 42 = 1960 Cri LJ 853.

(2) The report of police officer in writing cannot be termed as a "complaint of facts" **AIR 1965 SC 1185 (1187) = 1965 (2) Cri LJ 250 = [1965] 1 SCR 269.**

(3) Police-officer is free to make a complaint instead of a report. AIR

Section 190 — Note 16 (contd.)
1933 Sind 188 (190) = 34 Cri LJ 256 (DB).

[See also AIR 1970 Bom 225 (231, 232). (Magistrate can take cognizance of the offence under Section 135 Customs Act by treating the charge-sheet as a complaint in respect of non-cognizable offence.) ** AIR 1960 Ker 315 (317) = 1960 Ker LT 217 = 1960 Cri LJ 1334 (DB) ** (1968) 70 Bom LR 757 (764) = 1969 Mah LJ 199 ** 1965 All LJ 68 (70) ** AIR 1965 Ker 59 (62) = 1965 (1) Cri LJ 178 = 1964 Ker LT 535 (DB) ** AIR 1961 All 377 (378) = 1961 (2) Cri LJ 53 = 1961 All LJ 118 ** AIR 1958 Andh Pra 392 (393) = ILR (1958) Andh Pra 137 = 1958 Cri LJ 737 (DB).]

(4) He can make a complaint in respect of any offence whether he can investigate into it or not. AIR 1952 Kutch 54 (55) = 1952 Cri LJ 1037 ** AIR 1929 Pat 514 (516) = 31 Cri LJ 55.

(5) Where the allegation of a police-officer is held not to amount to a report of a police-officer, it can be treated as a complaint if it otherwise satisfies the requirements of the definition of a complaint. AIR 1953 Trav-Co 43 (44) = 1953 Cri LJ 288 ** (1902) 26 Bom 150 (156, 157) (FB) ** AIR 1948 Bom 163 (169) = 49 Cri LJ 196 (DB) ** AIR 1932 Bom 610 (612) = 33 Cri LJ 733 (DB) ** (1909) 9 Cri LJ 108 (110, 111) = 32 Mad 3 (DB) ** 1969 Cri LJ 1458 (1459) = 1969 Mad LW (Cri) 86.

(6) Where a letter was written by a Sub-Inspector of Police to the Superintendent of Police to the effect that a certain person had committed an offence under Section 177 of the Penal Code and praying for his permission for filing a complaint against the person and such letter was forwarded by the Superintendent of Police to the Magistrate, it was held that the letter was merely a report and not a complaint. AIR 1936 All 788 (799) = 38 Cri LJ 57 (DB)

(7) Statutory complaint of offence under Section 295A I. P. C. filed by police officer is not report in writing by police officer but complaint under Section 190 (1) (a). AIR 1963 Mad 160 (163) = 1963 (1) Cri LJ 772 = (1963) 1 Mad LJ 15.

17. Power of Magistrate to order police to charge-sheet any person.— (1) There is no specific provision in the Code authorising a Magistrate to order the police to charge-sheet any person. AIR 1956 Assam 127 (2) (128) = 1956 Cri LJ 974 (2) ** 1969 Cri LJ 831 = 1969 Raj LW 213 ** AIR 1966 Guj 283 (292) = 1966 Cri LJ 1420 = (1966) 7 Guj LR 130 (FB) ** AIR 1965 Him-Pra 37 (40) = 1965 (2) Cri LJ 99 ** AIR 1960 Madh Pra 12 (13, 14) = 1960 Cri LJ 79 = 1959 MPLJ 875.

(2) Where the Magistrate orders the police to investigate cases the police are entitled to come to their own conclusion in making their report and the Magistrate cannot order them to put in a charge-sheet when they are of the opinion that the case is not true. AIR 1953 Assam 112 (112) = ILR (1952) 4 Assam 273 = 1953 Cri LJ 797 (DB) ** AIR 1932 Mad 673 (673) = 33 Cri LJ 785 ** **AIR 1968 SC 117 (123) = 1968 Cri LJ 97 = (1967) 3 SCR 668. (AIR 1960 Bom 240 and AIR 1966 Pat 438, Overruled.)** ** AIR 1962 Cal 135 (145) = 1962 (1) Cri LJ 285 = 66 Cal WN 697 (FB) (Cr. Rev. No. 226 of 1960, D/- 12-9-1960 (Cal) and obiter observations in AIR 1941 Cal 263, Overruled; AIR 1952 Pepsu 29; AIR 1952 Pepsu 38 and AIR 1960 Bom 240, Diss. from.) ** AIR 1969 All 241 (242) = 1968 All LJ 429 = 1969 Cri LJ 590 ** 1969 All WR (HC) 493 (494) ** AIR 1960 Madh Pra 12 (13, 14) = 1960 Cri LJ 79 = 1959 MPLJ 875.

[See also AIR 1957 Cal 379 (381) = 1957 Cri LJ 713.]

[But see AIR 1932 Pat 72 (77) = 33 Cri LJ 349. (It is a proper procedure for a Magistrate who thinks it fit to proceed judicially against any person to order the police to charge-sheet him.) ** AIR 1958 Madh Pra 234 (234) = 1958 Cri LJ 1040. (AIR 1953 Pat 242 Rel. on.) ** ILR (1957) Cut 377 (379) ** AIR 1924 Pat 597 (602) = 26 Cri LJ 241 (DB) ** AIR 1951 Raj 146 (146) = 52 Cri LJ 1174.]

(3) No illegality is committed by the Magistrate taking cognizance of an offence against the accused on a charge sheet submitted to him by the Investigation officer under administrative directions of the District Magistrate after he had once submitted a final report. AIR 1956 All 525 (527) = 1956 Cri LJ 1037 (DB) ** AIR 1966 Raj 233 (234 to 237) = 1966 Cr LJ 1202 (DB).

[See also AIR 1965 Orissa 135 (136) = 1965 (2) Cri LJ 111 = 31 Cut LT 285.]

(4) Even though an illegality is committed by the magistrate in calling for a charge-sheet after the police submitted a final report under Section 169, in the absence of proof of miscarriage of justice thereby, neither the trial nor the result of the trial is vitiated. 1969 Cri LJ 1307 (1309) = 35 Cut LT 381 = 11 OJD 23 (Orissa). (AIR 1968 SC 1292 Foll.)

(5) Even after the Magistrate accepts the final report and does not wish to proceed with the matter further, it is open to him to revise his order and call for charge-sheet. AIR 1958 Orissa 11 (14) = ILR (1957) Cut 557 = 1958 Cri LJ 63 ** AIR 1958 Orissa 104 (105) = ILR (1958) Cut 25 = 1958 Cri LJ 655 (DB).

Section 190 — Note 17 [contd.]

(6) If a Magistrate, on a complaint being made to him, does not take cognizance but merely forwards the complaint to the police for investigation and for taking cognizance, he acts under Section 156 (3) and the proceedings based on a charge-sheet submitted by the police are valid. AIR 1950 Cal 246 (247) = 51 Cri LJ 720 ** AIR 1969 Ker 97 (98) = 1968 Ker LT 547 = 1969 Cri LJ 482. (AIR 1967 All 468 and 1968 Ker LT 57, **held no longer good law in view of AIR 1964 SC 1541.**) ** (1969) 35 Cut LT 105 (110).

(7) The proper procedure when a Magistrate proposes to take judicial action against any person is to take cognizance of the case against him and not to send the papers to the police so as to deprive him of his right under S. 191 to have his case tried by some other Magistrate or by the Sessions Court. AIR 1931 All 273 (274, 275) = 32 Cri LJ 370.

(8) It cannot be maintained that a Magistrate is bound to take cognizance on a complaint and cannot refer the matter to the police for investigation before taking cognizance. See **AIR 1951 SC 207 (210) = 1951 SCR 312 = 52 Cri LJ 775.**

(9) If after the submission of the final form under Section 173 of the Code, the Magistrate has some doubt in deciding whether he should take cognizance under Section 190 (1) (b) of the Code or not, he, in order to remove his doubt, may himself proceed to hold an enquiry or get an enquiry held, by any other subordinate Magistrate. AIR 1967 Pat 416 (421) = 1967 BLJR 411 = 1967 Cri LJ 1677 (DB).

(10) When a charge-sheet is filed against any person at the instance of the Magistrate, and the latter takes cognizance on such charge-sheet, though apparently the case is taken cognizance of on a police-report the Magistrate being the real originator of the proceedings is not competent to try the case and the accused is entitled to have the case transferred to some other Magistrate. AIR 1938 Lah 19 (20) = 39 Cri L Jour 299 ** AIR 1956 Assam 127 (2) (128) = 1956 Cri L Jour 974 (2) ** AIR 1921 Bom 365 (365) = 22 Cri L Jour 603 (DB).

(11) Where the Magistrate having taken cognizance of the case, passes an order directing the police to register a case and investigate the same, such an order is in the nature of a hybrid composite order and is contrary to law. (1963) 65 Pun LR 667 (672).

18. "Upon information . . . . that such offence has been committed" — Clause (1) (c).— (1) The object of this clause is to enable a Magistrate to see that justice is vindicated notwithstanding that the persons individually aggrieved are unwilling or unable to prosecute. (1870) 13 Suth WR (Cr) 27 (31) (DB) ** AIR 1917 Pat 611 (612) = 18 Cri L Jour 890 (DB).

(2) There is no obligation on the Magistrate to accept the report if he does not agree with the opinion formed by the police. Under those circumstances if he still suspects that an offence has been committed he is entitled notwithstanding the opinion of the police to take cognizance under Section 190 (1) (c). **AIR 1968 SC 117 (123) = 1968 Cri LJ 97 = (1967) 3 SCR 668** ** 1969 Cri LJ 831 (832) = 1969 Raj LW 213 (Raj). (AIR 1966 Raj 233, **Held impliedly overruled by AIR 1968 SC 117.**) ** 1968 All LJ 768 (771) (DB) ** 1968 All Cri R 121 (123) = 1968 All WR (HC) 187 ** (1967) 8 Guj LR 138 (138) ** 1964 All WR (HC) 525 (525).

(3) The proper use of the power conferred by the clause is when a Magistrate has reason to believe the commission of an offence but is unable to proceed in the ordinary way owing to the absence of any complaint or police-report about it. AIR 1917 Pat 611 (612) = 18 Cri L Jour 890 (DB) ** AIR 1966 Guj 283 (292, 293) = 1966 Cri LJ 1420 = (1966) 7 Guj LR 130 (FB).

[See also 1966 All WR (HC) 409 (411) ** AIR 1956 Assam 127 (2) (128) = 1956 Cri L Jour 974 (2).]

(4) When there is a complaint or police-report before a Magistrate, he cannot ignore it and proceed under this clause. AIR 1940 Pat 111 (112) = 41 Cri L Jour 318 ** AIR 1917 Pat 611 (612) = 18 Cri L Jour 890 (DB) ** (1907) 8 Cri L Jour 505 (510) = 4 Low Bur Rul 300 (FB).

(5) When a complaint happens to be invalid for some reason, the Magistrate can act on the information contained in the complaint, under this clause. AIR 1949 All 692 (696) = ILR (1950) All 571 = 51 Cri L Jour 199 (DB) ** AIR 1938 Pat 83 (89, 90) = 39 Cri L Jour 314 (DB) ** AIR 1969 Ker 111 (117) = 1969 Cri LJ 486 = 1969 Ker LT 351 (DB).

(6) Where on a complaint filed by an Executive Officer of a Panchayat, a Sub-Divisional Magistrate has taken cognizance of the complaint and tried the case himself on the assumption and bona fide belief that he had power to take cognizance of a panchayati offence, it cannot be said that the Magistrate has taken cognizance of the offence under Section 190 (1) (c). AIR 1969 Ker 111 (117) = 1969 Cri LJ 486 = 1969 Ker LT 351 (DB).

(7) Petition by A before magistrate requiring him to direct police to file charge-sheet against B — Rejection —

Section 190 — Note 18 (contd.)
Revision by A to Additional Sessions Judge who was also functioning as Additional District Magistrate — Facts in revision petition held constituted information within the meaning of Section 190 (1) (c). AIR 1960 Andh Pra 184 (186) = 1960 Cri LJ 455.

(8) Case registered against police officer for outraging modesty of girl — Departmental enquiry against accused — Final report under Section 173 not filed — Order by Magistrate on basis of case diaries and other material that accused should be put up for trial —Magistrate could be said to have taken cognizance under Section 190 (1) (c). (1961) 1 Andh WR 139 = 1961 (2) Cri LJ 448 (453).

(9) Where on the basis of investigation carried out by the police themselves for offences under the Opium Act, a charge-sheet signed by the Superintendent, Customs and Excise, was presented to the Magistrate who was competent to take cognizance under this clause, it was held that the irregularity in the presentation of the charge-sheet, if any, was curable under Section 537. AIR 1952 Madh B 17 (21) = 1952 Cri L Jour 246.

(10) In cases coming under Sec. 195 a Magistrate cannot take cognizance of an offence under this clause. AIR 1940 Oudh 424 (425) = 41 Cri L Jour 787 ** AIR 1967 Pat 166 (170) = 1967 Cri LJ 641 = 1967 BLJR 265.

[See also AIR 1952 All 560 (560) = 1952 Cri L Jour 1034 ** AIR 1951 Orissa 138 (139) = ILR (1950) Cut 476 (DB).]

(11) The "information" under this clause may be conveyed in the form of a letter to the Magistrate. (1910) 11 Cri L Jour 736 (736) (Low Bur) ** AIR 1925 Oudh 144 (144) = 25 Cri L Jour 1147 ** 1892 Pun Re (Cr) No. 2, p. 3 (5) ** (1966) 70 Cal WN 779 (785).

(12) The information may be in the form of an order for the prosecution of certain persons. (1908) 7 Cri L Jour 224 (226) (DB).

(13) A petition to the Magistrate praying for action under Section 107 or Section 145 may contain the information on which the Magistrate can take cognizance of an offence under this section. AIR 1930 Oudh 500 (502) = 32 Cri L Jour 124.

(14) Unless the information leads to the conclusion that an offence has been committed a Magistrate cannot act on it under this clause. AIR 1923 Pat 532 (534) = 25 Cri L Jour 954.

(15) The information may be sent by post. (1884) 2 Weir 467 (468) (DB) ** (1879) 2 Weir 149 (149).

(16) Suppose A gives certain information to B and the latter makes a complaint to a Magistrate on the basis of such information. The Magistrate takes cognizance on such complaint. In such a case, he cannot be held to take cognizance on the information given by A. (1893) 20 Cal 481 (482) (DB).

(17) Magistrate can act under this section on the confession of the accused himself though it is not recorded under Section 164. AIR 1932 Mad 500 (500, 501) = 33 Cri L Jour 586 (DB).

(18) The Magistrate can act on an anonymous communication to him. AIR 1928 All 756 (758) = 30 Cri L Jour 62 ** (1898) 3 Cal WN 65 (66) (DB).

(19) Magistrate can take cognizance of an offence which happens to be reported to him by a Judge of a Civil Court or an officer who presides in a Court of Justice. AIR 1938 All 449 (449) = 39 Cri L Jour 840.

(20) Copy of report of Cane Inspector addressed to officer in charge of police station is information received from any person other than police officer regarding an offence under Sec. 7 of Essential Commodities Act and cognizance can be taken under Clause (c) of Section 190 (1). 1968 Pat LJ R 179 (199) (DB).

(21) The information under this clause may be oral. (1909) 2 Ind Cas 436 (448) = 36 Cal 433 (DB).

(22) It is most desirable that the Magistrate should record the information on which he acts though he need not disclose the source of information. AIR 1926 Rang 46 (47) = 27 Cri L Jour 413 ** (1906) 3 Cri L Jour 473 (475, 476) (DB) (Cal).

(23) It is open to the Magistrate to act on information received by him otherwise than in such capacity. AIR 1920 Mad 19 (19) = 21 Cri L Jour 348 (DB) ** AIR 1930 Rang 253 (255) = 31 Cri L Jour 867 ** AIR 1924 Pat 128 (130) = 24 Cri L Jour 792 (DB) ** (1910) 11 Cri L Jour 305 (306) = 37 Cal 221 (DB).

[But see (1904) 3 Cri L Jour 473 (476) (DB) (Cal).]

(24) Magistrate cannot take cognizance under this clause on the information received from a police-officer. AIR 1917 Pat 611 (612) = 18 Cri L Jour 890 (DB) ** (1910) 11 Cri L Jour 453 (462) = 37 Cal 467 (DB) ** (1910) 11 Cri L Jour 150 (151) = 1910 Pun Re (Cr) No. 3.

[But see AIR 1958 Madh Pra 285 (285) = 1958 Cri L Jour 1194.]

(25) If information amounts to a report of a police-officer or a complaint, it can be the basis for taking cognizance under Clause (b) or Clause (a). AIR 1943 Oudh 226 (227) = 44 Cri L Jour 492.

"His own knowledge or suspicion."— (26) This clause enables a Magistrate to take cognizance not only on information-

Section 190 — Note 18 (contd.)
tion but also on his own knowledge or suspicion. AIR 1919 Mad 30 (31) (DB). ** 1963 Raj LW 30 (32).

(27) The knowledge or suspicion cannot be based on information given by a police-officer. AIR 1929 Pat 514 (515) = 31 Cri L Jour 55 ** 1959-2 Andh WR 354 (356, 357) = AIR 1960 Andh Pra 300 (301, 302).

[See also AIR 1958 Madh Pra 234 (235) = 1958 Cri L Jour 1040.]

19. Clauses of section alternative but not mutually exclusive.— (1) The different clauses of the section under which cognizance can be taken are alternative, and not mutually exclusive. Thus, when a Magistrate has before him a complaint and a police-report about the same offence he can take cognizance on both. AIR 1958 Orissa 11 (13) = ILR (1957) Cut 557 = 1958 Cri L Jour 63 ** AIR 1958 Orissa 104 (105) = ILR (1958) Cut 25 = 1958 Cri L Jour 655 (DB) ** 1957 Cri. L Jour 283 (283) (Madh B) ** 1957 Jab LJ 887 (888) ** AIR 1929 Pat 473 (475) = 30 Cri L Jour 1056 (FB) ** 1968 All LJ 768 (771) (DB) ** AIR 1965 Orissa 114 (117) = 1965 (2) Cri LJ 54 = 31 Cut LT 941 ** AIR 1960 Bom 116 (117) = 61 Bom LR 1642 = 1960 Cri LJ 326.

(2) Once cognizance of an offence has been taken by a Magistrate on a complaint under Clause (1) (a), there is no scope for cognizance being taken afresh of the same offence on receiving a police report under Clause (1) (b). **AIR 1964 SC 1541 (1544) = 1964 (2) Cri L Jour 468 = (1964) 5 SCR 37 ** AIR 1961 SC 986 (989) = 1961 (2) Cri LJ 39 = (1961) 1 SCJ 573.**

(3) J complains to a Magistrate about an offence by B. The Magistrate receives also a report from the police about the same offence. The Magistrate takes cognizance of the offence and proceeds against B. It is contended that the Magistrate must be deemed to have taken cognizance on J's complaint and that as he failed to examine him under Section 200, the entire proceedings are vitiated. It was held that the Magistrate need not be deemed to have taken cognizance on the complaint exclusively. He may be held to have taken cognizance on the police-report also and hence his failure to examine J does not vitiate proceedings. AIR 1929 Pat 473 (475) = 30 Cri L Jour 1056 (FB).

(4) D complains to a Magistrate about an offence and mentions A as having committed it. The police also send a report about the occurrence to the Magistrate in which they accuse B of the alleged offence. The Magistrate takes cognizance against both A and B. B contends that the Magistrate having already taken cognizance on D's complaint under Clause (a) of this section, it is not competent to the Magistrate to take cognizance of the same offence under Clause (b) also. It was held that the contention is untenable. and that a Magistrate can take cognizance of the same offence both under Clause (a) and Clause (b) of the section. AIR 1933 Rang 271 (272) = 34 Cri L Jour 1185.

(5) During pendency of investigation by police of specific offence the magistrate may take cognizance of that offence otherwise than on police report i.e., under Section 190 (1) (a) or (c). AIR 1968 All 394 (395) = 1968 Cri LJ 1463 = 1968 All WR (HC) 434.

20. Revision.— (1) The proceeding of a Magistrate taking cognizance of an offence under this section is a judicial proceeding. AIR 1951 Raj 146 (146) = 52 Cri L Jour 1174 ** AIR 1956 All 525 527 (537) = 1956 Cri L Jour 1037 (DB) AIR 1924 Cal 476 (479) = 25 Cri L Jour 732 (DB).

(2) Proceeding under this section is subject to the revisional jurisdiction of the High Court. AIR 1951 Raj 146 (146) = 52 Cr L Jour 1174 ** AIR 1956 All 525 (527) = 1956 Cri L Jour 1037 (DB). ** (1900) 4 Cal WN 825 (826, 827) (DB).

(3) Where a Magistrate institutes proceedings against any person without there being sufficient materials for doing so, the High Court can interfere in revision and quash the proceedings. AIR 1941 Pat 395 (397) = 42 Cri L Jour 504 ** AIR 1933 Pat 244 (246) = 35 Cri L Jour 533 (DB) ** 4 Cal WN 825 (826, 827) (DB).

(4) Mere fact that a Magistrate has erroneously treated an offence as non-compoundable and taken cognizance of it notwithstanding the indifference of the aggrieved party is no ground for interfering in revision after the trial is over. AIR 1944 Mad 166 (167) = 45 Cri L Jour 508.

(5) An order of a Magistrate refusing to take cognizance of an offence has also been dealt with by the High Court in its revisional jurisdiction. (1902) 29 Cal 410 (412) (DB) ** (1886) 13 Cal 334 (336) (DB) ** 1888 Rat 375 (375) (DB).

(6) It was held that the order of a District Magistrate directing the police to charge-sheet certain persons was a judicial order and subject to the revisional jurisdiction of the High Court. AIR 1928 Pat 585 (586) = 29 Cri L Jour 942.

[But see AIR 1956 All 525 (527) = 1956 Cri L Jour 1037 (DB). **(AIR 1928 Pat 585, Dissented from.)**]

191. Transfer or commitment on application of accused.—When a Magistrate takes cognizance of an offence under sub-section (1), clause (c), of the preceding section, the accused shall, before any evidence is taken, be informed that he is entitled to have the case tried by another Court, and if the accused, or any of the accused, if there be more than one, objects to being tried by such Magistrate, the case shall, instead of being tried by such Magistrate, be committed to the Court of Session or transferred to another Magistrate.

[1882—S. 191, last paragraph (added by Act III of 1884), 1872 and 1861—Nil]

OBJECTS AND REASONS

"Clause 191.—We have recast this clause so as to make it clear, first that the accused shall be informed of his right to be tried by another Court; and, secondly, that if he elects not to be tried by the Magistrate, he must signify his election as soon as possible."—S. C. R. 1898.

SECTION 191 — SYNOPSIS

1. Scope and applicability.
2. Nature of accused's right under this section.
3. Objection to commitment to Sessions by Magistrate taking cognizance.
4. Applicability of the provisions to appeals.
5. Effect of non-compliance with the section.
6. Applicability of the section to security proceedings.
7. Applicability of the section to proceedings under Section 133.
8. Applicability of the section to proceedings before a Special Judge.

1. Scope and applicability.— (1) Where the Court has been set in motion by a valid complaint or report of a police-officer, this section has no application. 1948 Bur LR 179 (181) ** AIR 1943 Oudh 226 (227) = 44 Cri L Jour 492 ** (1901) 26 Bom 193 (196) (DB) ** (1909) 10 Cri L Jour 18 (19) (DB) (All) ** AIR 1916 Pat 3 (4) = 18 Cri L Jour 273 (274) ** (1962) (1) Cri LJ 96 (98) (Tripura).

[See AIR 1944 Mad 166 (167) = 45 Cri L Jour 508.]

(2) Though a Magistrate may have taken cognizance of a case under Clause (c) of Section 190 (1), he may not be personally interested in the case within the meaning of Section 556, and if he complies with the provisions of this section, the bar under Section 556 may not apply to him. AIR 1924 Rang 352 (352) = 26 Cri L Jour 249 ** (1893) 15 All 192 (193, 194) (FB).

(3) Though a Magistrate may be personally interested in a case within the meaning of Section 556, he may not have taken cognizance under Clause (c) of Section 190 (1). In such cases, though this section does not apply, the Magistrate will be disqualified from trying the case. AIR 1921 Bom 365 (365) = 22 Cri L Jour 603 (DB).

[See also 1903 Pun LR No. 116, p. 323 (325) ** (1913) 14 Cri LJ 425 (425) (DB) (Cal).]

(4) Where during the trial of A, the Magistrate comes to a conclusion that the case cannot be properly decided unless B also is joined as co-accused, and orders him to be tried along with A, cognizance against B is not taken under Section 190 (1) (c) and therefore the provisions of this section have no application. In such a case the Magistrate can act under Section 351. AIR 1934 Rang 193 (194) = 35 Cri L Jour 1312 ** (1904) 1 Cri L Jour 511 (512) = 1904 Pun Re (Cr) No 32 (DB).

See also under S. 190.

(5) As to when a Magistrate may be said to have taken cognizance under Clause (c) of Section 190 (1), see Section 190.

2. Nature of accused's right under this section.— (1) The accused must be informed, before any evidence is taken, that he is entitled to have his case tried by another Court and that if he objects to being tried by the Magistrate who has taken cognizance of the case, the case must be transferred to another Magistrate or be committed to the sessions. But the accused is not entitled to claim that his case must be tried by a particular Court. AIR 1940 Pat 111 (112) = 41 Cri L Jour 318 ** 1957 Jab LJ 964 (965) ** AIR 1936 Mad 341 (341, 342) = 59 Mad 442 = 37 Cri L Jour 501 ** AIR 1934 Lah 210 (211) = 35 Cri L Jour 1407.

(2) He cannot insist that his case must be committed to the sessions and not sent to another Magistrate. All that the accused is entitled under this section is to demand that his case should be tried by another Court. It is left to the Magistrate to decide, in the exercise of his discretion, whether the case should be committed to the sessions or transferred to another Magistrate (except in cases exclusively triable by a Sessions Court where the Magistrate would be bound to commit the case to sessions.) (1899) 22 Mad 148 (149)

STATE AMENDMENT

West Bengal

In its application to the State of West Bengal, Section 191, shall be re-numbered as sub-section (1) thereof and in sub-section (1), so re-numbered,

(i) for the word "Magistrate", wherever it occurs, substitute the words "Judicial Magistrate"; and

(ii) after sub-section (1) as so re-numbered, insert the following as sub-section (2), namely:—

"(2) When an Executive Magistrate takes cognizance of an offence under sub-section (1A) of Section 190, he shall transfer the case to a Judicial Magistrate having jurisdiction to try the same and shall send the accused to such Magistrate, or may, subject to the provisions of this Code, release him on bail on taking from him a bond with or without surety for his appearance before such Magistrate". — W. B. Act 8 of 1970, Section 2 and Schedule, Item 66.

Section 191 — Note 2 ((contd.)
(DB) ** (1905) 2 Cri L Jour 582 (584) (DB) (Bom).

(3) In exercising the discretion whether the case should be committed to the Sessions or transferred to another Magistrate the Magistrate will be guided by considerations, similar to those which will apply when deciding the question if a case should be tried by himself or should be committed to the sessions. See (1909) 10 Cri L Jour 224 (224, 225) = 2 Sind LR 9.

(4) Where the case is tried by another Magistrate, the fact that such Magistrate is the successor of the one who took cognizance of the case will not amount to an infringement of the section. AIR 1940 Pat 111 (112) = 41 Cri L Jour 318.

(5) Unless the accused, on being informed of his right under this section, makes his objection to being tried by the Magistrate who has taken cognizance of the case, such Magistrate need not transfer the case to any other Magistrate or commit it to the sessions. (1893) 15 All 192 (194) (FB) ** AIR 1924 Rang 352 (352) = 26 Cri L Jour 249.

[See also (1897-1901) 1 Upp Bur Rul 127 (131).]

[See however 1896 Pun Re (Cr) No. 1, p. 1 (4) (DB). (It is for accused himself to take objection.)]

(6) The right of the accused under this section is one that can be waived by him. But where the accused is not informed at all of his right, he cannot be held to waive his right merely because he does not object to being tried by the Magistrate who has taken cognizance of the case. (1899) 3 Cal WN cclxxix (cclxxx).

(7) The section comes into force only after the accused appears. Where the accused has not appeared at all, an application for transfer of the case would be premature. (1909) 9 Cri L Jour 64 (65) (Low Bur).

3. Objection to commitment to Sessions by Magistrate taking cognizance.— (1) The section only entitles the accused to claim that his case should be tried by another Court. He is not entitled to object that the Magistrate, who has taken cognizance of the case, must not hold the preliminary inquiry under Chapter XVIII, in cases committed to the sessions. (1898) 21 All 109 (110, 111) ** AIR 1918 Cal 3 (3, 4) = 20 Cri L Jour 47 (DB).

4. Applicability of the provisions to appeals.— (1) A Magistrate, who has taken cognizance of an offence under Section 190 (1), Clause (c), cannot hear an appeal from a conviction in the case (which is tried by another Magistrate) without following the procedure laid down by this section. The reason is that an appeal is part of the trial for an offence and as such is covered by the section. (1908) 7 Cri L Jour 224 (225, 226) (DB) (Cal).

[But see 1899 All WN 74 (76) (DB).]

5. Effect of non-compliance with the section.— (1) Non-compliance with the section in not informing the accused of his right to have the case tried by another Magistrate is not a mere irregularity curable under Section 537 but is an illegality and renders the proceedings null and void. AIR 1939 Lah 479 (484) = 41 Cri L Jour 65 (DB) ** 1957 Jab LJ 964 (965) ** (1947) 48 Cri L Jour 799 (802) (Pat) ** AIR 1934 All 693 (693) = 35 Cri L Jour 1308 ** AIR 1934 Lah 210 (211) = 35 Cri L Jour 1407 ** AIR 1933 Pat 297 (298) = 34 Cri L Jour 942 (DB) ** 1968 All WR (HC) 187 = 1968 All Cri R 121 (123).

[See AIR 1931 All 273 (274, 275) = 32 Cri L Jour 370.]

[See however AIR 1948 Sind 114 (115) = ILR (1947) Kar 126 = 49 Cri L Jour 454.]

[But see (1897-1901) 1 Upp Bur Rul 127 (131). (In absence of prejudice conviction not set aside.)]

192. Transfer of cases by Magistrates. — (1) Any Chief Presidency Magistrate, District Magistrate or Sub-divisional Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial, to any Magistrate subordinate to him.

(2) Any District Magistrate may empower any Magistrate of the first class who has taken cognizance of any case to transfer it for inquiry or trial to any other specified Magistrate in his district who is competent under this Code to try the accused or commit him for trial; and such Magistrate may dispose of the case accordingly.

[1882—S. 192; 1872—Ss. 44, 141; 1861—S. 273.]

Section 191 — Note 5 (contd.)

(2) It is desirable that a Magistrate should make a note on the record that the provisions of the section have been complied with. (1905) 8 Oudh Cas 418 (419) = 3 Cri L Jour 27 (DB).

(3) The absence of a note on the record that the section has been complied with need not necessarily lead to the inference that the provisions of the section were not complied with. (1905) 8 Oudh Cas 418 (419) = 3 Cri L Jour 27 (DB).

(4) Where the Magistrate, who has taken cognizance under Clause (c) of Section 190 (1), transfers of his own motion the case to another Magistrate, the proceedings are not open to attack on the ground of non-compliance with the provisions of this section. AIR 1933 Pat 242 (244) = 34 Cri L Jour 1198 (DB).

6. Applicability of the section to security proceedings.— (1) The principle of the section applies to security proceedings under Chapter VIII of the Code, where there is no question of an offence being taken cognizance of. Where security proceedings are started against any person on the Magistrate's own knowledge, it is not open to him to hear the case and pass final orders therein and the case be transferred to some other Magistrate to be heard and disposed of by him. (1902) 29 Cal 392 (393) (DB) ** AIR 1918 Pat 98 (98) = 19 Cri L Jour 899 (DB).

[But see (1904) 1 Cri L Jour 807 (809) = 27 All 172 ** AIR 1942 Sind 122 (128) = 44 Cri L Jour 367 (DB). (Per Weston J.) ** AIR 1927 Sind 77 (77) = 27 Cri L Jour 1280.]

7. Applicability of the section to proceedings under Section 133.— (1) The principle of this section applies to all criminal proceedings and where a Magistrate has taken cognizance on his own knowledge or information and started proceedings under Section 133, the person proceeded against is entitled to have the case inquired into and disposed of by another Magistrate. AIR 1936 Pat 639 (640) = 38 Cri L Jour 29.

8. Applicability of the section to proceedings before a Special Judge.— (1) It has been held by the Patna High Court that Section 191 has no application to proceedings before a Special Judge. AIR 1955 Pat 317 (319) = 1955 Cri L Jour 1089.

SECTION 192 — SYNOPSIS

1. Scope.

1-A. Subordinate Magistrate.

1-B. Additional District Magistrate.

2. "Taken cognizance."

3. Stage at which transfer should be ordered.

4. Transfer of a transferred case.

5. Transfer of a case remanded for further inquiry.

6. "Case," meaning of.

7. Transfer of proceedings under other Acts.

8. Effect of transfer under the section.

9. Erroneous order of transfer — Effect of — See Section 529.

10. Notice of transfer.

11. Case triable by First Class Magistrate — Transfer to Second Class Magistrate with direction to commit to sessions — Legality.

1. Scope.— (1) The Magistrate should first have taken cognizance of the case before he can make an order of transfer under this section. AIR 1953 Cal 573 (573) = 1953 Cri L Jour 1355 (DB) ** AIR 1955 Cal 110 (111) = 1955 Cri L Jour 384 ** AIR 1953 Cal 109 (112, 113) = 1953 Cri L Jour 344 (DB) ** AIR 1952 Raj 96 (97) = ILR (1952) 2 Raj 41 = 1952 Cri L Jour 1048 ** AIR 1964 Tripura 67 (69) = 1964 (2) Cri LJ 735.

(2) The Magistrate has no power to send the case filed in his Court to a Magistrate in another District. AIR 1933 Pat 643 (1) (643) = 34 Cri LJ 451.

(3) Where a subordinate Magistrate wants to refer a case to a superior Magistrate for giving enhanced punishment to the accused, he should proceed under Section 349 of the Code. (1890) 12 All 66 (68) = (1906) 4 Cri L Jour 213 (214) (DB).

(4) The transfer to the subordinate Magistrate should be for inquiry or trial, i.e., for disposal by him, and not for mere investigation and report, or

STATE AMENDMENTS

Gujarat

In its application to the State of Gujarat, the amendments made in Section 192 are the same as those made in Maharashtra. — See Cent. Act XI of 1960, Section 87.

NOTE.—Chief Magistrate in the City of Ahmedabad exercises the jurisdiction of a Chief Presidency Magistrate. — See Guj. Act XIX of 1961, Section 14 (3).

Maharashtra

(1) In its application to the State of Maharashtra, in Section 192,—

(i) in sub-section (1), delete the words "District Magistrate or Sub-divisional Magistrate";

(ii) in sub-section (2),

(a) for the words "Any District Magistrate", substitute the words "A Sessions Judge;"

(b) for the words "in his district" substitute the words "in the sessions division." — Bombay Act XXIII of 1951, S. 2 and Schedule (1-7-1953).

(iii) after sub-section (2) insert the following, namely,—

"(3) Any District Magistrate or Sub-Divisional Magistrate may transfer any case of which he has taken cognizance, for inquiry or trial to any Magistrate subordinate to him and such Magistrate may dispose of the case accordingly." — Bom. Act VIII of 1954, S. 2 and Schedule (10-2-1954).

(2) After the reorganization of the State of Bombay in 1956, the amendments made in Section 192 by the above-mentioned Bombay Acts, are extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959, by Bom. Act XCVII of 1958.

Section 192 — Note 1 (contd.)

for merely considering the report of an investigation which the transferring Magistrate has ordered under Sec. 202. AIR 1941 Cal 185 (189) = 42 Cri L Jour 490 ** AIR 1916 Cal 867 (869) = 17 Cri L Jour 146 (DB) ** AIR 1920 Pat 563 (565, 566) = 21 Cri L Jour 594 ** AIR 1940 Lah 61 (63) = 41 Cri L Jour 344 ** AIR 1925 Cal 742 (743) = 26 Cri L Jour 990 (DB) ** AIR 1967 Punj 244 (249) = 1967 Cri LJ 909.

(5) The term "inquiry" in this section is used with special reference to such inquiries as are held under Chapters VIII, XII or XVIII of the Code and does not mean an inquiry under Section 202 which is merely for the limited purpose of ascertaining the truth or falsehood of a complaint with a view to take an action under Section 203. AIR 951 Mys 127 (128) = 52 Cri L Jour 1531 ** AIR 1941 Cal 185 (190) = 42 Cri L Jour 490 ** AIR 1967 Punj 244 (249) = 1967 Cri LJ 909.

(6) The transfer of a case to a subordinate Magistrate is for the purpose that he may complete the trial or inquiry to be held in connection with the case and take all the requisite steps to that end. AIR 1949 Cal 637 (640) = ILR (1950) 2 Cal 365 = 51 Cri L Jour 205 ** AIR 1941 Cal 185 (190) = 42 Cri L Jour 490.

(7) Where a Magistrate wants to keep a case on his own file and refer it for investigation and report by a Subordinate Magistrate, he should proceed under Section 202 of the Code. The powers conferred by one section do not curtail the powers conferred by the other. AIR 1919 Cal 59 (60) = 20 Cri L Jour 508 (DB).

[See also AIR 1941 Cal 185 (190) = 42 Cri L Jour 490.]

(8) An order under Section 202 to a Subordinate Magistrate to investigate and report does not operate as an order for transfer under this section. AIR 1941 Cal 185 (190) = 42 Cri L Jour 490.

(9) The Magistrate, to whom the case is transferred, should be otherwise competent to inquire into and try the case transferred. AIR 1941 Cal 185 (188) = 42 Cri L Jour 490 ** AIR 1940 Oudh 244 (245) = 41 Cri L Jour 469 ** (1907) 34 Cal 926 (927) = 6 Cri L Jour 363 (DB) ** AIR 1969 Ker 111 (116) = 1968 Ker LJ 335 = 1969 Cr LJ 486.

(10) Jurisdiction and competency, which are not otherwise inherent in a Magistrate, cannot be conferred merely by virtue of a transfer under this section. Thus, proceedings under Sec. 145 cannot be transferred to a second or third class Magistrate. (1878) 3 Cal 754 (755) (DB).

(11) Where the allegations in the complaint point to a graver offence not triable by a certain Magistrate a transfer of the case to such Magistrate will be bad in law and a conviction by such

Mysore

In its application to the State of Mysore, in Section 192,

(1) omit sub-section (1),

(2) in sub-section (2),

(a) for the words "Any District Magistrate", substitute "A Sessions Judge" and

(b) for the words "in his district", substitute the words "in the Sessions Division". — See Mys. Act XIII of 1965, Section 35 (1-10-1965).

Punjab: Haryana: Chandigarh

In its application to the States of Punjab and Haryana and the Union territory of Chandigarh, in Section 192,—

(i) in sub-section (1) for the words "Any Chief Presidency Magistrate, District Magistrate or Sub-divisional Magistrate", substitute the words "Any Chief Judicial Magistrate"; and

(ii) in sub-section (2) for the words "District Magistrate", substitute the words "Chief Judicial Magistrate". — Punj. Act XXV of 1964, Section 2 and Schedule Pt. I, Item (46) (2-10-1964) and Act 31 of 1966, Section 88 (1-11-1966).

Rajasthan

Abu Area. — In its application to the Abu area of the State of Rajasthan, the amendments made in Section 192 are the same as those of Maharashtra.—See Cent. Act XXXVII of 1956, Section 119 (1-11-1956).

Section 192 — Note 1 (contd.)

Magistrate even for a lesser offence which is within his competence to try will be illegal. AIR 1940 Oudh 244 (245) = 41 Cri L Jour 469.

[But see AIR 1939 Lah 122 (123) = 40 Cri L Jour 515 ** AIR 1942 Mad 465 (466) = 43 Cri L Jour 743.]

(12) An order of transfer under this section need not be in writing. AIR 1938 Cal 195 (197) = 39 Cri L Jour 417 (DB).

(13) It has been held that a transfer of a case to a Special Court constituted under the Special Criminal Courts Ordinance, 2 of 1942, (since repealed by Ordinance 19 of 1943) under the provisions of this section was not affected by Sections 25-A and 26 of the Ordinance as those sections came into operation only after the Special Court was in the seisin of the case and this section dealt with a stage before it. AIR 1943 Pat 245 (247, 257) = 45 Cri L Jour 177 (SB).

(14) The Magistrate should exercise his discretion fairly in the matter of transferring a case. Thus, a transfer by a District Magistrate of a complaint against a near relation of his to a Magistrate subordinate to such Magistrate or a transfer of a complaint against an officer of the rank of a District Superintendent of Police in respect of acts done in his official capacity, to a subordinate Magistrate and not to a senior Magistrate, has been held to be improper, though not illegal. AIR 1936 Rang 242 (243) = 37 Cri L Jour 723. (Complaint against D. S. P.)

(15) Where a complaint against a near relation of a District Magistrate was transferred to a Magistrate subordinate to him for disposal and the complainant objected to the trial by the latter Magistrate on the ground that he (i. e., the latter Magistrate) would have to be called as a witness in the case and prayed for a transfer, it was held that the order of the Magistrate discharging the accused on the ground that he could not take cognizance of the offence for want of the sanction of the Local Government was improper though not illegal. The proper order would be one asking for a transfer of the case to another Magistrate to be dealt with finally. AIR 1936 Rang 242 (244) = 37 Cri L Jour 723.

(16) A Magistrate is not justified in dismissing an application for transfer without giving an opportunity to the applicant of being heard. 1948 AMLJ 16 (17).

1-A. Subordinate Magistrate.— (1) The transfer should be made to a Magistrate subordinate to him. (1900-02) 1 Low Bur Rul 59 (59) ** 1965 All LJ 1126 (1128). (Additional Sub-Divisional Magistrate is subordinate to Sub-Divisional Magistrate.)

[But see (1870) ILR 7 Bom HCR (Cr) 69 (70) (SB) ** 7 Mad HCR (App) v (v).]

1-B. Additional District Magistrate.— (1) If the Additional District Magistrate is invested with all the powers of District Magistrate under Section 10 (2), Cr P. C. he has the power to act under Section 192, Cr. P. C. AIR 1960 Andh Pra 184 (185) = 1960 Cri LJ 455 ** AIR 1965 Madh Pra 53 (54) = 1965 (1) Cri LJ 298 ** (1960) 2 Andh WR 324 = 1961 (1) Cri LJ 461 (464) (DB). (The powers

Union territories (except Chandigarh)

In its application to the Union territories, in Section 192,—

(i) in sub-section (1), for the words "Any Chief Presidency Magistrate, District Magistrate or Sub-divisional Magistrate", substitute the words "Any Chief Judicial Magistrate"; and

(ii) in sub-section (2), for the words "District Magistrate" substitute the words "Chief Judicial Magistrate" — Act 19 of 1969, Section 3 and Schedule, Item 48 (In Delhi, on 2-10-1969).

West Bengal

In its application to the State of West Bengal, in Section 192,—

(i) in sub-section (1), for the words "or Sub-divisional Magistrate", substitute the words, "Sub-divisional Executive Magistrate or Sub-divisional Judicial Magistrate";

(ii) for sub-section (2), substitute the following:—

"(2) Any District Magistrate may empower any Executive Magistrate of the first class who has taken cognizance of any case to transfer the same for inquiry to any other specified Executive Magistrate within the district, who is competent under this Code to hold such inquiry."; and

(iii) after sub-section (2) insert the following as sub-section (3), namely.—

"(3) Any Chief Presidency Magistrate or Sessions Judge may empower a Presidency Magistrate or any Judicial Magistrate of the first class, as the case may be, subordinate to him, who has taken cognizance of any case to transfer the same to any other Presidency Magistrate or Judicial Magistrate, as the case may be, who is competent under this Code to try the accused or commit him for trial, and such Presidency Magistrate or Judicial Magistrate may dispose of the case accordingly." — W. B. Act VIII of 1970, Section 2 and Schedule, Item 67.

Section 192 — Note 1-B (contd.)

of Additional District Magistrate under Section 192 (1), Criminal P. C., are analogous to powers under Section 528 (2), Criminal P. C. and the principle involved is the same.)

2. "Taken cognizance".— (1) A District Magistrate cannot pass an order for a judicial inquiry by a subordinate Magistrate in a case taken cognizance of not by himself but by a Joint Magistrate, without withdrawing the case to his own file. (1900) 27 Cal 798 (799, 800) (DB).

(2) A First Class Magistrate dealing with the general file of another Magistrate on instructions from the District Magistrate cannot transfer a case pending in that file and of which he has not taken cognizance, to his own file under this section. AIR 1953 Cal 573 (573) = 1953 Cri L Jour 1355 (DB).

(3) A Sub-Divisional Officer can by virtue of Section 559 (1) transfer to a Magistrate subordinate to him a case of which cognizance was taken by his predecessor. AIR 1953 Cal 777 (779) = 1953 Cri L Jour 1782 (DB).

(4) Before any District Magistrate may empower any Magistrate of the first class under sub-section (2) of this section it is essential that the Magistrate of the first class must be one 'who has taken cognizance of any case.' It is not any and every Magistrate of the first class who can be empowered by the District Magistrate in this respect. AIR 1953 Cal 109 (113) = 1953 Cri L Jour 344 (DB) ** 1953 Raj LW 231 (232).

[See AIR 1952 Raj 96 (97) = ILR (1952) 2 Raj 41 = 1952 Cri L Jour 1048 ** AIR 1950 Him Pra 42 (44).]

(5) A Magistrate can take cognizance of a case upon a complaint preferred to him. AIR 1914 Cal 479 (479) = 15 Cri L Jour 348 (DB).

[See also 1903 Pun Re (Cr) No. 9, p. 25 (26).]

(6) The complaint may be in the form of a report submitted by a subordinate Magistrate. AIR 1924 All 190 (191) = 25 Cri L Jour 947 ** (1904) 1 Cri L Jour 335 (336, 337) = 26 All 514.

(7) A Chief Presidency Magistrate can prefer a complaint to himself against a person for giving false evidence before him, and then transfer the case for inquiry or trial by a subordinate Magistrate under this section. AIR 1926 Cal 470 (472, 473, 477, 478) = 27 Cri L Jour 385 (FB).

(8) By virtue of Clause (c) of Sec. 190 (1), a case can be taken cognizance of even without a formal complaint and it is competent for a Magistrate acting under that section to transfer such

Section 192 — Note 2 (contd.)
cases also. (1909) 8 Cri L Jour 374 (376) = 1 Sind LR 119 (DB) ** (1910) 11 Cri L Jour 736 (736) (Low Bur).

(9) The expression 'case of which he has taken cognizance' in sub-section (1) of this section means nothing more than that the Magistrate has applied his mind to the facts of the case. AIR 1952 All 215 (216) = ILR (1951) 2 All 609 = 1952 Cri L Jour 407 (DB) ** (1954) 58 Cal WN 383 (385) (DB).

(10) Where a complaint was dismissed under Section 203 and the Sessions Judge while ordering a further inquiry directed that the case should be sent to another Magistrate and the District Magistrate accordingly transferred the case to another Magistrate, it was held that the District Magistrate while doing so had taken cognizance of the case and that the transfer was under this section. AIR 1936 Sind 146 (147) = 37 Cri L Jour 1086 (DB).

[See however (1907) 5 **Cri** L Jour 112 (115, 116) (DB) (Cal).]

(11) The act of a Magistrate in taking cognizance of a case and transferring it to another Magistrate under this section is a judicial act. AIR 1941 Pat 395 (397) = 42 Cri L Jour 504.

(12) Where the Additional District Magistrate, without applying his mind to the petition of the complaint, transfers the same to another First Class Magistrate for necessary action under Chapter XVI, it cannot be said that the Additional District Magistrate had taken cognizance of the case and the transferee Magistrate is not deprived of his jurisdiction to act under Sec. 156 (3) and refer the matter to the police for investigation and submitting a charge sheet. AIR 1959 Assam 231 (Pr. 11) = 1959 Cri L Jour 1408.

3. Stage at which transfer should be ordered.— (1) All that the section requires is that the Magistrate should have taken cognizance of the case before transferring it. He need not judicially consider the case before making the transfer. AIR 1926 Cal 470 (477, 478, 479) = 27 Cri L Jour 385 (FB) ** **AIR 1961 SC 986 (988) = 1961 (2) Cri LJ 39 = (1961) 1 SCJ 578.** (Transfer of case before taking cognizance of offence — Transfer is only administrative action.)

(2) The Magistrate is not bound to examine the complainant on oath where the complaint is in writing, or issue process before transfer. AIR 1926 Pat 358 (359) = 27 Cri L Jour 855 ** AIR 1926 Cal 470 (479) = 27 Cri L Jour 385 (FB).

[See also AIR 1948 Pat 25 (27) = 48 Cri L Jour 347.]

[But see (1871) 4 NWPHCR 88 (89, 90).]

(3) The Magistrate can transfer the case at any stage after taking cognizance. AIR 1941 Cal 185 (190) = 42 Cri L Jour 490.

(4) He can transfer a case after issuing process to the witnesses for the prosecution. AIR 1919 Pat 319 (320) = 20 Cri LJ 413.

(5) The section contemplates the transfer of a case which has not reached the stage of enquiry or trial and that when once the proceedings have reached the stage of enquiry or trial, wholly or partially, sub-section (1) of this section cannot be availed of for transfer by the Magistrate who has taken cognizance of the case. AIR 1951 Mad 529 (530) = ILR (1951) Mad 792 = 52 Cri L Jour 177 (DB). (AIR 1934 Mad 435 = 35 Cri LJ 1055, **Dissented from.**) ** AIR 1969 Pat 97 (98) = 1969 Cri LJ 434 ** 1963 (1) Cri LJ 391 (393, 394) (Tripura).

(6) A transfer cannot be ordered by a Magistrate after discharging the accused. Such a procedure is not sanctioned by the Code. AIR 1921 Pat 205 (205) (DB).

(7) Where after hearing the evidence in the case the Magistrate finds that an offence triable by a subordinate Magistrate has been committed, the case should not be transferred on that ground. The Magistrate who undertakes the trial of the case, and who also hears the witnesses give their evidence should, if possible, finish it. AIR 1951 Mad 529 (531) = ILR (1951) Mad 792 = 52 Cri L Jour 177 (DB) ** AIR 1934 Mad 435, **Dissented from.**) ** AIR 1923 Cal 196 (197) = 24 Cri L Jour 198 (DB).

[See AIR 1937 Nag 103 (103) = 38 Cri L Jour 719.]

(8) Where a part-heard case is transferred, the transferee Magistrate should rehear the evidence and frame a fresh charge. 1 Low Bur Rul 301 (302) (FB) ** 2 Weir 152 (152, 153) (DB).

[See (1907) 6 Cri L Jour 434 (438) (DB) (Cal). (Case transferred under Section 528.) ** (1892) 14 All 346 (347).]

[See however AIR 1937 Oudh 81 (82) = 12 Luck 523 = 37 Cri L Jour 1128.]

4. Transfer of a transferred case.— (1) A Magistrate has no power to transfer a case which has itself been transferred to him for disposal under this section by a superior Magistrate. The reason is that the Magistrate cannot, in such a case, be said to have taken cognizance of the case. AIR 1951 All 371 (372) ** AIR 1914 All 150 (150) = 15 Cri L Jour 406 (DB) ** (1967) 1 Andh WR 191 (191) = 1967-2 Andh LT 80 = 1967 Mad LJ (Cri) 202 ** AIR 1966 Tripura 22 (23) = 1966 Cr LJ 1484.

(2) The effect of a transfer by the Magistrate of a case which was itself

Section 192 — Note 4 (contd.)
transferred to him is not to render the subsequent proceedings illegal on that ground; the transfer is only irregular and the irregularity is cured by the provisions of S. 529, Clause (f). AIR 1951 All 371 (372) ** AIR 1920 Pat 518 (519) = 21 Cri LJ 96 (DB).

(3) Where a case has been transferred by an order of the High Court, from a Court subordinate to a District Magistrate to that of a District Magistrate, unless a contrary intention is expressed by the High Court, the District Magistrate should himself try the case, and he has no power to transfer it to another subordinate Magistrate under this section. (1897) 19 All 249 (251) (DB).

(4) Where a case is transferred from the Court of one District Magistrate to another District Magistrate, the transferee Magistrate has, in the absence of any contrary direction by the High Court, power to transfer the case under this section to any Magistrate subordinate to him, who is competent to try the same. (1897) 19 All 240 (251) (DB) ** AIR 1917 Lah 329 (330, 331) = 18 Cri LJ 881 (883) (DB).

(5) A case transferred by a Sub-divisional Magistrate to the file of another Magistrate reverts automatically to him on the transfer of that Magistrate. Even assuming that when a Magistrate is transferred his file remains, the Sub-divisional Magistrate can certainly withdraw the case under sub-s. (1) of this section read with S. 528 (2). AIR 1952 Cal 713 (719, 725): 1952 Cri L Jour 1411 (DB).

5. Transfer of a case remanded for further inquiry.— (1) Where a case is remanded for further inquiry by a Sessions Judge to a District Magistrate, or Sub-divisional Magistrate the latter has power to transfer the proceedings to a Subordinate Magistrate. AIR 1920 Pat 563 (564, 565) = 21 Cri LJ 594 ** (1907) 5 Cri LJ 112 (115, 116) (DB) (Cal).

[See however (1870) 2 NWPHCR 132 (133) (SB).]

(2) Where a case dismissed under Section 203 was remanded for further proceedings to be held, it was held that the case could not again be transferred under this section. (1907) 5 Cri LJ 112 (115, 116) (DB) (Cal).

[See however AIR 1936 Sind 146 (147) = 37 Cri LJ 1086 (DB).]

(3) As regards the powers of a District Magistrate or a Presidency Magistrate to revive a case that has been discharged and then make a transfer, see Section 436 and the following cases. 1873 Rat 76 (76) (DB) ** (1903) 7 Cal WN 527 (529) (DB).

[But see (1882) 6 Mad 25 (26) (DB) ** (1898) 4 Cal WN 46 (47) (DB).]

6. "Case," meaning of.—

(A) Proceedings under S. 107 of the Code.— (1) The word "case" has been held to be comprehensive enough to include proceedings under Sec. 107 of the Code. AIR 1953 Cal 109 (112) = 1953 Cri LJ 344 (DB). (AIR 1949 Cal 637 = ILR (1950) 2 Cal 365 = 51 Cri LJ 205, **Dissented from.**) ** (1904) 1 Cri LJ 344 (346, 347) = 31 Cal 350 (DB) ** (1902) 29 Cal 389 (390, 391) (DB).

[See however (1906) 10 Cal WN xlvii (xlvii). (Question left open.)]

(2) Where a District Magistrate initiates proceedings under sub-s. (2) of Section 107, it has been held that such proceedings can be transferred to a subordinate Magistrate of the first class, who is competent to complete the proceedings, although the latter Magistrate is not competent to institute the same himself. (1901) 24 All 151 (152) ** AIR 1918 Cal 892 (892) = 19 Cri LJ 496 (DB).

[See however (1909) 9 Cri LJ 148 (149) (DB) (Cal).]

(3) Before making an order of transfer it is essential that the transferring Magistrate should have taken cognizance of the case. Thus, where the District Magistrate, to whom the police reported for action under Section 107, without stating his opinion that there was a likelihood of a breach of the peace, and without issuing the preliminary notice merely transferred the case to the Head-quarter Magistrate, within whose jurisdiction neither the accused resided nor the place where there was a likelihood of a breach of the peace was situated, it was held that the District Magistrate had not taken cognizance of the case and that the proceedings before the Head-quarter Magistrate were without jurisdiction. AIR 1918 Mad 555 (557) = 18 Cri LJ 878 (880, 881) (DB). (**Overruled** on another point in AIR 1940 Mad 23 = 41 Cri LJ 238 (FB).)

(4) Where, a District Magistrate made an order that proceedings were "sanctioned" and sent the same to a Sub-divisional Magistrate, it was held that he had taken cognizance of the case and the transfer was valid. AIR 1919 Cal 469 (470) = 19 Cri LJ 266 (DB).

(B) Proceedings under Section 110 of the Code.— (5) Proceedings under Section 110 of the Code can be transferred under this section by a District Magistrate or a Sub-divisional Magistrate, after taking cognizance of the same, to a Subordinate Magistrate who is otherwise competent to complete the proceedings. AIR 1941 Cal 185 (189) = 42 Cri LJ 490 ** (1908) 7 Cri LJ 146

Section 192 — Note 6 (contd.)
(150) = 35 Cal 243 (DB) ** AIR 1922 Pat 586 (587) = 24 Cri LJ 31 (DB).

(6) A First Class Magistrate, specially empowered under sub-section (2), can also transfer such proceedings. AIR 1922 Pat 586 (587) = 24 Cri LJ 31 (DB).

(C) Inquiry under Section 122 of the Code.— (7) An enquiry as to the fitness of a surety under Section 122 can be transferred to a Subordinate Magistrate (1910) 11 Cri LJ 23 (25, 26) = 37 Cal 91 (DB). (Per Coxe, J., Ryves. J. Contra.)

(D) Proceedings under Section 133 of the Code.— (8) The words 'any case' in this section are not restricted to offences or criminal cases and hence the section is applicable to proceedings under Section 133 of the Code. AIR 1952 All 215 (216) = ILR (1951) 2 All 609 = 1952 Cri LJ 407 (DB) ** AIR 1970 Cal 169 (170) (DB). (AIR 1949 Cal 637, held **overruled** by AIR 1956 Cal 24.)

[See AIR 1956 Cal 24 (24) = 1956 Cri LJ 212 (DB). (Section 133 does not in terms purport to restrict the power of a Magistrate who initiates proceedings to transfer the case to some other Magistrate. AIR 1929 Cal 813 = 31 Cri LJ 673, **Dissented from.**) ** AIR 1950 All 475 (477) = 51 Cri LJ 1248.]

(9) An order directing the person proceeded against to appear before another Magistrate to show cause against the conditional order made by a Magistrate under Section 133 is not an order of transfer under this section. AIR 1950 All 475 (477) = 51 Cri LJ 1248.

(10) A proceeding under Section 133 can be transferred by the Magistrate even before the passing of the conditional order under Section 133 provided the Magistrate has taken cognizance and decided to act under that section. AIR 1952 All 215 (216, 220) = ILR (1951) 2 All 609 = 1952 Cri LJ 407 (DB).

(11) It was held that Section 133 stands by itself independently of Section 192. If Section 192 were to prevail the special provisions in Section 133 would become surplusage. The District Magistrate, the Sub-Divisional Magistrate or the Magistrate of First Class can only direct appearance of the person proceeded against before some other Magistrate of First or Second Class at the time of passing of the order. Section 192 does not authorize a subsequent transfer of the case to some other Magistrate. AIR 1958 Raj 248 (249, 250) = ILR (1957) 7 Raj 737= 1958 Cri LJ 1243 (DB) ** 1966 All WR (HC) 655 (656) = 1966 All Cri R 377.

(E) Proceedings under Section 144 of the Code.— (12) An application made to a District Magistrate under Section 144 (4) of the Code, to rescind an order passed by a subordinate Magistrate under Section 144 (1) is not a case falling under Section 192 or Section 528 and cannot be transferred by the District Magistrate for disposal to another Magistrate subordinate to him. AIR 1937 Mad 167 (169) = 38 Cri LJ 125.

(F) Proceedings under Section 145 of the Code.— (13) Proceedings under Section 145 of the Code can be transferred under this section as they have been held to be "cases" within the meaning of this section. AIR 1941 Cal 185 (189) = 42 Cri LJ 490 ** AIR 1933 All 264 (266) = 34 Cri LJ 414 (FB) ** (1895) 22 Cal 898 (901, 902) (DB) ** AIR 1923 Pat 366 (367) = 24 Cri LJ 487.

(14) A transfer cannot be ordered under the section unless the transferring Magistrate has taken cognizance of the case. Where on an application being made to a District Magistrate, praying for action under Section 145, he transferred it to a Sub-divisional Magistrate under him for disposal without taking any action himself under sub-section (1) of Section 145, and the land concerned was also not within the local jurisdiction of the Sub-divisional Magistrate, it was held that the transfer was not valid. AIR 1928 Mad 1230 (1231) = 30 Cri LJ 340.

[See also AIR 1919 All 311 (313) = 20 Cri LJ 410.]

(15) Where, a petition was presented under Section 145 to a City Magistrate and he examined the petitioner on oath, ordered a police-enquiry and on receipt of the police-report, came to the conclusion that there was some basis for the complaint and then transferred the complaint to a Subordinate Magistrate, it was held that the Magistrate had taken cognizance of the case and the transfer was valid. AIR 1933 All 264 (266) = 34 Cri LJ 414 (FB).

(G) Proceedings under Section 147.— (16) Proceedings under Section 147 of the Code can be transferred under this section. The mere fact that the Magistrate has issued notice to the parties requiring them to attend the Court does not deprive him of the general power under this section. AIR 1949 All 616 (618) = 50 Cri LJ 929.

(H) Proceedings under Section 349 of the Code.— (17) Proceedings referred to a superior Magistrate by a subordinate Magistrate under Section 349 of the Code cannot be transferred under this section. (1869-70) 5 Mad HCR (App) xliii (xliii).

(I) Proceedings under Section 552 of the Code.— (18) A complaint under Section 552 of the Code has been held

Section 192 — Note 6 (contd.)
to be not transferable as that section confers exclusive jurisdiction only on a District or Presidency Magistrate. 1898 Rat 963 (963) (DB).

(J) Proceedings under Section 20 of the Cattle Trespass Act 1 of 1871.— (19) Though a complaint under Section 20 of the Act must be entertained by a District Magistrate or a Magistrate specially empowered under the Act, it is open to such Magistrate to transfer the case under this section, after taking cognizance of it, to a subordinate Magistrate, who is otherwise competent under the Code to try such a case. (1907) 6 Cri LJ 363 (364, 365) = 34 Cal 926 (DB) ** AIR 1959 Orissa 116 (Pr 4) = ILR (1958) Cut 549 = 1959 Cri LJ 884 (DB). (AIR 1951 Orissa 40 not good law.) ** 1879 Pun Re (Cr) No. 26 p. 75 (76, 77) (SB).

7. Transfer of proceedings under other Acts.— Proceedings under Ordinance 2 of 1932 (since expired).— (1) Where a special Magistrate after taking cognizance of the case under the Ordinance, transferred it to another Magistrate because he had heard the confession of the accused, it was held that the transfer was proper and valid. AIR 1933 Cal 124 (127) = 34 Cri LJ 633 (DB).

Proceedings under the Bengal Troops Transport Regulation 6 of 1825.— (2) It has been held that only the Collector can act under Section 2 of the Regulation and a case arising thereunder cannot be transferred to a Joint Magistrate. (1910) 11 Cri LJ 476 (476, 477) = 33 All 84.

Proceedings under the Bengal Tenancy Act (8 of 1885).— (3) A Collector can transfer an enquiry under Section 58 of the Act to a Sub-divisional officer. (1913) 14 Cri LJ 139 (140) = 40 Cal 465 (DB).

8. Effect of transfer under the section.— (1) Where once a case is transferred under this section, the case is entirely out of the hands of the transferring Magistrate and he ceases to have any jurisdiction in the case so long as the transfer is in existence. He cannot take any steps or pass any order relating to the case transferred unless and until the case is withdrawn to his file under S. 528 of the Code. AIR 1950 All 475 (477) = 51 Cri LJ 1248 ** AIR 1941 Cal 185 (190) = 42 Cri LJ 490 ** (1900) ILR 27 Cal 979 (980, 981) (DB) ** AIR 1930 Mad 705 (706) = 31 Cri LJ 895 ** (1922) 65 Ind Cas 441 (442) = 23 Cri LJ 89 (All) ** 1968 All WR (HC) 186 = 1968 All Cri R 120 (121).

(2) The transferee Magistrate is vested with full seisin of the case and has power to continue the enquiry up to the necessary stage of discharge, acquittal or conviction, as the case may be. AIR 1926 Pat 525 (527) = 26 Cri LJ 1585 ** ILR (1958) Cut 74 (76) ** (1912) 15 Ind Cas 484 (485) = 13 Cri LJ 484 (DB) (Cal).

(3) A Magistrate, to whom a case is transferred stands in the shoes of the original Magistrate and has full authority to deal with the case as if he had taken cognizance of it. AIR 1941 Cal 185 (191) = 42 Cri LJ 490 ** AIR 1958 Tripura 1 (Pr. 40) = 1958 Cri LJ 97 ** ILR (1958) Cut 74 (76) ** AIR 1948 Pat 25 (27) = 48 Cri LJ 347 ** AIR 1929 Cal 192 (193) = 30 Cri LJ 352 (DB).

(4) An order of transfer does not import any decision on any question either of law or of fact arising in the case and it is open to the accused to raise any objection on the ground of jurisdiction, as for instance, the competency of the Court to try him without the sanction of the State Government, where such sanction is required by law. (1913) 14 Cri LJ 298 (298) = 6 Sind LR 260 (DB).

(5) The transfer of a case taken cognizance of by a Magistrate means the transfer of the judicial investigation into any offence, of which the Magistrate has taken cognizance, and not merely with reference to some of the accused concerned in the offence. AIR 1933 Pat 244 (245, 246) = 35 Cri LJ 533 (DB) ** ILR (1958) Cut 74 (76) ** AIR 1951 Raj 131 (132) = 52 Cri LJ 964. (AIR 1933 Pat 244 = 35 Cri LJ 533, Rel. on.)

(6) A Magistrate, to whom the case, taken cognizance of on complaint, has been transferred, can in the course of the trial not only add to the charge other offences not complained about but arising out of the same transaction and disclosed in the evidence, but also can put on trial other persons whose names do not appear as accused in the petition or complaint directly or indirectly, provided the offences are such that no prerequisites are required to be fulfilled before cognizance can be taken of those offences. AIR 1949 Pat 47 (56) = 26 Pat 479 = 49 Cri LJ 612 (DB) ** AIR 1958 Tripura 1 (Pr 40) = 1958 Cri LJ 97 ** ILR (1958) Cut 74 (76) ** 1961 (2) Cri LJ 393 (395, 396) = 1961 BLJR 96.

[See 1967 BLJR 931 (933). (Section 192 makes no distinction between inquiry and trial. The transferee Court in either case has the same powers.)]

(7) Where a police charge-sheet contained the names of twenty-two persons as accused but only nine of them were sent up for trial and the rest were not sent for trial, as some of them were absconders, and the Magistrate to

Section 192 — Note 8 (contd.)

whom the charge-sheet was submitted transferred the case under this section, it was held that the transfer was with regard to the judicial investigation into the entire offence and not merely with reference to the accused actually sent up for trial. Consequently, the transferring Magistrate had no power to pass any order with regard to the trial of the other thirteen accused not sent up for trial. AIR 1933 Pat 244 (245, 246) = 35 Cri LJ 533 (DB) ** AIR 1921 Pat 474 (475).

[See also (1905) 2 Cri LJ 524 (526, 530, 532) = 32 Cal 783 (DB) ** AIR 1934 Pat 467 (467, 468, 469) = 36 Cri LJ 641 (DB).]

[See however (1906) 3 Cal LJ 87 (88, 89) = 3 Cri LJ 209 (DB).]

(8) After the case is transferred, if the police file a supplementary challan against other persons who were not named in the previous challan, the only Magistrate who can take cognizance of it is the Magistrate to whom the case has been transferred on previous challan. No other Magistrate can accept it and proceed to try the accused AIR 1951 Raj 131 (132) = 52 Cri LJ 964.

[See AIR 1949 Pat 47 (57) = 26 Pat 479 = 49 Cri LJ 612.]

(9) Where upon a complaint preferred to a Sub-divisional Magistrate against several persons as accused, the latter examined the complainant but issued summons only against one of the accused and then transferred the complaint to a subordinate Magistrate under this section, it was held that the whole case against all the accused was transferred and the transferee Magistrate was competent to issue summons against the other accused persons also. AIR 1941 Cal 185 (191, 192) = 42 Cri LJ 490 ** (1908) 7 Cri LJ 318 (318, 319) = 7 Cal LJ 249 (DB) ** AIR 1934 Pat 467 (467, 468, 469) = 36 Cri LJ 641 (DB).

(10) The transferee Magistrate can summon any further persons as accused if he finds evidence against them. AIR 1947 Pat 284 (289) = 25 Pat 539 (DB) ** AIR 1958 Tripura 1 (Pr 40) = 1958 Cri LJ 97 ** ILR (1958) Cut 74 (76) ** AIR 1964 Pat 487 (489) = 1964 BLJR 452 = 1964 (2) Cri LJ 569 (570) (DB) ** 1962 BLJR 692 (694) ** ILR (1961) 2 Cal 424 (429) (DB).

See also S. 190.

(11) The legality of piecemeal transfer of a case under this section is open to considerable doubt. AIR 1949 Cal 637 (640) = ILR (1950) 2 Cal 365 = 51 Cri L Jour 205 ** AIR 1941 Cal 185 (192) = 42 Cri L Jour 490 ** (1908) 7 Cri L Jour 318 (319) (DB) (Cal).

[But see ILR (1963) Cut 695 (698). (Transfer of case after passing conditional order — Mere irregularity — In absence of prejudice transfer is valid.)]

(12) Even if piecemeal transfer may be in certain circumstances valid, it must be clearly indicated in the order of transfer which portion of the case has not been transferred. In the absence of any such clear indication, it must be taken that the whole case has been transferred to the subordinate Magistrate. AIR 1941 Cal 185 (192) = 42 Cri L Jour 490.

(13) A transfer, with directions to commit if the evidence is sufficient and to disallow bail has been held to be erroneous. (1900) 27 Cal 820 (823, 825) (DB).

(14) Where a Magistrate summons only one of the accused persons and transfers the case under this section, the death of that accused after the transfer does not terminate the proceedings against the other accused persons unless the Magistrate to whom the case is transferred thinks fit to conclude the proceedings against them. AIR 1941 Cal 185 (192) = 42 Cri L Jour 490.

(15) As to whether a Magistrate to whom a case has been transferred can order an inquiry under Section 202, See Note 1 and Section 202.

9. Erroneous order of transfer — Effect of.— See Section 529.

10. Notice of transfer.— (1) The section contemplates a transfer even before the issue of process against the accused and no notice of transfer is necessary to the accused. Where, however, the transfer is made under Section 528, notice is necessary. AIR 1928 Mad 560 (560) = 29 Cri L Jour 734 ** AIR 1943 Sind 109 (110) = ILR (1943) Kar 13 = 44 Cri L Jour 612 (DB) ** 2 Bom LR 342 (342) (DB).

Also see Section 528.

11. Case triable by first class Magistrate — Transfer to second class Magistrate with direction to commit to sessions — Legality.— (1) A first class Magistrate transferred a case triable by himself to a second class Magistrate subordinate to him with directions to treat the case as one for committal to the sessions. It was held that the first class Magistrate had no power to do so and that the proper procedure to be followed by him was, if he thought that the case should be committed to the sessions to himself commit the case to the Court of Session under Section 347. AIR 1938 Mad 529 (529, 530) = 39 Cri L Jour 715.

193. Cognizance of offences by Courts of Session. — (1) Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the accused has been committed to it by a Magistrate duly empowered in that behalf.

(2) Additional Sessions Judges and Assistant Sessions Judges shall try such cases only as the °[State Government] by general or special order may direct them to try, or †[* * * *] as the Sessions Judge of the division, by general or special order, may make over to them for trial.

[1882—S. 193; 1872—Ss. 17, 18, 231; 1861—Ss. 22, 359.]

[°] Substituted for 'Provincial Government' by A. L. O., 1950.

[†] The words "in the case of Assistant Sessions Judges" were repealed by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), Section 46.

STATE AMENDMENTS

Gujarat

In its application to the State of Gujarat, the amendment made in Section 193 is the same as that made in Maharashtra. — See Central Act XI of 1960, Sec. 87 (1-5-1960).

Section 193 — Note 1

(1) The object of the restriction on Court of Session in taking cognizance, in sub-section (1), is twofold—

(a) To secure to the person charged a preliminary enquiry which would afford him the opportunity of being acquainted with the circumstances of the offence imputed to him and enable him to make his defence. (1881) 3 Mad 351 (352, 353) (DB) ** AIR 1927 Sind 28 (34) = 27 Cri L Jour 1217 (DB).

(b) To prevent the time of the Court of Session from being wasted over cases in which the charge is obviously not supported by such evidence as would justify a conviction. (1882) 5 All 161 (162) ** (1905) 2 Cri L Jour 534 (541) (SB) (Cal).

(2) Section 351 must be read as subject to this section, Consequently a Sessions Judge has no power to join a person as a co-accused in a case before him whether he happened to attend the Court or not, when no inquiry of any sort has been held by any Magistrate into the charges against him. AIR 1942 Sind 161 (162) = 44 Cri L Jour 137 (DB).

(3) Sections 193 and 195 regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. **AIR 1955 SC 196 (204) = 1955 Cri L Jour 526 = ILR [1955] Punj 135 = 1955 SCR 1150.**

(4) Although under Section 193 (1) a Court of Session cannot take cognizance of any offence as a Court of original jurisdiction, regard must be had to the exception contained in the words "except as otherwise expressly provided . . . . ." AIR 1915 Sind 50 (50) = 9 Sind LR 37 = 16 Cri L Jour 573.

(5) Where the committal was only for the offence of attempt to murder, the sessions judge could frame a charge under Section 302, I. P. C. in a case where after the committal the injured died. This fell within the scope of Section 226 of the Code and Section 193 is no bar. AIR 1966 Ker 1 (4, 5) = 1965 Ker LT 620 = 1966 Cri LJ 22 (FB).

(6) In a case not triable by the Court of Session exclusively, the Sessions Judge should send the case for inquiry to any Magistrate empowered to try or commit for trial the accused person. (1879) 4 Cal 570 (571) (DB).

(7) Section 6 of the West Bengal Special Courts Ordinance (3 of 1949) provides that a Court constituted under that Ordinance may take cognizance of offences without the accused being committed to the Court of Session for trial. This section does not therefore apply to trials under that Ordinance. (1950) 54 Cal WN 753 (754, 755) (DB).

(8) Special Court under West Bengal Criminal Law Amendment (Special Courts) Act, 1949 can take cognizance independently of Sections 190 and 193, Cr. P. C. But that does not mean that the Special Court cannot take cognizance on a complaint under Section 190 (1). It only means that, the Special Court is not confined to that method only in taking cognizance. AIR 1961 Cal 560 (565) = 1961 (2) Cri LJ 617 (FB).

(9) Section 5 of the West Bengal Tribunals of Criminal Jurisdiction Act (1952) provides that a Tribunal may take cognizance of schedule offences without the accused being committed to it for trial. AIR 1955 Cal 535 (538, 539) = 1955 Cri L Jour 1348 (DB).

Maharashtra

(1) In its application to the State of Maharashtra, in sub-section (2) of Section 193 after the words "the State Government" insert the words "in consultation with the High Court."—Bom. Act XXIII of 1951, Section 2 and Schedule (1-7-1953).

(2) After the reorganisation of the State of Bombay in 1956, the amendment made in Section 193 by the above-mentioned Bombay Act is extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

Punjab, Haryana: Chandigarh

In its application to the States of Punjab and Haryana and the Union territory of Chandigarh, in sub-section (2) of Section 193, for the words "State Government", substitute the words "the High Court". — Punj. Act XXV of 1964, Section 2 and Schedule Part I, Item (47) (2-10-1964) and Act 31 of 1966, Sections 29 and 89 (1-11-1966).

Rajasthan

Abu area. — In its application to the Abu area of the State of Rajasthan, the amendment made in Section 193 is the same as that made in (1) of Maharashtra. — See Cent. Act XXXVII of 1956, Section 119 (1-11-1956).

Union territories (except Chandigarh)

In its application to the Union territories, in Section 193, for the words "the State Government", substitute the words "the State Government in consultation with the High Court."—Act 19 of 1969, Section 3 and Schedule, Item 49. (In Delhi, on 2-10-1969).

West Bengal

In its application to the State of West Bengal, in Section 193,

(i) in sub-section (1) for the word "Magistrate", substitute the words "Judicial Magistrate"; and

(ii) in sub-section (2), after the words "State Government", insert the words, "in consultation with the High Court." — W. B. Act VIII of 1970, Section 3 and Schedule, Item 68.

Section 193 — Note 1 (contd.)

(10) So far as the Courts of Special Judges functioning under the Criminal Law (Amendment) Act, 1952, are concerned, though they are placed on the same footing as the Courts of Session (Section 8 (3)) the procedure prescribed under Sec. 193 of the Criminal Procedure Code, that no Court of Session shall take cognizance of any offence unless the accused has been committed to it, is not necessary to be followed in the case of these Courts. AIR 1959 Bom 437 (441) = ILR (1959) Bom 1088 = 1959 Cri L Jour 1153 ** AIR 1967 Pat 416 (422) = 1967 Cri LJ 1677. (Provision under Section 8 (1) of Criminal Law Amendment Act, 1952 does not restrict the powers of Magistrate under Section 190 of the Code.) ** 1966 Mad 432 (433, 434) = 1966 Cri LJ 1452.

(11) The absence of a commitment is a defect which affects the jurisdiction or competency of the Sessions Court to take cognizance of the case and cannot be cured by the provisions of Sec. 537. AIR 1953 Hyd 9 (12) — ILR (1952) Hyd 581 = 1953 Cri L Jour 116 (DB) ** (1895) 22 Cal 50 (71) (DB) ** (1892) 15 Mad 352 (353) (DB) ** 1913 Pun LR No, 260, p. 880 (881, 882) ** AIR 1934 All 963 (969) = 36 Cri L Jour 137 (FB).

[See 1969 All WR (HC) 356 (362) = 1969 All Cr R 230. (No commitment of accused for carrying firearm without licence — Sessions Court cannot convict him for that offence by adding charge therefor in absence of sanction of District Magistrate — Arms Act (1959), Sections 39 and 3 read with 25 (1) (a).)]

(12) The commitment must be by a competent Magistrate. (1907) 6 Cri L Jour 7 (7, 8) (All).

(13) Under Section 437 a Court of Session can commit an accused person itself and try him without the intervention of a Magistrate. (1886) 10 Bom 319 (323, 324) (DB).

(14) The reasons for which a Magistrate, who is otherwise competent, may commit a case to the Court of Session are not in any way limited either to a case which he cannot try or to a case in which he cannot adequately punish the accused. He may commit any person for trial to the Court of Session but he must give adequate reasons for committing a person for an offence which

Section 193 — Note 1 (contd.)

is not exclusively triable by the Court of Session. AIR 1949 All 1 (10, 11) = ILR (1949) All 279 = 50 Cri L Jour 59 (FB).

(15) An order of commitment passed by a competent Magistrate without framing a charge as required by Section 210 of the Code cannot affect the competency of the Court of Session to take cognizance of the offence as the omission to frame a charge is only an irregularity curable under Section 537 read with Section 226 under which it is open to the Sessions Judge to frame a charge. AIR 1953 All 191 (192) = 1953 Cri L Jour 478.

(16) Applications under Chap. XXXII (of Reference and Revision) of the Code are not cases for trial and cannot be transferred under the provisions of this section. (1885) 9 Bom 352 (353, 354) (DB) ** (1885) 9 Bom 164 (168) (DB).

(17) A Sessions Judge cannot transfer an appeal under this section to an Assistant Sessions Judge. AIR 1915 All 101 (102) = 16 Cri L Jour 316.

(18) Independently of the provisions of this section, a Sessions Judge can, under Section 409, transfer an appeal to an Additional Sessions Judge. AIR 1942 Oudh 50 (54) = 43 Cri L Jour 50.

(19) The Sessions Judge should arrange that difficult cases should be tried by himself and not be made over to a less experienced Additional Sessions Judge. AIR 1935 Rang 406 (407) = 37 Cri L Jour 196 (DB).

[See also AIR 1929 Oudh 150 (151) = 30 Cri L Jour 544 (DB).]

(20) An Additional Sessions Judge is to try only those original cases which come to him under Section 193. 1957 Cri L Jour 156 (159) (Raj).

(21) Where the Additional Sessions Judge transferred the case from the file of the Sessions Judge to his own file, this was quite against law. The trial before the Additional Sessions Judge being without jurisdiction, the order of conviction and sentence passed by him needs being set aside. AIR 1959 J and K 11 (12) = 1959 Cri L Jour 186.

(22) In cases arising under Sec. 193 (2) the distinction between elements, which are essential for the foundation of jurisdiction and the mode in which such jurisdiction has to be assumed and exercised, is of fundamental importance. If there is existence of jurisdiction, the irregularity in the exercise of it will not vitiate the trial. AIR 1955 Punj 65 (75) = ILR (1954) Punj 75 = 1955 Cri L Jour 609 (DB).

(23) The word "only" in Section 193 (2) is intended not so much to extend the power of transfer of the State Government as to limit the powers of Additional and Assistant Sessions Judges to try such cases alone as the State Government or the Sessions Judge empowers them to do. AIR 1931 Bom 313 (316) = 55 Bom 576 = 32 Cri L Jour 1147 (SB).

(24) By Section 193 (2) the Legislature did not intend that the State Government should interfere with the ordinary course of justice in a particular case or transfer a particular case from a particular Judge to another particular Judge. AIR 1931 Bom 313 (316) = 55 Bom 576 = 32 Cri L Jour 1147 (SB).

(25) Section 193 (2) is not hit by Article 14 of the Constitution and is not ultra vires. AIR 1958 All 838 (841) = 1958 Cri L Jour 1446.

(26) When High Court transfers a case from the Magistrate to Sessions Court there is no occasion for the Court of Session to take cognizance of the offence in the sense that it has to determine whether the proceeding should be initiated in connexion with the offence or not. The proceedings have been already initiated by the Magistrate and have been simply transferred to it. **AIR 1966 SC 595 (599) = 1966 Cri LJ 595.**

(27) Sessions Judge can make over transfer petitions to the Additional Sessions Judge for disposal. AIR 1964 Andh Pra 59 (65) = 1964 (1) Cri LJ 176 = (1963) 2 Andh WR 43.

(28) When a Sessions Judge is seized of the case not on committal by empowered Magistrate but by reason of an order of transfer passed by the High Court itself under Section 526 (1), his duty is to comply with the order of High Court and not to act under Section 193 (2) of the Code. 1969 Cr LJ 255 (257) = 9 Guj LR 903.

(29) Besides the Sessions Judge can act under Section 193 (2) Subject to the provisions of the Code which include any order passed by High Court under Section 526 (1). 1969 Cri LJ 255 (257) = 9 Guj LR 903.

(30) When the committing Magistrate could have lawfully framed a charge under Section 25 (1) (a) of Arms Act but failed to do so, the Sessions Court can frame such charge under S. 226 of the Code and Section 193 (1) of the Code is no bar. AIR 1968 Pat 258 (268) = 1968 Cri LJ 958.

194. Cognizance of offences by High Court. — (1) The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

°[Nothing herein contained shall be deemed to affect the provisions of any letters patent or †[law] by which a High Court is constituted or continued, or any other provision of this Code.]

(2) **Information by Advocate-General.** — (a) Notwithstanding anything in this Code contained, the Advocate-General may, with the previous sanction of ‡[* * * *] the °†[State Government], exhibit to the High Court, against persons subject to the jurisdiction of the High Court, informations for all purposes for which Her Majesty's Attorney-General may exhibit informations on behalf of the Crown in the High Court of Justice in England.

(b) Such proceedings may be taken upon every such information as may lawfully be taken in the case of similar informations filed by Her Majesty's Attorney-General so far as the circumstances of the case and the practice and procedure of the said High Court will admit.

(c) All fines, penalties, forfeitures, debts and sums of money recovered or levied under or by virtue of any such information §[shall form part of the revenues of the °†[State].]

(d) The High Court may make rules for carrying into effect the provisions of this section.

[1882—S. 194; 1872 and 1861—Nil.]

[°] Inserted for the second paragraph of sub-section (1), by A. L. O., 1950.

[†] Substituted for the word "order" by the Code of Criminal Procedure (Amendment) Act (I of 1951), Section 10 (1-4-1951).

Section 194 — Note 1

(1) The High Court has no jurisdiction to try an accused on an application made under S. 85 of the Companies Act. AIR 1936 All 830 (832) = 38 Cri LJ 111 (FB).

(2) The High Court takes cognizance of a case, not on a complaint or police report or on information as in the case of Magistrate under Section 190, but upon a commitment. (1897) 22 Bom 112 (124).

(3) In Calcutta and Bombay, where the Coroners Act is in force, an inquisition drawn up by the coroner has the effect of commitment to the High Court, when it has been accepted by the High Court and the officers of the State have drawn up a charge in accordance therewith. (1904) 1 Cri LJ 13 (19) = 31 Cal 1 (DB).

(4) As to the original criminal jurisdiction given to the High Courts by their Letters Patent, see the following cases. AIR 1932 Cal 123 (123) = 33 Cri LJ 219 (DB) ** ILR (1953) 2 Cal 150 (151, 152) ** AIR 1933 Cal 364 (364) = 34 Cri LJ 320 (DB) ** AIR 1933 PC 124 (128) = 34 Cri LJ 322.

(5) Sub-section (4) of Section 45C read with Section 45A of the Banking Companies Act, 1949, as amended by the Banking Companies (Amendment) Act (20 of 1950) provides that notwithstanding anything contained in the Code of Criminal Procedure, the High Court shall take cognizance of any offence under that section without the accused being committed to it for trial.

(6) For contempt committed out of Court, the High Court has always got the power to try and punish a person. AIR 1935 All 1 (2, 3) (DB).

(7) The information to be exhibited by the Advocate-General to the High Court against a person under sub-section (2) (a) should contain a statement of the charge as definite and detailed as an indictment. Allegations as to the opinion of the Executive are out of place and should never be included in it. This procedure should not be resorted to where the ordinary procedure can be adopted, as in cases of perjury and conspiracy, as it will be prejudicial to the accused. AIR 1933 PC 124 (128, 133) = 34 Cri LJ 322.

(8) When non-scheduled offence is committed in port area in Ganga contiguous to Presidency town of Calcutta High Court has no jurisdiction to try it on its original Criminal side. Commitment of such offence to High Court is bad. 1962 (2) Cri LJ 656 (658) (Cal).

(9) Where on the death of petitioner in contempt proceedings the High Court appoints Deputy Advocate General to assist it, Sec. 194 (2) (a) Cr. P. C. does not apply to him and previous sanction of State Government is not necessary. AIR 1968 Punj 217 (230) = 1968 Cri LJ 775 (FB).

[‡] The words "The Governor-General-in Council or" were repealed by A. O., 1937.

[§] Substituted for "shall belong to the Government of India" by A. O. 1937.

[*†] Substituted for "Provincial Government" and "Province" by A. L. O., 1950.

OBJECTS AND REASONS

"Clause 194 (2) — The practice and procedure relating to criminal information differs in many respects from the ordinary procedure laid down by this Code, as, for example, by dispensing with the preliminary inquiry before Magistrates. Now that the provisions of Section 144 of Act 10 of 1875 (The Advocate-General's (Powers) Act) are included in the Code instead of being contained in a separate Act, it is desirable to show that they are not subject to the general provisions of this Code. We have, therefore, prefixed the words "Notwithstanding anything in this Code contained" to this section." — S. C. R. 1898.

195. Prosecution for contempt of lawful authority of public servants. — *[(1) No Court shall take cognizance —

(a) of any offence punishable under Sections 172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate;

Prosecution for certain offences against public justice.

(b) of any offence punishable under any of the following sections of the same Code, namely, Sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceedings in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate; or

Prosecution for certain offences relating to documents given in evidence.

(c) of any offence described in Section 463 or punishable under Section 471, Section 475 or Section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.]

SECTION 195 — SYNOPSIS

1. Scope and object.
2. "Complaint."
2A. Absence of complaint.
2B. Irregular and invalid complaints.
2C. Avoidance of Section 195 not permissible.
2D. Offences covered and not covered by section — Alteration of charge or conviction.
2E. Complaint under this section and sanction for prosecution.
3. Offences concerning public servants — Sub-section (1), clause (a).
4. Subordination of public servants.
5. Complaint in cases of offences mentioned in clause (a).
6. "Any proceeding" — Clauses (b) and (c).
7. "In relation to any proceeding."
8. Offence under Section 211, Penal Code, when committed in relation to a proceeding in Court.
9. Prosecution for giving or fabricating false evidence.
10. Offences under clause (b) — Whether the offender should be a party to the proceeding in Court.
11. Offences committed by a party to a proceeding in respect of a document produced or given in evidence — Sub-section (1), clause (c).
12. "By a party to any proceeding in any Court."
13. "In respect of a document produced or given in evidence in such proceeding."
14. "Of any offence described in Section 463" — Clause (c).
15. Who can make a complaint under clauses (b) and (c).
16. "Court", meaning of — Sub-sec. (2).
17. Subordination of Courts — Sub-section (3).
18. "Court to which appeals ordinarily lie."

(2) In clauses (b) and (c) of sub-section (1), the term "Court" †[includes] a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877.‡

§[(3) For the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate:

Provided that—

(a) where appeals lie to more than one Court, the appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate; and

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.]

°†[(4)] The provisions of sub-section (1), with reference to the offences named therein, apply also to °‡[criminal conspiracies to commit such offences and to] the abetment of such offences, and attempts to commit them.

Section 195 — Synopsis (contd.)

19. Subordination where appeals lie to more than one Court — Proviso (a).
20. Subordination where appeals lie to a Civil and also to a Revenue Court — Proviso (b).
21. Subordination of Civil Courts from whose decrees no appeal ordinarily lies.
22. Abetment, conspiracy and attempt to commit offence — Sub-section (4).
23. Withdrawal of complaint filed by a public servant — Sub-section (5).
24. "Authority to which such public servant is subordinate" — Sub-sec. (5).

24A. This section and Section 476, Cr. P. C.

24B. This section and Section 480, Cr. P. C.

25. Appeal.
26. Revision.
27. Revision, whether lies against withdrawal of complaint under sub-section (5).
28. Dismissal of complaint for non-compliance with the section, whether bars a fresh and proper complaint.

1. Scope and object. — (1) This section provides an exception to the general rule that any person may set the criminal law in motion. (1938) 67 Cal L Jour 583 (586) (DB) °° AIR 1938 Mad 173 (174) = 39 Cri L Jour 1 °° AIR 1937 Lah 624 (626) = 38 Cri L Jour 1070. (Offence under Section 182, Penal Code.) °° AIR 1935 Pat 214 (216) = 36 Cri L Jour 714 (SB) °° AIR 1966 Raj 101 (103) = 1966 Cri LJ 576 = 1966 Raj LW 33 (DB) °° 1963 (1) Cri LJ 358 (359) (Ker).

(2) The object of the section is to prevent improper or reckless prosecutions by private persons for offences in connection with the administration of public justice and those relating to the contempt of lawful authority of a public servant. AIR 1952 Hyd 7 (9) = ILR (1951) Hyd 778 = 1952 Cri L Jour 215 (DB) °° 1959 All L Jour 620 (622) °° AIR 1942 Cal 79 (80) = 43 Cri L Jour 402 (DB) °° AIR 1938 Mad 173 (174) = 39 Cri L Jour 1 °° AIR 1934 Pat 536 (537) = 36 Cri L Jour 26.

(3) Section 195 is aimed at giving protection to parties and witnesses, against vexatious or frivolous prosecutions for their resorting to Courts and giving evidence therein. AIR 1916 Mad 72 (73) = 16 Cri L Jour 721 (DB) °° AIR 1917 Nag 198 (199) = 18 Cri L Jour 1001 °° 1963 Raj LW 416 (419).

(4) Before filing a complaint the public servant or the Court must satisfy itself that an offence mentioned in sub-sec. (1) has been committed and should not, like an ordinary litigant, rush with a complaint to another Court. AIR 1953 Cal 507 (507) = 1953 Cri L Jour 1180.

2. "Complaint". — (1) What is required under this section is a complaint. AIR 1952 Him Pra & B 32 (34) = 1952 Cri L Jour 821 °° AIR 1951 Assam 54 (55) = ILR (1950) 2 Assam 249 = 52 Cri LJ 394.

(2) For meaning of complaint, see the undermentioned cases. AIR 1940 Oudh 241 (242) = 41 Cri L Jour 228 °° 1959 All L Jour 620 (621) °° AIR 1958 Raj 89 (90) = ILR (1958) 8 Raj 1 = 1958 Cri L Jour 567 °° 1957 All WR (HC) 552 (553) °° AIR 1955 Mys 1 (2) = 1955 Cri L Jour 160 = ILR (1954) Mys 372.

(3) Term "complaint" in clause (a) of sub-section (1) is not used in the technical

°§[(5) Where a complaint has been made under sub-section (1), clause (a), by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on the complaint.]

[1882 — S. 195; 1872 — Ss. 467 to 470; 1861 — Ss. 168 to 170.]

[°] Substituted for the original sub-section (1), by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), Section 47.

[†] Substituted for "means", ibid.

[‡] See now the Indian Registration Act, 1908 (XVI of 1908).

[§] Substituted for the original sub-section (7) and re-numbered as sub-section (3), by Act XVIII of 1923, Section 47.

[°†] The original sub-section (3) was re-numbered as (4), ibid.

[°‡] Inserted by the Criminal Law (Amendment) Act (VIII of 1913).

[°§] The original sub-sections (4), (5) and (6) were repealed and new sub-section (5) was inserted by Act (XVIII of 1923), Section 47.

Section 195 — Note 2 (contd.)

sense in which it is defined in Section 4 (1) (h) under which the report of a police-officer is not a complaint. AIR 1943 All 6 (7) = 44 Cri L Jour 165 °° AIR 1956 Orissa 211 (211) = ILR (1956) Cut 470 = 1956 Cri L Jour 1420. (40 Cal 360 and AIR 1943 All 6 and AIR 1951 Sau 8, Followed.)

[But see (1968) 2 Mys LJ 608 (609) = 1969 Cri LJ 1449 °° 1966 Cr LJ 969 (970) (Him Pra).]

(4) Expression "complaint" includes report of police officer when it is made by him as public servant with a view to take action against a person. AIR 1965 Mad 526 (527, 528) = (1965) 2 Cri LJ 780 = (1965) 1 Mad LJ 348 °° 1968 Cri LJ 1354 (1356) (Delhi).

(5) The purpose of a complaint under this section is only to show that the officer concerned or his superior had considered the matter and had moved the Court. AIR 1950 Nag 12 (13) = ILR (1949) Nag 976 = 51 Cri L Jour 254 °° AIR 1951 Sau 8 (9) = 3 Sau LR 248 = 1952 Cri L Jour 850 (DB).

(6) Where a charge-sheet under Sec. 188, Penal Code is signed by the Magistrate whose order is disobeyed, as also the District Magistrate, the purpose of a complaint is served and the trial is not without jurisdiction. AIR 1950 Nag 12 (13) = ILR (1949) Nag 976 = 51 Cri L Jour 254.

[But see AIR 1950 Ajmer 23 (24) = 51 Cri L Jour 935.]

(7) The complaint must be in writing by the public officer concerned. AIR 1962 SC 1206 (1207) = 1962 (2) Cri LJ 286 = 1962 Supp (2) SCR 812.

(8) In a case where an investigation is not strictly relevant for the purpose of a statutory complaint and in such a case if there was an investigation before the filing of the complaint the nature of the complaint for the purpose of taking cognizance by a Magistrate will not be affected. ILR (1964) 2 Mad 403 = (1965) 1 Mad LJ 348 (352) = 1965 MLJ (Cr) 195.

(9) No provision in Criminal P. C. or in Factories Act making it necessary to present complaint personally or through lawyer. AIR 1960 Pat 514 (515) = 1960 Cri LJ 1483 = 1960 BLJR 480. (Complaint by Inspector sent by post → Sufficient.)

(10) This section should be construed strictly. AIR 1945 Pat 322 (326) = ILR 24 Pat 1 = 48 Cri LJ 19 (DB).

2A. Absence of complaint. — (1) In absence of complaint required by section Court cannot take cognizance of offence. AIR 1953 All 200 (201) = 1953 Cri L Jour 555 °° AIR 1956 Bom 326 (328) = ILR (1955) Bom 1064 = 1956 Cri L Jour 603 (DB) °° AIR 1955 Bom 315 (317) = ILR (1955) Bom 402 = 1955 Cri L Jour 1156 °° AIR 1953 Him Pra 117 (120) = 1953 Cri L Jour 1683 °° (1968) 1 SCWR 320 (324) = 70 ITR 89 °° (1962) 1 Cri LJ 627 (629) (All) °° (1959) 25 Cut LT 528 (529).

(2) Where the complaint is not in conformity with the provisions of this section, the Court has no power even to examine the complainant on oath. AIR 1932 Mad 253 (254) = 33 Cri L Jour 361 (DB).

(3) An objection as to jurisdiction of Magistrate to try case on ground of want of complaint as required by this section goes to the root of the case. AIR 1939 Mad 579 (579) = 40 Cri L Jour 798 °° AIR 1955 Mad 561 (562) = 1955 Cri L Jour 1360. (AIR 1953 Mad 1008 = 1953 Cri L Jour 1894 and AIR 1953 Mad 226 = 1953 Cri L Jour 442, Dissented from.) °° AIR 1954 Mad 561 (561) = 1954 Cri L Jour 799.

[See also AIR 1955 Ajmer 45 (45) = 1955 Cri L Jour 1021 °° (1957) 2 Andh WR 368 (372).]

(4) Absence of a complaint as required by the section is an illegality which vitiates the trial and conviction. AIR 1951 Orissa

Section 195 — Note 2A (contd.)

84 (85) = ILR (1950) Cut 545 (DB) °° AIR 1955 Mys 1 (2) = ILR (1954) Mys 372 = 1955 Cri L Jour 160 °° AIR 1955 Sau 10 (11) = 1955 Cri L Jour 52 (DB) °° AIR 1954 Orissa 175 (176) = ILR (1954) Cut 92 = 1954 Cri L Jour 950 °° (1968) 34 Cut LT 842 = ILR (1968) Cut 542 (546) °° AIR 1966 Raj 101 (103) = 1966 Cri LJ 576 = 1966 Raj LW 33 °° 1962 (1) Cri LJ 340 (342) = 1961 Ker LJ 850 = 1961 Ker LT 778 °° AIR 1961 Orissa 14 (14) = 1961 (1) Cri LJ 132 (1) = 26 Cut LT 148 °° AIR 1926 All 700 (701) = 27 Cri L Jour 901 °° 1959 All L Jour 620 (624) °° AIR 1927 Oudh 326 (327) = 28 Cri L Jour 681 (DB).

(5) If at any stage of the proceedings the Court found a legal bar to the prosecution of the accused it is open to the Court to discharge the accused. ILR (1966) 1 Ker 168 (169) = 1965 Ker LT 1116.

(6) The provisions of Section 195 require to be strictly construed since the effect of the section is to restrict the jurisdiction of the ordinary criminal courts. (1968) 9 Guj LR 1 (23) = ILR (1967) Guj 1091 (FB).

(7) It will not be proper to construe that section in such a manner as to restrict the jurisdiction of the criminal court unless such a restriction is expressly provided for or necessarily follows from the language used by the Legislature. AIR 1965 Guj 70 (80) = (1964) 5 Guj LR 229 (DB) °° 1962 Raj LW 271 (274) = ILR (1962) 12 Raj 254.

(8) Section applies only to offences mentioned therein and not to any other offences. AIR 1952 Assam 109 (110) = 1952 Cri L Jour 994 °° 1955 Andh WR 465 (467) °° AIR 1949 All 692 (695) = ILR (1950) All 571 = 51 Cri L Jour 199 (DB) °° AIR 1948 Mad 115 (115, 116) = 49 Cri L Jour 71 °° AIR 1937 Bom 46 (48) = 38 Cri L Jour 272 (DB) °° AIR 1968 SC 19 (22) = 1968 Cri LJ 86 = (1967) 2 SCR 828 °° (1968) 2 SCWR 387 (392) °° AIR 1967 Pat 166 (168) = 1967 Cri LJ 641 = 1967 BLJR 265 °° 1962 All Cr R 43 = (1962) 2 Mad LJ 283 = 1962 (2) Cri LJ 555 (557) (DB) (Mad).

2B. Irregular and invalid complaints. — (1) Irregularity in a complaint made under this section is curable under clause (a) of Section 537. AIR 1943 All 6 (7) = 44 Cri L Jour 165 °° AIR 1938 Nag 487 (489) = 40 Cri L Jour 388.

(2) Offence under Section 188, I. P. C. — Complaint by personal assistant to public servant concerned not valid — Invalidity cannot be cured under Section 537. AIR 1964 Madh Pra 237 (238) = 1964 (2) Cri LJ 420 = 1964 MPLJ 383.

(3) Enquiry under Section 476 — Court deciding to file complaint — His action in filing complaint can be looked upon as action in three different capacities, namely (a) as complaint by Court (b) as complaint by the presiding officer (c) as complaint by a private person. AIR 1964 Andh Pra 248 (254, 255, 256) = 1964 (1) Cri LJ 634 = (1964) 1 Andh WR 139.

(4) This section controls Section 190 and in cases coming under it a Magistrate cannot take cognizance of an offence under clause (b) or clause (c) of Section 190. AIR 1940 Oudh 424 (425) = 41 Cri L Jour 787 °° AIR 1966 Raj 101 (103) = 1966 Cri LJ 516 = 1966 Raj LW 33 (DB).

(5) Decision to file complaint becoming final — Enquiry under Section 476, Cr. P. C. — Complaint filed by Court for an offence under Sections 463 and 471 — Complaint as from a Court invalid for any reason — Complaint should not be dismissed on the ground that it is not by the Court — The Magistrate can treat it as a complaint from a presiding officer and can entertain it under Section 190 (1) (a) and (c). AIR 1964 Andh Pra 248 (254) = 1964 (1) Cri LJ 634 = (1964) 1 Andh WR 139.

(6) If a magistrate files a complaint otherwise than what is contemplated under Section 195, then before process can be issued the complainant has to be examined under Section 200. AIR 1965 Assam 29 (30) = 1965 (1) Cri LJ 424 = ILR (1964) 16 Assam 276.

(7) Enquiry under Section 476, Cr. P. C. — Decision to file complaint becoming final — Complaint for an offence under Sections 463 and 479 filed — Magistrate entertaining complaint finding that Sec. 195 (1) (b) and (c) and Section 476, Cr. P. C. do not apply to the offences mentioned in the complaint — He can take the case under Section 195 (1) (a) as a complaint by a public servant concerned. AIR 1964 Andh Pra 248 (255) = 1964 (1) Cri LJ 634 = (1964) 1 Andh WR 139.

(8) Where a Magistrate takes cognizance of an offence on a complaint purporting to be made under this section read with Section 476 and convicts the accused but the case is one to which neither this section nor Section 476 applies and therefore the complaint is invalid as a complaint, the entire proceedings are not vitiated and the conviction need not be set aside. AIR 1938 Pat 83 (89) = 39 Cri L Jour 314 (DB).

2C. Avoidance of Section 195 not permissible. — (1) Where in the course of the same transaction, two offences are committed, one of which falls under this section and the other does not, and the offences are not constituted by the same acts of the accused, then a complaint under this section is not necessary in res-

Section 195 — Note 2C (contd.)

pect of the offence not falling among the offences enumerated in it. AIR 1953 SC 293 (295) = 1953 Cri L Jour 1232.

(2) The mere fact that one distinct offence happens to be a step forward in the commission of another distinct offence is no reason why the first should be brought within the ambit of clause (c) simply because the second offence falls within that ambit. AIR 1965 Guj 70 (79) = 1965 (1) Cri LJ 428 = (1964) 5 Guj LR 229 (DB).

(3) Provisions of section cannot be evaded by resorting to devices or camouflages. AIR 1953 SC 293 (296) = 1953 Cri L Jour 1232 °° AIR 1957 Andh Pra 663 (670) = 1957 Cri L Jour 1078 °° AIR 1930 Pat 98 (102) = 30 Cri L Jour 710 °° AIR 1925 All 129 (130) = 26 Cri L Jour 446.

(4) Where the facts stated in a complaint amount to an offence under Section 193, Penal Code, to which sub-section (1) (b) would apply, no Court can take cognizance of it otherwise than in the manner prescribed in this section, and it makes no difference that the complainant, evidently with a view to evade the section, has elected to name the offence as forgery to which sub-section (1) (c) does not apply because the offender is not a party to the proceeding in Court. AIR 1936 Mad 89 (91) = 37 Cri L Jour 159 (DB) °° AIR 1946 Mad 489 (489, 490) = 47 Cri L Jour 1034.

[See also AIR 1955 Mad 237 (239) = 1955 Cri L Jour 716 °° AIR 1950 All 465 (466) = 51 Cri L Jour 1235.]

[See however AIR 1941 Mad 323 (324) = 42 Cri L Jour 468.]

(5) When a complaint is made Court is not entitled to disregard some of the facts and try or convict an accused person for an offence which the remaining facts disclose, but the Court must consider the facts as a whole and if these facts disclose an offence for which a special complaint is necessary under the provisions of Sec. 195, a Court cannot take cognizance of the case at all unless that special complaint has been filed. AIR 1937 Mad 8 (9) = 37 Cri L Jour 1134.

[See also AIR 1948 Mad 474 (477) = 49 Cri L Jour 737.]

(6) Where the allegations in a private complaint only disclose an offence not falling under this section, the Court can take cognizance of such offence on such complaint although the same facts in combination with some other facts would have amounted to an offence falling under this section. AIR 1945 Mad 345 (346) = 47 Cri L Jour 90 °° AIR 1964 All 103 (104) = 1964 (1) Cri LJ 324 = 1963 All LJ 501.

(7) Where the facts taken as a whole disclose an offence which does not fall under this section, there is no objection to taking cognizance of such offence without a complaint under this section. AIR 1937 Mad 8 (9) = 37 Cri L Jour 1134 °° AIR 1930 Pat 98 (102) = 30 Cri L Jour 710.

(8) Where a charge is made under Section 353, Penal Code, without a complaint of the public servant concerned, there is no violation of this section. 1955 Andh WR 465 (468).

(9) The test for determining whether there is evasion of this section is to see whether the facts disclose primarily and essentially an offence falling under this section. AIR 1953 SC 293 (296) = 1953 Cri L Jour 1232 °° 1955 Andh WR 465 (467) °° AIR 1945 Nag 210 (212) = ILR (1945) Nag 685 = 47 Cri L Jour 175 °° (1947) 48 Cri L Jour 470 (471) (Sind).

(10) If the facts in truth and substance fall within the scope of one section merely pulling a different table for the offence is not sufficient to change the nature of the offence. AIR 1968 All 342 (343) = 1968 Cri LJ 1329 = 1967 All WR (HC) 204 (2). (AIR 1962 All 150, Diss.)

(11) It is not possible for the prosecution to drop a serious charge and select one which does not require the procedure under Section 195. AIR 1966 SC 523 (529) = 1966 Cri LJ 459 = (1966) 1 SCR 493.

(12) Where the ingredients of two offences, one falling under Section 218 and other falling under Section 193 are common and overlap each other it is not open to the complainant to bypass the provisions of Section 195 by choosing to prosecute the accused under Section 218 Cr. P. C. only. AIR 1968 All 342 (345) = 1968 Cri LJ 1329 = 1967 All WR (HC) 204 (2). (AIR 1962 All 150, Diss.) °° 1964 All WR (HC) 232. (AIR 1962 All 150, Overruled.)

(13) Where a decree-holder obtains from the judgment-debtor by false representation a copy of the decree on which is entered full satisfaction of the decree and by destroying or secreting such copy obtains fraudulently a further sum in execution of the decree, the offence primarily and essentially disclosed is that under Sec. 210 of the Penal Code and as it falls under this section, its provisions cannot be evaded by prosecuting the offender under Sections 403, 409 and 420 of the Penal Code. AIR 1937 Sind 81 (83) = 38 Cri L Jour 742.

[See also AIR 1944 Sind 130 (132) = 46 Cri L Jour 97 (DB).]

(14) Where a statement by a witness is both false and defamatory he can be prosecuted for defamation under Sec. 500, Penal Code without there being a complaint for perjury under this section. AIR 1942 Mad 19 (20) = 43 Cri L Jour 441 (DB) °° AIR 1951 Mad 34 (43) = ILR (1951) Mad 661 = 52 Cri L Jour 1270 (FB) °° AIR 1938 Rang 232 (235) = 39 Cri L Jour 663 (FB) °° AIR 1938 Cal 527 (528) = 39 Cri L Jour 730 (DB). (AIR

Section 195 — **Note 2C (contd.)**
1921 Cal 1 = 22 Cri L Jour 31 (FB), Followed; AIR 1917 Cal 708 = 18 Cri L Jour 377 **held overruled by** AIR 1921 Cal 1 = 22 Cri L Jour 31 (FB).) °° AIR 1951 Cal 133 (Prs 22, 27) = 52 Cri L Jour 1226 (FB). (AIR 1917 Cal 708 = 18 Cri L Jour 377; 48 Cri L Jour 660 (Cal) and AIR 1949 Cal 632 = 51 Cri L Jour 97, **Overruled.**) °° AIR 1965 All 597 (598) = 1965 (2) Cri LJ 705 (1) = 1965 All WR (HC) 2.

(15) According to the Nagpur High Court if the person defamed was a party to the proceeding in the course of which the statement was made, the offence primarily committed would be one of perjury for which a complaint would be necessary under this section, while if the person defamed was a third party, he can complain of an offence under Section 500. AIR 1937 Nag 138 (139) = 35 Cri L Jour 775.

(16) The Judicial Commissioner's Court of Sind has held that where a defamatory statement is made in an affidavit in the course of judicial proceeding but it is doubtful whether the facts constitute an offence under Section 193, Penal Code, the party defamed can file a complaint under Section 500, Penal Code, and in doing so he cannot be said to be evading the provisions of the law. AIR 1938 Sind 129 (129) = 39 Cri L Jour 736 (DB).

(17) The Patna High Court has held that where more than five persons join together and resist the execution of legal process, they can be prosecuted both under Sections 143 and 186 of the Penal Code and that although the latter section falls under this section and the complainant required by this section is not present, the offence under Section 143, Penal Code, can be taken cognizance of. AIR 1938 Pat 548 (549) = 40 Cri L Jour 71 (DB).

(18) The Assam High Court has held that where land is attached in proceeding under Section 145 of the Criminal Procedure Code and the crops on the land are removed by the accused in violation of the Court's order, they can be prosecuted for theft though there is no complaint by the Court under Section 188, Penal Code. AIR 1952 Assam 109 (110) = 1952 Cri L Jour 994.

(19) The Supreme Court has held that where false information of a defamatory character is given to the police against a certain person, two distinct offences are committed one under Section 182, Penal Code, against the police and the other under Section 500 Penal Code, against the person against whom the information is given. In such cases the aggrieved party can prosecute for defamation even though the police have not laid a complaint under Section 182, Penal Code. **AIR 1953 SC 293** (294, 296) = 1953 Cri L Jour 1232.

(20) Where a complaint combines a complaint of an offence to which the section applies with a complaint of an offence to which the section does not apply, the Court must investigate the latter complaint but refuse to investigate the former if it is not in accordance with the section. **AIR 1953 SC 293 (295) = 1953 Cri L Jour 1232** °° AIR 1958 Andh Pra 718 (719, 720) = 1958 Cri L Jour 1378 °° AIR 1956 Bom 326 (328) = ILR (1955) Bom 1064 = 1956 Cri L Jour 603 (DB) °° AIR 1954 Sau 50 (51) = 1954 Cri L Jour 675 (DB) °° AIR 1945 Nag 210 (211, 212) = ILR (1945) Nag 685 = 47 Cri L Jour 175 °° AIR 1937 Lah 802 (803) = 39 Cri L Jour 122 °° AIR 1924 All 296 (297) = 25 Cri L Jour 688.

[See however AIR 1954 Nag 80 (81) = 42 Cri L Jour 800.]

[See howecer AIR 1954 Nag 30 (31) = 1954 Cri L Jour 15 = ILR (1953) Nag 847 °° AIR 1954 Orissa 175 (176) = 1954 Cri L Jour 950 = ILR (1954) Cut 92 °° AIR 1953 Nag 290 (291) = 1953 Cri L Jour 1573 °° AIR 1939 Bom 129 (137) = 40 Cri L Jour 579 (DB).]

(21) If there is a distinct offence disclosed by the same facts, the ingredients of which are not the same as the ingredients of an offence which is enumerated in Section 195, Section 195 will not be a bar to the trial of that offence; but the provisions of Section 195 cannot be evaded by resorting to mere devices. ILR (1958) Andh Pra 917 (924) °° **AIR 1966 SC 1775** (1779) = 1966 Cri LJ 1491 = (1966) 3 SCR 636 °° 1969 Cri LJ 1459 (1461) = (1969) 2 Mys LJ 608 °° AIR 1968 Goa 14 = 1968 Cri LJ 313 °° 1968 Raj LW 512 (515) = ILR (1968) 18 Raj 544 °° 1966 All LJ 1105 (1108) = 1967 All Cri R 66 °° AIR 1967 Mad 400 (401) = 1967 Cri LJ 1528 = (1967) 1 Mad LJ 33 °° ILR (1966) Cut 199 (205) °° AIR 1964 Cal 436 (437) = 1964 (2) Cri LJ 405 = 68 Cal WN 710 °° AIR 1963 Mys 153 (156, 157) = 1963 (1) Cri LJ 781 = 1963 (1) Mys LJ 22 (DB) °° 1963 BLJR 211 (213) °° 1962 (2) Cri LJ 555 (557) = (1962) 2 Mad LJ 285 °° ILR (1962) Cut 610 (615) °° AIR 1960 Punj 356 (357) = 1960 Cri LJ 987 = 62 Punj LR 73 °° AIR 1959 Andh Pra 144 (145) = 1959 Cri L Jour 300.

(22) **Commission of offence under Section 188, Penal Code, common object of unlawful assembly — Conviction under Section 188 set aside for want of a complaint under this section — Conviction for offence under Section 145, Penal Code, cannot stand.** AIR 1951 Orissa 84 (86) = ILR (1950) Cut 545 (DB).

[See also AIR 1969 All 189 (191) = 1969 Cri LJ 460 = 1969 All WR (HC) 337 °° AIR 1968 All 342 (345) = 1968 Cri LJ 1329 = 1967 All WR (HC) 204 (2).]

Section 195 (contd.)

2D. Offences covered and not covered by Section — Alteration of charge or conviction. — (1) Section 195 cannot be evaded by the devise of charging a person with an offence to which that section does not apply and then convicting of an offence to which it does, on the ground that the latter offence is a minor one. **AIR 1966 SC 1775 (1779) = 1966 Cri LJ 1491 = (1966) 3 SCR 636.**

(2) Where a person has been convicted for an offence not falling within this section, the appellate or revisional Court cannot alter the conviction to one for an offence coming under this section in the absence of a complaint as required by it. AIR 1937 Lah 624 (626) = 38 Cri LJ 1070.

(3) Provisions of this section cannot be avoided by reducing a charge in respect of the offence mentioned in the section to some other offence and thus avoid the necessity of a complaint by the Court or the public servant. AIR 1948 Mad 474 (477) = 49 Cri L Jour 737 (DB) °° AIR 1958 Raj 89 (90) = ILR (1958) 8 Raj 1 = 1958 Cri L Jour 567 °° AIR 1957 Andh Pra 663 (670) = 1957 Cri L Jour 1078 °° AIR 1955 Sau 10 (11) = 1955 Cri L Jour 52 (DB) °° 1955 Andh WR 465 (467).

[See however AIR 1935 Sind 81 (83) = 36 Cri LJ 881 (DB).]

(4) Where a Court makes a complaint only under Section 193, Penal Code, the accused can be tried for an offence under Section 471, Penal Code, where the facts stated in the complaint support such a charge. AIR 1936 Mad 280 (281, 282) = 37 Cri LJ 421.

[But see AIR 1945 All 397 (399) = ILR (1945) All 668 = 47 Cri L Jour 200. (Complaint under Sections 218 and 194, Penal Code — Accused cannot be convicted under Section 193.)]

(5) Where a complaint is under S. 182 of the Penal Code, the accused can be convicted under Section 186 of that Code on the facts alleged in the complaint. AIR 1948 All 121 (122, 123) = 49 Cri L Jour 25 = ILR (1947) All 796.

(6) Magistrate makes a complaint under Section 193, I. P. C., in respect of the statement made in his Court on the definite allegation that the particular portion of that statement was false — Section 195 is fully complied with — Accused cannot be charged in the alternative that his previous statement in certain suit before the Civil Judge was false. AIR 1958 Raj 240 (241) = ILR (1957) 7 Raj 756 = 1958 Cri L Jour 1241.

(7) Major and minor offence alleged — Minor offence alone barred under S. 195 — Private complaint in respect of major offence still maintainable. 1970 All Cr R 45 = 1970 All LJ 206 = 1970 All WR (HC) 61. (AIR 1966 All 124, Overruled.)

2E. Complaint under this section and sanction for prosecution.— (1) Complaint which is required to be made under Ss. 195 and 196 on which Court can take cognizance of an offence is not the same thing as sanction to prosecute upon which alone a Court can take cognizance of an offence in respect of which the sanction is granted. (1960) 62 Bom LR 818 (820) = ILR (1961) Bom 200.

(2) Where an offence alleged to have been committed by a person referred to in Section 197 also falls under this section, the complaint referred to in this section will also be necessary in addition to the sanction required by Section 197 for taking cognizance of the offence. AIR 1938 Pat 83 (86) = 39 Cri L Jour 314 (DB).

3. Offences concerning public servants — Sub-s. (1), Cl. (a). — (1) In respect of offences mentioned in Clause (a) of sub-section (1), it is the public servant concerned or some other authority to which he is subordinate that is competent to make a complaint. AIR 1942 Cal 434 (435) = 43 Cri L Jour 410 (DB) °° AIR 1957 Pat 687 (687) = 1957 Cri L Jour 1444 °° AIR 1956 Cal 118 (119) = 1955 Cri L Jour 524 °° AIR 1955 Bom 315 (317) = 1955 Cri L Jour 1156 = ILR (1955) Bom 402 °° AIR 1941 All 100 (100) = 42 Cri L Jour 326 (DB) °° (1968) 2 Mys LJ 608 (609) = 1969 Cri LJ 1349.

(2) The section does not permit any delegation of authority by the public servant concerned. AIR 1955 Bom 315 (317) = 1955 Cri L Jour 1156 = ILR (1955) Bom 402 °° AIR 1953 Trav-Co 350 (351).

(3) A complaint by a private person in respect of any of the offences mentioned in Section 195 (1) (a) is barred. AIR 1927 Rang 61 (66) = 28 Cri L Jour 145 (DB) °° 1965 (2) Cri LJ 824 (1) (824) (All).

(4) Court cannot take cognizance of any such offence suo motu. AIR 1925 Mad 400 (400) = 26 Cri L Jour 962 (DB) °° AIR 1935 Pat 356 (356) = 36 Cri L Jour 904.

(5) The determination of public servant will vary according to particular offence concerned. 1968 Cri LJ 417 (418) = 1967-1 Mad LJ 447 (Cri).

(6) "Concerned" means concerned in the offence — Offence under Section 182, Penal Code — Complaint that is necessary is that of public servant to whom false information was given, and not that of public servant sought to be injured by such information. AIR 1941 Mad 764 (765) °° AIR 1937 Lah 624 (626) = 38 Cri L Jour 1070 °° AIR 1916 Upp Bur 15 (15) = 17 Cri L Jour 59 °° AIR 1961 All 352 (353) = 1961 (2) Cri LJ 47 = 1960 All LJ 684 (DB).

[See also AIR 1950 Cal 97 (99) = 51 Cri L Jour 469.]

(7) If a District Magistrate finds on enquiry that a complaint made to him is false he can file a complaint under Section 182 I. P. C. against the informant as the "public

Section 195 — Note 3 (contd.)
Servant concerned" within the meaning of Section 195. AIR 1966 Raj 101 (105) = 1966 Cri LJ 576 = 1966 Raj LW 33.

(8) The words 'public servant concerned', so far as an offence under Section 182, Penal Code, is concerned would mean a public servant to whom a false information is given with the intention or knowledge that such public servant will do something in his official capacity as a public servant. AIR 1950 Cal 97 (99) = 51 Cri L Jour 469.

(9) 'Public servant concerned' — Superintendent in charge of Central Telegraph Office — Whoever happens to occupy that post at the time of filing complaint is the public servant concerned and can file complaint for offences under Sections 182, 417 and 471, Penal Code. AIR 1969 Andh Pra 41 (43) = 1969 Cri LJ 145.

(10) False information relating to police officer given to the District Magistrate — District Magistrate can file a complaint under Section 195 (1) (a) for an offence under Section 182 both as a public servant and as a head of criminal administration to whom police officers are subordinate. AIR 1961 All 352 (353) = 1961 (2) Cri LJ 47 = 1960 All LJ 884 (DB).

(11) "Public servants" within the meaning of Section 195 (1) (a) is the person to whom complaint is made and not the one in whose jurisdiction offence had been committed. 1966 All Cri R 231 (232) = 1966 All WR (HC) 369.

(12) Offence under Section 182, Penal Code, committed in respect of a letter written to the Collector of District — Sub-divisional Magistrate not concerned in the offence is not competent to prefer a complaint. AIR 1919 All 175 (175) = 20 Cri L Jour 702.

(13) District Magistrate receiving copy of complaint addressed to Deputy Inspector General against Sub-Inspector — Complaint found to be false — District Magistrate, held competent to make complaint under Section 182, I. P. C. AIR 1966 Raj 101 (105) (DB) = 1966 Cri LJ 576 = 1966 Raj LW 33.

(14) Complaint filed before Sub-divisional Magistrate — Sub-Inspector of Police to whom complaint is sent by Magistrate for inquiry and report cannot make a complaint under Section 182, Penal Code. AIR 1936 Pat 56 (56) = 37 Cri L Jour 324 °° AIR 1929 Pat 92 (92) = 30 Cri L Jour 545.

[See also (1938) 67 Cal L Jour 583 (586) (DB).]

(15) District Magistrate receiving complaint against police officer in his district — Complaint found false upon enquiry by him — He would be competent to file a complaint against informant under Sec. 182, I. P. C. as a public Servant. AIR 1966 Raj 101 (105) = 1966 Cri LJ 576 = 1966 Raj LW 33 (DB).

(16) Order releasing premises in favour of L — Revision before Commissioner by T and application for stay of delivery of possession — On re-allocation of business, transfer of both applications to Additional Commissioner and their disposal by him — Application by L under Section 476 for filing complaint under Section 182 against T and others for filing false affidavits — Held, Additional Commissioner was public servant concerned and not the Commissioner who was competent to lodge complaint under Section 182. 1969 All WR (HC) 600 (601) = 1969 All Cr R 377.

(17) False information given to the Deputy Inspector General of Police — He would be the 'public servant concerned' and not the station officer of the particular police-station to whom the complaint is sent for investigation. AIR 1952 Raj 142 (144) = ILR (1952) 2 Raj 44.

(18) First information report of robbery lodged before a Sub-Inspector of Railway Police — Investigation made by an Assistant Sub-Inspector of another police-station — Latter could not make a complaint for prosecution of informant under Section 182, Penal Code. AIR 1947 Pat 64 (65) = 48 Cri L Jour 264.

(19) Report lodged at police-station B by a person that his pocket had been picked at the railway station at H — Report forwarded by Station Officer of B for investigation to Station Officer G. R. P., at H, offence having occurred on the railway — Station Officer of B and not of H could make a complaint under Section 182, Penal Code. AIR 1952 All 436 (437) = 1952 Cri L Jour 835.

(20) In the case of an offence under Section 188, Penal Code, the complaint that is necessary is that of the public servant whose order has been disobeyed. (1943) 9 Cut L Tim 95 (97) °° AIR 1939 Mad 496 (496) = 40 Cri L Jour 752 °° (1921) 63 Ind Cas 865 (866) = 22 Cri L Jour 705 (DB) (Lah).

(21) An offence under Section 174, Penal Code, is against the public servant before whom the accused fails to appear. AIR 1942 Oudh 425 (426) = 43 Cri L Jour 641.

(22) Offence under Section 174, I. P. C. — Cognizance can be taken by a Court only on a complaint in writing by the public servant concerned as provided by Section 195 (1) (a). AIR 1961 J and K 54 (55) = 1961 (2) Cri LJ 87.

(23) An offence under Section 176, I. P. C. can be taken cognizance of on the complaint of a police officer who is the public servant concerned. AIR 1956 Orissa 211 (212) = ILR (1956) Cut 470 = 1956 Cri L Jour 1420.

(24) Where false information is not given to a public servant, neither Section 182, Penal Code, nor this section applies to the case. 1887 Rat 315 (316) (DB).

Section 195 — Note 3 (contd.)

(25) Where an order, for the disobedience of which a prosecution under Section 188, Penal Code, was launched, was not promulgated by any public servant but by the Government, it was held that the section did not apply to the case. (1901) 24 Mad 70 (72) (DB).

(26) Where there is a disobedience of an order of interim injunction passed by a Civil Court, Section 188, Penal Code, does not apply and the complaint by the Civil Court for prosecution of the party under Section 188, Penal Code, is not necessary. AIR 1949 Cal 349 (350) = 50 Cri L Jour 632.

(27) The complaint prescribed in sub-section (1), Clause (a) is a public duty and the successor in office of the public servant concerned can make a complaint under the section. AIR 1939 Oudh 160 (161) = 40 Cri L Jour 508 °° AIR 1939 Sind 164 (165) = 40 Cri L Jour 659 (DB) °° AIR 1938 Pat 83 (88) = 39 Cri L Jour 314 (DB).

(28) Where the public servant concerned is not available by reason of transfer or resignation or death, the complaint might be made by some other public servant to whom he is subordinate. AIR 1956 Cal 102 (103) = 1956 Cri L Jour 515.

(29) A complaint under the section may be made by a public servant to whom the public servant concerned is subordinate, but not by a public servant who is himself subordinate to the public servant concerned. (1950) 3 Sau LR 148 (1) (148) (DB) °° AIR 1940 Lah 15 (15) = 41 Cri L Jour 368.

(30) A certain notification was issued in the Government Gazette by the Home Minister to the Government. Complaint by the Home Secretary to the Government for contravention of the notification was held sufficient under this section. AIR 1950 Madh B 58 (59) = 51 Cri L Jour 1345.

(31) Complaint given to a village Magistrate sent by him to the Sub-Inspector of Police in the usual course. If the information is false, a complaint of an offence under Section 182, Penal Code, by the Sub-Inspector of Police is valid under this section. AIR 1942 Mad 513 (514) = 43 Cri L Jour 574.

(32) In considering whether a complaint is to be made or not by a public servant under this section, it is desirable that the public servant has regard to the interests of public justice rather than to the gratification of private spite. AIR 1937 Pat 31 (33) = 38 Cri L Jour 292.

(33) Where an order under Section 144 of the Code passed by a First Class Magistrate while in charge of the file of a Sub-Divisional Magistrate is disobeyed, a complaint filed by the First Class Magistrate who would be the public servant concerned, under Section 195 (1) (a) in respect of an offence under Section 188, Penal Code would be perfectly valid although on the date he makes the complaint he is not functioning as a Sub-Divisional Magistrate. AIR 1956 Cal 102 (103) = 1956 Cri L Jour 515.

Public servant, meaning of. — (34) The following persons have been held to be public servants—

(a) A peon of a Court of Justice whose duty is to execute any judicial process. AIR 1942 Cal 434 (435) = 43 Cri L Jour 410 (DB) °° 1966 All LJ 1105 = 1967 All Cri R 66 = 1967 All WR (HC) 48.

(b) The Collector acting in management of a khas mahal and a surveyor employed by him in such department. ILR (1898) 26 Cal 158 (160) (DB).

(c) A municipal sanitary inspector. ILR (1898) 21 Mad 428 (429) (DB).

(d) Municipal tax collector. 1961 (2) Cri LJ 564 (566) (Tripura).

(35) The following persons have been held not to be public servants—

(a) A person nominated by the Collector under Section 69 of the Bengal Tenancy Act for making a division of the crops between the landlord and the tenant. ILR (1891) 18 Cal 518 (519) (DB).

(b) A Local Board sircar. (1907) 6 Cri L Jour 393 (394) (DB) (Cal).

(c) A municipal water-tax collector. (1904) 1 All L Jour (Jour) 125 (125).

(36) District Judge to whom false information is given in respect of an insolvency proceeding pending before him can make a complaint in his capacity as a public servant. AIR 1914 All 397 (398) = 15 Cri L Jour 360 (DB).

(37) Public servant, though he is the presiding officer of a Court, does not exercise any quasi-judicial function but acts only as an ordinary public servant. AIR 1927 Oudh 326 (327) = 28 Cri L Jour 681 (DB).

[See also AIR 1919 Pat 203 (206) = 20 Cri L Jour 247.]

(38) A public servant can in that capacity complain to himself in the capacity of a Court and he can in the latter capacity take cognizance of the offence. (1950) 54 Cal WN (2 D R) 71 (83) (DB).

[See also AIR 1952 Assam 68 (68) = ILR (1951) 3 Assam 164 = 1952 Cri L Jour 641 (DB) °° AIR 1926 Cal 470 (477, 479) = 27 Cri L Jour 385 (FB).]

[But see AIR 1953 All 200 (201) = 1953 Cri L Jour 555.]

(39) Where the public servant concerned has declined to make a complaint, the public servant to whom he is subordinate cannot make a complaint under this section. (1940) 44 Cal WN 1011 (1013) (DB) °° AIR 1934 Mad 473 (474) = 35 Cri L Jour 1134.

[But see AIR 1965 Pat 154 (155) = 1965 (1) Cri LJ 464.]

4. Subordination of public servants. — (1) Subordination of one public servant to another may arise either from express enactment or from the fact that both belong

Section 195 — Note 4 (contd.)

to the same department one being superior in rank to the other. (1908) 8 Cri L Jour 400 (401) (DB) (Mad).

(2) Police-officers of the District including the District Superintendent of Police have been generally held to be subordinate to the District Magistrate. AIR 1923 All 149 (149, 150) = 24 Cri L Jour 597 (DB) °° (1904) 1 Cri L Jour 899 (899, 900) = ILR 27 All 292 °° (1910) 11 Cri L Jour 252 (253) = 1910 Pun Re (Cr) No. 6 (DB).

[See however AIR 1923 Lah 341 (342) = 24 Cri L Jour 683 °° ILR (1900) 27 Cal 452 (454) (DB).]

(3) The Registrar of the Presidency Small Cause Courts, acting under Section 35 of Act 15 of 1882, has been held to be a public servant subordinate to the Chief Judge of that Court. ILR (1903) 27 Bom 130 (134) (DB) (Bom).

(4) A bailiff executing a warrant issued by the Judge of the Court of Small Causes has been held to be subordinate to the Additional Judge of the Court to whom the proceedings had been transferred for disposal by the former. AIR 1931 Lah 530 (532) = 32 Cri L Jour 964 (DB).

(5) As to the subordination of a process server see the following cases: AIR 1926 Nag 485 (486) = 27 Cri L Jour 1010 °° AIR 1937 Pat 31 (33) = 38 Cri L Jour 292 °° AIR 1936 Pat 74 (75) = 37 Cri L Jour 104 °° AIR 1942 Cal 434 (435) = 43 Cri L Jour 410 (DB).

(6) Nazarat under charge of Nazir subject to control of Subordinate Judge and not of District Munsif — Amin executing decree of District Munsif obstructed — Complaint under Section 183, Penal Code, can be filed by Subordinate Judge and not by District Munsif as amin is not subordinate to him. AIR 1943 Mad 170 (171) = 44 Cri L Jour 326.

(7) A Commissioner appointed by the Court in a suit is a public servant subordinate to the Court appointing him. AIR 1927 Bom 647 (648) = 28 Cri L Jour 1021 (DB) °° (1949) 15 Cut L Tim 5 (7) (DB).

(8) An election returning officer is subordinate to the District Magistrate under the rules framed by the Provincial Government in the United Provinces. AIR 1929 All 931 (932) = 30 Cri L Jour 1159.

(9) A kulkarni in the Bombay State is subordinate to a Mamlatdar or Patil. (1870) 7 Bom HCR (Cr) 64 (66) (DB).

(10) A kurk-amin is subordinate to a Tahsildar. AIR 1933 Oudh 281 (282) = 34 Cri L Jour 614.

(11) A sub-deputy collector deputed by a Sub-divisional Officer to make a local inquiry into an objection as to the preparation of an electoral roll is subordinate to the latter officer. AIR 1928 Pat 56 (57, 58) = 28 Cri L Jour 872.

(12) A Sub-divisional Magistrate passing an order under Section 145 (6), Criminal P. C., has been held to be subordinate to the District Magistrate or the Additional District Magistrate who has got the powers of the District Magistrate. AIR 1951 All 828 (829) = 52 Cri L Jour 1508.

(13) An Additional Deputy Commissioner exercising powers under Section 9A of the C. P. Land Revenue Act is subordinate only to the State Government. AIR 1953 Nag 121 (121, 122) = 1953 Cri L Jour 741 (DB).

(14) Police head-constable of one police-station is not subordinate to the Sub-Inspector of Police of another police-station. AIR 1928 Pat 102 (103) = 28 Cri L Jour 902 (DB).

(15) A village Magistrate is not subordinate to a Second Class Sub-Magistrate. AIR 1924 Mad 387 (388) = 25 Cri L Jour 215 (DB) °° (1908) 8 Cri L Jour 400 (401) (DB) (Mad).

[See however (1881) 4 Mad 241 (243) (DB).]

(16) A Sub-Inspector of Police is not subordinate to a Prosecuting Inspector. AIR 1935 Nag 241 (242) = 37 Cri L Jour 180.

(17) An officer in charge of a police-station is not subordinate to a Magistrate. AIR 1951 Assam 54 (55) = ILR (1950) 2 Assam 249 = 52 Cri L Jour 394.

(18) A first class Magistrate while making a complaint under Section 188, Penal Code, in respect of disobedience of his order under Section 144 of this Code is not subordinate to the Additional District Magistrate but to the District Magistrate. AIR 1953 Mad 956 (958) = 1953 Cri L Jour 1780.

(19) When a Magistrate appointed under Sections 12, 13 and 14 and before whom the application was made for filing a complaint against members of the opposite party under Section 188 of the I. P. Code for disobedience of his own order under Section 144, Cr. P. C., refused to file such a complaint, it is only the District Magistrate to whom the Magistrate is subordinate by virtue of Section 17 (1) who is competent to file the complaint under that section. AIR 1959 Cal 450 (451) = 1959 Cri LJ 833.

5. Complaint in cases of offences mentioned in Clause (a). — (1) Complaint or information lodged with police found to be false. Before police report of investigation complaint or information repeated before Court either in form of a complaint, or in form of a petition impugning the police investigation and asking for an inquiry by Court. Prosecution under Section 182, Penal Code, should not be launched before the complaint is judicially disposed of by the Court. ILR (1883) 5 All 387 (389) °° 1928 Mad WN 673 (674) °° AIR 1932 Cal 383 (383) = 33 Cri L Jour 514 (DB).

[See also AIR 1929 Pat 92 (92) = 30 Cri L Jour 545.]

Section 195 — Note 5 (contd.)

(2) Person charged by police for offence under Section 182, Penal Code — In answer to that charge he files narazi petition impugning result of police investigation and asking for inquiry into truth of his original information to police — Where objection is taken and pressed before trial, he can be given an opportunity to prove his case — But after trial and conviction under Section 182, Penal Code, the trial will not be considered to be vitiated on ground of failure to give such an opportunity. (1938) 67 Cal L Jour 583 (586) (DB) °° AIR 1933 Cal 532 (533) = 34 Cri L Jour 1059 °° AIR 1930 Pat 505 (506) = 31 Cri L Jour 1200 °° ILR (1893) 15 All 336 (337, 338) (DB).

(3) Proceedings under Section 182, Penal Code — False allegations made before a public servant — Clause (a) of Section 195 applies. 1962 (1) Cri L Jour 627 (629) = 1961 All LJ 278 = 1961 All WR (HC) 286.

[See however AIR 1933 Cal 614 (615) = 34 Cri L Jour 1077.]

(4) A complaint under Section 182, Penal Code, should not be made in the absence of anything to show that the information given by the accused is false to his knowledge. AIR 1919 Pat 511 (514) = 20 Cri L Jour 618.

(5) Complaint by a Magistrate under Section 182 will not be bad merely because the Magistrate has not taken the deposition of the informant on oath. AIR 1936 All 469 (470) = 37 Cri L Jour 857.

(6) A complaint ought not to be made merely on basis of statements made in a petition presented to court under Sec. 144, sub-section (4), which the petitioner later on failed to substantiate or in respect of statements made in answer to questions put by the Magistrate during an examination on oath. AIR 1928 Pat 574 (577) = 29 Cri L Jour 613 °° (1910) 11 Cri L Jour 537 (537) (DB) (All).

(7) Report to Tehsildar with a view to take action — Report found false — Offence under Section 182, I. P. C., is complete even if no action is taken on report — Prosecution under Section 182 must be on complaint in writing by Tehsildar — There is an absolute bar against the Court taking seisin of the case under Section 182, I. P. C., except in the manner provided by Section 195, Cr. P. C. AIR 1962 SC 1206 (1207) = 1962 (2) Cri LJ 286 = 1962 Supp (2) SCR 812.

(8) Police finding the information lodged by A against B to be false — B filing complaint against A on allegation of giving false information to police servant with a view to make him take action against B — Complaint, held, barred by Section 195 — Penal Code (1860), Sections 211, 182. 1965 (2) Cri LJ 824 (1) (824) (All).

(9) Accused lodging a false report against the petitioner — Magistrate permitting investigation — Petitioner arrested and released on bail — Magistrate dismissing case after receiving final report — Circle Officer filing complaint against accused under Section 182, I. P. C. for lodging false report — Complaint dismissed on the ground that Magistrate took cognizance of the case and the offence could be only under Section 211, I. P. C. and there was no complaint in writing by Magistrate — Plea that complaint under Section 182, I. P. C. can be lodged irrespective of Section 211 — Plea rejected — Held that Section 182 has to be interpreted not in isolation but in association with Section 211. 1966 All Cri R 298 (300) = 1966 All WR (HC) 482.

(10) A complaint about an offence under Section 182, Penal Code, can be preferred by the successor in office of the public servant to whom the false information was given. AIR 1938 Pat 83 (88) = 39 Cri L Jour 314 (DB) °° 1962 Ker LT 493 (494) = 1962 Ker LJ 875.

(11) Assistant Sub-Inspector in charge of police station in absence of Sub-Inspector who is officer-in-charge, recording F. I. R. and investigating it — Complaint about offence under Section 182, I. P. Code filed by him is valid. ILR (1963) Cut 790 (792).

(12) A returning officer acting under Section 36 (2), Representation of the People Act, can file a complaint under Sections 181 and 182, Indian Penal Code, as provided in Section 195 (1) (a) and can also charge the accused therein with an offence under Section 193, Penal Code. AIR 1956 SC 153 (158) = (1955) 2 SCR 1013 = ILR (1956) Punj 163 = 1956 Cri L Jour 326.

(13) Section 476 does not require that a preliminary inquiry should be made before a complaint under Section 182, Penal Code is made by a public servant. AIR 1957 Cal 382 (383) = 1957 Cri L Jour 716 °° 1970 Cri LJ 425 (427) (Guj).

(14) Where false information regarding a demand of bribery made by a public servant supplied to the Chief Minister is sent for inquiry and that information is again repeated in the inquiry made by a Sub-Divisional Magistrate, the repeated information can be basis on which Sub-Divisional Magistrate can file a complaint against the informant for an offence under Section 182, Penal Code; the said Magistrate will, under Section 195, Criminal P. C., be the public servant concerned. AIR 1959 All 378 (379) = 1959 Cri L Jour 683.

(15) District Judge moved in his capacity as a public servant to whom a process-server is subordinate, to make a complaint under Section 183, Penal Code, against certain persons alleged to have offered resistance to him—In considering whether a complaint is to be made or not regard should be had to interests of public justice. AIR 1937 Pat 61 (63) = 38 Cri L Jour 292.

Section 195 — Note 5 (contd.)

(16) Where a peon of a Civil Court executing a warrant of attachment in execution of a decree is resisted and assaulted by the judgment debtor, there is a good case, prima facie, for making a complaint under Section 186, Penal Code. AIR 1942 Cal 434 (435) = 43 Cri L Jour 410 (DB).

(17) Fact that an offence under Sec. 188, has been made cognizable does not dispense with the necessity of a complaint under this section. AIR 1931 Bom 135 (137) = 32 Cri L Jour 507 (DB) °° AIR 1931 Cal 122 (127) = 32 Cri L Jour 511 (DB) °° AIR 1952 All 560 (560) = 1952 Cri L Jour 1034 °° AIR 1951 Orissa 138 (140) = ILR (1950) Cut 476 (DB) °° (1959) 25 Cut LT 528 (529) = ILR (1959) Cut 555.

(18) A prosecution under this section should not be launched unless the necessary elements prescribed for the offence are present. AIR 1953 Cal 507 (507) = 1953 Cri L Jour 1180 °° AIR 1959 Mad 89 (94) = 1959 Cri L Jour 328 °° AIR 1920 Cal 520 (521) = 21 Cri L Jour 675 (DB).

(19) Where an order under Section 144 of the Code is ultra vires, no prosecution should be launched. (1936) 37 Cri LJ 936 (937) (DB) (Cal).

(20) A Magistrate passing an order under Section 144 of this Code cannot take cognizance of an offence under S. 188, Penal Code, for disobedience of his own order. He must make a complaint under this section. AIR 1952 Assam 68 (68) = ILR (1951) 3 Assam 164 = 1952 Cri L Jour 641 (DB) °° (1936) 37 Cri L Jour 936 (937) (DB) (Cal) °° AIR 1970 Pat 102 (103).

(21) Sub-Divisional Magistrate is not competent to take cognizance of the offence if it has been committed in and in relation to a proceeding in his own Court and if he is of opinion that the petitioner should be prosecuted, he should have filed a complaint for that offence before a Court of competent jurisdiction. 1964 BLJR 350 (350).

(22) Where an order under Section 144, Criminal P. C., passed by the Sub-divisional Magistrate is infringed, it is the Sub-divisional Magistrate who can file a complaint upon which cognizance can be taken under Section 195 (1) (a). 1964 BLJR 506 (507).

(23) Notification issued by Home Minister to the Government — Court could not take cognizance of offence under S. 188, Penal Code, for contravention of notification as there was no complaint by the Home Secretary to the Government. AIR 1950 Madh B 58 (59) = 51 Cri L Jour 1345.

(24) A well-known solicitor on being called upon to appear before a Commissioner, believed that he was required only for the production of certain document and he sent a letter to the Commissioner that he could not produce the document as it was privileged. It was held that a prosecution of the solicitor under Section 174, Penal Code, was not justified. AIR 1918 Cal 240 (241) (DB).

(25) Where in disobedience of an order under Section 145, Criminal P. C., the accused trespasses into the field of the complainant and commits the offences under Ss. 188, 447, Penal Code, the offences under Sections 188 and 447 cannot be tried except upon a complaint of the Magistrate, who had passed an order under Section 145, Criminal P. C., or his superior. AIR 1958 Andh-Pra 718 (719, 720) = 1958 Cri L Jour 1378.

(26) Village karnam under suspension refusing to hand over record to his successor as per orders of Revenue Divisional Officer —Prosecution of, under Section 175, I. P C. — Karnam subordinate to Tahsildar — Complaint by Tahsildar held sufficient. 1968 Cri LJ 417 (418) = (1967) MLJ (Cr) 437 = 1967 Mad LW (Cr) 57.

(27) District Magistrate appointed Commissioner of Inquiry under Commission of Inquiry Act, 1952 — Commissioner is competent to prefer complaint. AIR 1960 Ker 350 (350) = 1960 Cri LJ 1466 = 1960 Ker LT 588.

(28) Offence under Section 188, Penal Code — Complaint filed by personal assistant to public servant concerned is not valid complaint under section — Magistrate gets no jurisdiction to take cognizance. AIR 1964 Madh Pra 237 (238) = 1964 (2) Cri LJ 420 = 1964 MPLJ 383.

(29) Information addressed to Sub-Inspector of Police — Case against informant under Section 182, Penal Code, started on petition of complaint submitted by Asst. Sub-Inspector, who held inferior rank to that of Sub-Inspector — Complaint is directly in conflict with Section 195 (1) (a) and prosecution is illegal. 1963 BLJR 471 (472). **(AIR 1962 SC 1206, Foll.)**

(30) Obstruction to police constable in discharge of official duties — Charge sheet for offence under Section 186 not signed by the constable but signed by police Sub-Inspector not in capacity as superior of constable — Magistrate not entitled to take cognizance even though charge relates to non-cognizable offence. 1969 Cri LJ 1459 (1460) = (1969) 2 Mys LJ 608.

(31) Application under Section 476 (1) alleging commission of offence under Section 409, I. P. C. in proceedings before Court — Facts disclosing offence under Section 187, I. P. C. — Application not affected by mention of wrong section — Section 476 does not apply to the case. AIR 1965 Orissa 180 (182) = 1965 (2) Cr LJ 525 = 31 Cut LT 1036.

(32) Complaint of offence made to police — Police finding complaint to be false — Complainant filing complaint before Magistrate on same facts — Thereafter, Police lodging complaint under Section 182, Penal

Section 195 — Note 5 (contd.)

Code — Police cannot do so after the complainant had filed his complaint on the same facts and allegations and proceedings started against complainant deserve to be quashed. AIR 1962 Raj 149 (152) = 1962 (1) Cri LJ 760 = 1961 Raj LW 534.

6. "Any proceeding". — Clauses (b) and (c). — (1) Both under this section and Section 476, the complaint can only be by a Court when the offence is committed in, or in relation to, any proceeding before such Court. AIR 1940 Sind 100 (101) = 41 Cri L Jour 861 (DB) °° AIR 1935 All 341 (341) = 36 Cri L Jour 1505 (DB) °° AIR 1925 Pat 330 (333) = 26 Cri L Jour 170 (DB).

(2) An officer who has been appointed as a Court and has also an executive capacity, and acts in his executive capacity is not a "Court" at all. AIR 1938 Sind 213 (215) = 40 Cri L Jour 12 (DB).

(3) Section 195 (1) (b) does not require that the proceeding must be one from which it can be found out whether an offence has been committed or not or that it must be such as to give material to the Court for deciding whether to make a complaint or not. (1963) 2 Cri LJ 64 (65) = 1963 All LJ 334.

(4) The word "proceeding" in Sec. 195 (1) (b) is used in a wider sense than "judicial proceeding." (1963) 2 Cri LJ 64 (65) = 1963 All LJ 334 °° AIR 1965 Tripura 13 (13, 14) = 1965 (1) Cri LJ 344.

(5) One of the conditions necessary for attracting the bar created by Section 195 (1) (c), is that the offence specified therein must be alleged to have been committed by a party to any proceeding in any Court. AIR 1965 Guj 70 (75, 76) = 1965 (1) Cri LJ 428 = (1964) 5 Guj LR 229 (DB) °° **AIR 1967 SC 528 (533) = 1967 Cri LJ 528 = (1967) 1 SCR 520.**

(6) Cr. P. Code (1898), Sections 496 and 195 (1) (b) and (c) — 'In or in relation to a proceeding in that Court' — Section 476 is attracted only if offences mentioned in Section 195 (1) (b) or (c) committed in or in relation to a proceeding in a Court — Matter pending police investigation is not proceeding pending in Court and hence Section 195 (1) is not attracted to prosecute an informant under Sec. 211 I. P. C. when a false charge has been made by him only to the police. (Penal Code (1860), Secs. 211 and 295). 1968 Cri LJ 1534 (1536) (Cal).

(7) The following have been held to be proceedings in Court within the meaning of this section and of Section 476.

(a) Proceedings in execution of a decree. (1910) 11 Cri L Jour 407 (410) = 87 Cal 642 (SB) °° (1910) 11 Cri L Jour 90 (94) = 1910 Pun Re (Cr) No. 1 (DB) °° (1913) 14 Cri L Jour 624 (624) (DB) (Mad) °° AIR 1917 Pat 101 (102) = 19 Cri L Jour 153 (DB).

[See however (1905) 2 Cri L Jour 110 (112, 115) = ILR 32 Cal 367 (SB).]

(b) Proceedings under Section 83 of the Transfer of Property Act, 1882. AIR 1925 Pat 330 (333) = 26 Cri L Jour 170 (DB) °° AIR 1947 Pat 37 (39) = ILR 25 Pat 385 = 48 Cri L Jour 203 (DB).

[See however 1895 All WN 145 (146, 147).]

(c) Proceedings before an arbitrator appointed in a pending suit. AIR 1931 Cal 436 (437) = 32 Cri L Jour 826.

(d) Proceedings directing the return of the plaint for presentation to the proper Court. AIR 1929 Cal 203 (204) = 30 Cri L Jour 656 (DB).

(e) Proceedings before a Magistrate acting under Section 350 of the Code. AIR 1917 Cal 310 (311) = 18 Cri L Jour 10 (DB).

(f) Proceedings before a Sessions Judge making an inquiry into the conduct of the jury during the progress of a trial upon certain allegations made against the jury. AIR 1927 Cal 628 (629) = 28 Cri L Jour 783 (DB)

(g) Proceedings of a liquidator appointed by Court in proceedings for the winding up of a company. AIR 1939 Bom 129 (137) = 40 Cri L Jour 579 (DB).

(h) A proceeding held by a Magistrate on receipt of an investigating officer's report made under Section 167 (1), Cr. P. C. is a proceeding within the meaning of Section 195 (1) (b). (1963) 2 Cri LJ 64 (64) = 1963 All LJ 334 °° AIR 1969 Andh Pra 281 (290) = 1969 Cri LJ 1025 = (1968) 2 Andh WR 122 (DB).

(i) Proceedings before Income-tax Officer under Section 37 (4) of Income-tax Act. **AIR 1964 SC 1154 (1159, 1160) = 1964 (2) Cri LJ 249 = (1964) 6 SCR 700.**

(j) Proceedings before an Income-tax Officer under Section 26-A of the Income-tax Act. (1968) 1 SCWR 320 (326).

(8) Where there are no proceedings in Court, the provisions of clauses (b) and (c) do not apply. AIR 1951 Assam 54 (55) = ILR (1950) 2 Assam 249 = 52 Cri L Jour 394 °° AIR 1959 All 14 (15) = 1959 Cri L Jour 2 °° ILR (1899) 26 Cal 786 (790) (DB) °° AIR 1917 Lah 267 (268) = 18 Cri L Jour 893 (DB) °° AIR 1928 Bom 130 (133) = 29 Cri L Jour 403 (DB) °° **AIR 1967 SC 528 (538, 540) = 1967 Cri LJ 528 = (1967) 1 SCR 520.** (AIR 1927 Sind 10, **Overruled on another point.**)

(9) Where a charge is made to the police and the latter, finding it to be false, report it to the Sub-Divisional Magistrate for "B" summary which is given, the

Section 195 — Note 6 (contd.)
giving of such "B" summary is not a proceeding in the Court of the Sub-Divisional Officer. AIR 1938 Sind 213 (215) = 40 Cri L Jour 12 (DB).

(10) Share-holder of a Company filing a criminal complaint for misfeasance and malfeasance against its directors that they had swindled the company by assigning debts for large amounts for very much lesser amounts, pending suits for the recovery of debts by assignees. Complaint by Civil Court is not necessary. (1952) 2 Mad L Jour 706 (707).

(11) Where the offence is committed in a proceeding in Court, the fact that it is brought to the notice of the Court in a subsequent stage of the proceeding does not affect the applicability of the clause to the offence. AIR 1924 Mad 86 (86) = 25 Cri L Jour 731 °° AIR 1933 All 318 (320) = 34 Cri L Jour 686.

(12) Where the offence is committed in a proceeding in Court, it is not necessary that the Court should have tried the proceedings on the merits. AIR 1927 All 555 (557) = 28 Cri L Jour 549. (Decree on basis of statement of referee.) °° (1911) 12 Cri L Jour 93 (94) = 33 All 396 (DB). (Decree on award.)

(13) A proceeding before the Official Assignee for a composition or scheme is one in relation to the original insolvency proceeding which is a proceeding in a Court. AIR 1942 Cal 79 (82) = 43 Cri L Jour 402 (DB).

(14) Gram Kutchery having no jurisdiction to try offence under Section 228, I. P. C., committed by a party by offering insult to its members — Proper procedure which should be followed by the Gram Kutchery is to make a complaint as provided by Section 195 (1) (b) and Section 476. AIR 1958 Pat 94 (95) = 1958 Cri L Jour 209.

7. "In relation to any proceeding." — (1) The crucial date for the purpose of determining the applicability of clause (b) is not the date of the commission of the offence mentioned in the clause, but the date on which the Criminal Court is invited to take cognizance of the offence. AIR 1946 Bom 7 (9) = ILR (1945) Bom 1056 = 47 Cri L Jour 321 (DB) °° ILR (1958) Andh Pra 917 (923) °° AIR 1954 Mad 822 (824) = 1954 Cri L Jour 1283 °° AIR 1939 Bom 129 (137) = 40 Cri L Jour 579 (DB) °° AIR 1932 Bom 185 (186, 187) = 33 Cri L Jour 386 (DB) °° AIR 1969 Andh Pra 281 (291) = 1969 Cri LJ 1025 = 1968-2 Andh WR 122 (DB) °° AIR 1967 SC 528 (533) = 1967 Cri LJ 528 = (1967) 1 SCR 520.

[But see AIR 1921 Bom 366 (366) = 22 Cri L Jour 49 (DB) °° AIR 1930 Bom 337 (339) = 32 Cri L Jour 391 (DB).]

(2) Where A files a complaint before a Magistrate alleging that B has fabricated false accounts for the purpose of filing false suits in Court but no suits are actually filed on the date of the complaint this section does not apply. AIR 1943 Nag 327 (328) = 45 Cri L Jour 175 °° AIR 1916 Mad 72 (73, 75) = 16 Cri L Jour 721 (DB).

[But see (1902) 5 Oudh Cas 46 (47, 48).]

(3) Where on the date when the Criminal Court takes cognizance of a complaint, proceedings with reference to which the offence has been committed, have already been started in another Court, then cl. (b) applies and the complaint of the latter Court is necessary although the proceedings in Court are subsequent to the commission of the offence. AIR 1943 Nag 327 (328) = 45 Cri L Jour 175 °° AIR 1940 Sind 209 (210) = 42 Cri L Jour 141 (DB) °° AIR 1939 Bom 129 (137) = 40 Cri L Jour 579 (DB) °° 1937 Mad WN 870 (871).

(4) The words "in relation to" do not mean that the offence must have been committed after the proceeding had started. 1963 (2) Cri LJ 64 (65) = 1963 All WR (HC) 270 (DB) °° AIR 1966 All 124 (127) = 1966 Cri LJ 244 = 1965 All WR (HC) 82 °° AIR 1965 Tripura 13 (13, 14) = 1965 (1) Cri LJ 344 °° 1963 (2) Cri LJ 64 (65, 66) = 1963 All WR (HC) 270 (DB) (All).

(5) Where a witness in his evidence before the Civil Court admitted to have fabricated false evidence, the complaint by the Civil Court for prosecution under Section 193, Penal Code, was held necessary. AIR 1951 Ajmer 53 (53).

(6) The mere fact that the proceedings in the Court are withdrawn by the parties without being heard by the Court is no ground for holding that the clause does not apply. AIR 1932 Bom 185 (186, 187) = 33 Cri L Jour 386 (DB).

[See also (1913) 14 Cri L Jour 289 (290) (DB) (Cal).]

(7) Where a complaint is made to the police who put up the accused before the Court, the mere fact that the accused has been discharged does not make the offence of laying a false charge one not committed in relation to a proceeding in Court. AIR 1945 Mad 461 (462) = ILR (1946) Mad 301.

(8) Where a person charges another before the police accusing him of theft and the police put up the accused for trial before the Court of Session which tries and finds the case to be false, a subsequent complaint under Section 211, Penal Code, cannot be entertained unless it is by the Court of Session or by the Court to which it is subordinate. AIR 1927 Cal 478 (478, 479) = 28 Cri L Jour 324 (DB) °° AIR 1924 Rang 211 (211) = 26 Cri L Jour 383.

(9) A statement recorded under Sec. 164 of the Code, or a statement made in the inquiry before a committing Magistrate is a statement made in relation to the trial before another Magistrate or in the Court

Section 195 — Note 7 (contd.)

of Session, and, therefore, it is that Court that is competent to make a complaint for perjury. AIR 1934 Lah 981 (982) = 36 Cri L Jour 402 °° AIR 1933 Mad 767 (768) = 35 Cri L Jour 503 (DB) °° AIR 1932 Mad 494 (494, 495) = 33 Cri L Jour 519 (DB) °° AIR 1931 Mad 778 (779) = 33 Cri L Jour 48 °° AIR 1918 Mad 1200 (1201) = 18 Cri L Jour 143 (DB).

(10) It is indispensable under clause (b) that the offence must have in some manner affected the proceedings in Court or designed to affect them or come to light in the course of such proceedings. AIR 1932 Mad 290 (291) = 33 Cri L Jour 788.

(11) Where a judgment-debtor's application for certifying a certain payment alleged to be made to the decree-holder but not admitted by the latter in his petition for execution is dismissed as time-barred, the executing Court has no jurisdiction to take notice of a receipt produced by the judgment-debtor subsequent to the dismissal of the application and order a prosecution under Sections 209 and 210, Penal Code. AIR 1931 Lah 105 (106) = 32 Cri L Jour 647.

(12) Where after a pauper application has been dismissed by a Subordinate Judge, the applicant makes a false charge to the District Judge that the Subordinate Judge has committed an offence under Section 196, Penal Code, by relying on false evidence knowing it to be false while disposing of the pauper application, the false charge is not made in relation to any proceeding before the Subordinate Judge. AIR 1938 Pat 83 (89) = 39 Cri L Jour 314 (DB).

(13) Where in a trial in a Court of Session, a document is exhibited on behalf of the defence but the executant of the document is neither a party nor a witness in the case, nor is there anything to suggest that he intended to use that document in Court, it has been held that the section does not apply and the Court cannot order his prosecution for perjury or forgery. AIR 1924 Cal 986 (987) = 25 Cri L Jour 1095 (DB).

(14) An offence committed in the trial Court is committed in relation to the proceeding of the appellate Court. AIR 1931 All 706 (707) = 33 Cri L Jour 285 (DB) °° (1913) 14 Cri L Jour 32 (32) (DB) (Cal) °° AIR 1916 Pat 97 (98) = 18 Cri L Jour 135 (DB).

[See however AIR 1919 Mad 1132 (1134) = 19 Cri L Jour 483 (DB).]

8. Offence under Section 211, Penal Code, when committed in relation to a proceeding in Court. — (1) Section 195 (1) (b) applies only where the offence under Section 211, I. P. C., is committed in or in relation to a proceeding in Court. AIR 1939 Rang 148 (148) = 40 Cri L Jour 432 °° AIR 1941 Cal 263 (264) = 42 Cri L Jour 626 (DB) °° AIR 1939 Sind 65 (65, 66) = 40 Cri L Jour 461 (DB).

(2) Question about legality of cognizance — Section 195 (1) (b) contemplates only the proceeding pending or concluded and not one in contemplation. AIR 1967 SC 528 (533, 534, 538) = 1967 Cri LJ 528 = (1967) 1 SCR 520. (AIR 1927 Sind 10 Overruled.)

(3) Section 195 (1) (b) bars taking of cognizance if the following circumstances exist: (1) that the offence in respect of which the case is brought falls under Section 211, I. P. C. (2) that there should be a proceeding in any court; (3) that the allegation should be that the offence under Section 211 was committed in or in relation to such a proceeding. AIR 1967 SC 528 (532) = 1967 Cri LJ 528 = (1967) 1 SCR 520.

(4) Section 195 (1) (b) does not require that the proceeding in any Court must actually be pending at the time where the question of applying this bar arises. AIR 1967 SC 528 (533) = 1967 Cri LJ 528 = (1967) 1 SCR 520.

(5) It is no doubt anomalous that although for a prosecution for an offence under Section 182 for giving false information to a police officer a complaint by that officer or his superior is enjoined by Section 195 (1) (a) no complaint by the authority concerned is enjoined by the section if the false information amounts to a graver offence punishable under Sec. 211, I. P. C. AIR 1966 Ker 242 (243) = 1966 Cri LJ 1166. (AIR 1946 Bom 7 and AIR 1952 Sau 67, Diss.)

(6) In a case when there is no proceeding pending in any Court at all at the time when the applicability of Sec. 195 (1) (b) has to be determined, nor has there been any earlier proceeding which may have been concluded the provisions of Sec. 195 (1) (b) would not be attracted and a Magistrate would be competent to take cognizance of the offence under Sec. 211 if his jurisdiction is invoked in the manner laid down in Section 190. AIR 1967 SC 528 (533, 537) = 1967 Cri LJ 528 = (1967) 1 SCR 520.

(7) Where there is only a charge or complaint to the police but there are no further proceedings in Court, then cl. (b) does not apply. AIR 1941 Mad 579 (580) = 42 Cri L Jour 640 °° AIR 1930 All 818 (819) = 32 Cri L Jour 314 °° AIR 1928 Nag 17 (19) = 28 Cri L Jour 934 °° AIR 1934 Rang 40 (41) = 35 Cri L Jour 802 °° AIR 1930 Pat 98 (102) = 30 Cri L Jour 710.

(7A) Proceedings under Section 211, Penal Code can be started only on complaint of Magistrate concerned. (1965) All WR (HC) 282 (285).

Section 195 — Note 8 (contd.)

(8) The fact that subsequent to the institution of the prosecution by the police, the accused repeats his charge made in a statement to the police before a Magistrate, cannot make the provisions of this section applicable so as to require the complaint of the Magistrate. AIR 1939 Cal 273 (273) = 40 Cri L Jour 785 (DB) °° AIR 1928 Bom 22 (23) = 29 Cri L Jour 225 (DB) °° AIR 1934 Pat 573 (574) = 36 Cri L Jour 200 (DB) °° AIR 1934 Rang 21 (23) = 35 Cri L Jour 1259.

[But see AIR 1927 Cal 95 (96) = 28 Cri L Jour 86 (DB).]

(9) Where a person charges several persons before the police, but the police put up for trial before the Court only some of them, the complaint of the Court is not necessary for prosecuting the complainant under Section 211, Penal Code, in respect of the other persons not sent up for trial. AIR 1924 All 779 (780) = 25 Cri L Jour 1239 (DB) °° AIR 1932 Mad 363 (368) = 33 Cri L Jour 479 (FB) °° AIR 1928 Lah 259 (262) = 29 Cri L Jour 605 (DB).

[But see (1912) 13 Cri L Jour 702 (703) = 34 All 522 (DB).]

(10) Where a person makes a false report of dacoity to the police but the police instead of proceeding on this report prosecute certain persons under Section 324, Penal Code and this charge also fails there is no objection to the informer being prosecuted under Section 182, Penal Code, on a complaint by the police. AIR 1930 Oudh 414 (415).

(11) Where a complaint preferred to the police is investigated and brought to the notice of the Magistrate by the police who report it to be false under Section 173 of the Code, clause (b) does not apply. AIR 1939 Sind 65 (65) = 40 Cri L Jour 461 (DB) °° AIR 1948 Nag 244 (244) = 49 Cri L Jour 326 = ILR (1948) Nag 381 °° AIR 1934 Mad 175 (176) = 35 Cri L Jour 698 (DB) °° AIR 1966 Ker 242 (242) = 1966 Cri LJ 1136. (AIR 1941 Bom 294 and AIR 1946 Bom 7 and AIR 1952 Sau 67, Dissented from.) °° 1962 Raj LW 271 (274) = ILR (1962) 12 Raj 254.

(12) Information of dacoity given to the police — Investigation by police — Report by police under Sections 157 and 173, Cr. P. C. to the Magistrate — In respect of neither can it be said that the informant instituted or caused to be instituted any criminal proceeding against any person in Court or in relation to a proceeding in Court or that he charged any person with having committed an offence so as to attract Section 195 (1) (b) in respect of his prosecution for an offence under Sec. 211, I. P. C. His prosecution by the Magistrate for an offence under Section 211 is therefore not barred by Section 195 (1) (b). AIR 1966 Ker 242 (242) = 1966 Cri LJ 1136. (AIR 1941 Bom 294, Dissented.)

(13) False information to Police — Case cancelled on final report from police — Magistrate in accepting such report does not act as Court — Prosecution of informant under Section 211, Penal Code, is not in relation to proceedings before Court — Complaint of Court is not necessary. AIR 1961 Raj 231 (233) = 1961 (2) Cri LJ 691 = 1961 Raj LW 6.

(14) Until some occasion arises for a Magistrate to make a judicial order in connection with an investigation of a cognizable offence by the police, no question can arise for the Magistrate having the power of filing a complaint under Section 195 (1) (b). **AIR 1967 SC 528 (539) = 1967 Cri LJ 528 = (1967) 1 SCR 520.**

(15) In dealing with the question whether a Magistrate is competent to take cognizance of a private complaint under S. 211, I. P. C. the legality of the cognizance taken has to be judged with reference to the time where cognizance is actually taken under Section 190, Cr. P. C. **AIR 1967 SC 528 (531) = 1967 Cri LJ 528 = (1967) 1 SCR 520.**

(16) Police finding on investigation that an information or complaint made to them is false and bringing it to notice of Magistrate, who thereupon orders the police to stop further investigation, or to remove the case from file, or makes an enquiry into the truth of the police-report either himself or through another Magistrate. (1912) 13 Cri L Jour 480 (480) (DB) (Mad) °° (1912) 13 Cri L Jour 904 (905) (DB) (Bom) °° AIR 1916 Cal 593 (594) = 18 Cri L Jour 13 (DB) °° AIR 1924 Pat 789 (790) = 25 Cri L Jour 670.

[But see AIR 1936 Lah 238 (238) = 37 Cri L Jour 426 °° AIR 1952 Sau 67 (68) = 1952 Cri L Jour 1084 (DB) °° AIR 1946 Bom 7 (11) = ILR (1945) Bom 1056 = 47 Cri L Jour 321 (DB).]

(17) Where an accused person was arrested by the police on a charge of cheating and subsequently, after investigation, the police reported the case to be false and asked the Magistrate to discharge the accused and the Magistrate discharged the accused, it was held that the Magistrate's order was a judicial order and the Magistrate's complaint was necessary for the prosecution of the informant under Section 211, Penal Code. AIR 1941 Bom 294 (296) = 42 Cri L Jour 814 (DB). (Dissented in AIR 1966 Ker 242 on another point.)

(18) Police had started proceedings before Magistrate on basis of first information report and Magistrate in his turn committed the case for trial to Sessions Judge. The trial ended in acquittal. Sessions Judge held was not competent to make a complaint under Section 211, Penal Code, in respect of the offence relating to the first information report. AIR 1949 Dacca 5 (6) = 50 Cri L Jour 769 (DB).

Section 195 — Note 8 (contd.)

(19) If Magistrate takes cognizance of offence upon a police report he should not order prosecution of complainant under Section 211, Penal Code, without giving him an opportunity to substantiate charge. But an objection on ground of failure to give such an opportunity should be taken before trial; after trial, conviction will not be considered to be vitiated on that ground. AIR 1925 Pat 708 (710) = 26 Cri L Jour 893 (DB) °° AIR 1929 Pat 650 (651) = 30 Cri L Jour 1144 (DB) °° AIR 1930 Pat 622 (623) = 31 Cri L Jour 934 (DB) °° AIR 1934 Rang 21 (23, 24) = 35 Cri L Jour 1259.

(20) Where the Magistrate had already taken cognizance of the complaint under Section 211, Penal Code, and after that stage if the accused moves the Court in a revision petition for enquiring into the truth of his complaint, there will be no question of the former complaint being hit by Section 195 (1) (b), and no sanction of that Court which has taken cognizance of the revision petition will be necessary to validate the further proceedings under the earlier complaint. (1964) 2 Mad LJ 471 (473) = 1964 Mad WN 296.

(21) Once a complaint filed by the informant which is based on the same facts and allegations on which the first information was registered, is being proceeded with, it is not open to any Magistrate to take cognizance of any offence alleged to have been committed under Section 211, Penal Code unless there has been proper compliance with the provisions of Section 195 (1) (b) AIR 1969 SC 355 (359) = 1969 Cri LJ 645. (AIR 1928 All 765, Overruled.) °° AIR 1960 Raj 168 (168, 169) = 1960 Cri LJ 995 = ILR (1960) 10 Raj 277 °° AIR 1946 Bom 7 (10) = ILR (1945) Bom 1056 = 47 Cri L Jour 321 (DB) °° AIR 1939 Nag 226 (227) = 40 Cri L Jour 638 °° AIR 1917 Cal 593 (594) = 18 Cri L Jour 13 (DB) °° AIR 1927 Mad 851 (852) = 28 Cri L Jour 849 °° AIR 1925 Pat 483 (484) = 26 Cri L Jour 889 (DB).

[See however (1912) 13 Cri L Jour 576 (577) = 1 Upp Bur Rul 134 °° AIR 1916 Cal 86 (869) = 17 Cri L Jour 146 (DB).]

(22) On a parity of reasoning with regard to an offence under Section 211, no cognizance can be taken by the Magistrate for the alleged offence under Section 193, Penal Code which is one of the sections mentioned in Section 195 (1) (b). AIR 1969 SC 355 = 1969 Cri LJ 645 = (1969) 1 SCJ 383.

(23) The repetition of complaint to Court may be in the form of an original complaint or in the shape of a petition impugning result of police investigation and asking for an enquiry, which in law amounts to a complaint. In either case clause (b) applies and a prosecution under Sec. 211 cannot be instituted without the complaint of the Court. AIR 1939 Nag 226 (227) = 40 Cri L Jour 638 °° AIR 1957 Cal 251 (251, 252) = 1957 Cri L Jour 505 °° AIR 1947 Cal 439 (440) °° AIR 1932 Pat 152 (154) = 33 Cri L Jour 153 (DB).

(24) Complaint made to police by a certain person repeated in Court by some other person — Person making report to police can be regarded as having committed an offence in relation to a proceeding in Court. AIR 1940 Sind 209 (211) = 42 Cri L Jour 141 (DB).

(25) No complaint should be made without disposing of complaint of person charged, in accordance with law, and giving him an opportunity to substantiate the complaint. AIR 1932 Cal 383 (383) = 33 Cri L Jour 514 (DB) °° ILR (1887) 14 Cal 707 (711, 712, 716, 717, 720) (FB) °° AIR 1919 Pat 530 (531) = 20 Cri L Jour 389 °° AIR 1932 Cal 287 (288) = 33 Cri L Jour 406 (DB).

(26) Where a complaint made to police is repeated before Court, there is no bar to a prosecution for giving false information to the police under Section 182, Penal Code, or for laying a false charge before the police. AIR 1924 All 187 (187) = 25 Cri L Jour 729 °° AIR 1956 Hyd 25 (25) = ILR (1955) Hyd 842 = 1956 Cri L Jour 215 °° AIR 1954 Mad 561 (562) = 1954 Cri L Jour 799 °° AIR 1928 All 765 (766) = 29 Cri L Jour 938 °° AIR 1924 All 779 (780, 781) = 25 Cri L Jour 1239 (DB). (AIR 1941 Lah 216. (42 Cri L Jour 667, Dissented from.) °° (1912) 13 Cri L Jour 578 (579) (FB) (Low Bur).

[See however the following cases holding that prosecution should be for graver offence under Section 211 in such cases. AIR 1931 Mad 702 (703, 704) = 32 Cri L Jour 1215 (DB) °° AIR 1946 Bom 7 (12) = ILR (1945) Bom 1056 = 47 Cri L Jour 321 (DB) °° (1913) 14 Cri L Jour 491 (492, 493) (DB) (Bom) °° AIR 1939 Nag 226 (227) = 40 Cri L Jour 638 °° AIR 1952 Sau 67 = 5 Sau LR 56 = 1952 Cri L Jour 1084 (DB).]

(27) Where before the complaint is repeated to a Magistrate, police have already launched a prosecution under Section 182, Penal Code, the prosecution need not be quashed merely because the complaint is afterwards repeated to the Court and an offence under Section 211, is thereby committed. AIR 1943 Lah 31 (33) = 44 Cri L Jour 305 (DB) °° AIR 1956 Hyd 25 (25) = ILR (1955) Hyd 842 = 1956 Cri L Jour 215.

(28) Where a complaint is made to the Court, clause (b) applies although the complaint is subsequently investigated by the police. AIR 1926 All 613 (614) = 27 Cri L Jour 1014.

(29) Where there is a complaint preferred to the Court, an order for prosecution

Section 195 — Note 8 (contd.)
under Section 211, Penal Code, should not be passed without disposing of the complaint in accordance with law. AIR 1937 Sind 209 (210, 211) = 38 Cri L Jour 951 (DB) °° (1912) 13 Cri L Jour 482 (483) = ILR 40 Cal 41 (DB) °° AIR 1926 Bom 284 (285, 286) = 27 Cri L Jour 740 (DB) °° AIR 1919 Pat 495 (495) = 20 Cri L Jour 396 (DB).

(30) Where a Magistrate dismissed the complaint without examining the complainant and then ordered his prosecution for making a false complaint, it was held that the order for prosecution was illegal. AIR 1934 Bom 321 (321) = 25 Cri L Jour 960 (DB) °° ILR (1882) 8 Cal 435 (438) (DB) °° (1911) 12 Cri L Jour 539 (541) = 1912 Pun Re (Cr) No. 2 °° AIR 1924 Nag 115 (115) = 24 Cri L Jour 959 °° AIR 1926 Pat 400 (400) = 27 Cri L Jour 704 (DB).

(31) The Court should not dismiss complaint merely on basis of police-report of investigation without giving complainant an opportunity to substantiate his complaint. (1901) 5 Cal WN 106 (107, 108) °° AIR 1920 All 125 (125) = 21 Cri L Jour 416 °° (1887) 10 Mad 232 (235, 236) (FB) °° AIR 1927 Pat 402 (403) = 28 Cri L Jour 639 °° AIR 1927 Cal 175 (176) = 28 Cri L Jour 152 (DB).

(32) Court is not bound to examine all witnesses of complainant; it is competent to dismiss complaint under Section 203. AIR 1930 Cal 515 (518) = 31 Cri L Jour 1055 (DB) °° AIR 1915 Mad 229 (230, 233) = 15 Cri L Jour 271 (DB) °° AIR 1919 Pat 530 (531) = 20 Cri L Jour 389.

(33) Where a petition containing allegations against a Subordinate Judge is sent to the Governor through the District Court and the District Judge, in view of the petition being addressed to the Governor, only deals with it as an administrative matter, the allegation, if it is false, does not constitute an offence committed in or in relation to a proceeding in a Court. AIR 1938 Pat 83 (89) = 39 Cri L Jour 814 (DB).

9. Prosecution for giving or fabricating false evidence. — (1) Application to Court for prosecution of a person for giving false evidence in such Court based on fact that statement made in Court is contradicted by a letter written by the person's pleader, Court is entitled to call for the letter to see whether it contradicts the statement made in the Court. AIR 1938 Cal 677 (679) = 40 Cri L Jour 450. (Observations of Coutts Trotter, J., in AIR 1923 Mad 136 = 24 Cri L Jour 340 (FB), **Dissented from.**)

(2) For the applicability of this section to the offence of fabricating false evidence, it is necessary that the evidence must have been fabricated for the purpose of a proceeding in Court. AIR 1938 Cal 677 (680) = 40 Cri L Jour 450.

(3) Expert examined in sessions trial — His credentials challenged — Expert filing diploma in Court as asked by Court — **Held,** conduct of expert did not come within Sections 465/471, Penal Code but within Sections 193/196, Penal Code — Complaint in writing by Court was necessary for his prosecution. AIR 1966 SC 523 (529) = 1966 Cri LJ 459 = (1966) 1 SCR 493. (Decision of Allahabad High Court in Cri. Revn. No. 260 of 1963, D/- 12-2-1965, **Reversed.**)

(4) K purchasing certain Bhumidari lands. After purchase by K, H, in conspiracy with M, Ahlmad of Court of Tahsildar, getting false entry to be made so that his application filed on a later date may be taken to have been filed earlier. K's private complaint against H and M is incompetent. Alleged offence committed by M being one clearly in or in relation to a proceeding in Court falls under Sec. 193, Penal Code and in view of Section 195 (1) (b), such a case could be instituted only by the Court in which or in relation to which the offence was committed. AIR 1968 SC 19 (21) = 1968 Cri LJ 86 = (1967) 2 SCR 828.

(5) False entries in the khasra cannot be said to be in or in relation to Court and does not fall under Section 193 but falls under Section 218, I. P. C. and hence there can be a private complaint in respect of such an offence. (1968) 1 Andh WR 1 (1) = ILR (1969) Andh Pra 736.

(6) Section 479-A (6), prohibits the taking of proceedings under Sections 476 to 479, in those cases only where a person is to be prosecuted for giving or fabricating false evidence and not in other cases mentioned in Section 195. ILR (1962) 2 Punj 504 (507).

(7) Offence under Section 193, Penal Code — Lodging of complaint likely to cause inconvenience and harassment to respectable counsel — Party thoroughly exposed — Purpose of punishment partly served — **Held,** it was not a fit case for filing complaint. AIR 1968 All 65 (66) = 1968 Cri LJ 225 = 1967 All LJ 690.

10. Offences under clause (b) — Whether the offender should be a party to the proceeding in Court. — (1) Provided the offence is committed in, or in relation to, a proceeding in Court, clause (b) will apply although the offender is not himself a party to the proceeding. AIR 1944 Sind 130 (133) = 46 Cri L Jour 97 (DB) °° AIR 1941 Mad 576 (576) = 42 Cri L Jour 800 °° AIR 1938 Cal 677 (680) = 40 Cri L Jour 450 °° AIR 1936 Rang 369 (372) = 37 Cri L Jour 1008.

[See also AIR 1948 Mad 471 (472) = 49 Cri L Jour 713.]

(2) Complaint of Court is necessary for prosecution of a person who is alleged to

Section 195 — ote 10 (contd.)
have caused or instigated the filing of a false complaint in Court. AIR 1925 Rang 321 (321) = 27 Cri L Jour 4 (FB) °° (1912) 13 Cri L Jour 527 (528) (DB) (Bom) °° AIR 1930 Cal 671 (672) = 31 Cri L Jour 1145 (DB) °° AIR 1916 Pat 103 (104) = 18 Cri L Jour 554 (DB).

[See however (1898) 2 Cal WN cliv (cliv).]

(3) Section 195 (1) (b) cannot apply when the presiding officer of a Court itself is alleged to have committed the offences, for it would be absurd to require that he cannot be prosecuted except on a complaint made by himself. AIR 1959 All 512 (512) = 1959 Cri L Jour 937.

11. Offences committed by a party to a proceeding in respect of a document produced or given in evidence — Sub-section (1) Clause (c). — (1) The emphasis in clause (c) appears to be in regard to prosecution of offences relating to documents produced in Court or given in evidence in court. Therefore sanction for prosecuting a party to a proceeding for an offence under Section 471, I. P. C. is not necessary. (1968) 9 Guj LR 1 (24) = ILR 1967 Guj 1091 °° AIR 1969 Guj 195 (197, 198) = 1969 Cri LJ 902 = 10 Guj LR 646.

(2) Document alleged to be forged produced in Court, but offender not a party to proceeding in Court Section 195 does not apply. AIR 1917 All 354 (354) = 18 Cri L Jour 563.

(3) Section 195 (1) (c) only applies to offences committed in or in relation to a proceeding in Court. AIR 1931 All 443 (447) = 32 Cri L Jour 1105 (SB).

[But see 1937 Mad WN 887 (888).]

(4) The clause does not require that the offence should have been committed by the party with the intention of document being produced in the said proceeding AIR 1953 Him Pra 117 (118) = 1953 Cri L Jour 1683.

(5) It is only when the original forged document is produced in Court that a complaint by the Court is required. Where, however, what is produced before the Court is not the forged document itself, Section 195 (1) (c) will not apply on its terms. 1963 (2) Cri LJ 698 (700) = (1963) 3 SCR 876.

(6) Bar under — Operates even if forgery is committed subsequent to initiation of proceedings — All that S. 195 (1) (c) lays down is that if a forged document is produced or given in evidence by a party to any proceeding in any Court, the bar laid down in that section is attracted. AIR 1969 All 189 (191) = 1969 Cr LJ 460 = 1969 All WR (HC) 837.

12. "By a party to any proceeding in any Court." — (1) Where any of the offences mentioned in clause (c) is committed by a person who is not a party to a proceeding in Court, the section does not apply and the complaint of the Court is not necessary for taking cognizance of the offence. AIR 1945 Pat 362 (363) = ILR 24 Pat 174 = 47 Cri L Jour 183 (DB) °° AIR 1937 Bom 14 (14) = 38 Cri L Jour 149 (DB) °° AIR 1936 Rang 369 (372, 373) = 37 Cri L Jour 1008 °° AIR 1915 Mad 1033 (1033) = 16 Cri L Jour 797 (DB) °° AIR 1960 Pat 310 (310, 311) = 1960 Cri LJ 977.

(2) Section 195 does not apply where the offence is committed by a witness, or the pleader of the party, or by a receiver appointed by the Court, or by the presiding officer of the Court. AIR 1917 Lah 333 (334) = 18 Cri L Jour 544 °° AIR 1929 Cal 539 (541) = 31 Cri L Jour 564 (DB) °° AIR 1921 Sind 48 (49) = 23 Cri L Jour 31 (DB) °° AIR 1945 Pat 362 (363, 366) = ILR 24 Pat 174 = 47 Cri L Jour 183 (DB) °° 1966 All Cri R 176 (183) = 1966 All LJ 838 (Pleader) °° ILR (1963) 13 Raj 928 = 1963 Raj LW 416 (419, 420) °° (1961) 65 Cal WN 600 (604, 606) = ILR (1961) 1 Cal 307.

(3) Where the offender is not a party to the proceeding but abets the commission of the offence by the party, no complaint of the Court is necessary. AIR 1928 Lah 787 (791) = 30 Cri L Jour 485 (DB) °° AIR 1947 Sind 129 (130) = 48 Cri L Jour 296 (DB) °° AIR 1934 Mad 316 (317) = 35 Cri L Jour 780 (DB) °° AIR 1947 All 173 (174) = ILR (1947) All 411 = 48 Cri L Jour 706. (Scribe.) °° AIR 1965 Guj 70 (81) = 1965 (1) Cri LJ 428 = (1964) 5 Guj LR 229 (DB).

[But see AIR 1937 Sind 193 (195) = 38 Cri L Jour 1002 (DB) °° AIR 1965 Guj 70 (81) = 1965 (1) Cri LJ 428 = (1964) 5 Guj LR 229 (DB).

(4) Offence mentioned in clause (c) committed by several persons but only one of them is a party to the proceeding in Court — Complaint of Court not necessary against other offenders. AIR 1949 All 392 (394) = ILR (1949) All 715 = 50 Cri LJ 595 °° AIR 1917 Cal 121 (122) = 18 Cri L Jour 901 (DB) °° 1965 (2) Cri LJ 837 (838, 839) = 1965 BLJR 81.

[But see AIR 1965 Guj 70 (81) = (1965 (1) Cri LJ 428 = (1964) 5 Guj LR 229 (DB) °° 1960 Nag LJ 570 (585) = (1960) 62 Bom LR 527 = ILR (1960) Bom 888 (FB) °° (1910) 11 Cri LJ 868 (869, 870) (Bom) (DB).]

[See however AIR 1929 Mad 21 (25) = 30 Cri L Jour 322.]

(5) Offence referred to in Section 195 (1) (c) committed by person not party to proceeding — Complaint by presiding officer to District Magistrate — District Magistrate competent to take cognizance of offence. 1965 (1) Cri LJ 387 (2) (389) = 1963 Ker LT 563 °° AIR 1968 Pat 88 (90) = 1968 Cri LJ 352.

(6) Complaint under this section made with reference to some persons — Court can take cognizance of the offence even

Section 195 — Note 12 (contd.)
with regard to other persons who may be involved in the offence. AIR 1936 Pat 346 (347) = 37 Cri L Jour 893 (DB) °° AIR 1940 Sind 209 (212) = 42 Cri L Jour 141 (DB) °° AIR 1936 Cal 147 (149) = 37 Cri L Jour 521 (DB).

(7) The proper test to be applied for the purpose of determining the applicability of the clause is to see whether the offender is or has been a party to a proceeding in any Court not on the date of the commission of the offence but on the date when the Criminal Court is invited to take cognizance of the offence. AIR 1918 Cal 792 (793) = 18 Cri L Jour 522 (DB) °° AIR 1953 Him Pra 117 (119) = 1953 Cri L Jour 1683 °° (1910) 11 Cri L Jour 280 (280) (DB) (Cal) °° AIR 1925 Lah 266 (266) = 26 Cri L Jour 537 °° AIR 1930 Mad 869 (870) = 32 Cri L Jour 219 °° 1962 (1) Cri LJ 340 (342) (Ker) = 1961 Ker LT 778.

[But see AIR 1937 All 714 (716) = 39 Cri L Jour 38 (DB) °° AIR 1931 All 443 (447) = 32 Cri L Jour 1105 (SB) °° AIR 1916 Cal 711 (712) = 16 Cri L Jour 617 (DB). (4 Bom LR 268, **Followed.**) °° (1912) 13 Cri L Jour 863 (864) = ILR 34 All 654.]

(8) The proceeding in which the forged document has been produced or given in evidence must be pending at the time when the Criminal Court is asked to take cognizance of the offence. AIR 1937 Bom 14 (14) = 38 Cri L Jour 149 (DB).

[But see AIR 1957 Madh-B 12 (13) = 1957 Cri L Jour 66 °° AIR 1953 Him Pra 117 (119, 120) = 1953 Cri L Jour 1683.]

(9) A complaint of the Court is not necessary where the offence has been committed subsequent to the termination of the proceedings in Court in which the offender has been a party. 1940 Mad WN 865 (867) °° AIR 1932 Mad 290 (291) = 33 Cri L Jour 788 °° AIR 1930 Cal 278 (280) = 31 Cri L Jour 1205 (DB).

(10) Where a document which is in the custody of the Court is alleged to be forged after the termination of the proceedings in which it was filed, a complaint can neither be made nor is necessary. AIR 1932 Mad 290 (291) = 33 Cri L Jour 788.

(11) A complainant in a criminal case is a party to the proceeding in Court, and a complaint of the Court disposing of the case is necessary for prosecuting him for the offence of forgery under Section 467, Penal Code. AIR 1926 All 30 (32, 33) = 26 Cri L Jour 1485.

(12) A claimant, who files a claim in insolvency before the Official Assignee, is a party to the insolvency proceedings, and the complaint of the Insolvency Court is necessary for taking cognizance of any of the offences referred to in the section. AIR 1920 Mad 218 (219) = 20 Cri L Jour 193 °° AIR 1914 Mad 474 (477) = 13 Cri L Jour 241.

(13) A third person who lays claim to the subject-matter involved in the criminal proceedings started on a complaint is a party to the proceedings. AIR 1952 Hyd 7 (9) = ILR (1951 Hyd 778 = 1952 Cri L Jour 215 (DB).

(14) The guardian or next friend of a party to a proceeding is not himself a party to such proceeding. AIR 1944 Mad 528 (528) = 46 Cri L Jour 161 °° AIR 1937 Bom 14 (14) = 38 Cri L Jour 149 (DB).

(15) Where a criminal case was launched at the instance of one R on behalf of other persons but it was R alone who had taken an active part in the criminal case and had filed a forged document and the other persons did not even come to depose in the case, it was held that a complaint filed against all those persons except R was not warranted. AIR 1954 Pat 287 (288) = 1954 Cri L Jour 803.

(16) The word 'party' if it is to have any effect as regards criminal cases cannot be given the strict meaning appropriate in ordinary civil cases. ILR (1951 1 Cal 243 (247).

13. "In respect of a document produced or given in evidence in such proceeding."— (1) When a document is produced in a Court or is given in evidence, it is for that Court to decide whether it is genuine or forged. AIR 1966 All 124 (127) = 1966 Cri LJ 244 = 1965 All WR (HC) 82. (**Overruled** on another point in 1970 All Cr R 45.)

(2) Document in respect of which offence is committed not produced or given in evidence in a proceeding in Court — Cl. (c) does not apply. AIR 1920 Lah 89 (90) = 21 Cri L Jour 7.

(3) The word "or" between the words "produced" and "given in evidence" in the section shows that the two things are disjunctive. AIR 1942 Sind 62 (64) = 43 Cri L Jour 612 (DB) °° AIR 1953 Him Pra 117 (119) = 1953 Cri L Jour 1683 °° AIR 1929 Pat 60 (63) = 30 Cri L Jour 236.

(4) "Produced" means produced for the purpose of being tendered in evidence or for some other purpose. (1907) 6 Cri L Jour 78 (79) (DB) (Bom) °° (1912) 13 Cri L Jour 6 (7) (DB) (Cal).

(5) Where a document is handed over to the Judge by the party but the Judge returns it without taking it on the file, or rejects it as being inadmissible in evidence the document is produced within the meaning of the section. AIR 1925 Bom 467 (468) = 27 Cri L Jour 251 (DB) °° 1886 Rat 242 (242) (DB).

(6) Document sent for from file of another Court and used by pleader in arguments and referred to in judgment — Clause (c) applies. AIR 1918 Cal 792 (793) = 18 Cri L Jour 522 (DB).

Section 195 — Note 13 (contd.)

(7) For fulfilling the requirements of the section it is not necessary that the document should be considered or acted upon by the Court. (1902) 29 Cal 887 (888, 889) (DB) °° AIR 1929 Cal 203 (204) = 30 Cri L Jour 656 (DB) °° (1907) 6 Cri L Jour 331 (332) (DB) (Mad) °° AIR 1914 Lah 253 (253) = 15 Cri L Jour 358 (DB).

(8) Where a forged document is used in an enquiry by a police-officer under Section 202 of the Code, the production of the document has been held to be in, or in relation to the proceedings of the Magistrate who has directed the enquiry. AIR 1934 Pat 156 (158) = 35 Cri L Jour 1309.

(9) Document alleged to be forged simply mentioned in affidavit as to documents but not actually put into Court — Cl. (c) does not apply, notwithstanding that the document has been inspected by opposite party and has even been filed in the court-translator's office for translation in accordance with rules. AIR 1923 Mad 136 (137) = 24 Cri L Jour 340 (FB) °° (1966) 2 Andh WR 89 (91) = 1966 Mad LJ (Cr) 554.

(10) Although a document has not been actually produced in Court because of its custody with the Registrar, but is relied upon in the list of documents filed by the party, and the Court has also called for its production from the Registrar, cl. (c) applies to the case. AIR 1917 Nag 198 (199) = 18 Cri L Jour 1001.

(11) Where the accused, a managing director of the Bank, produced before the liquidator as good assets of bank certain promissory notes which were alleged to be forged, it was held that the alleged user by the accused of forged documents must be taken to have been made in a judicial proceeding namely the liquidation proceedings and the fact that the accused did not personally make over the pronotes into the hands of the Court was immaterial. ILR (1951) 1 Cal 243 (245, 246).

(12) Certified copy of forged document on record of High Court with knowledge that it was a copy of a forged document filed in lower Court for purpose of calling original from High Court — Petition calling for original not disposed of — Accused held could not be said to have produced document or used it in evidence within Section 195 (1) (c). AIR 1956 Pat 354 (359) = 1956 Cri L Jour 1091 (DB).

(13) The production contemplated is that of the original and not of a copy of the document. AIR 1925 Oudh 413 (414) = 26 Cri L Jour 929 °° (1905) 2 Cri L Jour 653 (654, 655) = 8 Oudh Cas 313 °° AIR 1950 PC 31 (32) = 77 Ind App 7 = 51 Cri L Jour 651 °° AIR 1951 Mys 117 (118) = 52 Cri L Jour 1506.

[See also AIR 1956 Pat 354 (358) = 1956 Cri L Jour 1091 °° AIR 1954 Nag 95 (96) = ILR (1954) Nag 175 = 1954 Cri L Jour 425.]

[But see AIR 1932 Sind 90 (91) = 33 Cri L Jour 452 (DB).]

(14) Clause (c) applies to documents produced in Court whether by the party who is alleged to have committed the offence or by any one else. AIR 1925 Bom 433 (434) = 27 Cri L Jour 69 (DB) °° AIR 1953 Him Pra 117 (120) = 1953 Cri L Jour 1683 °° AIR 1942 Sind 62 (64) = 43 Cri L Jour 612 (DB) °° (1963) 2 Cri LJ 355 (357, 359) = (1963) 1 Mad LJ 421.

[See however AIR 1920 Pat 147 (148, 149) = 21 Cri L Jour 272 (DB).]

(15) Where the criminal Court has taken cognizance of an offence, e.g., forgery, the production of the document (alleged to be forged) subsequent thereto in a Civil Court will not make the section applicable so as to necessitate a complaint of the Civil Court. AIR 1937 Lah 238 (239) = 38 Cri L Jour 581 °° AIR 1929 Cal 633 (634) = 31 Cri L Jour 125 (DB).

(16) Where the document is produced before the committing Magistrate by the accused in a prosecution relating to the document under Section 218, Penal Code, the complaint of the Magistrate is not necessary for trying the accused in the Court of Session on a charge of forgery under Section 465, Penal Code, in respect of the same document. AIR 1932 Bom 545 (546, 549) = 34 Cri L Jour 357 (DB).

(17) Where the Magistrate has taken cognizance of the offences of cheating and criminal misappropriation, he is also entitled to take cognizance of the offence of forgery which is alleged to be part of the same transaction and which came to light during the proceedings before him, although the forgery is in respect of a document given in evidence in such proceedings. AIR 1939 Sind 222 (224) = 40 Cri L Jour 818 (DB).

(18) Where a document alleged to be forged is not produced by a party in the civil suit filed on the basis of such document because the suit has been withdrawn, the subsequent production of the document as per order of the Court in a proceeding started after the disposal of the suit on an application for ordering a prosecution cannot be regarded as produced within the meaning of the section. AIR 1923 Mad 136 (137, 140) = 24 Cri L Jour 340 (FB).

(19) Where the proceedings are pending, and a document alleged to be forged is produced in the proceedings though only as an annexure to a report by a guardian, the clause applies. AIR 1927 Nag 184 (188, 189) = 28 Cri L Jour 388.

(20) Document produced by defendant in civil suit for being filed — Plaintiff removing document from record before it is actually exhibited and inserting another document forged by him in its place — Document is "produced". 1963 (2) Cr LJ 558 (559, 560) = (1963) 4 Guj LR 647.

Section 195 (contd.)

14. "Of any offence described in S. 463" — Clause (c). — (1) Clause (c) will apply to an offence under Sections 465, 466, 467 and 468 of the Penal Code as they are all offences described in Section 463. AIR 1925 Lah 266 (266) = 26 Cri L Jour 537 °° AIR 1925 Nag 337 (338) = 26 Cri L Jour 1115 °° AIR 1926 Oudh 485 (486) = 27 Cri L Jour 969 °° (1912) 13 Cri L Jour 35 (36, 37) = 36 Mad 387 (DB). (S. 468.) °° AIR 1933 Cal 481 (481) = 34 Cri L Jour 526 (DB) °° ILR 1968 Cut 542 (544) = 34 Cut LT 842.

(2) Clause (c) does not apply to an offence under Section 474. AIR 1923 Mad 136 (140) = 24 Cri L Jour 340 (FB) °° AIR 1954 Nag 95 (96) = 1954 Cri L Jour 25 °° AIR 1915 Cal 596 (596) (DB).

(3) The bar of Section 195 (1) (c), Cr. P. Code applies only to cases where the offence was committed by a person who was a party to the proceedings in any Court in which the document was produced and the proceedings were pending in Court at the time when the document was forged. 1970 All Cri R 45 = 1970 All LJ 206 = 1970 All WR (HC) 61. (AIR 1966 All 124, Overruled.)

[See however AIR 1927 Mad 1060 (1060) = 28 Cri L Jour 225.]

15. Who can make a complaint under clauses (b) and (c). — (1) It is only the Court in or in relation to whose proceedings the offence is committed, or the Court to which such Court is subordinate within the meaning of sub-section (3) that is competent to make a complaint in respect of the offences mentioned in clauses (b) and (c). AIR 1920 Sind 49 (49) = 21 Cri L Jour 787 °° AIR 1959 Mys 158 (162) = 1959 Cri L Jour 746 °° AIR 1956 Cal 63 (63) = 1956 Cri L Jour 398 (DB) °° (1878) 2 Bom 653 (653) (DB) °° 1967 All 420 (422) = 1967 Cri LJ 1121 = 1966 All WR (HC) 789 °° 1962 (1) Cri LJ 627 (628, 629) = 1961 All Cri R 135.

(2) A private individual cannot after amendment in 1923 apply for the court's sanction to the prosecution of a party in respect of the offences mentioned in S. 195 (1) (c) and a prosecution can be launched only if the concerned court comes to the conclusion that it is necessary. 1963 Raj LW 416 (419) °° AIR 1966 All 124 (126) = 1966 Cri LJ 244 = 1965 All WR (HC) 82. (Overruled on another point in 1970 All Cr R 45.)

(3) District Magistrate cannot make a complaint in respect of an offence committed before a first class Magistrate. AIR 1934 Oudh 344 (346) = 35 Cri L Jour 624.

(4) Same officer functioning in two different capacities, as for instance, a District Judge also exercising powers of a District Registrar. District Judge cannot, in his capacity as Judge, make a complaint in respect of an offence committed before him in his capacity as Registrar. AIR 1923 All 175 (175) = 24 Cri L Jour 747 °° AIR 1918 All 329 (329) = 19 Cri L Jour 201.

[See however (1901) 23 All 249 (251).]

(5) Presiding officer of a Court alleged to have committed an offence falling under cl. (b) or cl. (c) in or in relation to a proceeding in his Court — Complaint in writing of the Court to which his Court is subordinate would be necessary for taking cognizance of the offence. AIR 1938 Pat 83 (86) = 39 Cri L Jour 314 (DB).

(6) Where offence is committed before a Deputy Magistrate who has been appointed as Commissioner by the Court of Session, it is the latter Court that is competent to complain. (1907) 6 Cri L Jour 160 (161) (DB) (Cal).

(7) Application to Consolidation Officer to proceed against accused under Sec. 195 (1) (c) in respect of an action punishable under Section 471, I. P. C. — Application is not a complaint and the applicant is not complainant within meaning of Sec. 417 (3), Cr. P. C. — Consolidation Officer moving the Magistrate to take action — It is Consolidation Officer who is the complainant and his complaint to Magistrate under Section 195 (1) (c) is the complaint. AIR 1962 All 6 (7, 8) = 1962 (1) Cri LJ 1 = 1961 All LJ 557 (DB).

(8) In respect of an offence committed before an Official Assignee, the Insolvency Court should make the complaint. AIR 1914 Mad 474 (476) = 13 Cri L Jour 241 °° AIR 1920 Mad 218 (219) = 20 Cri L Jour 193.

Also see Note 12.

(9) A successor in office is competent to make a complaint in respect of the offence committed before his predecessor. AIR 1940 Lah 292 (297) = 41 Cri L Jour 843 (DB) °° AIR 1957 Mad 442 (445) = 1957 Cri L Jour 765 °° AIR 1914 All 537 (538) = 16 Cri L Jour 97 (DB) °° AIR 1924 All 770 (771) = 25 Cri L Jour 1277 °° (1910) 11 Cri L Jour 407 (410) = 37 Cal 642 (SB). (Overruling 5 Cri L Jour 398 (FB), ILR 35 Cal 114 and 4 Cri L Jour 209.) °°AIR 1960 Pat 206 (208, 209) = 1960 Cri LJ 631 (2) = 1960 BLJR 153 (DB).

(10) Successor can continue proceedings for making a complaint under Section 476 started by predecessor. (1910) 11 Cri L Jour 438 (439) (All) °° AIR 1922 Lah 479 (480) = 23 Cri L Jour 451 °° AIR 1919 Mad 896 (897) = 20 Cri L Jour 172.

[But see (1911) 12 Cri L Jour 68 (69) (DB) (Lah).]

(11) The presiding Judge cannot after he ceases to hold office, make a complaint. AIR 1927 Pat 327 (328) = 28 Cri L Jour 643 °° AIR 1924 All 770 (771) = 25 Cri L Jour 1277.

[See however AIR 1917 All 214 (215) = 18 Cri L Jour 308 (DB) °° AIR 1920 All 177 (179) = 21 Cri L Jour 746.]

Section 195 — Note 15 (contd.)

(12) Where the Court before which the offence was committed was abolished but reinstated with modifications in the territorial jurisdiction two years later, it was held that there was no such continuity as to make the Court reinstated the same as the one that ceased to exist. AIR 1916 Mad 1007 (1007) = 16 Cri L Jour 787 (DB) °°(1961) 2 Cri LJ 139 (145) (Orissa).

(13) No superior Court can by an order of transfer of the case to another Court, confer jurisdiction upon the transferee Court to file a complaint. AIR 1960 Pat 206 (209) = 1960 Cri LJ 631 (2) = 1960 BLJR 153 (DB).

(14) Offence of perjury committed before Sessions Judge of Ahmedabad — Portion of territory subject to his jurisdiction transferred to newly constituted Sessions Judge of Kaira — Judge of Kaira had no power to make a complaint regarding offence committed before Judge of Ahmedabad. AIR 1927 Bom 47 (48) = 28 Cri L Jour 49 (DB).

(15) Where the perjury was alleged to be committed before a first class Magistrate and pending proceedings for prosecution of the offender under Section 476 he was transferred and was succeeded by a Magistrate with second class powers, it was held that the District Magistrate was competent to make the complaint. AIR 1918 Bom 244 (245) = 19 Cri L Jour 332 (DB).

(16) Court of District Judge of Mahasu superseded the Court of District Judge of Koti as the effect of paragraph 15 of the Himachal Pradesh (Courts) Order, 1948. Former Court was therefore competent to file a complaint for an offence of forgery committed in the latter Court. AIR 1953 Him Pra 38 (40) = 1953 Cri L Jour 594.

(17) High Court in exercise of its revisional jurisdiction calling for proceedings in lower Court. High Court can make a complaint in respect of an offence committed in relation to such proceedings although the latter Court may not be subordinate, within the meaning of sub-section (3). AIR 1937 Sind 193 (195) = 38 Cri L Jour 1002 (DB).

(18) Where an offence is committed in or in relation to the proceeding in the High Court and the High Court thinks that a complaint should be made, the complaint made by the Deputy Registrar is valid. AIR 1940 Nag 410 (411) = 41 Cri L Jour 697.

[See also AIR 1958 All 703 (704) = 1958 Cri L Jour 1257.]

(19) One Judge of the High Court is competent to make a complaint with regard to an offence committed before another Judge of the High Court. AIR 1937 Mad 716 (717) = 38 Cri L Jour 871 (DB) •• AIR 1925 Bom 436 (438) = 26 Cri L Jour 1189

(20) A Sessions Judge is competent to make a complaint in respect of an offence committed before the Additional Sessions Judge. AIR 1931 Cal 190 (191, 192) = 32 Cri L Jour 842 (DB).

[See however AIR 1943 Cal 103 (104) = 44 Cri L Jour 332 (DB).]

(21) Sarpanch of a Panchayat Court cannot make a complaint under this section when he has not been a member of the Bench (of the Panchayat Court) before which the offence was committed. AIR 1936 Nag 275 (276) = 38 Cri L Jour 680.

(22) Complaint made by Panchayati Adalat but signed by sarpanch who was not a member of the particular Bench. Held that he could do so as the representative of the adalat and the complaint was competent. AIR 1952 All 306 (308) = 1952 Cri L Jour 621.

(23) Where a case is transferred for disposal from one Court to another, it is the transferee Court that tries and disposes of the case that is competent to complain for an offence committed in relation to the proceedings in that Court. AIR 1926 Cal 788 (789) = 27 Cri L Jour 648 (DB) °° AIR 1930 Mad 192 (192) = 31 Cri L Jour 986 °° AIR 1926 Sind 215 (216) = 27 Cri L Jour 780 (DB) °° AIR 1931 Oudh 417 (418) = 33 Cri L Jour 160.

[See however AIR 1940 Lah 292 (297) = 41 Cri L Jour 843 (DB).]

(24) Where an attempt to fabricate false evidence is made in a proceeding pending before the Magistrate at C but the case is transferred to the Magistrate at S who tries and disposes of the case, it is the latter that should make the complaint although the offence was not actually committed before him. AIR 1934 Bom 185 (186) = 35 Cri L Jour 848 (DB).

[But see AIR 1954 All 384 (384) = 1954 Cri L Jour 804 °° AIR 1922 All 233 (234) = 23 Cri L Jour 603 (DB).]

(25) District Magistrate withdraws a case to his file and disposes of it himself. Complaint for an offence committed in relation to proceedings in that case should be filed by him and not by the Magistrate who originally took cognizance of the case. AIR 1929 Cal 724 (726) = 31 Cri L Jour 430 (DB).

(26) Plaintiff first instituted a suit in Court A and obtained a decree only for a portion claimed, and subsequently filed a fresh suit in Court B and obtained an ex parte decree fraudulently in respect of the portion disallowed by Court A. Court B should complain for an offence under Section 210, Penal Code. AIR 1925 Lah 524 (525) = 26 Cri L Jour 1588.

(27) Claim based on a sale deed made before a subordinate Judge but claim suit was disposed of by Munsif, and by District Judge on appeal. Subordinate Judge held was competent to complain for an offence respecting the sale deed under Sec-

Section 195 — Note 15 (contd.)
tion 206, Penal Code, as the offence was in relation to proceedings in his Court. (1904) 1 Cri L Jour 706 (708) (All).

(28) Case transferred to another Magistrate for enquiry and report. Enquiring Magistrate is competent to prefer a complaint with regard to offence commited in the course of enquiry. (1909) 9 Cri L Jour 295 (296) (DB) (Cal).

[But see AIR 1916 Cal 867 (869) = 17 Cri L Jour 146 (DB) °° (1909) 10 Cri L Jour 424 (426) = ILR 32 All 30 (DB).]

(29) Where a complaint is filed before a Magistrate who refers it to another Magistrate for enquiry and report, the latter cannot prefer a complaint under Sec. 211, Penal Code, if he finds the complaint referred to him to be false. AIR 1916 Cal 867 (869) = 17 Cri L Jour 146 (DB).

(30) Settlement Officer is not a Revenue Court within the meaning of S. 4 (8) of U. P. Land Revenue Act and Court has no jurisdiction to draw up proceedings for offence under Section 228, Penal Code. AIR 1967 All 88 (90) = 1967 Cri LJ 151 (2) = 1967 All WR (HC) 148.

(31) Sections 195, 476, 479-A and 439 — Offence under Section 471, Penal Code, not covered by Section 479-A of Cr. P. C. — Procedure prescribed under Sec. 476 Criminal P. C. not excluded — Magistrate can file complaint in respect of offence under Section 471, I. P. C. AIR 1965 Mad 539 (540, 541) = 1965 (2) Cri LJ 783 = (1965) 2 Mad LJ 318. (**AIR 1964 SC 725 and (1964) 1 Cri LJ 489 (SC), Foll.**)

(32) Power of civil Court to make a complaint in respect of offences — Power is exercisable only in respect of offences mentioned in Section 196 (1) (b) and (c) — Direction of the Additional Subordinate Judge to file a complaint in respect of offence under Section 20 of Bihar Money Lenders Act was held without jurisdiction. AIR 1967 Pat 264 (265) = 1967 Cri LJ 1045 = 1967 BLJR 451.

16. "Court," meaning of — Sub-section (2). — (1) Two tests should be applied in order to see whether a particular officer is a Court, and they are — (1) authority to take evidence on oath, and (2) authority to deal out justice, i. e., to give a final decision in the matter. AIR 1935 Mad 673 (677) = 36 Cri L Jour 895 (DB) °° ILR (1912) 36 Mad 72 (86, 89) = 13 Cri L Jour 723 (DB) °° AIR 1943 Cal 574 (577) = 44 Cri L Jour 601 (DB) °° AIR 1940 Cal 286 (289) = 41 Cri L Jour 662 (DB) °° AIR 1918 Cal 932 (933) = 19 Cri L Jour 315 (DB).

[See however AIR 1925 All 737 (740, 741) (DB) °° AIR 1931 Lah 662 (663) = 32 Cri L Jour 1252.]

[But see AIR 1954 Mad 822 (826) = 1954 Cri L Jour 1283.]

(2) It may be stated broadly that what distinguishes a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment by giving the parties an opportunity as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. When a question therefore arises as to whether an authority created by an Act is a Court as distinguished from a quasi-judicial Tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court. AIR 1956 SC 153 (157) = 1956 Cri L Jour 326.

(3) The expression "Court" is not restricted to Courts, Civil, Revenue or Criminal, it includes other tribunals — The definition of that word in Evidence Act and in Section 20 of I. P. C. does not apply to Criminal P. C. **AIR 1969 SC 724 (728, 729) = 1969 Cri LJ 1069 = (1969) 1 SCJ 945.**

(4) A Registrar or a Sub-Registrar under the Registration Act has no power to make a complaint under the section in respect of the offences mentioned. AIR 1934 Mad 316 (317) = 35 Cri L Jour 780 (DB) °° ILR (1893) 15 All 141 (143) °° AIR 1914 Bom 202 (202) = 16 Cri L Jour 106 (DB) °° (1912) 13 Cri L Jour 845 (845) (DB) (Bom) °° (1909) 9 Cri L Jour 54 (55) = 11 Oudh Cas 358 °° AIR 1924 Pat 128 (130) = 26 Cri L Jour 1482 (DB).

(5) The substitution of the word 'includes' for 'means' by the 1923 amendment has widened the scope of the definition of Court by including Courts other than Civil, Criminal or Revenue Courts referred to in Section 476. AIR 1952 All 306 (307) = 1952 Cri L Jour 621 °° AIR 1925 All 737 (740) (DB) °° AIR 1940 Cal 286 (290) = 41 Cri L Jour 662 (DB) °° AIR 1940 Nag 184 (184) = 41 Cri L Jour 376 (376) °° AIR 1931 Lah 662 (663) = 32 Cri L Jour 1252 °° **AIR 1963 SC 416 (421) = 1963 (1) Cri LJ 330 = (1963) 2 SCR 850** °° AIR 1963 All 395 (398) = 1963 (2) Cri LJ 118 = 1962 All LJ 921.

(6) A complaint was made under this section by an Honorary Magistrate whose term of office had expired at the time of complaint though it had not expired when proceedings under Section 476 had been started before him. Defect held was only an irregularity in the complaint curable under Section 537. AIR 1936 Pat 346 (349) = 37 Cri L Jour 893 (DB).

(7) The following have been held to be Courts within the meaning of this section and Section 476:

(a) Election Commissioner. AIR 1935 Mad 673 (678, 679) = 36 Cri L Jour 895 (DB) °° AIR 1953 Him Pra 117 (119) = 1953 Cri L Jour 1683. (Election Tribunal: AIR 1950 East Punj 181 = ILR (1949) East Punj 606 (FB), Rel. on.)

[See however AIR 1925 All 737 (740) (DB).]

Section 195 — Note 16 (contd.)

(b) Income-tax Collector. AIR 1914 Bom 138 (141) = 15 Cri L Jour 581 (FB) (Overruling 4 Cri L Jour 34 (Bom)).. °° (1906) 3 Cri L Jour 128 (130) = 1905 Pun Re (Cr) No. 44 (DB).

(c) Divisional Officer hearing an appeal under the Income-tax Act. (1912) 13 Cri L Jour 723 (730, 733) = ILR 36 Mad 72 (DB).

(d) Collector acting under Section 69 and Section 70, Bengal Tenancy Act. AIR 1918 Cal 927 (928) = 19 Cri L Jour 273 (DB) °° AIR 1921 Cal 260 (260) (DB).

(e) Sub-Divisional Officer acting under Section 58, Bengal Tenancy Act. (1913) 14 Cri L Jour 139 (140) = ILR 40 Cal 465.

(f) Settlement Officer proceeding under Chapter X, Bengal Tenancy Act. (1913) 14 Cri L Jour 197 (204) = ILR 40 Cal 477 (FB).

(g) Deputy Tahsildar proceeding under Madras Act 3 of 1869, in connection with transfer of patta. ILR (1901) 24 Mad 121 (123) (DB) °° AIR 1923 Mad 87 (87) = 24 Cri L Jour 15 (DB).

(h) Assistant Collector holding mutation proceedings. AIR 1930 Oudh 58 (59) = 31 Cri L Jour 679.

[See however AIR 1915 Lah 250 (250) = 16 Cri L Jour 785.]

(i) Mamlatdar in Bombay. AIR 1936 Bom 221 (221) = 37 Cri L Jour 814 (DB).

(j) Tribunal formed under the Calcutta Improvement Act, 5 of 1911. AIR 1918 Cal 932 (933) = 19 Cri L Jour 315 (DB).

(k) District Judge acting under Sec. 22, Bombay District Municipal Act (3 of 1901). (1913) 14 Cri L Jour 72 (73, 74) = ILR 37 Bom 365 (DB).

(l) Deputy Commissioner deciding revision applications under rules framed under Section 240, Punjab Municipal Act (3 of 1911). (1921) 62 Ind Cas 413 (414) = 22 Cri L Jour 525 (Lah).

(m) Assistant Registrar acting under R. 14 of the Rules framed under Sec. 43 of the Co-operative Societies Act, 2 of 1912. AIR 1930 Mad 869 (870) = 32 Cri L Jour 219.

(n) Registrar of a Court of Small Causes. See AIR 1915 Cal 105 (106) = 16 Cri LJ 151 °° ILR (1903) 27 Bom 130 (134) (DB) °° AIR 1942 Mad 626 (327) = 43 Cri L Jour 738 °° AIR 1942 Mad 737 (738) = 44 Cri L Jour 144.

(o) Village Munsif trying a case under the Madras Village Courts Act 1 of 1889. ILR (1888) 11 Mad 375 (376, 377) (DB).

[See however AIR 1936 Mad 89 (91) = 67 Cri L Jour 159 (DB).]

(p) Certificate Officer acting under the Public Demands Recovery Act, 4 of 1914. AIR 1919 Pat 212 (214, 215) = 20 Cri L Jour 529 (DB).

[See however AIR 1923 Pat 410 (411) = 24 Cri L Jour 809 (DB).]

(q) Court taking action under the Legal Practitioners' Act. AIR 1918 Mad 398 (399) = 18 Cri L Jour 785 °° (1912) 13 Cri L Jour 190 (190) (All).

(r) Magistrate recording a statement under Section 164 of the Code. AIR 1935 All 341 (341) = 36 Cri L Jour 1505 (DB).

(s) Mukhtiarkar holding an enquiry in mutation proceedings is a revenue Court within the meaning of this section though his proceedings are not judicial proceedings within the meaning of Section 196, Bombay Land Revenue Code, 5 of 1879. AIR 1940 Sind 100 (101) = 41 Cri L Jour 861 (DB).

(t) Panchayati Adalat constituted under the U. P. Panchayat Raj Act (26 of 1947). AIR 1952 All 306 (307) = 1952 Cri L Jour 621.

(u) A Sales Tax Officer is a Revenue Court. AIR 1956 Bom 326 (328) = ILR (1955) Bom 1064 = 1956 Cri L Jour 603 (DB) °° AIR 1956 Bom 230 (231) = 1956 Cri L Jour 496 (1).

(v) High Court is Civil Court within meaning of Section 479-A, and Court within Section 195. AIR 1960 All 55 (62) = 1960 Cri LJ 26.

(w) Election Tribunal is "Court" by virtue of Section 92 of Representation of the People Act (1951). AIR 1960 All 602 (606) = 1960 Cri LJ 1281 °° AIR 1960 All 602 (604, 605) = 1960 Cri LJ 1281.

(x) 'Court', meaning of — Tahsildar dealing with mutation proceedings is Revenue Court. AIR 1966 All 124 (125, 126) = 1966 Cri LJ 244 = 1965 All WR (HC) 82 °° 1968 Cur LJ 103 = 70 Pun LR 140 (141, 142).

(y) Thika Controller in the Calcutta Thika Tenancy Act is a court and not a mere tribunal. (1961) 65 Cal WN 600 (602) = ILR (1961) 1 Cal 307.

(z) 'Court' — Agricultural Lands Tribunal acting under Section 32-G, Bombay Tenancy and Agricultural Lands Act is a Court. AIR 1965 Guj 70 (72, 73) = 1965 (1) Cri LJ 428 = (1964) 5 Guj LR 229 °° AIR 1963 Bom 70 (73) = 1963 (1) Cri LJ 569 = 64 Bom LR 348 (DB).

(z1) An election tribunal constituted under Sec. 22 of the U. P. Municipalities Act. AIR 1963 All 395 (398) = 1963 (2) Cri LJ 118 = 1962 All LJ 921.

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(8) The following have been held not to be Courts within the meaning of this section and Section 476—

(a) A Land Acquisition Collector. AIR 1927 Cal 621 (623) = 28 Cri L Jour 809 (DB).

(b) Registrar acting under Land Registration Act, 3 of 1877. (1898) 2 Cal WN ccxliv.

(c) Assistant Collector holding a departmental enquiry under the Bombay Land Revenue Code, 5 of 1879 into the alleged misconduct of a subordinate. ILR (1898) 22 Bom 936 (939) (DB).

(d) District Judge performing functions under Rule 55 of the Rules made under the Burma Rural Self-Government Act 4 of 1921. AIR 1940 Rang 148 (149) = 41 Cri L Jour 687. (District Judge acted as persona designata.)

(e) Revenue Officer proceeding under Section 46 of U. P. Land Revenue Act, 3 of 1901. (1910) 11 Cri L Jour 514 (514) = 13 Oudh Cas 198.

(f) Revenue Officer preparing a record of rights under Sections 164 to 167 of the Madras Estates Land Act, 1 of 1908. AIR 1916 Mad 555 (555, 557) = 16 Cri L Jour 241 (DB).

(g) Collector holding an enquiry as to who should pay stamp duty on a document impounded. (1903) 7 Cal WN 795 (797) (DB).

(h) Deputy Magistrate appointed as Commissioner by Sessions Judge to examine witnesses. (1907) 6 Cri L Jour 160 (161) (DB) (Cal).

(i) Governor in Council or a member of the Council disposing of an appeal from an order of the Conservator of Forests in a Forest Department case. AIR 1932 Cal 390 (393) = 33 Cri L Jour 685 (DB).

(j) Excise Collector. (1906) 3 Cri L Jour 196 (197) (DB) (Cal).

(k) Police Patel. ILR (1880) 4 Bom 479 (481) (DB).

(l) Collector acting under rules framed under Madras District Municipalities Act, 1884 (since repealed, see now Madras Act 5 of 1920). (1909) 10 Cri L Jour 9 (10) (DB) (Mad).

(m) Courts in Native States outside British India as for instance, in Baroda, were held not to be Courts within the meaning of this section. AIR 1925 Bom 535 (535) = 26 Cri L Jour 1456 (DB).

(n) Debt Settlement Board. AIR 1940 Cal 286 (290) = 41 Cri L Jour 662 (DB).

[See also AIR 1940 Nag 184 (184) = 41 Cri L Jour 376 (377).]

(o) Appellate Officer under Bengal Agricultural Debtors Act, 7 of 1936. AIR 1940 Cal 454 (454) = 41 Cri L Jour 951 (DB).

(p) Chairman of a Municipality scrutinizing a nomination paper under R. 17 (4) of the Rules under the Bengal Municipal Act (15 of 1932) and rejecting it, and the District Magistrate who hears an appeal from his decision under Rule 20. AIR 1943 Cal 574 (577) = 44 Cri L Jour 601 (DB).

(q) Sub-Divisional Magistrate making an order under Section 144 of this Code. (1943) 9 Cut L Tim 95 (97).

(r) Commissioner of a Division acting as Election Judge under Section 24 (1) of the U. P. Municipalities Act (2 of 1916). AIR 1947 All 139 (140) = ILR (1947) All 297 = 48 Cri L Jour 282.

(s) Magistrate cancelling under Sec. 173 a case as false. AIR 1948 Lah 184 (188) = ILR (1947) Lah 645 = 49 Cri L Jour 531 (FB).

(t) The returning officer deciding on the validity of a nomination paper under Section 36 (2) Representation of the People Act. AIR 1956 SC 153 (157, 158) = 1956 Cri L Jour 326 ; AIR 1953 Him Pra 117 (119) = 1953 Cri L Jour 1683. (AIR 1929 Rang 25 (FB) and AIR 1950 East Punj 181 = ILR (1949) East Punj 606 (FB), **Rel. on.**)

(u) A Deputy Registrar of Co-operative Societies. AIR 1954 Mad 822 (824) = 1954 Cri L Jour 1283.

(v) Nominee of Registrar Co-operative Societies is not a 'Court' within Section 195, Cr. P. C. **AIR 1969 SC 724 (730) = 1969 Cri LJ 1069 = (1969) 1 SCJ 945.**

(w) **'Court' — Sales Tax Officer is not a Court — Offence under Section 471, Indian Penal Code committed in proceeding before him — Complaint under Section 195 by him is not necessary. AIR 1963 SC 416** (419, 420, 421, 422) **= 1963 (1) Cri LJ 330 = (1963) 2 SCR 850.**

(x) **A Rent Control and Eviction Officer under the U. P. (Temporary) Control of Rent and Eviction Act. 1966 All Cri R 469 (473) = ILR (1967) 2 All 230 = 1966 All WR (HC) 753.**

(y) **U. P. Land Revenue Act (III of 1901), Section 4 (8) — Revenue Court — Meaning — Settlement Officer under U. P. Consolidation of Holdings Act is not a Court. AIR 1967 All 88 (90) = 1967 Cri LJ 151 (2) = 1967 All WR (HC) 148.**

(z) **Income-tax Officer requiring furnishing of evidence of eligibility from Income-tax practitioner — Income-tax Officer not Court. AIR 1960 Madh Pra 269 (270) = 1960 Cri LJ 1217 (2) = 1960 MPLJ 649.**

Section 195 — Note 16 (contd.)

(z1) Tahsildar functioning under S. 3-A, Madras Cultivating Tenants Protection Act as amended in Mysore does not act as a Court. AIR 1963 Mys 153 (155) = 1963 (1) Cri LJ 781 = 1963 (1) Mys LJ 22.

(z2) Conciliation officer functioning under Industrial Disputes Act is not a Court — Accused producing forged authority before such officer — Complaint from the officer is not necessary to prosecute accused. AIR 1964 Punj 389 (390, 391) = 1964 (2) Cri LJ 333 = 1964 Cur LJ 109.

(z 3) Settlement Officer under E. P. Holdings (Conso. and Prev. of Frag.) Act, 1948 is not Civil, Criminal or Revenue Court. AIR 1965 Punj 454 (455) = 1965 (2) Cri LJ 669 = 1965 Cur LJ 293.

(z4) 'Competent authority' under Slum Areas (Improvement and Clearance) Act, 1956 does not constitute a 'Court' for the purpose of S. 195 (1) (c). AIR 1966 Punj 407 (409) = 1966 Cri LJ 1198.

(z 5) The Industrial Tribunal is not a Court within the meaning of Section 195 (1) (b) of the Code of Criminal Procedure. AIR 1960 Assam 55 (56, 57) = 1960 Cri LJ 458 (DB).

(z 6) The 'Competent Authority' under the Rehabilitation of Displaced Persons and Eviction of Persons in Unauthorised Occupation of Land Act, 1951 is not a 'Court' within meaning of Section 195 (2). AIR 1969 Cal 161 (162) = 1969 Cri LJ 462 (DB).

17. Subordination of Courts — Sub-section (3). — (1) The subordination of Courts generally for the purposes of the Code is dealt with by Section 17. AIR 1930 Pat 550 (555) = 31 Cri L Jour 210 (DB).

(2) In order to determine whether a particular Court is subordinate to another Court within the meaning of Section 195 (3), the first question to be asked is whether any decree, orders or sentences of the original Court are appealable at all. If they are not and the Court is a Civil Court, then, under Section 195 (3), the appeal against the order making or refusing to make a complaint will be to the principal Court of ordinary original civil jurisdiction. If, however, appeals from its various decrees and orders lie to different Courts, then it has to be seen to which of them they "ordinarily" lie and select the one of the lowest grade from among them. AIR 1956 SC 391 (395) = 1956 SCR 125 = ILR (1956) Punj 1075 = 1956 Cri L Jour 781.

(3) For purposes of sub-section (3) it is enough if an appeal lies from the decisions of the Court although the particular proceeding in respect of which the offence is committed is not appealable. AIR 1930 All 407 (407) = 31 Cri L Jour 898.

(4) Where appeals lie from a decision of a Court to more Courts than one, the former is subordinate to the appellate Court of inferior jurisdiction. AIR 1940 All 7 (7) = 41 Cri L Jour 227 °° AIR 1933 Cal 192 (194) = 34 Cri L Jour 628 (DB).

[See AIR 1946 Pat 435 (437) = 47 Cri L Jour 385.]

(5) In the case of a Civil Court from whose decree no appeal lies, it is subordinate to the principal Civil Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate. AIR 1935 Mad 673 (679) = 36 Cri L Jour 895 (DB).

(6) When a public servant is a Court he is subordinate to the appellate Court as defined in sub-section (3) only when the offences are those mentioned in clauses (b) and (c) but not in respect of offences mentioned in Clause (a). AIR 1942 Oudh 50 (53) = 43 Cri L Jour 50 °° AIR 1927 Pat 111 (112) = 28 Cri L Jour 353 (DB) °° AIR 1951 All 828 (829) = 52 Cri L Jour 1508.

[But see AIR 1922 Bom 453 (454) = 23 Cri L Jour 576 (DB) °° AIR 1919 Mad 610 (612) = 20 Cri L Jour 78 (DB).]

(7) By virtue of Section 195 (3), even Executive Magistrates like Judicial Magistrates are deemed to be subordinate to the Court of Session. ILR (1964) Cut 515 (517) = (1964) 6 Ori JD 137 = ILR (1964) Cut 515.

(8) The Additional District Magistrate is subordinate to District Magistrate. AIR 1967 Cal 314 (317) = 1967 Cri LJ 735.

(9) Court of A. D. M. is not a Court superior to the Court of a Magistrate for the purposes of Section 195 (3) Cr. P. C. Appeal proceedings before him will be without jurisdiction. AIR 1969 Orissa 6 (7) = 1969 Cri LJ 229 = 34 Cut LT 401.

(10) First class Magistrate is not within the meaning of Section 195 (3) subordinate to District Magistrate but to Sessions Judge. 1969 Cri LJ 90 (93) (Pat).

18. "Court to which appeals ordinarily lie." — (1) The words "Court to which appeals ordinarily lie" in sub-section (3) do not mean Court by which appeals are ordinarily heard. AIR 1938 Lah 641 (642) = 40 Cri LJ 140 (DB) °° 1968 Cri LJ 568 (1) (568) = 33 Cut LT 152 = ILR (1966) Cut 727.

(2) In determining the Court or Courts to which an appeal will ordinarily lie, it has to be seen which Court or Courts entertain appeals from that class of tribunal in the ordinary way apart from special notifications or laws that lift the matter out of the general class. **AIR 1956 SC 391 (395) = 1956 SCR 125 = ILR (1956) Punj 1075 = 1956 Cri L Jour 781 .**

(3) Sub-section (3) speaks of the Court to which appeals ordinarily lie from appealable decrees or sentences passed by the

Section 195 — Note 18 (contd.)
Court. AIR 1942 Sind 98 (99) = 43 Cri L Jour 720 (DB) °° AIR 1955 Mys 59 (60) = 1955 Cri L Jour 718 = ILR (1955) Mys 89.

(4) A Division Bench of a High Court is subordinate to the Supreme Court within the meaning of this sub-section as appeals will ordinarily lie to the Supreme Court from appealable decree and sentences passed by the Division Bench. **AIR 1954 SC** 397 (399) = **1954 Cri L Jour 1019 = 1954 SCR 1144.** (AIR 1951 Mad 1060 = 1952 Cri L Jour 61 = ILR (1952) Mad 638 (DB), **Reversed.**)

(5) District Munsifs are subordinate to the District Judge. AIR 1933 Pat 179 (180) = 34 Cri L Jour 410 °° AIR 1955 Mys 59 (61) = 1955 Cri L Jour 718 = ILR (1955) Mys 89 °° 1900 Pun Re (Cr) No. 25 p. 54 (55) (DB) °° AIR 1968 Pat 100 (106) = 1968 Cri LJ 354 = 1967 BLJR 941 (FB) °° 1970 Cri LJ 399 (402) (Bom) = 71 Bom LR 387. (AIR 1967 Bom 41 held no longer good law in view of (1968) 70 Bom LR 588.)

(6) Subordinate Judge empowered to entertain appeal directly from decrees of Munsifs by virtue of special notification under sanction of State Government as required by Civil Courts Act of particular State — Munsif is subordinate to the Subordinate Judge. AIR 1939 All 79 (81) °° AIR 1916 Mad 1105 (1105, 1106) = 16 Cri L Jour 439 (DB) °° AIR 1935 All 696 (697) (DB) °° AIR 1918 Lah 400 (400) = 19 Cri L Jour 975 °° AIR 1929 Pat 367 (368) = 30 Cri L Jour 834 (DB).

(7) The Court of the Additional District Judge is not the Court to which appeals ordinarily lie from the Court of the Munsif. But where under Section 21 (3) of the Bengal, Agra and Assam Civil Courts Act (1887) the District Judge has assigned the function of receiving appeals to the Additional District Judge, then it can be said that appeals will ordinarily lie to the Court of the Additional District Judge. AIR 1950 Pat 567 (568) = 51 Cri L Jour 1568.

(8) District Judge is subordinate to the High Court. (1906) 4 Cri L Jour 164 (165) = ILR 29 Mad 122 (DB) °° AIR 1923 Rang 12 (13) = 24 Cri L Jour 511.

(9) A Single Judge of the High Court is subordinate to the Bench which hears appeals from his judgment under Cl. (15) of the Letters Patent. AIR 1922 Bom 455 (456) = 23 Cri L Jour 497 (DB) °° AIR 1918 Cal 850 (852, 853) = 18 Cri L Jour 497 (DB) °° AIR 1914 Mad 181 (183) = 45 Cri L Jour 464 (DB) °° AIR 1922 Mad 495 (496) = 24 Cri L Jour 78 (FB).

[But see AIR 1917 All 474 (475) = 17 Cri L Jour 537 (DB) °° (1911) 12 Cri L Jour 469 (470) (DB) (Low Bur).

(10) Revenue Courts are generally subordinate to the Board of Revenue to which appeals ordinarily lie. (1902) 26 Mad 139 (142).

[See also 1902 Pun Re (Cr) No. 8 p. 21 (21, 22) °° 1891 All WN 82 (82).]

(11) Assistant Collector acting under the Tenancy Act is subordinate to the District Collector. 1895 All WN 121 (121).

[See also (1909) 9 Cri L Jour 180 (181) (All) °° ILR (1883) 6 All 98 (101).]

(12) Tahsildar holding mutation proceedings held subordinate to the Deputy Commissioner. AIR 1935 Oudh 113 (114) = 36 Cri L Jour 319 °° (1911) 12 Cri L Jour 109 (109) (All).

(13) Additional Deputy Commissioner exercising jurisdiction under Section 83 (1) of the C. P. Municipalities Act, 1922, held not subordinate to the Board of Revenue. AIR 1953 Nag 121 (121) = 1953 Cri L Jour 741 (DB).

(14) Sessions Judge or an Additional Sessions Judge is subordinate to the High Court. AIR 1932 Bom 551 (552) = 34 Cri L Jour 33 (DB).

(15) The District Magistrate is subordinate to the Sessions Judge. AIR 1924 Mad 387 (388) = 25 Cri L Jour 215 (DB) °° AIR 1914 Mad 50 (51) = 15 Cri L Jour 409 (DB) °° 1890 All WN 168 (169) °° (1908) 8 Cri L Jour 457 (459) (DB) (Lah) °° AIR 1917 Lah 91 (93) = 18 Cri L Jour 298 °° AIR 1929 Nag 97 (98) = 30 Cri L Jour 550 (FB).

[See however (1907) 6 Cri L Jour 454 (456) = ILR 30 All 109 °° AIR 1917 Pat 342 (343) = 18 Cri L Jour 759 °° (1906) 3 Cri L Jour 121 (122) = 1905 Pun Re (Cr) No. 56.]

(16) City Magistrate is subordinate to Sessions Judge. (1902) 4 Bom LR 750 (752, 753) (DB).

(17) A first class Magistrate is subordinate to Sessions Judge and not to District Magistrate. AIR 1922 Bom 453 (454) = 23 Cri L Jour 576 (DB) °° (1958) 2 Andh WR 480 (483) °° AIR 1915 Cal 674 (674) = 16 Cri L Jour 640 (DB) °° (1908) 7 Cri L Jour 304 (305) (All) °° (1911) 12 Cri L Jour 539 (541) = 1912 Pun Re (Cr) No. 2.

(18) First class Magistrate is subordinate also to an Additional Sessions Judge because under Section 409 of the Code the latter was empowered to hear appeals to the Court of Session. AIR 1920 Bom 415 (416) = 21 Cri L Jour 382 (DB) °° (1913) 14 Cri L Jour 195 (195, 196) (DB) (Cal) °° AIR 1919 Pat 362 (363) = 20 Cri L Jour 603.

(19) First Class Magistrate is not subordinate to a Commissioner appointed under the Defence of India Act. AIR 1921 Bom 3 (16) = 22 Cri L Jour 241 (FB).

(20) A second class Magistrate is subordinate to District Magistrate. AIR 1938 Lah 641 (642) = 40 Cri L Jour 140 (DB) °° AIR 1937 Pat 176 (177) = 38 Cri L Jour 97 °° AIR 1924 Mad 387 (388) =

Section 195 — Note 18 (contd.)
25 Cri L Jour 215 (DB) °° (1904) 1 Cri L Jour 7 (9) = ILR 26 All 244 (SB) °° AIR 1923 All 597 (597) = 24 Cri L Jour 658 °° AIR 1921 Lah 298 (299) = 23 Cri L Jour 465 °° 1966 Mad LW (Cr) 145 (147) = (1966) 2 Mad LJ 146 = 1966 Mad LJ (Cri) 565.

(21) Second class Magistrate is not subordinate to a first class Magistrate who is specially directed by the District Magistrate to hear appeals from second class Magistrate under Section 407 (2) of the Code. (1903) 26 Mad 655 (659) (FB). (Impliedly overruling ILR 18 Mad 487). °° AIR 1919 Mad 1132 (1133) = 19 Cri L Jour 483 (DB) °° (1904) 1 Cri L Jour 422 (424) = ILR 27 Mad 124 °° 1902 All WN 9 (10) °° AIR 1929 Cal 172 (173, 174) = 30 Cri L Jour 658 (DB).

[See however (1900) 2 Bom LR 536 (540) (DB).]

(22) Second Class Magistrate is not subordinate to an Additional District Magistrate. AIR 1938 Lah 641 (642) = 40 Cri L Jour 140 °° AIR 1937 Pat 176 (177) = 38 Cri L Jour 97 °° 1931 Mad WN 1191 (1195).

19. Subordination where appeals lie to more than one Court — Proviso (a). — (1) A Subordinate Judge is subordinate to the District Judge as in suits up to the value of Rs. 5,000, appeals lie from the decree of the former to the latter although in suits of the value of more than Rs. 5000 appeals lie to the High Court. AIR 1939 All 79 (81) °° AIR 1955 Mys 59 (60) = 1955 Cri L Jour 718 = ILR (1955) Mys 89 °° AIR 1936 Pat 122 (122) = 37 Cri L Jour 413 °° ILR (1886) 11 Bom 438 (440) (DB) °° AIR 1918 Cal 791 (791) = 18 Cri L Jour 735 (DB).

(2) The subordination of a subordinate Judge is to the Court of the District Judge and not to that of the Additional District Judge. AIR 1945 Pat 322 (325) = ILR 24 Pat 1 = 48 Cri L Jour 19 (DB) °° AIR 1941 Pat 592 (593) = 42 Cri L Jour 748.

[See however AIR 1934 Nag 236 (237) = 31 Nag LR 90.]

(3) District Judge in Central Provinces was subordinate to the Divisional Judge. (1912) 13 Cri L Jour 498 (500, 501) = 8 Nag LR 57.

(4) The District Munsif in the Punjab is subordinate to the Court of the Subordinate Judge which is the appellate Court of inferior jurisdiction. AIR 1921 Lah 28 (29, 30) = 22 Cri L Jour 325 (DB) °° (1926) 27 Cri L Jour 75 (76) (Lah) °° AIR 1924 Lah 356 (356) = 23 Cri L Jour 720.

[See also (1940) 42 Pun LR 23 (25).]

[See however AIR 1920 Lah 29 (30) = 21 Cri L Jour 495.]

(5) A Special Judge invested with special powers under the U. P. Encumbered Estates Act, 25 of 1934, is primarily a Civil Judge and is subordinate to the District Judge and not to the High Court. AIR 1940 All 7 (7) = 41 Cri L Jour 227.

(6) Under the Punjab Courts Act, 1918, a subordinate Judge of the first class is not subordinate to the Senior Subordinate Judge. But appeals do 'ordinarily' lie either to the District Court or the High Court and as the District Court is the lower of these tribunals that must be regarded as the appellate authority for purposes of Section 476B. AIR 1956 SC 391 (396) = 1956 SCR 125 = ILR (1956) Punj 1075 = 1956 Cri L Jour 781.

20. Subordination where appeals lie to a Civil and also to a Revenue Court — Proviso (b). — (1) Assistant Collector acting in a suit for recovery of revenue was subordinate to the District Judge. AIR 1930 All 407 (407) = 31 Cri L Jour 898.

[See AIR 1934 All 886 (887) = 35 Cri L Jour 1136.]

(2) Proceedings in execution in a suit for arrears of rent were not appealable to the District Judge and the fact that the decree in the suit was appealable to the District Judge did not make the revenue Court acting in the execution proceedings subordinate to the District Court. (1912) 13 Cri L Jour 44 (46) = ILR 34 All 197 (DB).

21. Subordination of Civil Courts from whose decrees no appeal ordinarily lies.— (1) A Provincial Small Cause Court is subordinate to the District Court. AIR 1935 All 573 (574) = 36 Cri L Jour 950 °° 1957 Cri L Jour 198 (198) (Madh-B) °° AIR 1937 Rang 526 (527) °° AIR 1917 All 405 (407) = 18 Cri L Jour 935 (FB) °° AIR 1918 Cal 910 (910) = 18 Cri L Jour 791 (DB) °° AIR 1919 Pat 350 (353, 356) = 20 Cri L Jour 577 (FB).

(2) Small Cause Court at Saugor is subordinate to the Additional District Judge at Saugor as his jurisdiction is that of the District Judge and he is only the Additional Judge of the District in Jubbulpore sitting at Saugor. AIR 1934 Nag 236 (237) = 36 Cri L Jour 851.

(3) A Presidency Small Cause Court, whether presided over by a Single Judge or sitting as a Full Court, is subordinate to the High Court. AIR 1916 Cal 103 (104) = 17 Cri L Jour 504 °° AIR 1925 Mad 609 (610) = 26 Cri L Jour 801 (DB).

[See (1910) 11 Cri L Jour 271 (273) = ILR 34 Bom 316.]

(4) According to the prevailing practice of Calcutta High Court an appeal against an order for prosecution by the Small Cause Court lies to a single Judge of the High Court exercising original jurisdiction. (1910) 11 Cri L Jour 357 (359) = ILR 37 Cal 714.

[See also AIR 1917 Cal 527 (529) = 18 Cri L Jour 793 (DB).]

(5) According to Madras High Court a Bench of the High Court exercising appellate jurisdiction is competent to entertain

Section 195 — Note 21 (contd.)
and dispose of an appeal against an order for prosecution by Small Cause Court. AIR 1925 Mad 609 (610, 611) = 26 Cri L Jour 601 (DB) °° (1911) 12 Cri L Jour 545 (546) (DB) (Mad).

(6) A Village Panchayat exercising jurisdiction in civil matters is a Civil Court and is subordinate to the District Court which is the principal Civil Court of original jurisdiction. AIR 1943 Mad 419 (420) (DB) °° AIR 1942 Oudh 439 (440) = 43 Cri L Jour 668 °° AIR 1934 All 216 (217) = 35 Cri L Jour 1050.

(7) A Village Munsif acting under the U. P. Village Courts Act, 3 of 1892, is subordinate to the District Judge. (1909) 10 Cri L Jour 437 (439) (All).

(8) A Mamlatdar in Bombay is a Civil Court and, therefore, subordinate to the District Judge within the meaning of the section. (1903) 5 Bom LR 206 (207) (DB) °° (1907) 6 Cri L Jour 225 (226) (DB) (Bom).

(9) A claims commissioner appointed under the Railways Act to decide claims arising out of railway accidents, even if regarded as a Civil Court is not subordinate to Andhra High Court. AIR 1959 Andh Pra 235 (237) = 1959 Cri L Jour 558.

22. Abetment, conspiracy and attempt to commit offence — Sub-section (4). — (1) Provisions of sub-section (1) apply also to the abetment, conspiracy and attempt to commit the offences mentioned therein. AIR 1940 Sind 100 (101) = 41 Cri L Jour 861 (DB).

(2) Prosecution in respect of a charge of conspiracy under Section 120-B read with Section 193, Penal Code — Complaint of Court in or in relation to whose proceedings the offence is alleged to have been committed is necessary. AIR 1932 Cal 850 (856) = 33 Cri L Jour 657 (DB).

(3) Conspiracy or attempt to commit forgery — Offender should be a party to the proceeding in Court as required by clause (c) of sub-section (1). AIR 1931 Cal 438 (441) = 32 Cri L Jour 883 (DB).

23. Withdrawal of complaint filed by a public servant — Sub-section (5). — (1) Where a public servant, whether he is a Court or not, files a complaint in respect of an offence falling under clause (a) of this section, there is no appeal but subsection (5), newly added, enables an authority to which such public servant is subordinate, to withdraw the complaint. AIR 1953 Mad 569 (570) = 1953 Cri L Jour 1076 °° AIR 1927 All 828 (828) = 28 Cri L Jour 547 °° AIR 1931 All 630 (630) (DB).

(2) Sub-divisional Magistrate acting under clause (a) of sub-section (1) is subordinate to the District Magistrate, the authority to which he is subordinate under Section 17 of the Code, and an application for withdrawal of the complaint should be made to him and not to the Court of Session or to the High Court. AIR 1927 Pat 111 (112) = 28 Cri L Jour 853 (DB) °° AIR 1942 Cal 307 (308) = 43 Cri L Jour 636 (DB).

(3) Sub-section (5) empowers a superior authority only to withdraw a complaint and not to make a complaint. (1940) 44 Cal WN 1011 (1013) °° AIR 1934 Mad 473 (474) = 35 Cri L Jour 1134.

(4) Application made to a District Magistrate under sub-section (5) to withdraw a complaint — It is not open to District Magistrate to withdraw complaint without affording the other side a chance of being heard. AIR 1949 Nag 226 (227) = ILR (1949) Nag 475 = 50 Cri L Jour 580.

(5) Where a First Class Magistrate has filed a complaint under Section 488, Penal Code, for the disobedience of his order under Section 144, the Additional District Magistrate has no jurisdiction to withdraw it whether the First Class Magistrate is considered to have filed the complaint as a Court or purely as a public servant. AIR 1953 Mad 956 (958) = 1953 Cri L Jour 1780.

24. "Authority to which such public servant is subordinate." — Sub-sec. (5).— (1) High Court, as being the authority to which a District Judge or an additional Sessions Judge is subordinate within the meaning of this sub-section, is competent to withdraw a complaint filed by the latter as public servant. AIR 1927 All 828 (828) = 28 Cri L Jour 547 °° AIR 1924 Oudh 402 (403) = 25 Cri L Jour 1127.

(2) Where a District Magistrate directed a complaint to be filed under Section 174, Penal Code, the High Court ordered the complaint to be withdrawn in the exercise of its revisional jurisdiction. AIR 1928 Rang 296 (296) = 29 Cri L Jour 912.

(3) An Additional Deputy Commissioner exercising powers under Section 9A of the C. P. Land Revenue Act, is subordinate to the State Government. AIR 1953 Nag 121 (121, 122) = 1953 Cri L Jour 741 (DB).

24A. This section and Sec. 476, Cr. P. C. — See also notes to section 476, Cr. P. C. (1) Section 476 of the Code enacts the procedure to be followed for removing the bar created by Section 195. AIR 1945 Pat 362 (363, 366) = ILR 24 Pat 174 = 47 Cri L Jour 183 (DB) °° AIR 1931 All 443 (446) = 32 Cri L Jour 1105 (SB).

(2) Sections 195 and 476 should be read together. AIR 1945 Pat 362 (363, 366) = ILR 24 Pat 174 = 47 Cri L Jour 183 (DB) °° AIR 1926 All 21 (22) = 26 Cri L Jour 1506.

(3) The jurisdiction of Court under Section 476 is limited to sections enumerated in Section 195 (1) (b) and (c). It therefore cannot make a complaint under Sec. 476 for an offence falling under Section 195

Section 195 — Note 24-A (contd.)
(1) (a). AIR 1965 Orissa 180 (182) = 1965 (2) Cri LJ 525 = 31 Cut LT 1036 °° AIR 1967 Pat 166 (169) = 1967 Cri LJ 641 = 1967 BLJR 265.

(4) "Offence referred to in Section 195 (1) (c)" in or in relation to proceedings in that Court — Offence committed by person not party to Court proceeding — Court has power under Section 476 to prefer complaint against such non-party person. AIR 1962 Pat 282 (283, 284) = 1962 (2) Cri LJ 89 = 1961 BLJR 886.

(5) Offence of fabrication of false evidence — Committed in proceeding before a Munsif's Court — Offender not a party to the proceeding in Munsiff's Court — Offence covered by Section 195 (1) (c) — Munsif as a presiding officer can file a complaint to the District Magistrate — Section 476 is no bar. 1965 (1) Cri LJ 387 (389) = (1963) Ker LT 563.

(6) When a complaint is made under Section 476 of an offence under Sec. 195 (1) (b) and forwarded to a competent Magistrate, the transferee Court is competent to summon and try even those whose names do not appear in the complaint. AIR 1967 Pat 270 (274) = 1967 Cri LJ 1171 = 1967 BLJR 90 (DB).

(7) Application to Court to take action under Section 476, Cr. P. C. in respect of offences falling under Sections 193, 406, 465 and 477, I. P. C. — Rejection of application — The applicant before appealing to High Court must exhaust his remedy by appeal to District Court. 1966 Mad LW (Cr) 178 (178).

24B. This Section and S. 480, C. P. C.— (1) The provisions of Section 190 (1) (a) and Section 195 are not at all affected by the provisions of Section 480 and 482 and cognizance of an offence under Section 228 can be taken on a complaint of the Court concerned. AIR 1969 Pat 323 (329) = 1969 Cri LJ 1262 = 1969 BLJR 836 °° AIR 1959 All 693 (694) = 1959 Cri LJ 1261.

25. Appeal. — (1) No appeal lies from an order of a public servant under clause (a) of sub-section (1) of this section refusing to file a complaint for an offence referred to in that clause. AIR 1939 Mad 336 (336) = 40 Cri L Jour 568 °° AIR 1956 SC 153 (157) = (1955) 2 SCR 1013 = ILR (1956) Punj 163 = 1936 Cri L Jour 326 °° AIR 1967 Pat 95 (96) = 1966 BLJR 814.

(2) Where a public servant, whether he is a Court or not, files a complaint in respect of an offence falling under cl. (a) of sub-section (1), there is no appeal. But in such a case sub-section (5) enables the authority to which the public servant is subordinate to withdraw the complaint. AIR 1953 Mad 569 (570) = 1953 Cri L Jour 1076

(3) No appeal lies against order for prosecution for offences covered by Section 195 (1), Clause (a) — Appeal can be treated as withdrawal of complaint — Appeal transferred by District Judge to Additional District Judge for disposal — Additional District Magistrate not competent to hear appeal treated as application — Although High Court cannot exercise powers under Section 439, it can send back case direct to Subordinate Judge making complaint, for withdrawal. 1963 BLJR 375 (378).

(4) Whether action should be taken under this section is a matter primarily for the Court which hears the application, and its discretion is not to be lightly interfered with in appeal, even when that is competent. AIR 1956 SC 153 (158) = (1955) 2 SCR 1013 = ILR (1956) Punj 163 = 1956 Cri L Jour 326.

(5) Under Section 476B read with Section 195 (3), an appeal against an order passed by the Court of Small Causes refusing to make a complaint under Section 476 would lie to the principal Court of ordinary original civil jurisdiction where the Court of Small Causes is situated, viz., the Court of District Judge, Gwalior and not the High Court of Madhya Bharat. 1957 Cri L Jour 198 (198) (Madh-B).

(6) See also Notes on Section 476B.

26. Revision. — (1) As to when a revision lies against an order of Court directing a complaint to be filed, see Notes on Section 476B.

(2) Subordinate Judge declined to make a complaint under sub-section (1) cl. (a) of this section in respect of an offence under Section 186, Penal Code, alleged to have been committed against a peon of the Court while executing a process of the Court — High Court interfered in revision and set aside the order of the Subordinate Judge. AIR 1942 Cal 434 (435) = 43 Cri L Jour 410 (DB).

(3) The bar of jurisdiction under this section can be pleaded for the first time in revision. 1957 All WR (HC) 552 (553).

(4) Complaint under for alleged forgery in execution proceedings — Execution proceedings being civil in nature, person aggrieved by such complaint can file a revision under the section, when appeal against order is dismissed. AIR 1968 Pat 88 (89) = 1968 Cri LJ 352.

27. Revision, whether lies against withdrawal of complaint under sub-sec. (5). — (1) A withdrawal of a complaint under sub-section (5) is an administrative or executive act and hence not open to revision by the High Court. AIR 1929 All 931 (932) = 30 Cri L Jour 1159 °° AIR 1930 Pat 98 (101) = 30 Cri L Jour 710 °° AIR 1938 Pesh 9 (10) = 39 Cri L Jour 445.

(2) District Magistrate to whom returning officer is subordinate under the elec-

196. Prosecution for offences against the State. — No Court shall take cognizance of any offence punishable under Chapter VI [*][or IX-A] of the Indian Penal Code except Section 127 [†][and Section 171-F, so far as it relates to the offence of personation], or punishable under Section 108-A, or Section 153-A, or Section 294-A, [‡][or Section 295-A], or Section 505 of the same Code, unless upon complaint made by order of, or under authority from, [§][the State Government or District Magistrate or such other officer as may be empowered by the State Government in this behalf.]

[1882—S. 196; 1872—S. 465; 1861—S. 166.]

[*] Inserted by Indian Elections Offences and Inquiries Act, 1920 (XXXIX of 1920), Section 3.

[†] Inserted after the word and figures "Section 127," by the Representation of the People Act (XLIII of 1951), Section 138 (17-7-1951).

[‡] Inserted by the Criminal Law Amendment Act (XXV of 1927), Section 3.

[§] Substituted for the words "State Government or some officer empowered by the State Government in this behalf" the Criminal and Election Laws (Amendment) Act, 1969 (35 of 1969), Section 4 (4-9-1969).

STATE AMENDMENTS

Before the amendment of the section by Section 138 of Act XLIII of 1951, by insertion of the words 'and Section 171-F, in so far as it relates to the offence of personation,' the section was amended to the same effect by the following State Acts:—

Bombay Act XXIX of 1935;

Central Provinces and Berar Act XIX of 1936;

Punjab Act VIII of 1925, Section 161 (as amended by Punj Act XXV of 1954, S. 8) and Punjab Act I of 1936; and

West Bengal Act LVIII of 1950.

Section 195 — Note 27 (contd.)

toral rules refusing to entertain an application for withdrawal of a complaint filed by latter officer — **Held** that High Court could not interfere with order of Magistrate as he did not act as a Court. AIR 1929 All 931 (932) = 30 Cri L Jour 1159.

(3) District Magistrate summarily rejected application for the withdrawal of a complaint preferred by the joint Magistrate without giving notice or hearing the applicant — **Held**, that the application was by way of a judicial revision, and the order was open to revision under Section 439. AIR 1934 Mad 473 (474) = 35 Cri L Jour 1134.

(4) Where a joint Magistrate has passed an order withdrawing a complaint, the order of the District Magistrate in revision setting aside that order is passed as a Court and is open to revision by the High Court. AIR 1945 Mad 58 (58) = 46 Cri L Jour 421.

28. Dismissal of complaint for non-compliance with the section, whether bars a fresh and proper complaint. — (1) Where the Court dismisses a complaint for non-compliance of Section 195, the dismissal does not operate as an acquittal by a Court of competent jurisdiction. AIR 1928 Bom 143 (144) = 29 Cri L Jour 545 (DB) °° AIR 1926 Pat 302 (304) = 27 Cri L Jour 849 (DB) °° AIR 1927 Sind 10 (12, 15) = 27 Cri L Jour 1105 (DB) °° AIR 1966 Raj 40 (42) = 1966 Cri LJ 166 = 1965 Raj LW 279.

[See also AIR 1937 Mad 301 (302, 303) = 38 Cri L Jour 457 (FB).]

(2) See also Notes under Section 403.

SECTION 196 — SYNOPSIS

1. Scope and object.
2. Taking cognizance.
3. "Complaint made by order of, or under authority from ......"
4. Signature on order of sanction.
5. Specification of section under which complaint is to be made.
6. Proof of sanction.
7. Who can sanction prosecution.
8. Sanction not judicial function.
9. Form and contents of complaint.
10. Want of sanction — Effect.
11. Want of complaint — Effect.
12. Facts of case amounting to offence requiring sanction as well as other offence — Effect.

1. Scope and object. — (1) Cognizance in cases coming under this section can only be taken on a complaint sanctioned by the authorities mentioned in the section. Section 190 (b) and (c) have no application to such cases. AIR 1919 Mad 968 (969) = 20 Cri L Jour 186 (DB) °° (1911) 12 Cri L Jour 2 (3) (SB) (Cal) °° 1962 Ker LT 639 (641). (The general rule is that a complaint need not necessarily be made by the person injured but may be filed by

Section 196 — Note 1 (contd.)

any person aware of the offence but exception to this rule is found in Sections 195 to 199, Cr. P. C., the offences found wherein are complainable only by specified persons.)

(2) Offence under Rule 34 (6) (e) and (k) of Defence of India Act charged under Rule 38 (1) of Defence of India Rules — Trial by Sub-divisional Magistrate on report required by Rule 130 (1), Defence of India Rules — No objection held could be taken that provisions of Section 196 should have been complied with. AIR 1941 Mad 363 (364) = 42 Cri L Jour 652.

(3) Offences enumerated in this section are of a very exceptional nature and are all of them in the nature of offences against the State either in its internal or in its external relations. (1911) 12 Cri L Jour 217 (221, 222) = 1911 Pun Re (Cr) No. 11.

(4) Object of the section is to prevent unauthorized persons from intruding in State affairs by instituting State prosecutions and to secure that such prosecutions shall only be instituted under the authority of the Government. (1897) 22 Bom 112 (125) °° AIR 1923 Mad 328 (328) = 24 Cri L Jour 539 (DB) °° (1911) 12 Cri L Jour 286 (289) = 38 Cal 559 (SB).

(5) This section being a disenabling section must be construed strictly. AIR 1919 Mad 968 (969) = 20 Cri L Jour 186 (DB).

(6) Discretion vested in the Government to initiate proceedings cannot be delegated to or exercised by any other body or person. (1910) 11 Cri L Jour 453 (459) = 37 Cal 467 (DB) °° AIR 1922 Mad 126 (127) = 23 Cri L Jour 203 (DB) °° AIR 1918 Nag 248 (251).

(7) The considerations of policy which apply to the initiation of proceedings apply not only to the institution of a prosecution for the first time, but also to the question whether it is desirable to launch a fresh prosecution if the first prosecution fails or is likely to fail on account of a technical defect. AIR 1920 Mad 928 (931, 932) = 20 Cri L Jour 455 (SB).

(8) No apprehension of person doing any act mentioned in Section 108 — Sec. 108 does not apply — Proper procedure is to prosecute person after obtaining sanction under this section. AIR 1928 All 344 (344, 345) = 30 Cri L Jour 216.

(9) Cognizance under this section depends on complaint (made under authority emanating from certain sources) while cognizance under Section 197 depends on sanction. 1890 Pun Re (Cr) No. 16, p. 33 (37) (DB) °° (1910) 11 Cri L Jour 453 (460) = 37 Cal 467 (DB).

(10) Decisions bearing on the interpretation of Section 197 are not ipso facto applicable to the questions arising under this section. (1910) 11 Cri L Jour 453 (460) = 37 Cal 467 (DB) °° (1911) 12 Cri L Jour 217 (221, 222) = 1911 Pun Re (Cr) No. 11.

[But see (1897) 22 Bom 112 (125).]

(11) Provisions of Bengal Suppression of Terrorists Outrages Act, 1932, are controlled by Section 196. AIR 1937 Cal 99 (113) = 38 Cri L Jour 818 (SB).

(12) Section 138 of the Representation of the People Act amends Section 196. Therefore after the amendment no order of the Government is required for instituting prosecution under Section 171-F, Penal Code, so far as it relates to false personation. AIR 1958 Madh Pra 67 (68) = 1958 Cri L Jour 384 (DB) °° AIR 1959 Orissa 97 (98) = ILR (1959) Cut 153 = 1959 Cri L Jour 752 °° AIR 1954 Mad 704 (705) = 1954 Cri L Jour 1126.

(13) The section governs cases of prosecution under Section 124-A, Penal Code, in prosecutions in Manipur State. AIR 1955 Manipur 9 (13) = 1955 Cri L Jour 184.

(14) It is only when an offence strictly falls within the purview of this section that a sanction is necessary. Therefore, where a statement is merely defamatory and does not fall under Section 171-G, Penal Code, no sanction is necessary. AIR 1958 Mad 240 (241) = 1958 Cri L Jour 647 (2).

2. Taking cognizance. — (1) Ordering a preliminary investigation by the police under Section 155 of the Code is not "taking cognizance of an offence" hence a complaint made under the sanction of the Government is not necessary for ordering such an investigation. AIR 1932 Lah 581 (581) = 33 Cri L Jour 678.

(2) A Magistrate can arrest a person under Section 64 even in respect of an offence mentioned in this section, and release him on bail, without a complaint made by order of the Government. AIR 1939 All 682 (683) = 41 Cri L Jour 85.

(3) Trial commenced on sanction and complaint in respect of offence under Section 121A, Penal Code — Facts proved amounting to offence under Section 124 — Fresh sanction and complaint specifically directed to offence proved are necessary to proceed with case. AIR 1926 Rang 169 (171) = 27 Cri L Jour 1075 (DB).

(4) Section 237 has to be read subject to this section. AIR 1957 Andh Pra 987 (989) = 1957 Cri L Jour 1389.

(5) Offence under Section 295-A, I. P. C. — Order of State Government directing Commissioner of Police to depute an officer to make complaint — Commissioner directing Sub-Inspector of Police to investigate — Investigation completed but no charge-sheet under Section 173 (1) (a) submitted — Sub-Inspector filing complaint on further direction by Commissioner — Cognizance can be taken under Section 190 (1) (a) by Magistrate. AIR 1963 Mad 160 (163) = 1963 (1) Cri LJ 772 (DB).

Section 196 (contd.)

3. "Complaint made by order of, or under authority from ......" — (1) Section does not contemplate sanction — Complaint should be by order of or under authority of State Government. AIR 1965 Pat 393 (394) = 1965 BLJR 613 = 1965 (2) Cri LJ 401.

(2) It is not necessary that the very words used in a complaint must have been sanctioned by the authority. It is enough if the institution of the complaint has been sanctioned by it. AIR 1919 Mad 968 (968) = 20 Cri L Jour 186 (DB) °° (1909) 9 Cri L Jour 130 (132) = 32 Mad 35 (DB) °° (1909) 9 Cri L Jour 108 (110) = 32 Mad 3 (DB) °° AIR 1925 Mad 106 (107) = 25 Cri L Jour 401 (DB) °° (1908) 7 Cri L Jour 10 (13) = 35 Cal 141 (DB).

(3) Sanction must be given in each case specifying person against whom prosecution is to be instituted. AIR 1930 Lah 81 (81) = 31 Cri L Jour 692 (DB) °° (1908) 7 Cri L Jour 10 (14) = 35 Cal 141 (DB).

(4) Sanction must specify matter in respect of which prosecution should be launched. **AIR 1948 PC 82 (84) = 75 Ind App 30 = ILR (1948) Bom 316 = 49 Cri L Jour 261** °° AIR 1950 Cal 108 (109) = 51 Cri L Jour 556 °° AIR 1949 Mad 710 (711) = 51 Cri L Jour 156 °° (1912) 13 Cri L Jour 609 (649) (SB) (Cal).

(5) Sanction given in respect of particular offence — Sanction cannot sustain prosecution for different offence. AIR 1926 Rang 169 (171) = 27 Cri L Jour 1075 (DB) °° AIR 1948 Nag 71 (73) = 49 Cri L Jour 54 = ILR (1947) Nag 788 (DB).

(6) Where the order for prosecution relates to a definite offence committed on a particular occasion, a prosecution in respect of a distinct offence committed on a different occasion cannot be sustained on the basis of such an order. AIR 1924 Rang 371 (372) = 26 Cri L Jour 245.

(7) Where the facts constituting the offence charged are not shown on the face of the sanction, the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority. **AIR 1948 PC 82 (84) = 75 Ind App 30 = ILR (1948) Bom 316 = 49 Cri L Jour 261** °° AIR 1949 Assam 84 (Prs 8, 9) = ILR (1949) 1 Assam 323 = 51 Cri L Jour 63 °° AIR 1949 Mad 710 (Pr 1) = 51 Cri L Jour 156.

[See also AIR 1956 Bom 287 (297) = ILR (1956) Bom 343 = 1956 Cri L Jour 585 (DB).]

(8) Where a prosecution has been ordered and a complaint is made by an official, the presumption that official acts are regularly done may be applied and it may be presumed that the official making the complaint is duly authorized to do so. AIR 1938 Mad 758 (760, 761) = 39 Cri L Jour 938 °° (1908) 7 Cri L Jour 10 (15) = 35 Cal 141 (DB).

(9) The defect in a sanction due to the failure to address it to some determinate person is only an irregularity which does not go to the root of the jurisdiction. AIR 1923 Mad 328 (328) = 24 Cri L Jour 539 (DB).

(10) An order sanctioning a prosecution under this section need not be in any particular form. AIR 1918 Nag 248 (251) °° AIR 1925 Mad 106 (107) = 25 Cri L Jour 401 (DB) °° (1897) 22 Bom 112 (150) °° (1908) 7 Cri L Jour 10 (13) = 35 Cal 141 (DB) °° (1967) 69 Pun LR 126 = 1967 Cur LJ 72 (74). (When the District Magistrate orders putting up of a challan under Section 295-A I. P. C. after the enquiry, provisions of Section 196, Cr. P. C. can be said to have been complied with.)

(11) A sanction of prosecution under the section must be expressed with sufficient particularity to indicate clearly the matter which is to be the subject of the proceedings; there is no rigid rule as to degree of particularity required. (1908) 7 Cri L Jour 10 (13) = 35 Cal 141 (DB) °° (1897) 22 Bom 112 (124) °° (1912) 13 Cri L Jour 609 (649) (SB) (Cal) °° AIR 1919 Mad 968 (969) = 20 Cri L Jour 186 (DB).

(12) Where the order of the Government authorized filing of a complaint against certain named persons for offences under Sections 121, 121-A and 122, Penal Code, the sanction was not invalid merely because particulars of the offences were not stated. AIR 1946 Nag 173 (187, 188) = ILR (1946) Nag 126 = 47 Cri L Jour 851 (DB). **(Overruled on another point in AIR 1956 SC 238.)**

(13) An order for prosecution under this section need not be in writing. (1897) 22 Bom 112 (124) °° AIR 1918 Nag 248 (251).

(14) A sanction to prosecute may be communicated by telegram. AIR 1920 Mad 928 (929) = 20 Cri L Jour 455 (SB).

(15) There is no restriction as to the person who can be ordered to make a complaint under this section. (1897) 22 Bom 112 (123) °° AIR 1938 Mad 758 (760) = 39 Cri L Jour 938 °° (1909) 9 Cri L Jour 108 (111) = 32 Mad 3 (DB).

(16) Delegation of authority to file complaint by person authorised to file complaint is not illegal. AIR 1967 Mad 335 (337) = 1967 Cri LJ 1339 °° (1960) 62 Bom LR 818 (821). (Sanction to prosecute accused under Bombay Act 42 of 1949 granted to A — Complaint filed by B to whom no sanction was granted — Sanction held was valid and prosecution was not bad.)

(17) Government's order sanctioning prosecution addressed to Inspector-General of Police. Nothing to show that Inspector-

Section 196 — Note 3 (contd.)
General of Police authorised making of a complaint by inspector who laid charge-sheet but stated that Inspector was in fact so authorised and that correspondence between them was inadvertently omitted to be filed. Presumption under Section 114 (e) of the Evidence Act that official acts have been regularly performed could be invoked and Inspector's action was not unauthorised. AIR 1957 Andh Pra 987 (990) = 1957 Cri L Jour 1389.

4. Signature on order of sanction. — (1) An order sanctioning a prosecution under this section need not be signed personally by the head of the Government but may be signed by some gazetted officer having authority to sign on behalf of the Government. AIR 1938 Mad 758 (761) = 39 Cri L Jour 938 °° (1908) 7 Cri L Jour 10 (16) = 35 Cal 141 (DB) °° (1910) 11 Cri L Jour 453 (458) = 37 Cal 467 (DB) °° AIR 1918 Nag 248 (251).

(2) A signature by a Deputy Secretary to the Government was held to be insufficient. AIR 1922 Cal 298 (299, 300) = 24 Cri L Jour 111 (DB).

(3) A Court can take judicial notice of the signature of a gazetted officer who has signed an order for prosecution under this section. AIR 1923 Mad 600 (600, 601) = 24 Cri L Jour 403 (DB).

(4) A person signing an order for prosecution not being himself a complainant need not be examined on oath in the case. (1908) 7 Cri L Jour 10 (16) = 35 Cal 141 (DB).

5. Specification of section under which complaint is to be made. — (1) Sanction should be specifically directed to the particular section in respect of which proceedings are to be taken. It would be opposed to the true intendment of Section 196, for the Government by its order to give its legal or other advisers a roving power to determine under what section proceedings should be taken. (1910) 11 Cri L Jour 453 (459) = 37 Cal 467 (DB) °° (1912) 13 Cr L Jour 609 (649) (SB) (Cal) °° AIR 1922 Mad 126 (127) = 23 Cri L Jour 203 (DB).

(2) The particular section under which prosecution is to be started need not be specified in the sanction provided the matter of complaint is otherwise made clear. (1910) 11 Cri L Jour 583 (587) = 4 Sind LR 55 (DB) °° AIR 1926 Rang 169 (171) = 27 Cri L Jour 1075 (DB).

(3) Where a sanction was given for prosecution under Section 121 Penal Code in respect of certain activities of the accused and under Section 124-A in respect of certain speeches delivered by him, it was held that, a prosecution under Section 121 in respect of the speeches was covered by the sanction. AIR 1925 Mad 106 (106, 107) = 25 Cri L Jour 401 (DB).

(4) Where a prosecution under Sec. 124A is sanctioned, a prosecution for abetment of offence under S. 124-A is justified under the sanction. (1909) 9 Cri L Jour 130 (132) = 32 Mad 35 (DB).

6. Proof of sanction. — (1) Sanction of Government for prosecution must be strictly proved. 1872-1892 Low Bur Rul 389 (389).

(2) A sanction communicated by telegram must be proved to emanate from the Government. The Court is forbidden by the express provisions of Section 88 Evidence Act to make any presumption as to the person by whom the telegram was sent. AIR 1920 Mad 928 (928, 929) = 20 Cri L Jour 455 (SB).

(3) Order authorising Senior Superintendent of Police to make complaint under Section 153-A, Penal Code — Such order signed by Deputy Secretary to Government—Assistant who was acquainted with Deputy Secretary's signature could prove it — Sanction held not invalid merely because file was not sent to Governor as the order was a public document by virtue of Section 47 Evidence Act. AIR 1965 Pat 393 (394, 395) = 1965 (2) Cri LJ 401 = 1965 BLJR 613.

7. Who can sanction prosecution. — (1) Where a sanction is issued by the Government, it must be the act of the Government as a body and not of a single member of it. AIR 1920 Mad 928 (929) = 20 Cri L Jour 455 (SB).

(2) It is not open to accused person to dispute the right of the de facto Government to sanction prosecution under this section. (1912) 13 Cri L Jour 609 (613, 649) (SB) (Cal).

(3) State Government by general order can empower subordinate officers to grant sanction for a class of offences. AIR 1968 All 265 (269) = 1968 Cri LJ 884 (DB).

8. Sanction not judicial function. — (1) Government in according or withholding sanction under this section acts purely in executive capacity and not in judicial capacity. (1904) 1 Cri L Jour 275 (278) = 27 Mad 54 °° AIR 1916 Mad 1110 (1112) = 13 Cri L Jour 209 (211) (FB) °° AIR 1926 Rang 169 (171) = 27 Cri L Jour 1075 (DB). (Per Duckworth, J.)

(2) It is not necessary that the Government in sanctioning a prosecution should give reasons for doing so. AIR 1923 Mad 338 (339) = 24 Cri L Jour 116.

(3) It is not necessary, before sanctioning a prosecution, that the accused must be given an opportunity of showing why his prosecution should not be ordered. (1904) 1 Cri L Jour 275 (278) = 27 Mad 5.

Section 196 (contd.)

9. Form and contents of complaint. — (1) A complaint under this section must fulfil the requirements of the definition of a complaint under Section 4 (1) (h). (1908) 7 Cri L Jour 10 (14) = 35 Cal 141 (DB).

(2) The complaint must set out the facts constituting the alleged offence. If such facts are not stated, the proceedings are liable to be quashed. (1912) 13 Cri L Jour 609 (650) (SB) (Cal).

(3) After the proceedings have been terminated, a conviction cannot be set aside on the ground purely that the complaint did not properly set out the facts of the case. (1912) 13 Cri L Jour 609 (651) (SB) (Cal) °° (1908) 7 Cri L Jour 10 (16) = 35 Cal 141 (DB) °° (1909) 9 Cri L Jour 108 (111) = 32 Mad 3 (DB).

(4) It is absolutely necessary that a complaint under this section should specify the accused person against whom action is to be taken. (1911) 12 Cri L Jour 2 (3) (SB) (Cal) °° (1912) 13 Cri L Jour 609 (612) (SB) (Cal).

(5) In a prosecution for sedition the complaint must set out the alleged seditious words used by the accused. AIR 1929 Lah 284 (286) = 30 Cri L Jour 1129 °° AIR 1925 Mad 106 (107) = 25 Cri L Jour 401 (DB) °° (1897) 22 Bom 112 (150).

[But see (1909) 9 Cri L Jour 108 (111) = 32 Mad 3 (DB).]

(6) Charge-sheet in the form of final police report under Section 173, Criminal P. C. filed after investigation registered under Section 420, I. P. Code, but found relating to two offences namely under S. 420 and S. 294-A, I. P. Code — Charge-sheet is not a complaint required by Section 196. AIR 1957 Andh Pra 987 (990) = 1957 Cri L Jour 1389.

10. Want of sanction — Effect. — (1) Prosecution under this section is illegal in the absence of sanction. AIR 1951 Pat 513 (513) = 52 Cri L Jour 710 °° **AIR 1955 SC 196 (204) = 1955 SCR 1150 = ILR (1955) Punj 135 = 1955 Cri L Jour 526** °° AIR 1955 Cal 517 (519) = 1955 Cri L Jour 1340 (DB) °° AIR 1926 All 231 (232) = 27 Cri L Jour 705.

(2) Where there is no sanction, there is a defect of jurisdiction which can never be cured under Section 537, Criminal P. C. Fact that accused is ultimately convicted under another section in respect of which no sanction is required does not validate the proceedings or cure the defect. AIR 1951 Pat 513 (513) = 52 Cri L Jour 710.

(3) In the absence of a sanction to prosecute even evidence showing that an offence covered by this section has been committed is not admissible on the record. AIR 1944 Sind 1 (14) = 45 Cri L Jour 471 (FB).

(4) Sanction must be given before the proceedings are started. Sanction given after proceedings are commenced is not enough. AIR 1956 Mad 392 (393, 394) = 1956 Cri L Jour 1000 (2) °° 1890 Pun Re (Cr) No. 16 p. 33 (37) (DB) °° AIR 1933 Cal 332 (332) = 34 Cri L Jour 518.

(5) Section 532 does not apply to cases where a Magistrate has committed an accused person to the sessions in the absence of the sanction and complaint required by this section. (1910) 11 Cri L Jour 453 (460) = 37 Cal 467 (DB) °° 1890 Pun Re (Cr) No. 16 p. 33 (35, 36, 37) (DB).

[But see (1897) 22 Bom 112 (124, 125).]

11. Want of complaint — Effect. — (1) A mere sanction of prosecution by the Government is not enough for the validity of proceedings under this section in the absence of a valid complaint based upon such sanction. 1890 Pun Re (Cr) No. 16, p. 33 (34, 35) (DB) °° AIR 1955 Punj 90 (91) = ILR (1954) Punj 134 = 1955 Cri L Jour 714 (DB) °° (1911) 12 Cri L Jour 2 (3) (SB) (Cal) °° (1908) 7 Cri L Jour 10 (16) = 35 Cal 141 (DB).

(2) The letter embodying the sanction may itself be treated as complaint and, at any rate, the want of a complaint in such circumstances is only an irregularity curable under Section 537. (1908) 7 Cri L Jour 353 (355, 356) = 1908 Pun Re (Cr) No. 8 (DB).

(3) The State Government sanctioning prosecution u/s. 124A, I.P.C. against the accused and directing the Senior Superintendent of Police to institute a complaint — Filing of complaint by Senior Sub-Inspector is merely an irregularity curable by S. 537 Cr. P. C. AIR 1968 All 265 (267) = 1968 Cri LJ 884 (DB).

12. Facts of case amounting to offence requiring sanction as well as other offence. — Effect. — (1) Where the facts of a case amount to an offence which requires for its prosecution a sanction under this section as well as an offence which does not require such sanction, proceedings can be taken in respect of the latter offence in the absence of sanction. AIR 1951 Cal 581 (584) = 52 Cri L Jour 1480 (DB) °° AIR 1951 Cal 133 (136) = 52 Cri L Jour 1226 (FB). (AIR 1917 Cal 708 = 18 Cri L Jour 377 = 48 Cri L Jour 660 (Cal) and AIR 1949 Cal 632 = 51 Cri L Jour 97, **Overruled.**) °° AIR 1944 Sind 1 (14) = 45 Cri L Jour 471 (FB) °° AIR 1941 Mad 363 (364) = 42 Cri L Jour 652 °° AIR 1934 Nag 71 (73) = 35 Cri L Jour 1097 °° AIR 1952 All 35 (37) (DB). (AIR 1925 All 230 = 26 Cri L Jour 362, **Overruled.**)

*[**196A. Prosecution for certain classes of criminal conspiracy.** — No Court shall take cognizance of the offence of criminal conspiracy punishable under Section 120B of the Indian Penal Code,

(1) in a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means, or an offence to which the provisions of Section 196 apply, unless upon complaint made by order or under authority from †[the ‡[State Government] or some officer empowered by the ‡[State Government]] in this behalf, or

(2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, §[imprisonment of life] or rigorous imprisonment for a term of two years or upwards, unless the ‡[State Government], or a Chief Presidency Magistrate*‡ or District Magistrate empowered in this behalf by the ‡[State Government] has, by order in writing, consented to the initiation of the proceedings:

SECTION 196A — SYNOPSIS

1. Scope and object.

2. Chief Presidency Magistrate — Power of, to sanction prosecution under the section.

3. Essentials of sanction.

4. Whether Magistrate who has sanctioned prosecution can try a case.

5. Proviso.

6. Want of sanction — Effect.

1. Scope and object. — (1) This section is intended to see that prosecutions for the offence are not started in cases which are not of a sufficiently serious nature. AIR 1934 Cal 391 (392) = 35 Cri L Jour 714 (DB) •• AIR 1934 Pat 561 (563) = 36 Cri L Jour 17 (DB) •• AIR 1964 Bom 133 (136) = 1964 (1) Cri LJ 648 (DB).

(2) Under this section offence charged must be that of a criminal conspiracy. Where it is not criminal conspiracy but some other offence, the mere fact that it is asserted that the accused "conspired" to commit offence in the sense they are jointly responsible will not make this section applicable. AIR 1928 Mad 1158 (1161, 1164) = 30 Cri L Jour 191 (DB) •• **AIR 1968 SC 709 (713) = 1968 Cri LJ 867** •• AIR 1961 Andh Pra 448 (453, 454) = 1961 (2) Cri LJ 605.

(3) Criminal conspiracy must be one punishable under Section 120B Penal Code. If the offence charged is abetment of offence by conspiracy no sanction is necessary. 1958-2 Andh WR 523 (526) •• AIR 1938 Mad 130 (132) = 39 Cri L Jour 266 •• AIR 1922 Cal 107 (112, 113) = 23 Cri L Jour 657 (DB) •• **AIR 1962 SC 876 (885, 886, 903) = 1962 (1) Cri LJ 770** •• AIR 1961 Cal 461 (465, 466) = 1961 (2) Cri LJ 204 (FB). **(Reversed on another point in AIR 1962 SC 876.)**

(4) The jurisdiction of Court to take cognizance of an offence of conspiracy depends upon the object of the conspiracy. AIR 1939 Bom 129 (135) = 40 Cri L Jour 579 (DB) •• AIR 1918 All 345 (345, 346) = 19 Cri L Jour 12 (DB) •• AIR 1950 Cal 66 (71) = 51 Cri L Jour 376 (DB) •• AIR 1969 Punjab 225 (229) = (1967) 69 Pun LR 168 (179) (Delhi). (Where the communication was to forge documents and to use such documents to enable the passengers to go abroad, it was held that the case was covered by Clause (2) and not clause (1) of Section 196-A.)

(5) The object of conspiracy has to be determined at the initial stage not only by reference to the sections of the penal enactment referred to in the complaint but also upon the facts narrated therein and the evidence tendered before the Magistrate. AIR 1939 Bom 129 (135) = 40 Cri L Jour 579 (DB) •• AIR 1925 Cal 579 (580) = 26 Cri L Jour 302 (DB) •• **AIR 1961 SC 1241 (1245) = 1961 (2) Cri LJ 302 = (1962) 1 SCR 194.**

(6) The commission of a cognizable offence punishable with death, transportation or rigorous imprisonment for a term of two years or upwards, and not covered by Section 196, is not included in the section. No sanction is necessary for prosecution. AIR 1950 All 639 (643) •• 1958-2 Andh WR 523 (525) •• AIR 1950 Cal 66 (71) = 51 Cri L Jour 376 (DB) •• AIR 1946 Mad 7 (8) = 47 Cri L Jour 435 •• AIR 1934 All 61 (64) = 35 Cri L Jour 1349 (DB) •• AIR 1935 Pat 91 (93) = 36 Cri L Jour 500 (DB) •• 1963 (2) Cri LJ 713 (714) = (1964) 5 Guj LR 263 •• 1962 Ker LT 690 (702).

(7) Where the object of the criminal conspiracy does not fall within the section, sanction will not be necessary even where the object of the conspiracy is sought to be attained by doing an act which is covered by the section. AIR 1950 Cal 66 (71) = 51 Cri L Jour 376 (DB) •• AIR 1955 Bom 82 (86) = ILR (1954) Bom 554 = 1955 Cri L Jour 289 (DB) •• AIR 1939 Bom 129 (136) = 40 Cri L Jour 579 (DB) •• AIR 1947 Cal 32 (34) = 47 Cri L Jour 710 (DB) •• AIR 1934 Mad 88 (93, 94) = 35 Cri L Jour 631 (DB).

(8) Sanction will not be necessary merely because substantive offence which is alleged to be the object of the conspiracy is one which cannot be taken cognizance of without sanction of a particular authority. AIR 1934 Nag 71 (76) = 35 Cri L Jour 1097.

Provided that where the criminal conspiracy is one to which the provisions of sub-section °†[(4)] of Section 195 apply no such consent shall be necessary.]

[°] This section was inserted by the Criminal Law Amendment Act, 1913 (VIII of 1913), Section 5.

[†] Substituted for "the Governor-General in Council, the Local Government, or some officer empowered by the Governor-General in Council," by A. O., 1937.

[‡] Substituted for 'Provincial Government' by A. L. O., 1950.

[§] Substituted for "transportation," by the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), Section 24 (1-1-1956).

[°†] Substituted for the brackets and figure "(3)" by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), Section 48.

[°‡] The Chief Magistrate of the City of Ahmedabad exercises the jurisdiction of a Chief Presidency Magistrate. — See Guj. Act XIX of 1961, Section 14 (3) (4-11-1961.)

Section 196A — Note 1 (contd.)

(9) Consent under this section is not dispensed with merely because it can be said on the facts that a conspiracy to commit an offence not covered by the section has also been committed. AIR 1942 Sind 62 (64) = 43 Cri L Jour 612 (DB).

(10) Whether a sanction has been granted under Section 196-A is a question of fact which ought to be urged at the trial and before the High Court. It is impossible at the appellate stage in the Supreme Court to go into this question of fact. **AIR 1958 SC 350 (352) = 1958 SCR 1218 = ILR (1958) Punj 1310 = 1958 Cri L Jour 698.**

2. Chief Presidency Magistrate — Power of, to sanction prosecution under the section. — (1) A Chief Presidency Magistrate cannot sanction prosecution under this section unless he is empowered in this behalf by the State Government. AIR 1934 Bom 183 (184, 185) = 35 Cri L Jour 1330 (DB) °° AIR 1925 Cal 579 (580) = 26 Cri L Jour 302 (DB).

3. Essentials of sanction. — (1) No particular form is prescribed for a sanction under this section. AIR 1917 All 438 (439) = 18 Cri L Jour 634 (635).

[See also **AIR 1948 PC 82 (84) = ILR (1948) Bom 316 = 49 Cri L Jour 261 = 75 Ind App 30.**]

(2) In sanctioning prosecution under this section, the sanctioning authority is to see, not whether the allegations made by the prosecution are true but whether, if true, the case is such that in the interests of public justice there should be a trial. AIR 1934 Cal 391 (392) = 35 Cri L Jour 714 (DB).

(3) A letter from Under Secretary to the State Government in its Home Department addressed to District Magistrate informing that the Governor has been pleased to grant sanction for prosecution of certain persons named therein would meet the requirements of Section 196-A. **AIR 1963 SC 666 (671) = 1963 (1) Cri LJ 623 = (1963) Supp (1) SCR 382.**

4. Whether Magistrate who has sanctioned prosecution can try a case. — (1) The fact that a District Magistrate (or Chief Presidency Magistrate) has sanctioned a prosecution under sub-section (2) of this section is neither a disqualification preventing such Magistrate from trying the case under Section 556, nor in itself a ground for transferring the case from him. AIR 1934 Cal 391 (392) = 35 Cri L Jour 714 (DB).

5. Proviso. — (1) Proviso does not apply to cases covered by Section 195 (1). AIR 1942 Sind 62 (64, 65) = 43 Cri L Jour 612 (DB) °° AIR 1947 Sind 49 (53) °° AIR 1924 Cal 53 (54) = 24 Cri L Jour 949 (DB).

(2) Where there are several accused persons in a case and Section 195 applies only with regard to some and not with regard to others, this section will apply to the latter and a sanction will be necessary for their prosecution. AIR 1942 Sind 62 (64, 65) = 43 Cri L Jour 612 (DB) °° AIR 1938 Lah 526 (527) = 39 Cri L Jour 765 (DB) °° AIR 1925 Rang 296 (298) = 26 Cri L Jour 1329 (DB).

6. Want of sanction — Effect. — (1) Want of sanction under this section is fatal to proceedings and a conviction obtained in absence of such sanction must be set aside as illegal. AIR 1929 Cal 754 (755) = 31 Cri L Jour 995 °° AIR 1948 Sind 34 (36) = 49 Cri L Jour 51 (DB) °° AIR 1933 Pat 273 (275) = 34 Cri L Jour 938 (DB).

[See also **AIR 1948 PC 82 (84) = ILR (1948) Bom 316 = 49 Cri L Jour 261 = 75 Ind App 30.**]

[But see AIR 1932 Cal 786 (787) = 34 Cri L Jour 56 (DB). (Conviction by Sessions Court for offence falling under this section, without requisite sanction, held not bad in law.)]

(2) Where sanction is obtained after initiation of proceedings and before conviction, the defect is only a technical one and in absence of prejudice to the accused it does not make the trial illegal. AIR 1935 Cal 316 (319, 320) = 36 Cri L Jour 982 (DB) °° AIR 1938 Mad 130 (131) = 39 Cri L Jour 266 °° AIR 1945 Oudh 180 (182) = 47 Cri L Jour 40.

[But see AIR 1920 Mad 928 (930) = 20 Cri L Jour 455 (SB) °° (1909) 11 Cri L Jour 453 (460) = 37 Cal 467.]

*[**196B. Preliminary inquiry in certain cases.** — In the case of any offence in respect of which the provisions of Section 196 or Section 196-A apply, a District Magistrate or Chief Presidency Magistrate† may, notwithstanding anything contained in those sections or in any other part of this Code, order a preliminary investigation by a police-officer not being below the rank of Inspector, in which case such police-officer shall have the powers referred to in Section 155, sub-sec. (3).]

[*] Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), Section 49.

[†] See footnote (*‡) below Section 196-A.

STATE AMENDMENTS

Union territories (except Chandigarh)

In its application to the union territories, in Section 196-B, for the words "Chief Presidency Magistrate" substitute the words "Chief Judicial Magistrate".—Act 19 of 1969, Section 3 and Schedule; item 50 (in Delhi, on 2-11-1969.)

197. Prosecution of Judges and public servants. — *[(1) When any person who is a Judge within the meaning of Section 19 of the Indian Penal Code, or

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Section 196A — Note 6 (contd.)

(3) Where proper sanction was obtained before a final charge-sheet was laid against all the accused and the trial began only after the final charge-sheet, S. 196-A had been duly complied with. AIR 1955 Trav-Co 33 (41) = 1955 Cri L Jour 414 (DB).

(4) Where a charge in respect of the criminal conspiracy is added or substituted it is enough if sanction is obtained before such addition or substitution. AIR 1927 Cal 296 (297) = 28 Cri L Jour 466 (DB).

(5) A Court is not precluded from taking cognizance of different offence in absence of a sanction. AIR 1940 Cal 277 (280) = 41 Cri L Jour 719 (DB) °° AIR 1922 Cal 107 (110) = 23 Cri L Jour 657 (DB) °° AIR 1935 Pat 91 (93) = 36 Cri L Jour 500 (DB) °° **AIR 1967 SC 1590 (1594) = 1967 Cri LJ 1401** °° (1962) 64 Punj LR 519 (520).

(6) Where a prosecution is started for criminal conspiracy in the absence of the sanction required under this section, and the facts disclose also a different offence, the proceedings can be validated by amending the charge into one for such (different) offence. AIR 1925 Cal 579 (580) = 26 Cri L Jour 302 (DB) °° AIR 1926 Oudh 161 (164) = 26 Cri L Jour 1602 °° AIR 1939 Bom 129 (135, 136) = 40 Cri L Jour 579 (DB).

[But see AIR 1925 Rang 296 (299) = 26 Cri L Jour 1329 (DB).]

(7) Sanction given by authority in whose time prosecution was launched and not by him in whose time offence took place is valid. AIR 1969 Cal 481 (487) = 1969 Cri LJ 1224 (DB).

(8) Withdrawal of prosecution for obtaining sanction under Section 196-A, Cr. P. C. — Order of discharge does not amount to acquittal — Prosecution on submission of fresh charge sheet after obtaining sanction not barred. 1961 Pat LR 130 (132) (DB).

(9) Though the Home Secretary can pass an order on behalf of the Government, the order made by the former without reference to the minister in charge of the department on policy matter is invalid. AIR 1969 Punj 225 (234) = 1969 Cri LJ 932.

(10) Accused charged for two offences; (1) Conspiracy to commit offence under Section 5 (2), Prevention of Corruption Act and (2) Offence under that section committed in pursuance of that conspiracy — No sanction under Section 196-A (2) in respect of the offence of conspiracy which is a non-cognizable one — Both charges must fail. AIR 1970 Assam 43 (48) (DB).

(11) Where the accused was charged under Sections 120-B, 161, 162, 163 of Penal Code, but the sanction was obtained in respect of offences under Section 120B and Section 161 I. P. C. and not in respect of offences under S. 120-B and Ss. 162 and 163 it was held that the conviction for offences under Ss. 120B and 161, I. P. C. could still be maintained. AIR 1970 Delhi 102 (107).

Section 196B — Note 1

(1) Investigating Officer may arrest accused in course of investigation under authority of warrant of arrest issued by Sub-divisional Magistrate to facilitate Inspector's investigation — Sub-divisional Magistrate does not act beyond jurisdiction. AIR 1962 Pat 2 (5, 6) (DB). (**AIR 1959 SC 1118, Rel. on.**)

SECTION 197 — SYNOPSIS

1. Scope and object.
2. Judge.
3. Magistrate.
4. Public servant not removable from office save by or with the sanction of a State Government or the Central Government.

when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of a ‡§[State Government] or †[the Central Government], is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the ‡[previous sanction —

§[(a) in the case of a person employed in connection with the affairs of the Union, of the Central Government; and

(b) in the case of a person employed in connection with the affairs of a State, of the State Government].]]

(2) **Power of Central Government or State Government as to prosecution.**—°†[The °‡[Central Government or the State Government], as the case may be, °§[° °]] may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such Judge, †‡[Magistrate] or

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Section 197 — Synopsis (contd.)

5. **Receiver appointed by Court — Prosecution of.**
6. **"Is accused........duty."**
- **6A. Acts committed in official capacity requiring sanction — Illustrative cases.**
- **6B. Acts held not committed in official capacity and hence did not require sanction — Illustrative cases.**
7. **Taking cognizance.**
8. **Who can sanction prosecution.**
9. **Essentials of sanction.**
10. **Stage at which sanction is to be obtained.**
11. **Want of sanction — Effect.**
- **11A. Sanction in case of joint trial of two accused.**
12. **Sub-section (2).**
13. **Provisions of other Acts.**

1. Scope and object. — (1) The right to prosecute any person or body of persons by whom one may have been injured, when such injury gives rise to an offence, is a common right which can only be limited by special legislation, and in considering whether the right has been taken away, it must be seen whether it is taken away by express words or by necessary implication. (1878) 3 Cal 758 (761) (DB). (Per Ainslie, J.)

(2) This section is an instance of a provision restricting common right of a person to prosecute another who has caused him an injury which is an offence. The section embodies one of the exceptions to the general rule laid down in Section 190, that any offence may be taken cognizance of by the Magistrates enumerated therein. AIR 1952 Nag 12 (14) = ILR (1951) Nag 764 = 1952 Cri L Jour 98 (DB) °° **AIR 1955 SC 196 (204) = 1955 SCR 1150 = ILR (1955) Punj 135 = 1955 Cri L Jour 526.**

(3) The object of the section is to guard against vexatious proceedings against public servants and to secure the well-considered opinion of a superior authority before a prosecution is launched against them. AIR 1958 Madh Pra 2 (Pr 22) = 1958 Cri L Jour 41 °° AIR 1957 Cal 25 (Pr 28) = 1957 Cri L Jour 54 °° AIR 1957 Madh B 172 (Pr 7) = 1957 Cri L Jour 508 °° AIR 1957 Raj 51 (Pr 5) = ILR (1956) 6 Raj 821 = 1957 Cri L Jour 227 °° AIR 1952 Nag 12 (13) = ILR (1951) Nag 764 = 1952 Cri L Jour 98 (DB) °° AIR 1942 Mad 664 (664) = 44 Cri L Jour 13 °° AIR 1938 Pat 543 (544) = 39 Cri L Jour 774 °° AIR 1929 Bom 375 (376) = 31 Cri L Jour 353 (DB) °° (1970) 2 Pun LR 16 (19) °° AIR 1970 Andh Pra 13 (15) = 1970 Cri LJ 26 (DB) °° AIR 1968 Mys 243 (244) = 1968 Cri LJ 1183 °° AIR 1967 Goa 121 (133) = 1967 Cri LJ 1304 (DB) °° AIR 1963 Andh Pra 491 (491, 492) = 1963 (2) Cri LJ 601 (DB) °° AIR 1963 Andh Pra 491 (491, 492) = (1963) 2 Cri LJ 601 (DB) °° 1963 (2) Cri LJ 359 (361) (Raj) °° AIR 1961 Ker 175 (176, 178) = 1961 (1) Cri LJ 816 (DB). (Object is to ensure discouragement of fraudulent, doubtful and impolite prosecution.) °° AIR 1960 Raj 173 (176, 177) = 1960 Cri LJ 996 = 1959 Raj LW 609.

(4) Before the section can be invoked, two conditions must be satisfied—

(1) the accused must be a public servant of the kind mentioned in the section; and

(2) the offence must be committed by the accused while acting or purporting to act in the discharge of his official duty. AIR 1951 Cal 388 (389) (DB) °° AIR 1957 Madh B 172 (Pr. 4) = 1957 Cri L Jour 508 °° AIR 1957 Raj 51 (Pr 5) = ILR (1956) 6 Raj 821 = 1957 Cri L Jour 227 °° AIR 1957 Tripura 18 (Prs. 4, 8) = 1957 Cri L Jour 394 °° AIR 1943 Pat 229 (231, 232) (DB) °° **AIR 1949 FC 1 (2) = 49 Cri L Jour 625** °° AIR 1928 Mad 161 (162, 163) = 28 Cri L Jour 1038 °° AIR 1965 Bom 131 (133) = 1965 (2) Cri LJ 197 °° 1963 (2) Cri LJ 359 (361, 362, 363) (Raj) °° 1962 Ker LJ 1150 (1153) °° **AIR 1962 SC 1573 (1580, 1581) = 1962 (2) Cri LJ 510 = (1963) 1 SCR 121.**

(5) The section requires only a sanction for the prosecution. No formal complaint is necessary as in the case of Section 196. 1870 Rat 32 (32) (DB).

public servant is to be conducted, and may specify the Court before which the trial is to be held.

†§[(3) * * * *].

[1882—S. 197; 1872—S. 466; 1861—S. 167.]

[*] Sub-section (1) was substituted for the original by the Code of Criminal Procedure (Amendment) Act (XVIII of 1923), Section 50.

[†] Substituted for the words "some higher authority," by A. C. A. O., 1948.

[‡] Substituted for "previous sanction of the Local Government," by A. O., 1937.

[§] Substituted for clauses (a) and (b) in sub-section (1), by A. L. O., 1950.

[*†] Substituted for "such Government" by A. O. 1937.

[*‡] Substituted for "the Governor General or Governor" by A. L. O., 1950.

[*§] The words "exercising his individual judgment" were omitted by Adaptation of Existing Indian Laws Order, 1947.

[†‡] Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

[†§] Sub-section (3) was repealed by A. C. A. O. 1948.

[‡§] Substituted for "Provincial Government" by A. L. O., 1950.

OBJECTS AND REASONS

1923.— "It has been pointed out to us that difficulties with regard to Section 197 have recently come to light. There are certain public servants who are only removable from office by the Secretary of State, and it is unreasonable that they should obtain no protection under the section. Further, in view of Section 4 (2) of the Code, the word 'Judge' has to be interpreted according to the definition given in Sec. 19 of the Indian Penal Code, with the result that Magistrates, acting in certain capacities under the Code, e.g., when holding inquiries, obtain no protection. We have, therefore, proposed a re-draft of sub-section (1) of Section 197 to meet these difficulties. We have confined the operation of the section to public servants removable by a Local Government or some higher authority and have provided that the sanction required for a prosecution will be the sanction of the authority which has power to remove. Mr. Chaudhuri would prefer to leave Section 197 unaltered save in so far as the Bill proposed to amend it; he considers that the amendment proposed by us would enhance the difficulty of obtaining sanction" — S. C. R. (18 of 1923.)

Section 197 — Note 1 (contd.)

[See also (1910) 11 Cri L Jour 453 (460) = 37 Cal 467 (DB).]

(6) The section applies to offences under Penal Code, as well as to offences under other laws. AIR 1940 Pat 316 (320), 321) = 41 Cri L Jour 221 (225) (DB).

(7) Section applies even to offences committed outside India. AIR 1931 Cal 646 (648) = 33 Cri L Jour 83 (DB).

(8) Section 6 (2) of the Criminal Law Amendment Ordinance, 29 of 1943, construed in the light of Section 1 (2) of the Code shows that this section is not applicable to cases triable under the Ordinance. AIR 1944 FC 66 (68) = 45 Cri L Jour 755 ** AIR 1944 Pat 378 (387) = 46 Cri L Jour 438 (DB).

(9) Where the offence alleged to have been committed by a person referred to in this section in the discharge of his official duty also falls under Section 195, both the complaint referred to in Section 195 (1) (b) and sanction under this section are necessary for taking cognizance of the offence. AIR 1938 Pat 83 (86) = 39 Cri L Jour 314 (DB).

(10) This section has no application to proceedings for contempt of Court as the proceedings are not in connection with any offence. AIR 1952 All 56 (58) = 1952 Cri L Jour 223 (DB) ** AIR 1958 Punj 471 (Pr. 35) = ILR (1958) Punj 1822 = 1958 Cri L Jour 1529.

(11) This section is in the nature of a procedural provision and therefore would apply to a proceeding which was pending when the Code was made applicable to Hyderabad by the Code of Criminal Procedure (Amendment) Act, 1951. AIR 1952 Hyd 135 (136, 137) = ILR (1952) Hyd 383 = 1952 Cri L Jour 1299 (DB).

(12) The question whether an accused who is a public servant, would be protected under this section is not a pure question of law but a mixed question of fact and law and has to be decided after investigation and cannot be short-circuited by summarily throwing out the complaint. AIR 1952 Mad 667 (669) = 1952 Cri L Jour 1295 ** (1953) 2 Mad L Jour 28 (30) ** AIR 1967 All 333 (333) = 1967 Cri LJ 839.

(13) This section being an exception to the general rule in Section 190 an accused who relies on this section as a bar to his prosecution has to establish all facts which bring into play the exceptional provision. AIR 1952 Nag 12 (14) = ILR (1951) Nag 764 = 1952 Cri L Jour 98 (DB) ** 1958 Ker L Tim 106 (108) ** AIR 1946 Pat 108 (108) = 47 Cri L Jour 445 ** AIR

Section 197 — Note 1 (contd.)
1967 Goa 121 (133) = 1967 Cri LJ 1304 (DB).

(14) Article 14 of the Constitution of India does not render Section 197 ultra vires as the discrimination is based upon a rational classification. Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard. AIR 1956 SC 44 (48) = (1955) 2 SCR 925 = 1956 Cri L Jour 140 °° AIR 1954 Nag 265 (267) = ILR (1954) Nag 601 = 1954 Cri L Jour 1367 (DB).

[See also AIR 1957 Punj 110 (Pr 13) = ILR (1957) Punj 618 = 1957 Cri L Jour 659 (DB).]

2. Judge. — (1) A "Judge", as defined in Section 19 Penal Code, is entitled to the protection of this section whether or not he is removable from office without the sanction of the Government. AIR 1959 Raj 12 (Pr 6) = ILR (1957) 7 Raj 1085 = 1959 Cri L Jour 82. (Sarpanch of Panchayat is a Judge and removable by Panchayat Officer — He is protected under this section.)

(2) The following persons have been held to be Judges for the purpose of this section :

(a) The President of a Municipality or Local Board when accepting or rejecting nomination papers for election. AIR 1929 Mad 175 (176) = 30 Cri L Jour 365. (President of Union Board is Judge, but not a public servant being removable under Section 44, Madras Local Boards Act.)

(b) An election officer when removing names from the electoral roll. 1937 Mad WN 740 (741).

(c) A member of a Village Panchayat Court or its President. (1936) 37 Cri LJ 294 (294) (Nag). (Member.) °° AIR 1959 Raj 12 (Pr 6) = ILR (1957) 7 Raj 1085 = 1959 Cri L Jour 82. (Sarpanch of Panchayat.) °° AIR 1956 All 134 (135) = 1956 Cri L Jour 185. (Sarpanch under the U. P. Panchayat Raj Act.) °° AIR 1922 Mad 62 (62) = 23 Cri L Jour 148 (DB). (Do.) °° 1937 Mad WN 216 (216). (President.)

(d) A Village Munsif in the Madras Presidency trying suits under the Madras Village Courts Act. But in sending his report under Section 45 a Village Munsif is not acting in his capacity as a Magistrate. AIR 1929 Mad 172 (173, 174, 175) = 30 Cri L Jour 396 °° AIR 1933 Mad 270 (270) = 34 Cri L Jour 526 °° (1904) 1 Cri L Jour 321 (326) = 27 Mad 223 (DB) °° AIR 1937 Mad 578 (578) = 38 Cri L Jour 950. (Village Munsif sending report under Section 45 is not acting as Judge.)

(e) A Village Magistrate in the Madras Presidency when trying an offender under the Madras Village Police Regulation, 11 of 1816, or while entering in his register the particulars of a case filed before him. But a Village Magistrate when he is preventing the commission of an offence does not act as a Judge. (1900) 23 Mad 540 (543, 544) (DB) °° 1937 Mad WN 870 (871).

(f) A Village Police Patel trying and disposing of a case under Section 14, Bombay Village Police Act, 8 of 1867. AIR 1938 Bom 489 (490) = 40 Cri L Jour 116 (DB).

(g) A Court of Wards Manager while exercising the functions referred to in Part 4 of the Chota Nagpur Encumbered Estates Act, 6 of 1876, relating to the settlement of debts. AIR 1937 Pat 160 (162) = 38 Cri LJ 94.

(h) Punch while acting in his judicial capacity. 1959 Raj LW 51 (52) = ILR (1959) 9 Raj 38. (Overruled on another point in AIR 1964 Raj 174.)

(3) An arbitrator is not a Judge within the meaning of Section 19 of the Penal Code, and hence no sanction of State Government is necessary under this section for his prosecution for acts done while acting as arbitrator. AIR 1940 Pesh 41 (43) = 42 Cri L Jour 68.

(4) Returning Officer scrutinising nomination papers in election of a Co-operative Society is not a Judge and cannot claim protection under S. 197. AIR 1970 Punj and H 21 (23) = 1970 Cri LJ 67. (Section cannot be invoked when by the time complaint is filed, the Returning Officer had already given his decision and was no longer acting as such. AIR 1929 Mad 175, Dist.)

3. Magistrate. — (1) A Magistrate who was removable without the sanction of the Government and who was accused of an offence committed by him while merely holding an inquiry (not being a trial) under the Code was outside the purview of the section. Under the section as amended in 1923 such a Magistrate also would be entitled to the protection of this section. See Report of the Select Committee (1922).

4. Public servant not removable from office save by or with the sanction of a State Government or the Central Government. — (1) This section applies only to such public servants as are not removable from office save by or with the sanction of the State Government or of the Central Government. AIR 1952 Pat 379 (380) = 1952 Cri L Jour 1391 °° AIR 1959 Andh Pra 27 (Prs 6, 9) = 1959 Cri L Jour 21 °° AIR 1957 Assam 125 (Pr 4) = ILR (1955) 7 Assam 226 = 1957 Cri L Jour 832 (DB). (It cannot be applied to areas where District Councils with a certain

Section 197 — Note 4 (contd.)

amount of autonomy are functioning as the governing bodies such as Khasi and Jaintia Hill District.) °° AIR 1956 Assam 2 (4) = 1956 Cri L Jour 38 (DB) °° AIR 1954 Nag 265 (266) = ILR (1954) Nag 661 = 1954 Cri L Jour 1367 (DB) °° AIR 1951 Kutch 79 (80) = 52 Cri L Jour 1486 °° AIR 1950 All 639 (642) °° AIR 1944 FC 66 (67) = 45 Cri L Jour 755 °° AIR 1939 All 705 (705, 706) = 41 Cri LJ 137 °° AIR 1969 Delhi 291 (293) = 1969 Cri L J 1239 (DB). (Prosecution of General Manager, (State) Roadways — Sanction under Section 197 held required — Obiter.) °° (1964) MLJ (Cri) 711 = (1964) 2 Mys LJ 449 (450) (DB) °° 1962 (2) Cri LJ 583 (584) (Punj).

(2) Words 'removable from his office' refer not to particular vacancy to which a person has been posted but to the office to which he has been appointed as public servant wherever and in whatever capacity he may be working. AIR 1968 Mys 243 (244) = 1968 Cri LJ 1183 = 1968 Lab IC 1169 = (1968) 1 Mys LJ 388.

(3) Where a person is removable both by State Government and by an authority subordinate to Government, Section 197 would not apply. AIR 1957 Madh B 172 (Pr 5) = 1957 Cri L Jour 508 °° AIR 1959 Andh Pra 27 (Prs. 6, 9) = 1959 Cri L Jour 21 °° AIR 1957 Tripura 18 (Prs 4, 8) = 1957 Cri L Jour 394. (Sub-Inspector of Police also removable by District Superintendent of Police under Section 7, Police Act — No sanction is necessary.)

(4) Test for applicability of section is only that the public servant must not be removable by any other authority than that mentioned in the section but also that he must be removable by such authority. See Report of the Select Committee (1922).

(5) The words "removable from office' in Section 197 are used in the technical sense of the office coming to an end on some superior authority forcing the public servant to vacate it. AIR 1964 Raj 174 (176) = 1964 Cri LJ 339 (DB).

(6) If once the Central Government has delegated its powers to another authority with regard to appointment and removal of a public servant, then for the purposes of S. 197 the public servant concerned will not be treated to be a public servant "nor removable from his office except by or with the sanction of the Central Government". AIR 1967 SC 1331 (1334) = (1968) 1 SCJ 299 °° AIR 1968 Raj 136 (137) = 1968 Cri LJ 654. (Chairman of Municipal Board—as 'removable' in Section 197 must be construed in sense of office coming to end on some superior authority forcing public servant to vacate it and not in sense of it coming to end by operation of law. AIR 1965 Mys 258, Dissent. from.)

(7) The expression "Government" in the section refers to the Government acting in its executive capacity. Hence, a public servant who is removable from his office only by the Legislature is not entitled to the protection of this section. See (1878) 3 Cal 758 (762, 763) (DB).

(8) The Commissioner in Sind was not a Provincial Government within the meaning of this section. AIR 1932 Sind 177 (180) = 34 Cri L Jour 171 (DB).

(9) This section does not apply to offences alleged to have been committed by public servants who are removable from office by some authority subordinate to the State Government although such authority may only be acting in the exercise of a power delegated by the State Government. **AIR 1943 FC 18 (20, 21) = 44 Cri L Jour 466.** (No sanction necessary for prosecution of Sub-Inspector and an Assistant Sub-Inspector of Police and Excise Sub-Inspector who are removable from office under statutory rules by the Deputy Inspector General of Police and the Excise Commissioner respectively. Affirming AIR 1943 Pat 229 on appeal. AIR 1935 Mad 442 = 36 Cri L Jour 1241; AIR 1926 All 271 = 27 Cri L Jour 345 and AIR 1935 Rang 263 = 36 Cri L Jour 1272, Approved. AIR 1917 Mad 344 = 17 Cri L Jour 168 and AIR 1934 Rang 238 = 36 Cri L Jour 77, Overruled.) °° AIR 1965 Mys 128 (134) = 1965 (1) Cri LJ 565. (Treasurer removable from service by Comptroller of State Accounts on date of taking cognizance of offence.)

[See also AIR 1952 Mad 667 (669) = 1952 Cri L Jour 1295 °° AIR 1946 Bom 86 (87, 88) = ILR (1946) Bom 85 = 47 Cri L Jour 319 (DB) °° AIR 1947 Oudh 210 (215) = 22 Luck 428 (DB).]

[See however ILR (1954) 4 Raj 464 (467).]

(10) Where the power of removal has been transferred out and out by the State Government to some other authority, this section will not apply. AIR 1935 Rang 263 (264) = 36 Cri L Jour 1272 (FB) °° AIR 1969 Cal 481 (487) = 1969 Cri LJ 1224 (DB). (Members of Railway Protection Police removable from service by Commandant of R. P. P.) °° (1965) (2) Cri LJ 165 (165) (Guj). (Post-Master is removable by Post-Master General.)

(11) Where delegation of powers by State Government is ultra vires, but the subordinate authority is otherwise competent to remove the public servant from office, sanction is not necessary. AIR 1938 Rang 181 (184) = 39 Cri L Jour 614.

(12) Even though the Central Government delegates its power of appointing a public servant to another authority under Section 16 General Clauses Act, the authority to remove him is with the Central Government. In such a case, sanction of the Central Government is necessary for the prosecution of the public servant. AIR 1958 Assam 131 (Prs. 2, 3) = 1958 Cri L Jour 1129 (DB).

Section 197 — Note 4 (contd.)

(13) The President of a Taluk Board who is not removable from office without the sanction of the Government is entitled to protection of this section, though if he absents himself from a certain number of meetings, he will cease to hold office even without being removed from it. AIR 1933 Sind 161 (163, 164) = 34 Cri L Jour 191 (DB).

(14) Where a public servant is removable from his office without the sanction of any of the authorities mentioned in the section the fact that the State Government has the power of restoring to office such public servant after his dismissal by some other authority does not bring him within the purview of this section. AIR 1922 Nag 121 (122) = 23 Cri L Jour 397.

(15) The condition as to the status of the accused must be satisfied not only when the offence was committed but also when the prosecution is started for it is only then that it can be said that a public servant is accused of an offence. AIR 1952 Punj 89 (94) = 1952 Cri L Jour 316 (DB). **(Overruled** on another point in **AIR 1957 SC 458)** °° AIR 1932 Sind 177 = 34 Cri L Jour 171 and AIR 1937 Nag 293 = 39 Cri L Jour 146, **Dissented from.)** °° AIR 1959 Mad 437 (Pr. 10) = ILR (1959) Mad 877 = 1959 Cri L Jour 1187. (President of village Panchayat misappropriating money — Prosecution launched when he ceased to be President — Sanction not necessary — **AIR 1958 SC 107, Relied on.)** °° AIR 1959 Orissa 159 (Pr. 22) = 1959 Cri L Jour 1197. (Public servant ceasing to be such on date of cognizance — Sanction is not necessary — **AIR 1958 SC 107 Relied on.)** °° AIR 1952 Nag 12 (14) = ILR (1951) Nag 764 = 1952 Cri L Jour 98 (DB). (AIR 1937 Nag 293, **Overruled.)** °° AIR 1938 All 513 (514, 515) = 39 Cri L Jour 925 °° AIR 1948 Bom 248 (249) = 49 Cri LJ 357 = ILR (1947) Bom 706 °° AIR 1943 Cal 527 (530) = 44 Cri L Jour 633 (DB). (AIR 1937 Nag 293 = 39 Cri L Jour 146 and AIR 1932 Sind 177 = 34 Cri L Jour 171, **Dissented from.)** °° **AIR 1961 SC 1395 (1397) = 1961 (2) Cri LJ 571 = (1961) 2** SCJ 649 = 63 Bom LR 1020. (Person ceasing to be Magistrate when cognizance of offence is taken — Sanction not necessary. AIR 1958 SC 107, Rel. on.) °° AIR 1967 Goa 121 (132, 133) = 1967 Cri LJ 1304 (DB) °° 1962 (2) Cri LJ 408 (411) = 1961 All LJ 859 (DB). (Person not a 'judge' at the time of accusation — Sanction to prosecute him is not necessary. AIR 1958 SC 107, Rel. on.) °° AIR 1960 Raj 247 (248, 249) = 1960 Cri LJ 1375 (2) = 1960 Raj LW 183. (Sanction not necessary if accused ceases to hold public office on date of taking of cognizance of offence. **AIR 1958 SC 107, Foll.;** AIR 1952 Nag 12; AIR 1953 All 470 and AIR 1954 Bom 109, Rel. on; AIR 1932 Sind 177 and AIR 1937 Nag 293, **Diss. from.)**

[But see AIR 1932 Sind 177 (179) = 34 Cri L Jour 171 (DB).]

(16) It is not necessary that a public servant should be in office at the time when the accusation was preferred against him. AIR 1950 Raj 51 (52, 53).

(17) At the time the Court is asked to take cognizance, not only the offence must have been committed by a public servant but the person accused must still be a public servant removable from office by a competent authority before the provisions of Section 6 can apply. **AIR 1958 SC 107 (Pr 11) = 1958 SCR 1037 = ILR (1958) Punj 986 = ILR (1957) 2 All 523 = 1958 Cri L Jour 254.** (Accused ceasing to be public servant at time Court takes cognizance — Section 6 does not apply.)

(18) A Corporation (like the Calcutta Municipality) is not a public servant. See (1878) 3 Cal 758 (760, 762) (DB).

(19) The protection conferred by this section on the public servants mentioned therein does not extend to persons to whom such public servants may delegate any portion of their powers. (1897) 2 Weir 226 (226) (DB). (No sanction is necessary for prosecuting a Municipal Chairman Delegate for acts done qua Chairman Delegate.)

(20) The following persons have been held to be public servants to whom the section applies:

(a) Member of Municipal Council, (even after he is elected as vice-chairman). AIR 1953 Sau 143 (144): 1953 Cri LJ 1263 (DB) °° AIR 1938 Pat 543 (545) = 39 Cri L Jour 774 °° AIR 1934 Cal 838 (841) = 36 Cri L Jour 385 (DB) °° AIR 1928 All 756 (758) = 30 Cri L Jour 62 °° AIR 1930 Lah 147 (147) = 31 Cri L Jour 691 °° AIR 1939 Cal 636 (636) = 40 Cri L Jour 959 (DB).

[But see AIR 1932 Sind 177 (178, 179) = 34 Cri L Jour 171 (DB).]

(b) Member of District Board. AIR 1941 Bom 85 (88) = 42 Cri L Jour 441 (DB) °° AIR 1933 All 543 (544) = 34 Cri L Jour 1208 °° AIR 1925 Oudh 565 (566) = 26 Cri L Jour 1157 (DB).

(c) President of Taluk Board. AIR 1937 Bom 160 (161) = 38 Cri L Jour 654 (DB) °° AIR 1929 Mad 8 (10) = 30 Cri L Jour 164.

(d) Secretary of a municipality. AIR 1953 Vindh Pra 7 (8) = 1953 Cri L Jour 596.

(e) President of Municipality. AIR 1938 Pat 543 (545) = 39 Cri L Jour 774 °° AIR 1955 Mys 113 (113, 114) = ILR (1955) Mys 324 = 1955 Cri L Jour 1269 °° AIR 1928 Cal 516 (518) = 30 Cri L Jour 348 (DB) °° AIR 1928 Mad 1158 (1160, 1161) = 30 Cri L Jour 191 (DB) °° (1964) (1) Cri LJ 126 (127) (Raj) °° AIR 1961 Guj 57 (59, 61) = (1960) 1

Section 197 — Note 4 (contd.)

Guj LR 249 = 1961 (1) Cri LJ 499. (President as councillor not removable except by State Government.) °° AIR 1960 Raj 173 (175, 176, 177) = 1960 Cri LJ 996 = 1959 Raj LW 609. (AIR 1939 Cal 636, Rel. on; ILR (1954) 4 Raj 464, Disting.) °° AIR 1968 Raj 136 = (1968) Raj LW 59 = 1968 Cri LJ 654.

(f) Manager of Court of Wards of an estate. AIR 1943 Pat 316 (320) = 41 Cri L Jour 221 (225) (DB). (See Bengal Court of Wards Act, S. 59A.)

(g) Chairman and members of a Debt Settlement Board. AIR 1940 Cal 405 (405) = 41 Cri L Jour 854 (DB).

(h) Chairman of a District Board constituted under the Bombay Primary Education Act. AIR 1936 Bom 453 (454) = 38 Cri L Jour 16 (DB).

(i) The village officers referred to in the following cases. AIR 1939 Bom 63 (64) = 40 Cri L Jour 269 (DB). (Officiating kulkarni under Sec. 58, Bombay Hereditary Village Offices Act.) °° AIR 1927 Bom 432 (433) 28 Cri L Jour 534 (DB). (Revenue Patil.) °° (1965) 1 Mys LJ 647 (659) (DB).

(j) Sarpanch or upsarpanch of panchayat under Rajasthan Panchayat Act. AIR 1964 Raj 174 (175, 176) = 1964 (2) Cri LJ 339 (DB). (1959 Raj LW 51 = ILR (1959) 9 Raj 38 and ILR (1954) 4 Raj 464, **Overruled.**) °° AIR 1966 Raj 125 (127) = 1966 Cri LJ 584. (AIR 1959 Andh Pra 27, **Dissented from.**) °° 1961 (1) Cri LJ 558 (559, 560) = 1960 Raj LW 610 °° 1959 Raj LW 633 (635) = ILR (1959) 9 Raj 583.

(k) Assistant Registrar of Co-operative Societies appointed by Government and his services lent to Society who passed remarks against an audit report in discharge of his official duty. AIR 1968 Mys 243 (244) = 1968 Cri LJ 1183. **(AIR 1960 SC 266 and AIR 1966 SC 220, Foll.)** °° (1965) 1 Andh LT 225 = (1965) 1 Andh WR 358 (361).

(l) Chief Executive Officer of Road Transport Corporation is public servant under Section 43 of Road Transport Corporation Act. AIR 1963 Andh Pra 491 (491, 492) = (1963) 2 Andh WR 12 = (1963) 2 Cri LJ 601 (DB).

(m) Police Officers (removable from their office only by State Government) acting in exercise of their powers under Sections 127, 128 — Sanction under Sections 132 and 197 held necessary. 1963 (1) Cri LJ 53 = AIR 1963 Ker 7 (8, 9).

(21) The following persons have been held not to be public servants to whom this section applies:

(a) Police-patel in the Bombay Presidency. 1880 Rat 147 (147) (DB) °° (1880) 4 Bom 357 (358) (DB).

(b) President of Union Committee. AIR 1929 Mad 175 (176) = 30 Cri L Jour 365 °° AIR 1925 Cal 782 (782) = 26 Cri L Jour 1178 (DB).

(c) Forest ranger. AIR 1922 Nag 121 (122) = 23 Cri L Jour 397.

(d) Chairman of Co-operative Credit Society. AIR 1935 Bom 36 (36) = 36 Cri L Jour 532 (DB).

(e) Sub-overseer of P. W. D. (1912) 13 Cri L Jour 770 (770) (DB) (Mad).

(f) The officers referred to in the following cases. AIR 1952 Pat 379 (380) = 1952 Cri L Jour 1391. (Chaukidars and daffadars.) °° AIR 1959 Andh Pra 27 (Prs. 6, 9) = 1959 Cri L Jour 21. (Sar panch or Upa-Sarpanch of Gram Panchayat under Hyderabad Gram Panchayats Act, 17 of 1956.) °° AIR 1957 Madh B 172 (Prs. 5, 7) = 1957 Cri L Jour 508. (Panch or Sarpanch of Gram Panchayat.) °° AIR 1950 All 639 (642). (Railway Officer not removable from office except with the sanction of the Railway Board.) °° 7 J and K LR 261 (265, 266). (A Minister in Jammu and Kashmir.) °° AIR 1941 Sind 39 (41) = 42 Cri LJ 437. (A member of Legislative Assembly under Section 476.) °° AIR 1941 Sind 30 (31) = 42 Cri L Jour 422 (DB). (Chief store-keeper and assistant superintendent of machinery for the port trust estate entrusted with the keeping and the expending of property by the trustees of the port on their behalf.) °° AIR 1940 Oudh 382 (383) = 41 Cri L Jour 695 (DB). (Sub-Inspector of Police.) °° AIR 1937 Mad 578 (578) = 38 Cri L Jour 950. (Village Munsif sending report under Section 45.) °° AIR 1934 Pat 548 (549) = 36 Cri L Jour 285. (Municipal Engineer.) °° AIR 1917 Lah 179 (179) = 18 Cri L Jour 106 (106). (Member of a notified area committee.) °° AIR 1924 Lah 310 (311) = 23 Cri L Jour 750. (Municipal Secretary.) °° AIR 1931 Bom 527 (528) = 33 Cri L Jour 78 (DB). (Under Section 9 (2) of the Bombay Act, 4 of 1923, the administrative officer of the school board.) °° AIR 1934 All 173 (174) 35 Cri L Jour 617. (Clerk in U. P., District Board.) °° **AIR 1967 SC 1331 (1334) = 1967 Cri LJ 1200 = 1967 SCR 529** °° AIR 1967 Pat 441 (443). (Employees of National Coal Development Corporation.) °° AIR 1965 Mys 253 (255) = (1965) 1 Mys LJ 26 = 1965 (2) Cri LJ 379. (President or Vice-President of a Municipal Council constituted under Mysore Town Municipalities Act — Who are removable not only by or with sanction of Govern-

Section 197 — Note 4 (contd.)

ment but also by Municipal Council itself. AIR 1964 Bom 191, Foll.) °° AIR 1964 Bom 191 (194, 195) = 66 Bom LR 28. (Vice-president of a district municipality who is not removable from his office of vice-president save by or with the sanction of the State Government but is also removable by the municipality as and when it pleases.) °° (1964) 2 Mys LJ 449 (450) (DB) °° 1962 (1) Cri LJ 686 (687, 688) = 1961 All LJ 376. (The Secretary of Village Panchayat.) °° AIR 1960 Madh Pra 291 (291, 292) = 1960 Cri LJ 1220 = 1960 MPLJ 368. (Chairman and Secretary of Land Management Committee established by gaon Panchayat under U. P. Zamindari Abolition and Land Reforms Act.)

(g) Sanction is not necessary to prosecute a Sub-Inspector for offence committed by him even if the offence was committed while discharging his official duty. (1969) Mad LJ (Cr) 192 (193) = 1969 Ker LT 8 °° AIR 1964 SC 269 (272) = 1964 (1) Cri LJ 161 = (1964) 3 SCR 671.

5. Receiver appointed by Court — Prosecution of. — (1) A receiver appointed by a Court is not a public servant who is "not removable from his office save by or with the sanction of a State Government or the Central Government." Hence, the sanction of the State Government is not necessary for his prosecution in respect of acts done by him as receiver. Nor is the permission of the Court which appointed the receiver necessary for his prosecution. AIR 1939 Rang 202 (203) = 40 Cri L Jour 648 °° AIR 1928 Bom 493 (495) = 30 Cri L Jour 465 (DB) °° AIR 1934 Bom 306 (306) = 35 Cri L Jour 1403.

[See also (1912) 15 Ind Cas 491 (492) = 13 Cri L Jour 491 (Cal).]

(2) Sanction of the Court must be obtained before a prosecution is instituted against the receiver for criminal breach of trust in respect of the properties taken possession of by him as receiver. AIR 1919 Cal 647 (649) = 19 Cri L Jour 820 (DB) °° (1903) 30 Cal 721 (724) (DB) °° AIR 1960 Cal 444 (445) = 1960 Cri LJ 902 (DB).

(3) The Special Official Receiver of the High Court is a public servant not removable from office without the sanction of the State Government. AIR 1945 PC 18 (21, 22) = 71 Ind App 203 = ILR (1945) Lah 1 = 46 Cri L Jour 413 = ILR (1945) Kar (PC) 89.

(4) As to the liability of an executor or administrator filing false accounts in Court for being prosecuted without the sanction or complaint of the Court, see the following case. AIR 1921 Cal 431 (432) = 22 Cri L Jour 295 (DB). (Held that under the provisions of Section 98, Probate Act, such act is offence under Section 193, Penal Code, and hence sanction of High Court was necessary under Section 195, Criminal P. C., as it stood before amendment of 1923.)

6. "Is accused ......duty." — (1) By the amending Act, 18 of 1923, the words "as such Judge or public servant" were replaced by the words "while acting or purporting to act in the discharge of his official duty"; the object of the amendment was stated to be to amplify the words and to make the sense clear. See the Statement of Objects and Reasons 1914.

[See AIR 1937 Pat 160 (162) = 38 Cri L Jour 94. (Amendment has widened the scope of the section.)]

(2) The phrase 'conduct in the discharge of his public functions' occurring in Section 198-B covers a vaster field than what has been held by the Supreme Court in examining Section 197 (1). AIR 1961 All 24 (36, 37, 38) = 1961 (1) Cri LJ 1 (DB).

(3) Four different views have been expressed as to the interpretation of the words "while acting or purporting to act in the discharge of his official duty." See AIR 1939 FC 43 (56) = 40 Cri L Jour 468. (Case under Section 270 (1), Government of India Act, 1935, which used similar expression.)

(a) The test is not whether the offence is capable of being committed only by a public servant and not by anybody else but whether it is committed under the circumstances specified in the section. AIR 1949 PC 117 (118) = 76 Ind App 10 = 50 Cri L Jour 395 °° AIR 1929 Mad 659 (660, 661) = 30 Cri L Jour 864 (DB) °° AIR 1933 Sind 161 (164) = 34 Cri L Jour 191 (DB) °° AIR 1934 All 978 (979) = 36 Cri L Jour 331 °° AIR 1935 Nag 52 (53) = 36 Cri L Jour 1092 °° AIR 1934 Rang 238 (239) = 36 Cri L Jour 77 °° AIR 1935 Pat 52 (55, 56) = 36 Cri L Jour 650 (DB).

[See however AIR 1929 Bom 375 (376) = 31 Cri L Jour 353 (DB). (Per Baker, J.)]

(b) The section applies only if the act complained of is itself done by the public servant in pursuance of his public office, although it may be in excess of the duty or in the absence of such duty. AIR 1935 Cal 176 (176, 177) = 37 Cri L Jour 103 (DB) °° AIR 1935 Rang 263 (265, 266) = 36 Cri L Jour 1272 (FB) °° AIR 1939 Bom 63 (64) = 40 Cri L Jour 269 (DB) °° AIR 1939 Lah 1 (3) = 40 Cri L Jour 252 °° AIR 1939 Mad 604 (605) = 40 Cri L Jour 853 °° AIR 1937

Section 197 — Note 6 (contd.)

Pat 160 (162) = 38 Cri L Jour 94 °° 1937 Mad WN 216 (216) °° (1970) 72 Punj LR 16 (21) (Delhi) °° AIR 1970 Raj 145 (148) °° 1963 Ker LT 942 (944). (Complaint against Police Officer for using abusive language and assaulting — Act of Police Officer though reprehensible done while discharging duties as police officer — Complaint should be dismissed in the absence of Government sanction.)

(c) The section refers to cases where the act constituting the offence is so connected with the official duty or act as to be inseparable from it. AIR 1935 Pat 52 (55, 56) = 36 Cri L Jour 650 (DB) °° AIR 1957 Orissa 69 (Pr 4) = 1957 Cri L Jour 468. (Medical officer mishandling patient before taking him into operation theatre and also handling him roughly before operation — Acts form one transaction.) °° **AIR 1966 SC 220 (227) = 1966 Cri LJ 179** °° 1970 Cri LJ 642 (645) = 1969 Pat LJR 234. (Per Majority.) °° AIR 1966 Raj 125 (126) = 1966 Cri LJ 584 °° AIR 1965 Punj 200 (203, 204) = 1965 (1) Cri LJ 593 °° AIR 1965 Raj 210 (212, 213) = 1965 (2) Cri LJ 681. (Action taken under Section 203, of Rajasthan Municipalities Act (38 of 1959), which empowers the Board to remove any unauthorised obstruction or encroachment from any public street or open space.) °° 1961 (2) Cri LJ 218 (221) (Cal). (Laboratory technician going to Calcutta for bringing blood from Blood Bank for use of paying and non-paying patients — Part of amounts paid for blood by paying patients misappropriated — The offence is by a public servant while purporting to act as a public servant.) °° 1961 (1) Cri LJ 558 (561) = 1960 Raj LW 610. (Issue of certificate of residence of a person by Panchas of a Gram Panchayat.) °° ILR (1959) (1) Cal 607 (611, 612) (DB).

(d) It is not necessary that the action involving offence must be done or purported to be done in compliance with official duty. It is enough if the action relates to the discharge of an official duty, although it may be in derogation of that official duty. The applicability of the section depends not on the nature of the action which involves the offence but on the matter to which the action relates so that the words "in the discharge of an official duty" might be read as in the "matter of the discharge of an official duty." AIR 1930 Sind 144 (145) = 31 Cri L Jour 597 (DB) °° AIR 1928 All 756 (757, 758) = 30 Cri L Jour 62 °° AIR 1967 Pat 441 (443) = 1967 Cri LJ 1684.

(3) An offence, which does not come within any of the categories enumerated in the above classification, is not covered by this section. In other words, this section applies only to acts that can be said to be done in an official capacity and not to acts done in a private capacity. AIR 1956 All 396 (Pr 16) = 1956 Cri L Jour 848.

[See AIR 1939 FC 43 (52) = 40 Cri L Jour 468 °° AIR 1967 SC 776 (777, 778) = **1967 Cri LJ 665.** (See Panchayats — Madras Village Panchayats Act (X of 1950), Section 106.)]

(4) Mere fact that an offence is committed by a public servant when he is in office is not enough to attract the provisions of this section. AIR 1940 Cal 274 (275) = 41 Cri L Jour 659 (DB) °° AIR 1956 All 396 (Pr 16) = 1956 Cri L Jour 848 °° AIR 1927 Mad 566 (567) = 28 Cri L Jour 539 °° **AIR 1966 SC 220 (227) = 1966 Cri LJ 179.** (Per Majority.) °° 1968 MLJ (Cr) 735 (739) = 1967 Mad LW (Cri) 181 = 1968-2 Mad LJ 554 °° AIR 1967 Punj 51 (52) = 1966 Cur LJ 523 = 68 Punj LR 659.

(5) It is not enough to bring a case within this section that an offence is committed by a public servant at a time during which he is engaged in the transaction of official business. AIR 1935 Pat 52 (56) = 36 Cri L Jour 650 (DB) °° AIR 1955 All 396 (Pr 16) = 1956 Cri L Jour 848 °° AIR 1947 Sind 60 (61) = ILR (1946) Kar 187 = 48 Cri L Jour 573 (DB) °° AIR 1932 Mad 214 (215) = 33 Cri L Jour 557 °° 1967 Mad LW (Cr) 181 = (1968) 2 Mad LJ 554 °° AIR 1967 Goa 121 (132, 133) = 1967 Cri LJ 1304 (DB). (Per Jetley J. C. Addl. J. C. Contra.) °° 1963 (2) Cri LJ 573 (575) (Pat).

[See also AIR 1967 Punj 51 (52) = 68 Punj LR 659.]

(6) An offence will not come within the section merely because it is committed by a Judge while he is sitting on the Bench and trying cases. The reason is that a Judge sitting on the Bench can act in a private as well as in official capacity and this section does not apply to acts done in a private capacity. AIR 1927 Mad 566 (567) = 28 Cri L Jour 539 °° AIR 1917 Mad 344 (346) = 17 Cri L Jour 168 (170).

(7) The section comes into operation in cases where proceedings are taken against a public servant personally in respect of acts done or purporting to be done in the discharge of his official duty. It cannot apply where a public servant is prosecuted not in his personal capacity but in a representative capacity. AIR 1941 Cal 319 (322) = 42 Cri L Jour 855 °° 1968 Mad LJ (Cri) 735 (739) = 1968-2 Mad LJ 554.

Section 197 — Note 6 (contd.)

(8) It is a question of fact in each case whether the alleged offence has been committed in an official capacity or not. AIR 1950 Raj 51 (53) °° AIR 1939 FC 43 (56) = 40 Cri L Jour 468 °° AIR 1958 Andh Pra 643 (Pr 7) = 1958 Cri L Jour 1290 °° AIR 1957 Raj 51 (Pr 9) = ILR (1956) 6 Raj 821 = 1957 Cri L Jour 227 °° AIR 1956 Orissa 86 (88) = ILR (1955) Cut 644 = 1956 Cri LJ 540 °° AIR 1928 Lah 72 (73) = 29 Cri L Jour 511 (DB) °° AIR 1935 Pat 52 (56) = 36 Cri L Jour 650 (DB) °° AIR 1967 Goa 121 (132, 133) = 1967 Cri LJ 1304 (DB) °° 1963 (2) Cri LJ 573 (575) (Pat).

[See AIR 1948 Sind 114 (116) = ILR (1947) Kar 126 = 49 Cri L Jour 454.]

[See also AIR 1952 Mad 667 (669) = 1952 Cri L Jour 1295.]

(8a) What a public servant says need not be viewed with suspicion in order to uphold the general rights of the parties aggrieved. His defence is to be considered as objectively as in other cases. He is treated differently from other persons for the purposes of criminal prosecution and, to that extent, it may be said that he enjoys a privilege or a certain amount of protection. He is treated like other persons when he commits a common offence. He is not above the law in either case. AIR 1967 Goa 121 (132) = 1967 Cri LJ 1304 (DB).

(9) In determining the question whether offence has been committed in official capacity or not the Court must, at the outset, have regard to the allegations in the complaint (if any) in the case. AIR 1953 Trav-Co 183 (188) = ILR (1953) Trav-Co 1 = 1953 Cri L Jour 966 (FB) °° AIR 1952 Pat 253 (253) = 1952 Cri L Jour 799 °° AIR 1935 Cal 176 (176) = 37 Cri L Jour 103 (DB) °° AIR 1967 Punj 51 (52) = 1967 Cri LJ 256 °° AIR 1965 Punj 200 (203, 204) = 1965 (1) Cri LJ 593 = 1964 Cur LJ 548.

[But see AIR 1933 Mad 268 (269) = 34 Cri L Jour 528.]

(10) The Court is not always confined to the allegations in the complaint in determining the question of the applicability of this section. Where at any stage of the case it appears from the evidence and other materials before the Court, that the offence is one falling under this section, the Court is bound to drop the proceedings against the accused in the absence of the requisite sanction although the allegations in complaint do not show that this section applies to the case. AIR 1943 Cal 594 (608) = 45 Cri L Jour 224 (SB) °° **AIR 1956 SC 44 (50) = 1955-2 SCR 925 = 1956 Cri L Jour 140** °° AIR 1967 Goa 121 (132) = 1967 Cri LJ 1304 (DB) °° ILR (1960) Ker 1376 (1380).

(11) The complaint the allegations made therein and the examination of the complainant are to be considered for deciding whether sanction is necessary. AIR 1967 Goa 121 (132, 133) = 1967 Cri LJ 1304 (DB).

(12) The Court is not bound by the sections mentioned in the complaint in deciding whether the complaint is of such a nature as requires the sanction of the authority mentioned in Section 197. The Court must look to the facts contained in the complaint to decide whether an offence, which requires sanction, has been made out. ILR (1954) 4 Raj 499 (501) (DB).

(12A) Per Bindra, Addl. J. C. mere allegation of commission of offence should not scare Court from giving benefit of provisions of section to accused. AIR 1967 Goa 121 (135) = 1967 Cri LJ 1304 (DB).

(13) The section does not mean that the very act which constitutes the offence must be the official duty of the public servant concerned. AIR 1929 Mad 659 (660) = 30 Cri L Jour 864 (DB) °° AIR 1935 Pat 52 (54) = 36 Cri L Jour 650 (DB) °° AIR 1939 Mad 604 (605) = 40 Cri L Jour 853 °° AIR 1937 Nag 293 (295) = 39 Cri L Jour 146. (**Overruled** on another point in AIR 1952 Nag 12.)

[See AIR 1939 FC 43 (51) = 40 Cri L Jour 468.]

[See however AIR 1956 All 396 (Pr 16) = 1956 Cri L Jour 848. (AIR 1934 All 978, **Dissented from.**)]

(14) The words of this section and those of Section 270 (now repealed) of the Government of India Act, 1935, viz., "act done or purporting to be done etc.," have the same connotation and the words in this section "while acting" etc., should not be given a "temporal" meaning. A public servant can only be said to act or to purport to act in discharge of his official duty, if his act is such as to lie within the scope of his official duty. The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office. **AIR 1948 PC 128 (133) = 75 Ind App 41 = 1948 FCR 19 = 49 Cri L Jour 503. (Approving of AIR 1939 FC 43 = 40 Cri L Jour 468.)** °° AIR 1957 Madh Pra 230 (Prs 5, 6, 7) = 1957 Cri L Jour 1413 °° AIR 1957 Raj 51 (Pr 9) = ILR (1956) 6 Raj 821 = 1957 Cri L Jour 227 °° **AIR 1966 SC 220 (227) = 1966 Cri LJ 179.** (Per Majority.) °° AIR 1967 Goa 121 (135) = 1967 Cri LJ 1304 (DB). (Per Bindra, Addl. J. C.) °° 1966 Cri LJ 494 (495) = ILR (1965) Cut 255 (Ori) °° (1966) 32 Cut LT 1096 (1098, 1099) °° 1966 BLJR 693 (697) = ILR 46 Pat 167 (DB) °° 1965 Mad LJ (Cr) 162 (165, 166) (DB) (Ker) °° (1965) 1 Mys LJ 647 (661) (DB). (Inmate of Protective Home, caned by Lady Superintendent, confined and

Section 197 — Note 6 (contd.)
gagged under her instructions, resulting in death of the inmate due to suffocation — The acts of the Lady Superintendent cannot be said to be so completely dissociated from her official duty as not to attract provisions of Section 197.) °° (1965) 1 Mys LJ 647 (661) (DB) °° 1963 (2) Cri LJ 573 (575, 576) (Pat) °° 1962 (1) Cri LJ 686 (687) (All). (Chairman and Secretary of Land Mortgage Committee alleged to have prepared fictitious record of bogus action, can claim that they prepared the record in virtue of their office as part of their normal official functions.)

[See also **AIR 1948 PC 156 (159) = 75 Ind App 185 = 1948 FCR 67 = 49 Cri L Jour 660** °° 1959 Ker L Tim 347 (348). (AIR 1953 Trav-Co 183; **AIR 1957 SC 458, Foll.**) °° AIR 1958 Cal 517 (Pr 5) = 1958 Cri L Jour 1178 (DB) °° AIR 1958 Pat 441 (Pr 3) = 1958 Cri L Jour 1083. **(AIR 1957 SC 458, Foll.)** °° AIR 1957 Assam 125 (Pr 4) = ILR (1955) 7 Assam 226 = 1957 Cri L Jour 832 (DB) °° AIR 1956 Hyd 180 (Pr 12) = ILR (1956) Hyd 191 = 1956 Cri L Jour 1320. (If the act is not connected with the duties as an officer then sanction is not necessary.) °° AIR 1955 Sau 100 (102) = 1955 Cri L Jour 1528 (DB) °° AIR 1954 Sau 132 (137) = 1954 Cri L Jour 1559 (DB). (AIR **1948 PC 128 = 49** Cri L Jour 503 = **75 Ind App 41; 1948 FCR 19 = ILR (1948) 2 Cal 542, Foll.**) °° AIR 1953 Trav-Co 183 (188, 192) = ILR (1953) Trav-Co 1 = 1953 Cri L Jour 966 (FB) °° AIR 1952 Hyd 135 (136) = ILR (1952) Hyd 383 = 1952 Cri L Jour 1299 (DB) °° AIR 1952 Pat 389 (391) = 1952 Cri L Jour 1477 °° AIR 1951 Cal 388 (389, 390) (DB) °° **AIR 1949 PC 117 (118) =** 76 Ind App 10 = 50 Cri L Jour 395.]

(15) The word 'alleged' qualifies the word 'offence' and not the expression "acting or purporting to act" in the discharge of his official duties. The question as to whether in making a particular order a public servant acted or purported to act in the discharge of his official duties depends on the contents of the order and the circumstances in which it has been made and not on allegations in complaint against him. AIR 1965 All 208 (209, 211) = 1965 (1) Cri LJ 532 = ILR (1965) 1 All 80.

(16) A public servant who does not purport to act in the discharge of his official duty but merely uses his official position to do an illegal act cannot claim the benefit of this section. AIR 1952 Mad 667 (669) = 1952 Cri L Jour 1295 °° **AIR 1957 SC 458 (Pr 30) = 1957 SCR 423 = ILR (1957) 2 All 468 = 1957 Cri L Jour 575.** (Criminal breach of trust by public servant.) °° 1959 Ker L Tim 347 (348). (Criminal breach of trust.) °° AIR 1958 Andh Pra 643 (Pr 7) = 1958 Cri L Jour 1290 °° AIR 1958 Cal 517 (Pr 5) = 1958 Cri L Jour 1178 (DB). (Criminal breach of trust by sub-post master — Sanction for prosecution is not necessary.) °° AIR 1958 Pat 441 (Pr 3) = 1958 Cri L Jour 1083. (Offence under Section 408, I. P. C.) °° AIR 1957 Assam 146 (Prs. 10, 11) = 1957 Cri L Jour 1099 (DB). (AIR 1956 Cal 109 = 1956 Cri L Jour 519, **Dissented from.**) °° AIR 1957 Assam 125 (Pr 4) = ILR (1955) 7 Assam 226 = 1957 Cri L Jour 832 (DB). (Judge in his capacity as Judge collecting fees, fines and decretal money and misappropriating same — No protection under section can be claimed.) °° (1949) 7 J & K LR 261 (266) °° AIR 1939 Lah 1 (3) = 40 Cri L Jour 252 °° AIR 1947 Sind 60 (61) = ILR (1946) Kar 187 = 48 Cri L Jour 573 (DB) °° AIR 1929 Bom 375 (376) = 31 Cri L Jour 353 (DB) °° AIR 1935 Rang 263 (265, 266) = 36 Cri L Jour 1272 (FB) °° AIR 1965 All 207 (209, 210) (DB) °° 1964 (1) Cri LJ 126 (128) = 1963 Raj LW 293. (Chairman of a Municipal Board receiving certain amount of money in the discharge of his official duty but not depositing the amount in the Municipal Board.)

[See however AIR 1957 Assam 69 (Pr 2) = 1957 Cri L Jour 501. (Sanction is necessary for prosecution of a public servant for criminal breach of trust in his capacity as such.)]

(17) Even when the charge is one of misappropriation by a public servant, whether sanction is required will depend upon the facts of each case. If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under Section 197 (1) would be necessary, but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required. **AIR 1955 SC 309 (312) = 1955 SCR 1302 = 1955 Cri L Jour 865** °° AIR 1958 Andh Pra 643 (Pr 7) = 1958 Cri L Jour 1290. **(AIR 1955 SC 287, Foll.)** °° AIR 1957 Madh Pra 230 (Prs 5, 6, 7) = 1957 Cri L Jour 1413 °° **AIR 1969 SC 686 (688, 689) = 1969 Cri LJ 1057** °° **AIR 1960 SC 745 (747, 748) = 1960 Cri LJ 1153 = 1960 SCJ 1223.** (Railway servants going to house of complainant to witness search and there committing offences of theft, misappropriation and wrongful confinement — Sanction not necessary.) °° 1967 BLJR 727 (731, 732) (DB). (Sanction necessary for defamatory statements made in discharge of official duty; for statements not so made and having no connection with official duty sanction not necessary.) °° 1965 Mad LJ (Cri) 162 (165, 166) (Ker) (DB) °° AIR 1962 Bom 198 (199, 200, 201) = 1962 (2) Cri LJ 320 = 64 Bom LR 130 (DB). (Act includes illegal omissions — Allegation that public servants disregarded their duties cast on them for

Section 197 — Note 6 (contd.)
safety of the populace — Sanction under Section 197, held necessary.) °° AIR 1961 Ker 260 (263, 264) = 1961 (2) Cri LJ 484 = 1961 Ker LT 208 (DB). (Prosecution under Section 477-A of the Penal Code — Whether it is the official duty of the public servant to keep accounts, wherein false entries are made.)

(18) If Section 197 is construed too narrowly it can never be applied, for of course it is no part of an official's duty to commit an offence and never can be. But it is not the duty which the Courts have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The Courts have to concentrate on the word "offence". An offence seldom consists of a single act. It is usually composed of several elements and, as a rule, a whole series of acts must be proved before it can be established. **AIR 1955 SC 287 (292, 293) = 1955 Cri L Jour 857 = 1955 SCR 1177.**

(19) What the Court must find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation. **AIR 1956 SC 44 (49) = 1955-2 SCR 925 = 1956 Cri L Jour 140 °° AIR 1955 SC 309 (312) = 1955 SCR 1302 = 1955 Cri L Jour 865 = ILR (1955) Patiala 145** °° AIR 1957 Madh Pra 230 (Prs 5, 6, 7) = 1957 Cri L Jour 1413 °° AIR 1957 Raj 51 (Pr 9) = ILR (1956) 6 Raj 821 = 1957 Cri L Jour 227 °° **AIR 1969 SC 686 (688) 1969 Cri LJ 1057 °° AIR 1960 SC 266 (267, 278) = 1960 Cri LJ 410 = (1960) 2 SCR 89** °° AIR 1968 All 207 (209, 210) = 1967 All LJ 716 (DB) °° AIR 1967 Goa 121 (132, 133) = 1967 Cri LJ 1304 (DB) °° 1967 Cur LJ 209 (212) °° 1963 (2) Cri LJ 359 (361, 362, 363) (Raj) °° AIR 1961 Guj 57 (61, 62, 63) = 1961 (1) Cri LJ 499 = (1960) 1 Guj LR 249. (President of Municipality directing payment of expenses in connection with legal proceedings against him — Prosecution under Section 409, Penal Code — Sanction is necessary.) °° AIR 1961 Ker 260 (263, 264) = 1961 (2) Cri LJ 484 °° AIR 1961 Ker 175 (176, 177) = 1961 (1) Cri LJ 816 (DB) °° ILR (1960) Ker 1376 (1379). (**AIR 1956 SC 44, Foll.**) °° AIR 1960 Raj 247 (248) = 1960 Cri LJ 1375 (2) = 1960 Raj LW 183.

(20) It is not necessary that the action purported to be done by a public servant must be strictly within his powers as such public servant. It is enough if he purports to act in the capacity with which he is clothed. AIR 1943 Cal 594 (609) = 45 Cri L Jour 224 (SB) °° AIR 1957 Orissa 69 (Pr 4) = 1957 Cri L Jour 468 °° AIR 1937 Nag 293 (295) = 39 Cri L Jour 146. (Overruled on another point in AIR 1952 Nag 12.) °° AIR 1931 Mad 492 (494) = 32 Cri L Jour 969.

[See also AIR 1953 Sau 143 (144) = 1953 Cri L Jour 1263 (DB) °° AIR 1943 Pat 229 (236) (DB).]

(21) Where a Village Munsif ordered the attachment before judgment of certain property and its removal under such attachment, he purported to act in the discharge of his official duty though he acted ultra vires of his powers. AIR 1917 Mad 657 (658) = 17 Cri L Jour 394 (395).

(22) Where the President of a Municipality entered a private house for the purpose of inspecting the water connexion, his action though irregular as not having been authorized by the Municipal Committee (as required under the law) was purported to be in the discharge of his official duty. AIR 1935 Nag 52 (53) = 36 Cri L Jour 1092.

(23) Where the President of a Union Board published by affixing on the notice-board of his office and otherwise a notice that a certain election had been postponed and in giving the reasons for postponement he made certain defamatory statements the offence (if any) was committed by him while purporting to act in the discharge of his official duty though his action in publishing in the above manner the fact of postponement of the election might not have been authorized under the rules. AIR 1929 Mad 175 (176) = 30 Cri L Jour 865.

(24) The action purported to be done by the public servant in the discharge of his official duty must not be totally unlike anything which he is authorized to do by virtue of his official position. Such action must be of the sort that the public servant is empowered to do in the course of his official duties. AIR 1952 Pat 389 (392) = 1952 Cri L Jour 1477 °° AIR 1952 Pat 379 (380) = 1952 Cri L Jour 1391 °° AIR 1952 Pat 253 (253) = 1952 Cri L Jour 799.

[See also (1949) 2 Sau LR 208 (209) (DB) °° AIR 1943 Pat 229 (236) (DB).]

(25) A line has to be drawn somewhere between the very narrow inner circle of official duties strictly so called, and the very large number of acts altogether outside the scope of his official duties which no reasonable man would deem to be committed under the colour of that office. Where exactly that line is to be drawn is a problem not of principle but of prudence and reasonableness varying with the circumstances of each case. AIR 1953 Vindh Pra 7 (8) = 1953 Cri L Jour 596.

(26) If a public servant does not act in the belief that he is discharging his official duty, he cannot claim protection of this section. AIR 1917 Mad 657 (659) = 17 Cri L Jour 394 (395).

Section 197 — Note 6 (contd.)

(27) An act done in bad faith may yet be one done under colour of office. AIR 1950 Raj 51 (55). (Following Sulaiman J.'s observations in AIR 1939 FC 43.)

(28) Where a public servant holds two offices, one of them being of the kind specified in this section and the other not, if an offence is committed by him in his capacity as holding the latter office, the section does not apply. (1903) 30 Cal 927 (933) (DB) °° AIR 1930 Bom 487 (488) = 32 Cri L Jour 281 (DB) °° AIR 1931 Mad 492 (494) = 32 Cri L Jour 969.

(29) Where a public servant holding an office of the kind mentioned in this section is, as such public servant, appointed to another office, his official acts in connexion with the latter office will also relate to the former office and if they involve any offence will attract the provisions of this section. AIR 1934 Cal 838 (841) = 36 Cri L Jour 385 (DB) °° AIR 1930 Lah 147 (147) = 31 Cri L Jour 691 °° AIR 1925 Oudh 565 (565, 566) = 26 Cri L Jour 1157 (DB).

(30) Where members of a Municipal Council (who are public servants to whom this section applies) are appointed, as such to a committee for the preparation of an electoral roll for the municipal elections, this section will apply to offences committed by them in the discharge of their duties as members of such committee. AIR 1934 Cal 838 (841) = 36 Cri L Jour 385 (DB).

(31) A sanction under Section 6, Prevention of Corruption Act, 1947, unlike a sanction under this section, is a necessity irrespective of the question whether the public servant was acting or purporting to act in the discharge of his official duty. AIR 1952 Tripura 21 (21) = 1952 Cri L Jour 1648.

[See AIR 1957 Punj 110 (Pr 13) = ILR (1957) Punj 618 = 1957 Cri L Jour 659 (DB). (There is no essential difference between this section and section 6, Prevention of Corruption Act.)]

(32) Section 6 of the Prevention of Corruption Act must be construed with reference to the words used therein independent of any construction which may be placed on the words used in Section 197. **AIR 1958 SC 107 (Pr 11) = 1958 SCR 1037 = ILR (1958) Punj 986 = ILR (1957) 2 All 523 = 1958 Cri L Jour 254.**

6A. Acts committed in official capacity requiring sanction — Illustrative cases. — (1) A Judge or public servant passing certain orders or making certain communications in the course of official duty or a Judge regulating the conduct of a case which he is trying, makes certain remarks which are objected to as defamatory or insulting. He commits the offence (if any) while acting in the discharge of an official duty, because passing of the orders or making the communications constitutes his official duty. 37 Cri L Jour 294 (294) (Nag) °° AIR 1959 Raj 12 (Pr 7) = ILR (1957) 7 Raj 1085 = 1959 Cri L Jour 82 °° AIR 1957 Madh Pra 230 (Prs 5, 6, 7) = 1957 Cri L Jour 1413 °° (1886) 9 Mad 439 (440) °° AIR 1931 Oudh 392 (393, 394) = 32 Cri L Jour 991 °° AIR 1934 All 978 (979) = 36 Cri L Jour 331 °° AIR 1933 Sind 165 (166) = 34 Cri L Jour 819 (DB) °° AIR 1934 Pat 548 (549) = 36 Cri L Jour 285.

(2) A Judge (having the duty of maintaining a record of cases tried by him) fabricates the records of a case before him and thereby commits an offence. He commits offence while acting in the discharge of his official duty. AIR 1920 Mad 123 (123) = 21 Cri L Jour 233 (DB) °° AIR 1929 Mad 172 (175) = 30 Cri L Jour 396.

(3) A public servant or Judge purporting to exercise the powers vested in him as such public servant or Judge orders the arrest and detention in custody of a certain person when the circumstances do not justify such action. The offence (if any) is committed by the accused while purporting to act in the discharge of his official duty. AIR 1921 Cal 388 (388, 389) = 22 Cri L Jour 585 (DB) °° AIR 1932 Mad 214 (215) = 33 Cri L Jour 557 °° AIR 1929 Mad 659 (661) = 30 Cri L Jour 864 (DB).

[But see AIR 1921 Cal 388 (388, 389) = 22 Cri L Jour 585 (DB) °° AIR 1917 Mad 769 (769) = 17 Cri L Jour 462 (462, 463).]

(4) Sub-Magistrate taking steps to prevent apprehended breach of the peace — Sanction necessary even though he has exceeded his power. AIR 1935 Mad 319 (320) = 37 Cri L Jour 154.

(5) Assistant Commissioner of Police refusing to grant bail in respect of offence under Section 420, I. P. C. unless accused did something which he was not bound to do — Sanction necessary for prosecution of Assistant Commissioner of Police under Section 348, I. P. C. **AIR 1965 SC 588 (590) = 1965 (1) Cri LJ 499 = (1964) 6 SCR 275.**

(6) Complaint against police of assaulting persons attending meeting inside a building — Magistrate on complaint petition and complainant's initial statement alone holding order under Section 144 to have been in operation — Police held to have acted or purported to have acted in discharge of official duties — Sanction necessary. 1969 Cri LJ 550 (551) = 73 Cal WN 72 (DB).

(7) Acts by police officers, constituting offences under Sections 342 and 129 might be connected with discharge of official duties — Sanction for prosecution necessary. 1963 (2) Cri LJ 573 (578, 579) (Pat).

(8) On the arrest of some students, a crowd followed the police. Complainant who was a relative of one of arrested stu-

Section 197 — Note 6A (contd.)

dents, sought to represent to the Police Superintendent but later ordered him to go away. The Superintendent of Police resented complainant's insistence on making representation and put an end to those insistent representations by an unprovoked and unwarranted assault. Police officer was acting in discharge of his official duties. AIR 1943 Cal 594 (609) = 45 Cri L Jour 224 (SB) °° **AIR 1966 SC 220 (228, 229) = 1966 Cri LJ 179 = (1965) 2 SCJ 478.**

(8A) Failure to obtain permit by Chief Executive Officer, State Road Transport for running bus of the Corporation amounts to omission on his part in discharge of his duty. Section 197 (1) is attracted. AIR 1963 Andh Pra 491 (491, 492) = 1963 (2) Cri LJ 601 = (1963) 2 Andh WR 12 (DB) °° AIR 1963 Andh Pra 491 (491, 492) = 1963 (2) Cri LJ 601 (601, 602) = (1963) 2 Andh WR 12 (DB). (Chief Executive Officer of Road Transport Corporation is public servant under Section 43, Road Transport Corporation Act (1950) — The obtaining of a permit was directly concerned with the official duties. The omission thereof, would also attract the protective clause of Section 197.)

(9) President of Municipality purchasing goods for Municipality and receiving discount from seller and appropriating it to himself — Prosecution for criminal misappropriation — Sanction necessary. AIR 1926 Rang 171 (172) = 27 Cri L Jour 1088.

(10) The Chairman and the Executive Officer of the municipal board alleged to be party to a conspiracy to demolish the wall in defiance of injunction. The impugned act of the chairman and the executive officer, assuming that they were individually responsible for it was an act which was clearly relatable to the discharge of their official duties. AIR 1960 Raj 173 (174) = 1960 Cri LJ 996 = 1959 Raj LW 609.

(11) Municipal Councillor protesting to the chair about method of recording proceedings in minute book — Other Councillor intruding — Former using abusive language towards latter — Sanction is necessary for prosecuting former. AIR 1947 Mad 335 (337) = ILR (1948) Mad 126.

(12) Municipal Secretary removing obstruction placed on street by complainant — Quarrel ensuing in which hurt was caused to complainant by the Secretary — Sanction is necessary. AIR 1953 Vind Pra 7 (9) = 1953 Cri L Jour 596 °° AIR 1929 Mad 8 (10) = 30 Cri L Jour 164. (President Taluq Board evicting from meeting of Board member who had forfeited his seat — Sanction necessary.)

(13) Sale by auction of impounded cattle by member of District Board deputed for the purpose — Purchase at such auction by himself in name of servant — Offence (Section 169, Penal Code) is committed while acting in discharge of official duty. AIR 1925 Oudh 565 (565, 566) = 26 Cri L Jour 1157 (DB).

(14) Village Court executing under Section 48 of Village Courts Act 1 of 1889 a decree by way of distraint is a Village Court as defined in the Act and the Village Munsif if he himself distrains, is still acting as Judge of that Court. AIR 1929 Mad 256 (256) = 30 Cri L Jour 402.

(15) Issue of certificate of residence of a person by Panchas of a Gram Panchayat is in discharge of their official duty. 1960 Raj LW 610 = 1961 (1) Cri LJ 558 (561).

(16) Assistant Divisional Forest Officer deputed to hold inquiry into illegal cutting of trees in Government forest and who is charged with the preparation of record in connection with that inquiry making false documents and panchanama in collaboration with other persons — Sanction under Section 197 is necessary. AIR 1953 Bom 177 (180) = ILR (1953) Bom 55 = 1953 Cri L Jour 806 (DB).

(17) See also the following illustrative cases:

AIR 1968 All 207 (210) = 1968 Cri LJ 721. (For purposes of obtaining previous sanction of the Governor under Section 197, offences under Sections 218 and 477A should not be treated on different footings. Both offences involve dereliction of duty by a public servant in the discharge of his official functions.)

1967 Cur LJ 209 (212). (Block Development Officer prosecuted under Section 465, Penal Code for alleged forging of permit by antidating it — Sanction for prosecution necessary.)

1966 BLJR 693 (696) = ILR 46 Pat 167 (DB). (Officer performing his duty of collection of rent and execution of distress warrants was acting in discharge of his official duty. When he tried to arrest the complainant because he obstructed the officer in discharge of his official duty and some scuffle took place, the action of the officer was connected with discharge of his duties.

AIR 1965 Mys 128 (132, 134) = (1964) 1 Mys LJ 440. (Offence of falsification of accounts committed by treasurer is such offence — Sanction for prosecution is necessary — (Obiter) — AIR 1939 FC 43, Rel. on.)

1963 (2) Cri L Jour 359 (361, 362, 363) = 1962 Raj LW 601. (The provision would also apply to acts which constitute offences punishable under Sections 380 and 411, I. P. Code provided those acts were committed by the public servant concerned while acting or purporting to act in the discharge of their official duty and were reasonably necessary for the execution of the official duty.)

AIR 1952 Hyd 91 (93, 94) = ILR (1952) Hyd 292 = 1952 Cri L Jour 1005 (FB). (Charge of rash and negligent driving

Section 197 — Note 6A (contd.)
against Government driver — Allegation of his being drunk when accident occurred — Sanction for prosecution is necessary — (Per Shripat Rao, J. and Naik, C. J.: Ansari J., Dissenting.)

AIR 1957 Trav-Co 122 (Pr. 1) = 1957 Cri L Jour 479 (DB). (Mechanic of Road Transport Department driving car for testing — Sanction is required.)

AIR 1950 Raj 51 (53). (Where the offence mentioned in Section 409, was committed by the public servant in the discharge of official duty, sanction becomes necessary.)

AIR 1947 Cal 29 (30) = 47 Cri L Jour 623 (DB). (Offence under I. P. C., S. 217 is in its very nature one committed in the discharge of the functions of the person charged — Hence very nature of offence makes it clear that sanction is necessary.)

AIR 1940 Pat 316 (321) = 41 Cri L Jour 221 (DB). (Offence committed by Manager of Court of Wards as agent of the landlord whose estate was under the management of the Court of Wards — Offence must be regarded as having been committed in his official capacity — Sanction is necessary for prosecution.)

AIR 1927 Bom 432 (433) = 28 Cri L Jour 534 (DB). (A revenue patil was charged under Section 420, Indian Penal Code, for having cheated the Government and dishonestly induced it to part with money by misrepresentation that a certain person was employed as Patwari for the village in a certain year, when as a matter of fact no Patwari was employed in the village during that year. Offence was committed while the accused was purporting to act in the discharge of his official duty.)

[See also AIR 1950 Raj 51 (53).]

(18) S. D. O. of P. W. D. directed to maintain Officer's Note Book — Incorrect entries made by him after substituting leaf in Note Book — Offence falling under Section 218 Penal Code — Sanction was condition precedent to prosecution. AIR 1970 Punj 200 (201, 202) °° 1969 All Cr R 316 = 1969 All WR (HC) 475 (476). (Officer of Income-tax Department — Complaint showing offence of forgery to have been committed by him purporting to act in the discharge of his official duty — Sanction essential. AIR 1960 SC 226, Ref.)

6B. Acts held not committed in official capacity and hence did not require sanction — Illustrative cases. — (1) Threatened encroachment upon complainant's land by hawkers — Complaint to police — Appearance on spot of Deputy Superintendent of Police in civilian dress — Deputy Superintendent of Police threatening complainant that he would arrest him if he interfered with hawkers and asking hawkers to enter upon land — Complainant also threatened that he would be slapped — Prosecution of Deputy Superintendent of Police on various charges — **Held,** no sanction was required. **AIR 1969 SC 686 (689) = 1969 Cri LJ 1057.**

(2) (Per Majority) Offence of cheating by its very nature cannot be regarded as having been committed by public servant while acting or purporting to act in discharge of his official duty. **AIR 1960 SC 266 (271) = 1960 Cri LJ 410 = ILR (1963) Andh Pra 1040 (1048).**

(3) Officer of His Majesty's forces fraudulently misapplying money entrusted to his care as public servant — Acts are not done by virtue of his office — Sanction not necessary. **AIR 1948 PC 156 (159) = 75 Ind App 185 = 1948 FCR 67 = 49 Cri L Jour 660.**

(4) A Judge accused of offence alleged to have been committed by him while preventing an offence. He did not commit offence while acting or purporting to act in the discharge of his official duty, as the prevention of an offence was not one of his official duties. (1900) 23 Mad 540 (543, 544) (DB).

(5) Complainants kept in police station and assaulted by police officer to coerce them to make statement under Section 164 — Such acts of police officer cannot be said to have any connection with his official duty — Sanction for prosecution not necessary. AIR 1967 All 519 (520) = (1967) All LJ 362 = 1967 Cri LJ 1463 °° AIR 1953 Trav-Co 183 (192) = ILR (1953) Trav-Co 1 = 1953 Cri L Jour 966 (FB).

[See also 1963 (2) Cri LJ 573 (578) (Pat).]

(6) Superintendent of Police damaging property with a view to justify use of tear gas and violence in dispersing peaceful demonstration is not acting in purported discharge of duties. AIR 1965 Punj 192 (197, 198, 199) = 66 Punj LR 1152 = 1965 (1) Cri LJ 585 (DB). **(AIR 1960 SC 266 and AIR 1960 SC 745 and AIR 1955 SC 309, Rel. on.)**

(7) A public servant, having power to arrest and keep under custody persons suspected of offences, holding in confinement a person whom he has arrested and torturing him with a view to force him to confess his guilt. He neither discharges nor purports to discharge his official duty while torturing the prisoner and hence no sanction is necessary to prosecute him for wrongful confinement. AIR 1932 Mad 214 (215) = 33 Cri L Jour 557 °° AIR 1956 All 396 (Pr 17) = 1956 Cri L Jour 848. (AIR 1934 All 978, **Dissented** from.)

[See however (1952) Ker L Tim 419 (420).]

(Note.— The belabouring does not seem to be capable of being regarded as done in official capacity.)]

(8) Public servant not removable from office charged with offences under Section 477-A read with Secs. 109 and 409, Penal Code — Sanction for his prosecution

Section 197 — Note 6B (contd.)
for offence under Sec. 409, Penal Code — (Per Majority) — Sanction not necessary. AIR 1966 SC 220 (228, 229) = 1966 Cri LJ 179 °° 1968-2 Mad LJ 554 = 1968 Mad LJ (Cri) 735 (739) °° (1965) 1 Andh WR 358 (360) = (1965) 1 Andh LT 225. (Sarpanch under Andhra Pradesh (Telangana Area) Gram Panchayats Act.) °° 1962 (2) Cri LJ 583 (584) = 63 Punj LR 872. (Misappropriation of panchayat money by Sarpanch who is a public servant under the provisions of Pepsu Panchayat Raj Act (2008, B. K.) — Sanction of State Government is not essential to prosecute him under Section 409, Penal Code.) °° AIR 1961 Ker 175 (176, 177) = 1961 Ker LT 144 = 1961 (1) Cri LJ 816 (DB) °° 1960 Raj LW 207 (208) = ILR (1959) 9 Raj 1020 °° ILR (1954) Nag 757 (762, 763) (DB). (AIR 1952 Punj 89, **Dissented from.** Prosecution under Section 409 or Section 409 read with Section 120B, Penal Code.)

(9) Offence under Section 409 of Penal Code cannot normally be committed by a public servant acting in discharge of his duties or purporting to act in his official capacity. AIR 1961 Ker 260 (263, 264) = 1961 (2) Cri LJ 484 (DB).

(10) Wrongful confinement of complainant by Sarpanch, Chaukidar and Chief Officer purporting to act under Sec. 64, Bihar Panchayat Raj Act — No sanction for prosecution of these officers is necessary. 1965 (2) Cri LJ 299 (300, 301, 302) = 1965 BLJR 351 (DB).

(11) Customs Inspector losing temper and assaulting respectable woman on suspicion of smuggling — Act not in discharge of duty — Notice under Section 198, Sea Customs Act or sanction under Section 197, Criminal P. C. not necessary. AIR 1952 Mad 667 (668, 669) = 1952 Cri L Jour 1295.

(11A) Excise Sub-Inspector maliciously detaining a person and accepting gratification for his release — Act is not one done in discharge of his official duty. AIR 1943 Pat 229 (236) (DB).

(12) The acceptance of illegal gratification by a public servant cannot be said to be something done while acting or purporting to act in the discharge of his official duty and so no sanction is necessary in such cases. **AIR 1950 PC 26 (27) = 77 Ind App 62 = ILR (1950) Bom 470 = 51 Cri L Jour 644 °° AIR 1954 SC 455 (457) = 1954 Cri L Jour 1161 = 1955 SCR 216** °° AIR 1952 Mys 42 (45) = ILR (1951) Mys 464 = 1952 Cri L Jour 919 (DB) °° AIR 1952 Orissa 220 (221) = ILR (1952) Cut 344 °° AIR 1949 Cal 641 (644) = ILR (1950) 2 Cal 45 = 51 Cri L Jour 10 (DB) °° (1949) 1 Pepsu LR 334 (338, 339) °° **AIR 1949 PC 117 (118) = 76 Ind App 10 = 50 Cri L Jour 395 °° AIR 1948 PC 128 (133) = 75 Ind App 41 = 1948 FCR 19 = 49 Cri L Jour 503** °° AIR 1948 Bom 79 (86) = 49 Cri L Jour 4 = ILR (1947) Bom 538 (DB).

(13) Employee of Forest Department charged with (1) theft (2) assault (3) insult and (4) criminal trespass — Acts though done while discharging his official duty were outside his scope of authority and therefore no sanction is necessary. AIR 1952 Hyd 135 (137) = 1952 Cri L Jour 1299 = ILR (1952) Hyd 383 (DB).

(14) A Municipal Councillor being prohibited from entering into or acquiring any interest in any contract with the Municipality of which he is a Councillor does so and thereby commits an offence. The action which he takes is not required by his official duty. AIR 1932 Nag 133 (134) = 34 Cri L Jour 70 °° AIR 1940 Nag 81 (82) = 41 Cri L Jour 424 (DB).

(15) The Chairman of a Local Board is accused of having threatened a voter that he would increase his property tax and would prosecute him for alleged encroachment on Municipal land if he did not exercise his franchise in a particular manner is not acting or purporting to act in the discharge of an official duty. AIR 1928 Mad 1158 (1160, 1161) = 30 Cri L Jour 191 (DB).

[See also AIR 1927 Mad 566 (566, 567, 568) = 28 Cri L Jour 539.]

(16) Mukhia, Sarpanch and Gramsevak going to house of opposite party, tying him in ropes and publicly exhibiting him with idea of insulting him — Prosecution of Mukhia, Sarpanch and Gramsevak under Section 342, Penal Code — Sanction is not necessary. 1955 BLJR 529.

(17) Sarpanch entertaining a defamatory application and directing enquiries thereof cannot be said to have done so while purporting to act in the discharge of his official duty. Sanction under Section 197 not necessary. 1966 Cri LJ 494 (495) = 31 Cut LT 314.

(18) Panchayat opening new road in another man's property — Act is illegal — Resolution would not make it legal. 1962 Ker LJ 1150 (1153).

(19) Burning a thorn fence and outraging modesty of woman by sarpanch or panch during visit to spot by sarpanch or panch in pursuance of resolution of Panchayat — Offence committed cannot be in discharge of performance of official duty — No sanction is necessary. 1962 (1) Cri LJ 192 (193, 194) = 1962 Raj LW 148. **(AIR 1956 SC 44 and AIR 1955 SC 287, Rel. on.)**

(20) Money-order clerk in Post Office tampering with entries in Money-order form and handing over less amounts to Sub-Post Master — Sanction not required for prosecution under Section 409, I. P. C. ILR (1959) 1 Cal 607 (611, 612) (DB).

(21) A public servant committing breach of trust does not normally act in his capacity as a public servant — So also when a public servant cheats or takes a bribe. **AIR**

Section 197 — Note 6B (contd.)
1967 Goa 127 (132, 133) = 1967 Cri LJ 1304 (DB).

(22) Where at the time of the complaint the returning officer is no longer acting as such after giving his decision, Section 197 cannot be invoked. AIR 1970 P and H 21 (23) (Punj) = 1970 Cri LJ 67.

(22A) See also the following illustrative cases:

AIR 1935 Rang 263 (265, 266) = 36 Cri L Jour 1272 (FB).

AIR 1970 Andh Pra 13 (19) = 1970 Cri LJ 26 (DB). (Secretary of Wakfs Board and employees thereof. Section 65 of Wakfs Act is no bar to their prosecution. Sanction under Section 197, Cr. P. Code is not necessary. Cr. Revn. Case No. 441 of 1964, dated 12th August, 1964 (A. P.), **Overruled.**)

AIR 1968 All 207 = 1968 Cri LJ 721. (Sanction when necessary — Lekhpal charged with offence under S. 218, Penal Code relating to preparation of revenue records— Sanction not necessary as Lekhpal is not a public servant removable only by State Government.)

AIR 1967 All 333 (333) = 1967 Cri LJ 339. (Chairman of Municipal Board conspiring with another to commit criminal breach of trust — Sanction for prosecution not necessary.)

AIR 1967 Punj 51 (52) = 1967 Cri LJ 256.

32 Cut LT 1096 (1098, 1099) = ILR (1966) Cut 173. (Detention and forcible removal of passenger to police station — Acts by State owned Transport officials are not 'official acts' — No prior sanction required for prosecuting them.)

1965 Mad LJ (Cri) 162 (165, 166) (DB) (Ker). (Misappropriation of the money entrusted to the accused cannot be said to have been done in the performance of his official duties and clearly no sanction is necessary for prosecuting the accused for an offence under Section 409.)

AIR 1958 All 163 (Pr 9) = 1958 Cri L Jour 312. (Drugs Act, S. 33 (1), Rules under Rule 49 — Proviso — Inspector appointed under, abusing applicant while conducting search of house — Sanction for prosecution is not required.)

1953-2 Mad L Jour 28 (30). (It is no part of the duty of an officer to lose his temper and abuse and assault or do other things far removed from his capacity as a public servant and then claim protection.)

AIR 1951 Cal 388 (389, 390) (DB). (Superintendent of telegraph workshop directing his workmen to take Government property in his charge and make articles out of them for his private use — Sanction not necessary.)

AIR 1950 All 342 (346, 347) = 51 Cri L Jour 947. (No sanction is necessary in the case of offences under Sections 383 and 420, I. P. Code, as the acts cannot be said to have been done while acting or purporting to act in discharge of his official duty.)

AIR 1954 Pepsu 95 (96) = ILR (1953) Patiala 609 = 1954 Cri L Jour 756 (DB). (Forgery or embezzlement are not acts which an S. D. O. has to do while discharging his duties as such.)

AIR 1940 Cal 274 (275) = 41 Cri L Jour 659 (DB). (A public servant summoned to give evidence before a commission appointed to investigate certain charges against another public servant, gives false evidence. No sanction is necessary to prosecute him.)

AIR 1939 Bom 63 (64) = 40 Cri L Jour 269 (DB). (The kulkarni of a village who is a public servant within the meaning of this section collected money on account of land revenue and, instead of sending it to the treasury, used it for his own purposes could not be said to be acting or purporting to act in the discharge of his duty in committing criminal breach of trust.)

1933 Mad WN 1031 (1032) °° AIR 1932 Oudh 308 (309) = 34 Cri L Jour 253. (A public servant is accused of using defamatory words at a time when he was not discharging or purporting to discharge any official duty. No sanction is necessary.)

AIR 1930 Bom 487 (487, 488) = 32 Cri L Jour 281 (DB). (Liquidator who is a "Judge" for certain purposes who appropriated to himself money coming into his custody as liquidator cannot be said even to purport to act in the discharge of his duty as Judge.)

AIR 1929 Bom 375 (376) = 31 Cri L Jour 353 (DB). (Kulkarni and Revenue Patil removing alleged encroachment without orders of higher authorities and assaulting alleged trespassers — No sanction necessary for their prosecution.)

[See however AIR 1957 Raj 51 (Pr. 10) = ILR (1956) 6 Raj 821 = 1957 Cri L Jour 227. (Petitioner leading deputation to Commissioner with object of making complaint against a sub-divisional Magistrate — S present at the time — Case under Section 107, Cr. P. C. against petitioner pending before S — S calling petitioner a "goonda" in presence of Commissioner to whom complaint was being made — Sanction held necessary.)]

7. Taking cognizance. — (1) This section does not bar making of a complaint or submitting of a police report, but only bars the act of a Magistrate in taking cognizance of the offence on such complaint or such report or in any other way without sanction. AIR 1945 Cal 385 (386) = ILR (1944) 2 Cal 183 = 47 Cri L Jour 142 (DB) °° AIR 1939 Lah 479 (485, 486) = 41 Cri L Jour 65 (DB) °° AIR 1938 Pat 83 (88) = 39 Cri L Jour 314 (DB).

(2) A preliminary inquiry to see if it is expedient in the interests of justice that a prosecution should be made in respect of an offence alleged to be committed by a

Section 197 — Note 7 (contd.)
public servant can be held without the sanction of the State Government, for it does not entail taking cognizance of any offence. AIR 1937 Rang 312 (314) = 34 Cri L Jour 945 °° ('94) 19 Bom 51 (60) (DB).

(3) The police can investigate into a cognizable offence without any such sanction, the position in and time at which a Court is required to take cognizance of the matter not having been reached. **AIR 1945 PC 18 (21, 22) = 46 Cri L Jour 413 = 71 Ind App 203 = ILR (1945) Lah 1 = ILR (1945) Kar (PC) 89** °° AIR 1945 Cal 385 (386) = ILR (1944) 2 Cal 183 = 47 Cri L Jour 142 (DB).

(4) In the case of a cognizable offence the Magistrate takes cognizance when the police have completed the investigation and come to the Magistrate for the issue of process against the accused. The mere fact that the Magistrate issues an order for investigation or issues a warrant of arrest as required by the Proviso to Section 3, Prevention of Corruption Act will not mean that the Magistrate has taken cognizance of the offence. **AIR 1951 SC 207 (209) = 1951 SCR 312 = 52 Cri L Jour 775 °° AIR 1966 SC 220 (222, 229) = 1966 Cri LJ 179 = (1965) 2 SCA 343.**

(5) A proceeding before a Magistrate for execution of an extradition warrant against a person received under Section 7 of the Extradition Act being of an executive character, the Magistrate while acting upon such warrant cannot be deemed to have taken cognizance of the offence alleged to have been committed by such person and therefore no sanction under this section is necessary. AIR 1950 All 342 (347) = 51 Cri L Jour 947.

(6) The mere fact that the Magistrate is dealing with a bail application of the accused while the case is still at the stage of police investigation will not in itself amount to taking cognizance of the case. AIR 1952 Punj 89 (94) = 1952 Cri L Jour 316 (DB). **(Overruled** on another point in **AIR 1957 SC 458.)**

(7) The examination of the complainant under Section 200 is, to take place only on a Magistrate taking cognizance of an offence. Hence, when a complaint is preferred against a public servant as to an offence falling within the purview of this section, the Magistrate cannot examine the complainant on oath under Section 200 in the absence of the sanction mentioned in this section. See Section 190.

[But see (1897) 3 Cal WN 17 (18) (DB) °° (1873) 7 Mad HCR Cr 182 (187) (DB).]

(8) Where a sanction is given for a prosecution in respect of a certain offence, it is not open to the Court to proceed in respect of a different offence. AIR 1953 All 37 (41) = 1953 Cri L Jour 192 °° AIR 1951 Cal 388 (389) (DB).

[But see AIR 1958 All 481 (Prs. 22, 25, 27) = ILR (1958) 1 All 133 = 1958 Cri L Jour 827. (AIR 1953 All 37, **Dissented from.**)]

(9) If the charge in respect of different offence is founded on same facts as those on which a prosecution has been sanctioned, there is no bar to the Court proceeding with that charge. (1903) 30 Cal 905 (908) (DB) °° AIR 1958 All 481 (Prs. 22, 25, 27) = ILR (1958) 1 All 133 = 1958 Cri L Jour 827. (AIR 1953 All 37, **Dissented from.**)

(10) The sanction enables a Magistrate to take cognizance of offences set out in the sanction and the cognizance having properly been taken, the subsequent course of the proceedings would be regulated by the relevant provisions of the Code. The mere fact that at the time of framing charges the Magistrate comes to the conclusion that charges should be framed under slightly different sections from those mentioned in the sanction would not therefore, render the sanction nugatory. **AIR 1948 PC 128 (133) = 75 Ind App 41 = 1948 FCR 19 = 49 Cri L Jour 503 °° AIR 1947 FC 9 (12) = 48 Cri L Jour 155 = ILR (1947) Kar (FC) 20** °° AIR 1958 All 481 (Prs. 22, 25, 27) = ILR (1958) 1 All 133 = 1958 Cri L Jour 827. (AIR 1953 All 37, **Dissented from.**)

[See also AIR 1951 Hyd 97 (100) = 52 Cri L Jour 1123 (DB).]

(11) A sanction for prosecution of the accused for an offence under Section 161, Penal Code, cannot be availed of by the prosecution for prosecution of the accused for the major offence under Section 5 (2), Prevention of Corruption Act, 1947. Such a trial if held is void and the Court has no power to convict the accused even under Section 161, Penal Code, for which sanction had been granted. AIR 1953 All 37 (41) = 1953 Cri L Jour 192.

[See also Sections 190 and 230.]

[But see AIR 1958 All 481 (Prs. 22, 25, 27) = ILR (1958) 1 All 133 = 1958 Cri L Jour 827. (AIR 1953 All 37, **Dissented from.**)]

(12) Where sanction under Section 6, Prevention of Corruption Act, was only with respect of an offence under S. 5 (1) (d) of the Act for taking of bribe from one particular person, the Court cannot convict the accused for offence under Section 5 (1) (a) for being a habitual receiver of bribes. But taking of cognizance of offence under Section 5 (1) (d) for which there was sanction, and the trial for that offence is not made illegal and without jurisdiction, because of want of sanction for offence under Section 5 (1) (a). **AIR 1958 SC 124 (Pr 7) = 1958 SCR 762 = ILR (1958) Punj 572 = 1958 Cri LJ 265.**

(13) Where sanction is wrongly given in a case not requiring sanction under this section it is an irregularity curable under

Section 197 — Note 7 (Contd.)
Section 537. AIR 1940 Pesh 41 (44) = 42 Cri L Jour 68.

(14) Where the Magistrate throws out the complaint and acquits the accused on the ground of want of sanction, the acquittal is not an acquittal properly speaking but is a mere refusal to take cognizance of the offence for want of sanction. 1958 Ker L Tim 106 (107). (The proper remedy against this striking off lies in revision rather than in appeal.)

(15) See also Section 190.

(16) Magistrate satisfied that cognizance of case could be taken without sanction under Section 197 — Case cannot be sent for enquiry to another Magistrate under Section 202 without taking cognizance under Section 190. 1961 (2) Cri LJ 502 (504) (Manipur).

(17) Person even though not interested in property stolen can complain — It may be filed by any person having knowledge of commission of offence only exception being found in Sections 195 to 199 where certain offences are stated to be complainable only by specified persons. (1963) 1 Cri LJ 358 = 1962 Ker LT 639.

8. Who can sanction prosecution. — (1) When once the Secretary to the Government under the orders of the Governor certified that the Governor had accorded sanction that was a sufficient proof that the Governor had sanctioned the prosecution in the exercise of his individual judgment as prescribed in the section (prior to its amendment by A. L. O. 1950) in the absence of any evidence to the contrary. AIR 1945 Mad 284 (286) = ILR (1946) Mad 219 = 47 Cri L Jour 149 (DB).

(2) Sanitary Inspectors appointed as Food Inspectors of the Coimbatore Municipality were charged and convicted under Section 161, Penal Code read with Sec. 5 (2) and Section 5 (1) (d) of the Prevention of Corruption Act. - Sanction for prosecution could be given either by the Municipal Commissioner or by the Municipal Health Officer. 1969 Mad LW (Cr) 144 (146, 147) = (1969) 2 Mad LJ 379.

(3) Where, in the case of a public servant employed with the affairs of the Union the sanction for prosecution is signed by the Secretary to the Government of India in accordance with the rules for authentication, and the sanction is signed and issued under the authority of the Minister concerned, the sanction is legal, valid and sufficient to give jurisdiction to the trial Magistrate, although it does not conform with the provisions of Article 77 (1) as it is not expressed in the name of the President. AIR 1958 Andh Pra 643 (Pr. 5) = 1958 Cri L Jour 1290.

(4) Whether sanction is to be accorded or not is a matter for the Government to consider. The absolute power to accord or withhold sanction conferred on the Government is irrelevant and foreign to the duty cast on the Court, which is the ascertainment of the true nature of the act. In this respect Court has to see whether it can take cognisance of the case without previous sanction and for this purpose the Court has to find out if the act complained against is committed by the accused while acting or purporting to act in the discharge of official duty. Once this is settled, the case proceeds or is thrown out. **AIR 1956 SC 44 (48) = 1955-2 SCR 925 = 1956 Cri LJ 140** °° AIR 1965 Bom 131 (133) = 1965 (2) Cri LJ 197.

(5) The Governor General acting under Section 197, Criminal P. C. sanctioned prosecution of the first accused for having conspired with the other two accused to commit criminal breach of trust and for having abetted the commission of that offence, and also for having committed it. Similar sanction was not given against the other two accused. On the same date sanction was also given for the prosecution of the first accused under Section 5 (2) of the Prevention of Corruption Act before it was amended in 1952 and a similar sanction was given against the second accused. Trial for offence under Sec. 5 (2), Prevention of Corruption Act, was separated from trial under Section 409, I. P. Code. **Held** that under Section 197 the Governor-General was at that date the sanctioning authority; under the Prevention of Corruption Act the sanctioning authority was "Central Government'. By virtue of subsequent amendment by Act 59 of 1952 and the Criminal Law Amendment Act (46 of 1952) the trials under these two provisions have different procedures and different punishments. Thus, there was a choice not only of forum, but also of procedure and the extent of the maximum penalty. If two separate authorities were given the right to choose and neither could encroach upon the preserve of the other, then the Governor-General had not sanctioned the prosecution under Section 409, I. P. Code against the second accused and no other authority had the power to do so Therefore, in that event, the sanction given to prosecute under Section 5 (2) could not be used to cover the trial under Section 409, I. P. Code because it was given by another authority not competent to give it.' **AIR 1955 SC 287 (292) = 1955 Cri LJ 857 = 1955 SCR 1177.**

(6) Sanction for prosecution given by officer during whose time prosecution is launched is in order. It need not be given by the officer during whose time alleged offences were committed. AIR 1969 Cal 481 = 1969 Cri LJ 1224.

(7) Who can sanction prosecution — Test to determine — Public servant employed by State Government — Services lent to Government of India — Sanctioning authority is Governor-General and not Governor. **AIR 1962 SC 1573 (1580, 1581) = (1963)**

Section 197 — Note 8 (contd.)
1 SCR 121 = 1962 (2) **Cri LJ 510 = 1962** All WR (HC) 732.

(8) Deputy Secretary having power to make some orders in his own right and to authenticate other orders issued in the name of the President — Deputy Secretary having power to accord sanction under Section 197 and Section 6 (1) (a) of the Prevention of Corruption Act (1947) in his own right — Order giving sanction ex facie showing that he did not authenticate it by order of the President — It must be held that he gave sanction in his own right. **AIR 1961 SC 1762 (1774, 1775, 1776) = 1961 (2) Cri LJ 828.**

(9) Sanction under Section 270 of the Government of India Act by the Governor General himself could not be treated as a sanction under Section 197 of the Code. **AIR 1960 SC 266 (271) = 1960 Cri LJ 410.**

(10) No difference in scope between Section 197 (1) and Section 270 of Government of India Act, 1935. **AIR 1967 SC 776 (777) = 1967 Cri LJ 665.**

(11) Power to dismiss Lekhpal is conferred on Assistant Collector. AIR 1968 All 207 (211, 212) = 1968 Cri LJ 721 (DB).

9. Essentials of sanction. — (1) A sanction under this section must specify the offence for which prosecution should be started. (1893) 16 Mad 468 (473) (DB) °° AIR 1917 Mad 344 (348) = 17 Cri L Jour 168.

(2) Under Section 197 as also under Section 6 of the Prevention of Corruption Act unless the sanction specifies the offence and the person who has committed the offence, Court is not empowered to take cognizance. AIR 1967 Bom 126 = 1967 Cri LJ 605.

(3) A sanction which leaves it to another to determine the offence in respect of which proceedings should be started is invalid and a prosecution based on such sanction is illegal. (1893) 16 Mad 468 (473, 474) (DB).

(4) Sanction granted on basis of material illegally collected — Fresh investigation ordered — Fresh sanction after re-investigation not necessary. AIR 1962 Bom 205 (214) = 1962 (2) Cri LJ 326 (DB). (Case under Prevention of Corruption Act (1947), Section 6.)

(5) An order sanctioning prosecution "for bribery or such other charges as the District Magistrate thinks likely to stand investigation by Criminal Courts" is not sufficient. **(1893) 16 Mad 468 (473, 474) (DB).**

(6) The Court must not only be satisfied that sanction has been accorded but that the sanctioning authority has accorded it after applying its mind to the facts constituting the offence. 1957 All L Jour 28 (29) (DB) °° AIR 1958 Madh Pra 2 (Prs 22, 32) = **1958 Cri L** Jour 41 °° AIR 1957 Cal 25 (Prs. 28, 29) = 1957 Cri L Jour 54 °° AIR 1957 Madh B 115 (Pr. 6) = 1957 Cri L Jour 449.

[See **AIR 1958 SC 124 (Pr. 4) = 1958 SCR 762 = ILR (1958) Punj 572 = 1958** Cri L Jour 265. (Case under Section 6, Prevention of Corruption Act.)]

(7) Letter for sanction and the first information giving all facts — Both documents before sanctioning authority — Sanction showing that authority considered these facts — Sanction is not invalid because facts were not mentioned therein. **(1963) Sup (2) SCR 652 = 1964 (2) Cri LJ 65 (67, 68).**

(8) The burden of proving that the requisite sanction has been obtained rests on prosecution and such burden includes proof that the sanctioning authority had given sanction in reference to the facts on which the proposed prosecution was to be based; these facts may appear on the face of the sanction or may be proved by extraneous evidence. 1957 All L Jour 28 (29) (DB) °° AIR 1958 Madh Pra 2 (Prs. 19, 34) = 1958 Cri L Jour 41 °° AIR 1957 Cal 25 (Prs. 28, 29) = 1957 Cri L Jour 54 °° AIR 1956 Assam 170 (Pr. 11) =1956 Cri L Jour 1283 (DB).

[See **AIR 1958 SC 124 (Pr. 4) = 1958 SCR 762 = ILR (1958) Punj 572 = 1958 Cri L Jour 265.** (Case under Section 6, Prevention of Corruption Act.)]

(9) The section under which the alleged offence falls or the name of the offence need not be specified in the sanction. It is enough if the facts constituting the offence are set out with sufficient clearness in the order granting sanction. AIR 1953 Sau 89 (90) = 1953 Cri L Jour 926 (DB) °° AIR 1957 Cal 25 (Prs. 28, 29) = 1957 Cri L Jour 54 °° AIR 1957 Madh B 115 (Pr. 6) = 1957 Cri L Jour 449 °° AIR 1917 Mad 344 (348) = 17 Cri L Jour 166 °° AIR 1918 Bom 117 (118, 120, 121) = 20 Cri L Jour 71 (DB).

[See also AIR 1948 **PC 82 (85) = ILR (1948) Bom 316 = 75 Ind App 30 = 49 Cri L Jour 261.**]

(10) Facts on which proposed prosecution under Sections 161, 165, Penal Code was based put before sanctioning authority — Facts constitute offences under both sections — Sanction order mentioning S. 161 only was held to be a valid order for prosecution under both sections. (1957) 23 Cut LT 31 (33) (DB).

(11) Where the sanction on the face of it does not contain facts constituting offence charged nor is there any evidence given that those facts were placed before the sanctioning authority, the sanction is invalid. **AIR 1949 Mad 710 (Pr. 1) = 51** Cri L Jour 156. (**AIR 1948 PC 82 = 75 Ind App 30 = 49 Cri L Jour 261 = ILR (1948) Bom 316, Foll.**) °° AIR 1956 Assam 170 (Pr 11) = 1956 Cri L Jour 1283 (DB) °° 1967 All WR (HC) 326 = 1967 All Cri R 227 (229, 230). (Accused was public

Section 197 — Note 9 (contd.)
servant and that he was caught red-handed by police accepting bribe were not sufficient for holding sanction to be valid.)

[See **AIR 1958 SC 124 (Pr. 4) = 1958 SCR 762 = ILR (1958) Punj 572 = 1958 Cri L Jour 265.** (Case under Section 6, Prevention of Corruption Act.)]

[See also AIR 1961 Ker 175 (178) = 1961 Ker LT 144 = 1961 (1) Cri LJ 816 (DB).]

(12) Where particulars of offence were specified in a schedule annexed to the order of sanction and the sanction directed prosecution for an offence under Section 161 Penal Code, "or any other section of the Code that may be found applicable to the offence," the order was sufficient sanction. (1911) 12 Cri L Jour 217 (220, 221, 222) = 1911 Pun Re (Cr) No. 11 °° AIR 1938 Bom 50 (53) = 39 Cri L Jour 214 (DB).

[See also ('77) 2 Bom 481 (488) (DB).]

(13) The lacuna, if any, in the sanction of the kind contemplated by the decision in **AIR 1948 PC 82** can be remedied in the course of the trial by specific evidence in that behalf. **AIR 1954 SC 362 (363) = 1954 Cri L Jour 1012 = 1955 SCR 168.**

(14) The theory of implied sanction is unknown to law. Sanction should be clearly evidenced either from order granting sanction or other documentary evidence placed before Court or even oral evidence that facts were placed before the sanctioning authority and that sanction was granted. AIR 1952 Tripura 21 (21, 22) = 1952 Cri L Jour 1648.

(15) The prosecution must place before Court proof of very order granting the sanction and not proof of the fact that sanction has been granted. AIR 1952 Orissa 220 (222) = ILR (1952) Cut 344 (DB).

[See also (1950) 54 Cal WN (2 D R) 223 (225) (DB).]

(16) The requirement as to sanction being a statutory one, it must be given in the manner and expressed in the form authorised by the statutory provisions or regulations and no other. The sanction of the Central Government or the State Government being an executive act must conform to the provisions of Article 77 or Article 166 of the Constitution. AIR 1952 Orissa 220 (222) = ILR (1952) Cut 344 (DB).

(17) There is no prescribed form in which sanction must be given. AIR 1920 Pat 237 (243) = 21 Cri L Jour 584 (DB) °° AIR 1956 Assam 170 (Pr. 11) = 1956 Cri L Jour 1283 (DB). (Sanction under Prevention of Corruption Act.) °° AIR 1922 Lah 146 (147) = 23 Cri L Jour 113 °° (1872) 7 Mad HCR 58 (59) (DB) °° (1909) 10 Cri L Jour 463 (467) (DB) (Cal).

[See also AIR 1955 Punj 65 (73) = ILR (1954) Punj 75 = 1955 Cri L Jour 609 (DB) °° AIR 1961 Ker 175 (178) = 1961 (1) Cri LJ 816 (DB).]

(18) So long as sanction specifies with sufficient clearness the offence for which prosecution is to be started, any deficiency or error in particulars set out is immaterial. AIR 1949 Cal 641 (645) = ILR (1950) 2 Cal 45 = 51 Cri L Jour 10 (DB) °° AIR 1954 Madh B 101 (108) = 1954 Cri L Jour 966 °° (1904) 1 Cri L Jour 275 (279) = 27 Mad 54 °° AIR 1927 Bom 501 (503) = 28 Cri L Jour 1012 (DB) °° 1963 Raj LW 34 (36) = ILR (1962) 12 Raj 847. (Typographical error as regards date of offence.)

(19) It is not necessary that sanction should mention provision of an Act under which it was given. A sanction without it is not defective. AIR 1953 Sau 89 (90, 91) = 1953 Cri L Jour 926 (DB) °° AIR 1957 Cal 25 (Prs. 28, 29) = 1957 Cri L Jour 54.

(20) Where the sanctioning authority who was fully aware of the facts constituting offence wrote a letter by way of reply that no sanction was necessary and that there was no objection to the prosecution the letter was sufficient compliance with law and, therefore, sanction, if necessary, was valid. AIR 1958 Cal 517 (Pr. 5) = 1958 Cri L Jour 1178 (DB).

(21) Where facts in detail appear clearly in the sanction itself the accused can be prosecuted for any other offence than that mentioned in sanction, which quite clearly comes within the terms of the sanction. AIR 1957 Madh B 115 (Pr. 6) = 1957 Cri L Jour 449.

(22) There is no restriction as to the officer to whom a sanction under this section should be addressed. AIR 1938 Bom 50 (54) = 39 Cri L Jour 214 (DB) °° AIR 1933 All 543 (544) = 34 Cri L Jour 1208.

(23) It is not necessary that a complaint based on a sanction issued under this section should be filed by the very officer to whom sanction was addressed. AIR 1933 All. 543 (544) = 34 Cri L Jour 1208.

(24) Where sanction expressly specifies person by whom prosecution is to be instituted it is not open to any other person to do so. (1871) 8 Bom HCR (Cr) 32 (36) (SB).

(25) A substantial compliance with the order directing prosecution under this section is enough. Where a District Magistrate was ordered to institute a prosecution against certain person but he took cognizance of case and transferred it to another Magistrate for trial, it was held that though taking cognizance was not identical with instituting a prosecution, the order of Government had been substantially complied with and the proceedings were not vitiated. (1909) 10 Cri L Jour 463 (466) (DB) (Cal).

(26) The granting of a sanction under this section is an executive and not a judicial act. AIR 1922 Lah 146 (147) = 23

Section 197 — Note 9 (contd.)
Cri L Jour 113 °° AIR 1958 Andh Pra 643 (Pr. 4) = 1958 Cri L Jour 1290 °° AIR 1957 Madh B 115 (Pr. 6) = 1957 Cri L Jour 449 °° AIR 1923 Mad 338 (339) = 24 Cri L Jour 116 °° AIR 1962 Bom 205 (214) = 1962 (2) Cri LJ 326 (DB).

[See AIR 1952 Orissa 220 (222) = ILR (1952) Cut 344 (DB).]

(27) The sanctioning authority is not authorized to hold a judicial inquiry before granting such sanction. An inquiry that the sanctioning authority makes will be only a departmental one. (1899) 23 Mad 223 (224) (DB).

(28) A sanction under this section not being a judicial act, need not be based on legal evidence. (1904) 1 Cri L Jour 275 (278) = 27 Mad 54.

(29) It is not necessary to give reasons for sanctioning a prosecution. AIR 1923 Mad 338 (339) = 24 Cri L Jour 116.

(30) It is not necessary before sanctioning prosecution to give the accused an opportunity to show cause why his prosecution should not be ordered. (1904) 1 Cri L Jour 275 (278) = 27 Mad 54 °° AIR 1923 Mad 338 (339) = 24 Cri L Jour 116.

(31) A sanction for prosecution is not invalid merely because it is based on report which mentions the alleged admission of guilt by the accused along with other facts constituting the offence. AIR 1952 Mys 42 (45) = ILR (1951) Mys 464 = 1952 Cri L Jour 919 (DB).

(32) Sanction granted not separately but on report regarding offence, though irregular, did not invalidate the sanction. 1957 Cri L Jour 131 (Pr 4) (Him Pra).

(33) Where sanction under Section 6, Prevention of Corruption Act, 1947, is essential, a sanction granted under this section would not be valid. AIR 1952 Orissa 220 (222) = ILR (1952) Cut 344 (DB).

10. Stage at which sanction is to be obtained. — (1) A sanction obtained after the commencement of proceedings is not sufficient. AIR 1917 Bom 33 (33) = 19 Cri L Jour 342 (DB) °° (1885) 9 Bom 288 (299) (FB) °° AIR 1923 Mad 338 (339) = 24 Cri L Jour 116 °° AIR 1920 Pat 237 (243) = 21 Cri L Jour 584 (DB) °° **AIR 1966 SC 220 (222) = 1966 Cri LJ 179 = (1966) 1 SCR 210** °° (1970) 72 Punj LR (D) 16 (22) (Delhi) °° AIR 1970 Andh Pra 13 (15) = 1970 Cri LJ 26 (DB) °° AIR 1967 Goa 121 (132) = 1967 Cri LJ 1304 (DB) °° ILR (1966) 2 Ker 573 (576, 577) °° AIR 1961 Ker 260 (263, 264) = 1961 Ker LT 208 = 1961 (2) Cri LJ 484 (DB). (Need for obtaining sanction may arise at any stage of prosecution.)

(2) Whether sanction under Section 197 is necessary or not may have to be determined from stage to stage and may be clear only in course of progress of case — Complaint may not disclose need for sanction but subsequent facts may establish its necessity — Hence it cannot be said that sanction under Section 197 is required before taking cognizance. AIR 1967 All 519 (520) = 1967 All LJ 362 = 1967 Cri LJ 1463. **(AIR 1956 SC 44, Foll.)** °° ILR (1956) 2 Ker 573 (579).

(3) Sanction obtained after commencement of proceedings is curable under Sec. 537. The fact that process had been issued to accused before obtaining sanction would be merely an irregularity curable under Section 537; where, on the other hand, the sanction has not been received till after some of the evidence had been recorded and the Magistrate proceeds to judgment it would amount to a failure of justice, and the irregularity will not be cured. AIR 1939 Lah 479 (486) = 41 Cri L Jour 65 (DB) °° AIR 1939 Lah 1 (3) = 40 Cri L Jour 252 °° AIR 1938 Bom 50 (53) = 39 Cri L Jour 214 (DB).

(4) As the question of want of sanction goes to the root of the jurisdiction of the Court, a Court should consider at the earliest possible stage whether such sanction is in law necessary and if it is, whether it has been duly given. AIR 1953 Bom 177 (183) = ILR (1953) Bom 55 = 1953 Cri L Jour 806 (DB) °° AIR 1953 Trav-Co 183 (188) = ILR (1953) Trav-Co 1 = 1953 Cri L Jour 966 (FB).

(5) Accused not entitled to take part at stage of preliminary enquiry under S. 202 — Accused however, can take objection regarding want of sanction under S. 197. AIR 1965 Raj 210 (212) = (1965) 2 Cr LJ 681 = 1966 Raj LW 524.

(5A) Plea of want of sanction — It can be raised at any stage of case — Its decision would depend on availability of adequate material on record enabling court to effectively adjudicate it. AIR 1970 Raj 145 (147).

(5B) When an objection under Sec. 197 is taken the Courts are no doubt concerned only with the allegations made in the complaint but they can look beyond the form in which the allegations have been made to ascertain for themselves their substance. (1970) 72 Punj LR 16 (21).

(6) It is the duty of lawyers to take the point about sanction at the earliest stage and invite the Magistrate to decide it before proceeding to deal with the merits of the case. AIR 1953 Bom 177 (183) = ILR (1953) Bom 55 = 1953 Cri L Jour 806 (DB) °° AIR 1954 Pepsu 95 (96) = 1954 Cri L Jour 756 = ILR (1953) Patiala 609 (DB) °° AIR 1954 Sau 132 (138) = 1954 Cri L Jour 1559 (DB). (AIR 1953 Bom 177 = 1953 Cri L Jour 806 = ILR (1953) Bom 55, Foll.)

(7) The essential requirement of S. 197 is that there must be material before Court to base a decision as to whether the person claiming benefit under Section 197 is or is not entitled to claim it. Though the Code does not contain any express provision

Section 197 — Note 10 (contd.)
for taking of evidence for purpose of enabling Court to come to a decision as to whether the plea in limine bars a prosecution, it is not prevented from exercising its inherent power of doing justice between the State and party or party and party by taking evidence in order to be able to decide whether the prosecution should at all be permitted to proceed. AIR 1956 Cal 109 (110, 111) = 1956 Cri L Jour 519 °° AIR 1964 Bom 191 (193, 194) = 1964 (2) Cri LJ 272 (2) = 66 Bom LR 28

(8) It is not obligatory for Court to direct any enquiry into the matter as to the scope of applicability of the section even when there is a prima facie case to show that the accused could have taken the plea in defence that they were purporting to act in the discharge of the official duties even if the allegations as made against them are true. AIR 1957 Assam 146 (Prs. 10, 11) = 1957 Cri L Jour 1099 (DB). (AIR 1956 Cal 109 = 1956 Cri L Jour 519, **Commented upon.**) °° AIR 1967 All 333 (333) = 1967 Cri LJ 839 °° AIR 1967 Goa 121 (132, 133) = 1967 Cri LJ 1304 (DB). (Per Jetley, J. C.; Addl. J. C., contra.) °° AIR 1965 Punj 192 (197, 198, 199) = 1965 (1) Cri LJ 585 (DB) °° 1963 (2) Cri LJ 573 (575, 576, 579) (Pat) °° 1963 (2) Cri LJ 359 (361, 362) (Raj) °° ILR (1960) Ker 1376 (1378).

(9) Court can dismiss a complaint for want of sanction as required by Sec. 197 even after taking cognizance of the case. AIR 1965 All 208 (209) = 1965 (1) Cri LJ 532 = ILR (1965) 1 All 80. **(AIR 1956 SC 44, Foll.)**

(10) Where the police apply for a warrant of arrest during investigation under the proviso to Section 3, Prevention of Corruption Act, and the Magistrate issues such a warrant, he cannot be deemed to have taken cognizance of the case under Section 190 and the fact that sanction under this section had not been obtained before the warrant was issued will not vitiate the trial. **AIR 1951 SC 207 (209) = 1951 SCR 312 = 52 Cri L Jour 775.**

(11) In a previous trial point as to want of sanction was not raised specifically. It was raised in revision but was negatived. The matter was not pursued further. In a retrial, which was ordered, the accused raised the same point in a revision before the High Court. It was held that the matter was of fundamental importance going to the root of the proceedings and could therefore be allowed to be raised. **AIR 1957 Cal 25 (Pr 26) = 1957 Cri L Jour 54.**

(12) A decision as to whether sanction is necessary or not under Section 197, before taking cognizance of an offence is a judicial decision and such a decision should be arrived at after hearing arguments in Court by the Magistrate himself and not by inviting opinion of the Departmental head of the Government employees complained against. 1961 (2) Cri LJ 502 (503) (Manipur).

(13) Criminal complaint filed against public servant — Magistrate hearing evidence adduced in support of complaint and being not sure whether alleged criminal act was done by servant while acting or purporting to act in discharge of official duty passing order to summon the servant — Servant applying under Section 561-A for cancellation of order alleging that Section 197 operated bar to the proceedings — Whether alleged offence is done by public servant while acting or purporting to act in discharge of his official duty is a mixed question of law and fact — Magistrate held justified in keeping the question open. 1965 All WR (HC) 577 (578) = 1965 All Cri R 377.

11. Want of sanction — Effect. — (1) The provisions of this section are mandatory and the absence of sanction in cases coming under the section will render the proceedings illegal. AIR 1953 Bom 177 (181) = ILR (1953) Bom 55 = 1953 Cri L Jour 806 (DB) °° 1957 All L Jour 28 (29) (DB) °° AIR 1944 Pat 378 (387) = 46 Cri L Jour 438 (DB) °° ('85) 9 Bom 288 (296, 297) (FB) °° AIR 1928 All 756 (758) = 30 Cri L Jour 62 °° AIR 1919 Lah 300 (301, 302) = 20 Cri L Jour 152 (DB) °° AIR 1920 Mad 123 (123) = 21 Cri L Jour 233 (DB) °° AIR 1970 Raj 145 (147) °° 1969 Cri L Jour 550 (551) = 73 Cal WN 72 (DB). (Affidavits of both parties and other annexures showing order under S. 144 to have been in operation — Complaint against police of assaulting persons attending meeting inside a building — Sanction under S. 197 not got — Dismissal thus valid.) °° AIR 1967 Goa 121 (132, 133) = 1967 Cri LJ 1304 (DB) °° AIR 1967 Goa 121 (124) = 1967 Cri LJ 1304 (DB). ('No Court shall take cognizance' — Bar imposed on Court is absolute.) °° 1966 Cri LJ 230 (231) (Pat) °° AIR 1963 Andh Pra 491 (491, 492) = (1963) 2 Cri LJ 601 (DB). (Prosecution of Chief Executive Officer of Road Transport Corporation.)

[See **AIR 1958 SC 124 (Pr 4) = 1958 SCR 762 = ILR (1958) Punj 572 = 1958 Cri L Jour 265.** (Sanction under Section 6, Prevention of Corruption Act.) °° AIR 1939 Lah 479 (483) = 41 Cri L Jour 65 (DB).]

[See also AIR 1952 Tripura 21 (22) = 1952 Cri L Jour 1648 °° AIR 1951 Pat 513 (513) = 52 Cri L Jour 710 °° AIR 1943 Cal 594 (609) = 45 Cri L Jour 224 (SB) °° AIR 1939 FC 43 (50) = 40 Cri L Jour 468 °° AIR 1931 Cal 646 (647, 648) = 33 Cri L Jour 83 (DB).]

[See however AIR 1945 Oudh 180 (182) = 47 Cri L Jour 40.]

Section 197 — Note 11 (contd.)

[But see AIR 1919 Mad 190 (190) = 20 Cri L Jour 514 (DB).]

(2) Where there are a number of co-accused in a case the want of sanction in respect of one of them will vitiate the proceedings as regards the rest also. AIR 1937 Pesh 52 (56) = 38 Cri L Jour 1042 (DB) °° AIR 1947 Cal 29 (30) = 47 Cri L Jour 623 (DB).

[See also (1965) 1 Mys LJ 647 (665) (DB). (Lack of sanction under Sec. 197, when necessary, vitiates the trial only as regards the accused entitled to the protection under that section and only in respect of the offences in respect of which sanction is necessary. As regards other offences or other accused tried along with him, the trial does not become void in the absence of any prejudice suffered as regards the other offences or accused.)]

[See however AIR 1953 Bom 177 (183) = ILR (1953) Bom 55 = 1953 Cri L Jour 806 (DB). (It depends on whether trial against others has been prejudiced — AIR 1939 FC 43, Followed; AIR 1937 Bom 160 and AIR 1938 Bom 129 **Dissented from.**) °° AIR 1953 Trav-Co 183 (190) = ILR (1953) Trav-Co [illegible] = 1953 Cri L Jour 966 (FB). (Entire complaint need not be dismissed.)]

(3) When a complaint is presented without obtaining sanction to dismiss complaint under Section 203 is not a proper course, as such dismissal necessarily implies taking cognizance of the offence. See AIR 1947 Pesh 58 (60) = 48 Cri L Jour 953 (DB). (AIR 1934 Rang 238 = 36 Cri L Jour 77, **Dissented from.**)

[But see AIR 1934 Rang 233 (239) = 36 Cri L Jour 77.]

(4) When an accused person pleads Section 197 as a bar to his trial it is for him to show the facts which bring the section into operation. See Note 1. AIR 1967 Goa 121 (122, 123) = 1967 Cri LJ 1304 (DB). (Mere suggestion is not sufficient for throwing out complaint.)

(5) Where a complaint against a public servant covers some offences in respect of which no sanction to prosecute is necessary and certain other offence in respect of which such sanction is necessary, then a trial for such offences for which no sanction is necessary can be allowed to proceed provided such offences are of a distinct character, even though they are based on the same facts. This, however, should not amount to evasion by resorting to devices or camouflages. ILR (1954) 4 Raj 499 (503) (DB).

(6) Where a Magistrate thinks that sanction is necessary under this section, he must dismiss the case on the ground of want of sanction. The submission of the record to the District Magistrate for getting sanction is not the proper procedure. AIR 1949 Pat 36 (37) = 49 Cri L Jour 599 °° AIR 1964 Bom 191 (193, 194) = 1964 (2) Cri LJ 272 (2).

(7) Complainants kept in police station and assaulted by police officer to coerce them to make statement under Section 164 — Such acts of police officer cannot be said to have any connection with his official duty — Dismissal of complaint for want of sanction when sanction is not required invalid. AIR 1967 All 519 (520) = 1967 Cri LJ 1463.

(8) Invalid sanction cannot confer jurisdiction on Court to try a case. 1967 All WR (HC) 326 = 1967 All Cri R 227 (229).

(9) Where sanction was not necessary Magistrate ought not to have ordered acquittal. (1966) 32 Cut LT 1096 (1099, 1100) = ILR (1966) Cut 713.

(10) False report made by the Sarpanch to the police that certain person abused and threatened Panchas while their meeting was held was reasonably connected with the purported discharge of his official duty; and that prosecution of the Sarpanch under Section 183, I. P. C. without the previous sanction of the State was illegal. 1959 Raj LW 633 (634, 635) = ILR (1959) 9 Raj 583. (AIR 1957 Raj 51, **Rel. on.**)

(11) Ordinarily High Court does not interfere at interlocutory stage, but where question of law arises involving jurisdiction of Magistrate to take cognizance of the offence in absence of sanction required under Section 197 (1), High Court would be justified in exercising its jurisdiction. AIR 1967 Goa 121 (122) = 1967 Cri LJ 1304 (DB).

11A. Sanction in case of joint trial of two accused. — (1) Trial of A for cheating along with trial of public servant for abetment of offence of cheating, by falsely certifying correctness of the claims — Trial was not vitiated for want of sanction, as neither A was public servant nor act of public servant in abetting A was done in discharge of his official duty. **AIR 1967 SC 752 (756, 757) = 1967 All Cri R 79 = 1967 Cri LJ 656 = 69 Punj LR 107 = 1967 All WR (HC) 88. (AIR 1960 SC 266, Rel. on; AIR 1965 SC 706, Disting.)**

12. Sub-section (2). — **(1) This sub-section empowers the Central Government or the State Government, as the case may be, in sanctioning a prosecution under this section to direct by whom and in what manner the prosecution is to be conducted, and to determine the offence or offences for which the accused is to be prosecuted and the Court before whom he is to be tried.** AIR 1938 Pat 83 (86) = 39 Cri L Jour 314 (DB) °° AIR 1928 All 756 (758) = 30 Cri L Jour 62.

Section 197 — Note 12 (contd.)

(2) The sanctioning authority cannot specify a Court under this sub-section unless sanction under sub-section (1) is necessary and has actually been given. It has no authority to specify a Court in any other case. It cannot acquire power to specify a Court by coupling the specification with an unnecessary sanction. **AIR 1950 PC 19 (20) = 77 Ind App 11 = 51 Cri L Jour 638** °° AIR 1952 Mys 42 (45) = ILR (1951) Mys 464 = 1952 Cri L Jour 919 (DB) °° 1 Pepsu LR 334 (338, 339, 340).

(3) Where the sanctioning authority has specified the Court by which a case is to be tried under this sub-section, the High Court has no power to transfer the case to any other Court. (1949) 1 Pepsu LR 334 (337) °° 26 Cal 852 (862) (DB).

(4) The sub-section contemplates the authority making an order with reference to each particular case and not passing a general order affecting a whole class of cases. Thus, an order that all cases in which a particular class of officers are concerned (e.g., Tahsildars) must be tried only by a particular Court cannot be made. (1892) 15 Mad 36 (38, 39) (DB).

(5) There is no reason to think that Section 197 (2) is inspired by any policy of protection of the concerned public servant as Section 197 (1) is. There can be no question of protection involved by an accused being tried by one Court rather than by another at the choice of the Government. The power under Section 197 (2) appears to be vested in the appropriate Government for being exercised on grounds of convenience or the complexity or gravity of the case or other relevant considerations. **AIR 1954 SC 362 (363) = 1954 Cri L Jour 1012 = 1955 SCR 168.**

(6) It cannot be held that it is for the very Government which sanctioned the prosecution under Section 197 (1) to specify the Court before which the trial is to be held and no other and that consequently in a case to which Section 197 (1) applies, the exercise of any power under Section 14, Criminal P. C. is excluded. If in an individual case, power under Section 197 (2) is not exercised, it cannot be taken that the appropriate Government did not feel called upon to allot the case to any special Court and it cannot also be taken that such allotment by another Government under Section 14 would affect or nullify the power of the appropriate Government under Section 197 (2). The power to specify a Court for trial in such cases is a permissive and there can be no such implication arising from the non-exercise of power. **AIR 1954 SC 362 (363) = 1954 Cri L Jour 1012 = 1955 SCR 168.**

(7) Under this sub-section, the Central Government or the State Government can direct a case to be tried by a Court which otherwise would have no local jurisdiction over it. (1908) 8 Cri L Jour 70 (71) = 4 Low Bur Rul 265.

(8) Where a case is directed to be tried by the Sessions Court of a certain place, the case can be tried by the Additional Sessions Judge of that place. (1888) 2 Weir 215 (216) (FB).

(9) There is nothing in the section which requires that orders under this sub-section should necessarily be passed in every case. AIR 1938 Bom 50 (54) = 39 Cri L Jour 214 (DB).

13. Provisions of other Acts. — (1) Insistence of complainant to remain in precincts of Police Station amounting to trespass — Assault by Sub-Inspector — Prosecution of Sub-Inspector for — Sanction under Section 170 (1) is necessary. (1968) 2 Mys LJ 11 = 1968 Mad LJ (Cri) 473 (475).

(2) Section 170 (1) of Mysore Police Act (IV of 1964), bars a prosecution in respect of an offence and applies when the person or officer mentioned in the section does something more than his official duty. Something which is not his duty provided he does, does it while acting or purporting to act in the discharge of his official duties. 1968 Mad LJ (Cri) 473 (475) = (1968) 2 Mys LJ 11.

(3) Section 161 (1) Bombay Police Act, covers cases of acts done under colour of office and/or in excess of any such duty or authority. It further covers offences in which it appears to the Court that the wrong done was under colour of office or in excess of the duty. Under Section 197 the Government acts in an executive capacity and it is in the discretion of the Government whether to grant or withhold sanction under Section 197 and the order of the Government, either refusing or granting sanction under Section 197, need not be based on legal evidence. Unlike these provisions of Section 197 which the Government can use in an executive manner, the provisions of Section 161 (1) of the Bombay Police Act have to be interpreted by the Courts judicially on the basis of the evidence and materials on record. **AIR 1965 Bom 131 (133) = 67 Bom LR 25 = ILR (1965) Bom 126 = 1965 Mah LJ 238 = 1965 (2) Cri LJ 197.** (ILR 27 Mad 54, **Rel. on.**)

(4) Section 197 (1) relates to court taking cognizance of offences mentioned therein except with previous sanction — Section 20 of Prevention of Food Adulteration Act relates to institution of prosecution except by or with the consent of authorities or persons mentioned therein. AIR 1960 Bom 244 (246) = 1960 Cri LJ 805 (DB).

(5) Setting aside of accused's conviction and sentence on ground that sanction required to prosecute him was defective, does not preclude State from prosecuting

[°][197A. **Prosecution of Rulers of former Indian States.**—(1) In this section.—

(a) "former Indian State" means any such Indian State as the Central Government may, by notification in the official Gazette, specify[†] for the purposes of this section;

(b) "Ruler", in relation to a former Indian State, means the person who for the time being is recognized by the President as the Ruler of that State for the purposes of the Constitution.

(2)[‡] No Court shall take cognizance of any offence alleged to have been committed by the Ruler of a former Indian State except with the previous sanction of the Central Government.

(3) The provisions of sub-section (2) of section 197 shall apply in relation to the prosecution and trial of the Ruler of a former Indian State as they apply in relation to the prosecution and trial of a Judge.]

[°] Inserted by the Code of Criminal Procedure (Amendment) Act (1 of 1951), S. 11 (1-4-1951).

[‡] For specification of States for the purpose of this section, see Gazette of India, 1-4-1951, Part II, S. 3, Extra, p. 283.

Section 197 — Note 13 (contd.)

accused again after obtaining a valid sanction. 1967 All WR (HC) 326 = 1967 All Cri R 227 (231).

(6) Principles which relate to question of previous sanction of particular authority for taking cognizance of an offence have no application to filing of complaints under Section 6 of Imports and Exports (Control) Act, 1947. **AIR 1968 SC 247** (249, 250) = **1968 Cri LJ 236.** (AIR 1967 Delhi 97, **Affirmed.**)

(7) Madras Village Panchayats Act (10 of 1950), Section 106 is similar in language to Section 197 (1). Sanction is not necessary to prosecute President of Panchayat Board for offence under Section 409, I. P. C. **AIR 1967 SC 776 (777, 778) = 1967 Cri LJ 665.**

(8) 'Done or extended to be done' in Section 111 (2) of Orissa Gram Panchayats Act (15 of 1948) — Expression carries same connotation as 'acting or purporting to act' in Sec. 197, Criminal P. C. 31 Cut LT 314 = 1966 Cri LJ 494.

(9) U. P. Panchayat Raj Act (XXVI of 1947), Sections 95 (J) and 14 — Pradhan of Gaon Sabha can be removed from office by State Government in certain contingencies under Section 95 (J) of Panchayat Act — He can also be removed by Gaon Sabha under Section 14 of that Act under certain circumstances if he has worked for over a year — Where therefore he has worked for over a year he cannot take advantage of Section 197 and claim protection from prosecution without sanction of Government. (1966) All Cri R 314 (1) = 1966 All WR (HC) 507 (508). (AIR 1959 AP 27 and 1961 ALJ 376, **Foll.**)

(10) If under Section 145 Bombay Police Act, the conduct of District Superintendent of Police is punishable it is an offence, and Section 197 must apply. AIR 1962 Bom 198 (202) = 64 Bom LR 130 = 1962 (2) Cri LJ 320 (DB).

(11) Section 159, Bombay Police Act (1951) does not control application of Section 197, Criminal P. C. AIR 1962 Bom 198 (202) = 1962 (2) Cri LJ 320 (DB) °° AIR 1970 Andh Pra 13 (17) = 1970 Cri LJ 26.

(12) Madras Village Panchayats Act (10 of 1950), Sec. 106 — Complaint by President of Panchayat Board against P, public servant, under Sections 411 and 511, Penal Code alleging that P intentionally deceived him and thereby dishonestly and fraudulently induced him to sign on some blank paper — Magistrate taking complaint on file under Section 466 of Penal Code — P filing petition for dismissal of complaint for want of proper sanction under Section 197 (1) of Cr. P. C. and Section 106 of Madras Act (10 of 1950) — Both sections held contemplated same requirements — No sanction for prosecution was necessary for offences alleged whether under Section 197 (1) or Section 106. ILR (1963) Andh Pra 1040 (1048). **(AIR 1960 SC 266, Foll.)**

Section 197A — Note 1

(1) In pursuance of the power given by Article 362, Parliament incorporated Section 197A in the Criminal P. C. by which the prosecution of rulers of former Indian States is inhibited except with the previous sanction of the Central Government. The privilege of exemption from personal attendance in Court as a complainant has not been provided for by the law for the Ruler of the former Indian State. AIR 1953 Madh-B 254 (255) = ILR (1952) Madh-B 405 = 1953 Cri LJ 1718 °° AIR 1963 Madh Pra 162 (163, 164) = 1963 (1) Cri LJ 600.

(2) Where an application under Sec. 488, Criminal P. C. was filed against a Ruler of a former Indian State by his wife and a minor son, it was held that Section 197-A did not bar the jurisdiction of the trial Court. AIR 1955 Bom 108 (109) = 1955 Cri LJ 357 = ILR (1955) Bom 6.

[‡] As to non-applicability of sub-sections (2) and (3) of S. 197A, Criminal P. C., to Rulers of former Indian States under certain circumstances, see S. 168, Representation of the People Act, 1951 (XLIII of 1955).

STATE AMENDMENTS

Ss. 197A; 197AA; 197B

Note.—The Punjab and Uttar Pradesh State amendments inserting S. 197A, which relate to prosecution of Commissioners appointed by Court, were made prior to the insertion by the Court of Criminal Procedure (Amendment) Act, 1951, of S. 197A which relates to prosecution of Rulers of former Indian States. S. 197A was also newly inserted in the State of Bombay. After the insertion of S. 197A in the Code, consequential amendments in the number of the section added by the States have been made in the States of Bombay (now Gujarat and Maharashtra) and Punjab. There has, however, been no such change in the number of S. 197A inserted in the State of Uttar Pradesh.

S. 197A

Uttar Pradesh

(1) In its application to the State of Uttar Pradesh, after S. 197 insert S. 197A as follows namely—

"197A. Prosecution of Commissioner appointed by Court.—When any person, who is a Commissioner appointed by a Court under the provisions of the Code of Civil Procedure, 1908 is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his functions as Commissioner, no Court shall take cognizance of such offence except with the previous sanction of the Court which appointed him as Commissioner." → U. P. Act XLVI of 1948, S. 3. (27-12-1948).

(2) Merged States.—Section 197A as inserted by the above-mentioned U. P. Act has been extended to the States merged in the State of Uttar Pradesh, namely, Banaras, Rampur and Tehri Garhwal as from 1-1-1950 by U. P. Act VIII of 1950.

S. 197AA

Gujarat

In its application to the State of Gujarat, S. 197AA is the same as that inserted in Maharashtra. → See Cent. Act XI of 1960, S. 87.

Maharashtra

(1) In its application to the State of Maharashtra, after S. 197A insert S. 197AA as follows, namely,—

"197AA. Prosecution of Commissioner appointed by Civil Court.—When any person, who is a Commissioner appointed by a Court under the provisions of the Code of Civil Procedure, 1908, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his functions as Commissioner no Court shall take cognizance of such offence except with the previous sanction of the Court, which appointed such person as Commissioner." → Bom. Acts XX of 1951, S. 2 (2-6-1951) and XXXIX of 1951, S. 2 and Sch. II (25-12-1951).

(2) After the reorganisation of the State of Bombay in 1956, S. 197AA as inserted by the above-mentioned Bom. Acts is extended to the newly added areas of Hyderabad, Kutch and Saurashtra and the region of Vidarbha as from 1-9-1959 by Bom. Act XCVII of 1958.

S. 197B.

Himachal Pradesh

In its application to the whole of the Union Territory of H. P. Section 197B shall be inserted after S. 197A :—

"197B. Prosecution of Commissioner appointed by Court.—When any person, who is a Commissioner appointed by a court under the provisions of the Code of Civil Procedure, 1908 is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his functions as Commissioner, no court shall take cognizance of such offence except with the previous sanction of the court which appointed him as the Commissioner." — H. P. Act 11 of 1970, S. 2. (18-4-1970).

N. B. Punj. Act 28 of 1949 is repealed in territories transferred to H. P. from Punjab.

Punjab: Haryana: Chandigarh

(1) In its application to the State of Punjab, S. 197B inserted after S. 197A of the Code is the same as S. 197AA inserted in Maharashtra. — E. P. Act XXVIII of 1949, S. 2 (2-11-1949) read with Punj Act XXX of 1958, S. 4 (2) and Sch. I, Item 4, (7-11-1958) and Act 31 of 1966, S. 88 (1-11-1966).

(2) After the reorganisation of the State of Punjab in 1956, S. 197B as inserted by the above-mentioned E. P. Act is extended to the newly added area of Pepsu as from 7-11-1958 by Punj Act XXX of 1958.

Rajasthan

Abu Area. — In its application to the Abu area of the State of Rajasthan, S. 197AA is the same as that inserted in Maharashtra.—See Cent. Act XXXVII of 1956, Section 119 (1-11-1956).

198. Prosecution for breach of contract, defamation and offences against marriage.—No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Indian Penal Code or under Sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence :

°[Provided that, where the person so aggrieved is a woman who, according to the customs and manners of the country, ought not to be compelled to appear in public, or where such person is under the age of eighteen years or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his or her behalf:]

SECTION 198 — SYNOPSIS

1. Scope and object.
2. Abetment of offence mentioned in section — Applicability of section.
3. Complaint — Essentials.
4. "Person aggrieved by such offence."
5. Defamation.
6. Bigamy, etc.
7. Want of complaint — Effect.
8. Complaint of one offence — Evidence disclosing different offence falling within section — Power of Court to proceed in respect of such offence.
9. Complaint on behalf of another — Provisos.

1. Scope and object. — (1) This section embodies one of the exceptions to the general rule that any person having knowledge of the commission of an offence may set the law in motion by a complaint even though he is not a person injured by the offence. AIR 1952 Madh B 180 (181) = ILR (1953) Madh B 9 = 1952 Cri LJ 1647 °° ILR (1953) Hyd 293 (309) (DB) °° AIR 1935 All 938 (939) = 37 Cri LJ 56 °° AIR 1921 Cal 621 (629) = 22 Cri LJ 494 (DB) °° (1900) ILR 25 Bom 151 (155) (FB) °° AIR 1934 Sind 188 (188) = 36 Cri LJ 408 °° (1963) 1 Cri LJ 358 (359) (Ker).

(2) The offences referred to in the section are of a private character and the object of the section is to limit the persons by whom proceedings can be initiated and to see that it is not the power of any and everbody to drag such offences into a Court of justice. AIR 1938 Sind 141 (142) = 39 Cri LJ 686 (DB) °° (1900) ILR 25 Bom 151 (155) (FB).

[See also AIR 1943 Cal 564 (564) = 45 Cri LJ 123.]

(3) The section, only limits the power of the Court to initiate proceedings. AIR 1941 Rang 202 (205) = 42 Cri LJ 801 °° AIR 1967 SC 983 (986) = 1967 Cri LJ 943 = (1967) 1 SCR 807 = 69 Bom LR 308 °° AIR 1963 Madh Pra 47 (48) = 1963 (1) Cri LJ 184 = 1962 MPLJ 1117.

(4) What Section 198 does is to prohibit cognizance except upon complaint made by the person aggrieved. It does not, strictly speaking, confer any power of cognizance on the Court or a right of complaint on the person aggrieved. AIR 1959 Ker 100 (105) = ILR (1959) Ker 195 = 1959 Cri LJ 464.

(5) There is no warrant for enlarging the scope of this section. AIR 1952 Mad 170 (171) = 1952 Cri LJ 348 °° (1963) 1 Cri LJ 358 (359) (Ker).

†[Provided further that where the person aggrieved by an offence under Section 494 of the said Code —

(a) is the wife, any relative of the wife may make a complaint on her behalf;

(b) is the husband, and he is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorised by the husband in accordance with the provisions of sub-section (1) of section 199B may, with the leave of the Court, make a complaint on his behalf.

Explanation. — For the purpose of clause (a) of the second Proviso, 'relative' means any lineal descendant or ascendant of the wife, her brother or sister, or her father's or mother's brother or sister.]

[1882 : S. 198; 1872 : S. 142, para. 2; 1861 : S. 68.]

[*] The Proviso was added to the section by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 51.

[†] Substituted for the Second Proviso by the Code of Criminal Procedure (Amendment) Act, 1960 (LVI of 1960), S. 2 (26-12-1960). The original Proviso (added by Act 28 of 1943) was as follows, namely,—

> "Provided further that where the husband aggrieved by an offence under S. 494 of the said Code is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorised by the husband in accordance with the provisions of sub-section (1) of section 199B may, with the leave of the Court, make a complaint on his behalf."

Section 198 — Note 1 (contd.)

(6) The fact that the Companies Act contains certain specific provisions regarding the initiation of Criminal proceedings by the liquidator for offences committed in relation to the Company does not mean or involve that the Criminal Courts cannot entertain a complaint with regard to the same offences by any one else. This section is limited only to offences under Chapter XIX and Chapter XXI of the Penal Code. AIR 1955 Cal 29 (33) = 1955 Cri LJ 107 (DB).

(7) As to the inter-relation of Sec. 198 and Sec. 198-B — See under Sec. 198-B.

2. Abetment of offence mentioned in section — Applicability of section. — (1) The section applies to the abetment of an offence mentioned in the section. 1888 Pun Re (Cr) No. 4, p. 6 (7) (DB) °° AIR 1955 Madh B 176 (176) = 1955 Cri LJ 1359 °° AIR 1943 Pat 212 (217) = 44 Cri LJ 590 (DB) °° AIR 1952 Mad 193 (197) = ILR (1953) Mad 78 = 1952 Cri LJ 434 (DB).

[But see AIR 1926 All 189 (191) = 27 Cri LJ 101.]

3. Complaint — Essentials. — (1) The fact that a complaint is made at the instance of the police does not make it other than a complaint for the purposes of this section. AIR 1919 Lah 389 (390) = 20 Cri LJ 6 (DB).

(2) In construing a complaint regard must be had to every portion of it. 1891 Pun Re (Cr) No. 8, p. 19 (21) (DB).

(3) It is not necessary that a complaint of defamation should make a specific reference to every exhibit proposed to be put in evidence. AIR 1924 Mad 340 (341) = 25 Cri LJ 941 (DB).

(4) A case under Section 500, Penal Code must be instituted by a petition of complaint by the person defamed. AIR 1953 Cal 791 (791) = 1953 Cri LJ 1857.

4. "Person aggrieved by such offence." — (1) A complaint under this section can only be made by a person "aggrieved" by the offence complained of. AIR 1914 Mad 352 (352) = 15 Cri LJ 337 (DB).

(2) A merely fanciful or sentimental grievance will not make a person "aggrieved" within the meaning of this section. 1949 Trav-Co LR 151 (154) °° (1906) 3 Cri LJ 187 (189) (DB) (Cal) °° (1900) ILR 25 Bom 151 (156) (FB) °° AIR 1934 Sind 188 (190) = 36 Cri LJ 408.

(3) The expression "aggrieved" is not confined to a person who is directly injured by the offence. AIR 1943 Cal 564 (564) = 45 Cri LJ 123 °° AIR 1928 Nag 58 (60) = 28 Cri LJ 996 °° AIR 1969 All 423 (428) = 1969 Cri LJ 1089 = 1968 All LJ 466.

(4) The term "aggrieved" is not confined to a person who would be entitled to compound the offence under Section 345. (1900) ILR 25 Bom 151 (156, 157) (FB).

(5) Where the Magistrate considers that the case cannot be taken cognizance of, on the complaint of a person who has no locus standi to do it, the only course open to him is to dismiss the complaint and not

Section 198 — Note 4 (contd.)
to acquit the accused. AIR 1955 Andhra 227 (229) = 1955 Cri LJ 1316.

(6) The question whether a person is "aggrieved" within the meaning of this section is a question of fact. AIR 1950 Pat 545 (546) °° 1949 Trav-Co LR 151 (154) °° AIR 1934 Sind 188 (190) = 36 Cri L Jour 408 °° AIR 1928 Nag 58 (60) =28 Cri LJ 996 °° (1906) 3 Cri LJ 187 (189) (DB) (Cal) °° 1968 All LJ 865 = 1968 All WR (HC) 265 (266) (DB). °° 1964 (1) Cri LJ 367 (369) = 68 Cal WN 654 (DB).

[See also (1950) 28 Mys L Jour 176 (181) (DB).]

(7) Defamation of a spiritual head of certain community — Individual person of that community is not a person aggrieved — Cognisance of offence taken on complaint by such individual is illegal. AIR 1970 Cal 216.

5. Defamation. — (1) The right to complain about defamation belongs not only to the person defamed but also to others who are affected by the defamation. (1900) ILR 25 Bom 151 (156, 157) (FB). (Overruling 1887 Rat 327 and 1888 Rat 392.) °° AIR 1928 Nag 58 (60) = 28 Cri LJ 996 °° 1968 All LJ 865 (866) = 1968 All WR (HC) 265 (DB) °° 1964 (1) Cri LJ 367 (369, 370) = 68 Cal WN 654 (DB) °° 1963 (1) Cri LJ 706 (707, 708) = 65 Pun LR 14 (DB).

(2) The husband of a woman who has been defamed by the imputation of unchastity to her can complain about the defamation. AIR 1949 Cal 567 (571) = 50 Cri LJ 972 °° AIR 1943 Cal 564 (564) = 45 Cri L Jour 123 °° AIR 1925 Mad 320 (321) = 26 Cri LJ 521 °° AIR 1924 Lah 559 (561) = 26 Cri L Jour 242 (SB) °° (1900) ILR 25 Bom 151 (156) (FB). (Overruling 1887 Rat 327.) °° 1891 All WN 188 (188) °° (1891) ILR 14 Mad 379 (381) (DB).

[But see 1884 Pun Re (Cr) No 22 p. 39 (40) (DB).]

(3) Near relations of the woman to whom unchastity has been imputed may be entitled to complain about the defamation if the defamation indirectly operates as a defamation of themselves also. AIR 1952 Madh B 180 (181) = ILR (1953) Madh B 9 = 1952 Cri LJ 1647 °° AIR 1951 All 585 (586) = 52 Cri LJ 668 °° (1906) 3 Cri L Jour 187 (190) (DB) (Cal) °° AIR 1928 Nag 58 (60) = 28 Cri LJ 996 °° AIR 1969 All 423 (428) = 1969 Cri LJ 1089 = 1968 All LJ 466 °° 1968 All LJ 865 (866) = 1968 All WR (HC) 265 (DB).

[But see 1893 All WN 207 (208) °° 1887 Pun Re (Cr) No. 39 p. 91 (92).]

(4) Where there is no imputation of unchastity, the question whether the husband is a person aggrieved within the meaning of Section 198 must be determined with reference to the nature of the accusation and having regard to the special circumstances of each case. AIR 1952 Madh B 180 (181) = ILR (1953) Madh B 9 = 1952 Cri LJ 1647.

(5) It is not necesary that an imputation of personal misconduct on the part of the husband must be involved in the accusation before the husband can be classed as a "person aggrieved" within the meaning of Section 198 of the Code of Criminal Procedure. The test is whether the reputation of the wife vis-a-vis the particular imputation made is so bound up with the reputation of the husband that an imputation against the wife affects him also. AIR 1958 Madh Pra 278 (279) = 1958 Cri LJ 1191.

(6) A complaint by the father of a woman to whom unchastity is imputed, not made on her behalf, is no bar to an independent complaint by the woman herself. AIR 1938 Lah 739 (740) = 40 Cri LJ 131.

(7) A person who is merely one whose feelings are hurt by the defamation of another is not "aggrieved" by the offence and cannot complain under this section. The test is whether the complainant's own personal reputation has been harmed directly or indirectly. AIR 1952 Madh B 180 (181) = ILR (1953) Madh B 9 = 1952 Cri L Jour 1647 °° AIR 1934 Sind 188 (190) = 36 Cri L Jour 408 °° (1950) 28 Mys LJ 176 (186, 187) (DB) °° AIR 1953 Punj 82 (83) = 1953 Cri LJ 575 °° AIR 1953 Vindh Pra 9 (10) = 1953 Cri LJ 963 °° 1968 All LJ 865 (866) = 1968 All WR (HC) 265 (DB).

(8) Even where a husband prefers a complaint about imputation of unchastity to his wife, the defamation complained of should be of himself and not of the wife. AIR 1949 Cal 567 (571) = 50 Cri LJ 972.

(9) Imputations against the head of a religious sect which do not affect his spiritual character are not sufficient to justify a member of the sect to complain under this section. AIR 1935 Sind 98 (100, 101) = 36 Cri LJ 975 (DB).

(10) The official superior of the person defamed is not necessarily entitled to complain under this section. (1903) ILR 26 Mad 43 (47) (SB) °° AIR 1923 Oudh 4 (6) = 23 Cri LJ 641.

(11) A Magistrate cannot complain in respect of words contained in a statement before him and defaming a third party. AIR 1940 All 246 (247) = 41 Cri LJ 660.

(12) In the case of defamation of a Cooperative Bank its manager, who is the person primarily concerned with its day to day management, is a 'person aggrieved'. AIR 1950 Pat 545 (546).

(13) Where the statements made are defamatory only of the President and Directors of a society and not of the so-

Section 198 — Note 5 (contd.)

ciety itself, the society is not an aggrieved person. 1969 Cri LJ 701 (702, 703) = (1967) 2 Mys LJ 149.

(13A) Institution of proceedings under Section 500, Penal Code on complaint alleging defamation of Ashram — Complaint filed by member of Ashram — Complainant not being a "person aggrieved" cognizance taken under Section 198 is improper and vitiates proceedings. AIR 1970 Cal 248 (249, 250).

(14) Where a class of persons (e.g., the students of a particular college) are defamed in such a way that the defamation can be brought home to the individual members of the class, any member of the class can complain. AIR 1935 All 743 (744, 745) = 36 Cri LJ 816.

(15) A wife can complain against the husband and vice versa if one defames the other. AIR 1957 Mad 339 (340).

(16) For prosecution for defamation against public servants in respect of their conduct in the discharge of public functions, see under Section 198-B.

6. Bigamy, etc. — (1) A complaint of bigamy can be preferred by the person with whom the second ceremony is gone through or by other persons aggrieved, e. g., the husband (by the first marriage) of the woman committing the bigamy. AIR 1943 Pat 212 (216) = 44 Cri LJ 590 (DB) °° (1899) ILR 26 Cal 336 (337) (DB).

(2) The father, mother, or brother of the first husband or the second husband or the father of the woman who contracts the bigamous marriage has been held not competent to prefer a complaint of bigamy under this section. (1910) 11 Cri LJ 51 (51) = ILR 32 All 78 °° (1903) 2 Weir 231 (232) (DB) °° (1908) 7 Cri LJ 457 (458) = 11 Oudh Cas 148 °° (1886) ILR 10 Bom 340 (341) (DB) °° (1902) ILR 25 All 132 (133) °° (1912) 13 Cri L Jour 204 (204) (DB) (Mad).

(3) The spiritual head of a community cannot complain about an offence committed in relation to the marriage of a member of the community. AIR 1931 Mad 247 (248) = 32 Cri LJ 1116.

(4) If a husband does not complain of bigamy committed by his wife but complains of other offences and the evidence discloses the offence of bigamy, the wife cannot be proceeded against under Section 494. AIR 1938 Sind 141 (142) = 39 Cri L Jour 686 (DB).

(5) The marriage of the second wife with the accused during the subsistence of his first valid marriage is ab initio void and the second wife cannot be a person aggrieved. AIR 1954 Mad 947 (948) = 1954 Cri LJ 1436.

(6) A wife who is a person aggrieved by the offence under Section 494, I. P. C., at the date of the alleged offence remains the person aggrieved despite the fact that at a later date before the complaint is lodged in Court there has been a decree for divorce dissolving the marriage between the complainant and the accused. AIR 1967 Cal 203 (204) = 1967 Cri LJ 462 = 1964 Cal LJ 11.

(7) If a person, who has a wife living, after disclosing the same, marries again, it cannot be said that the second wife who had the knowledge that the first wife was living is an aggrieved person within the meaning of Section 198. (1967) 2 Andh WR 8 = 1967 Mad LJ (Cri) 550.

(8) Both parties to second marriage having their previous spouses living on date of second marriage — Only one offence results from second marriage — When offending parties are acquitted under Section 345 (6), Cr. P. Code, 1898, in trial on previous complaint of one aggrieved spouse and other aggrieved spouse has allowed erroneous order of composition to become final, second prosecution on complaint of other aggrieved spouse is barred by Section 403, Cr. P. Code. 1966 Mah LJ 545 (553) = (1966) 68 Bom LR 286.

(9) Before the second proviso was amended by Act 56 of 1960, it was held that a complaint without the leave of the Court by the father of a minor girl whose husband was alleged to have married a second time was not competent. AIR 1962 Bom 33 (35) = 1962 (1) Cri LJ 134 = 63 Bom LR 717.

(10) The second proviso as substituted in 1960 is clear and leaves no room for doubt in view of the Explanation that if the person aggrieved by an offence under Section 494 is the wife, then the father of the wife can make a complaint on her behalf, the father being a lineal ascendant of the wife. 1967 All WR (HC) 623 (625).

(11) The brother of the wife undoubtedly comes within the definition of the word 'relative' as stated in the explanation to Section 198 but the authority conferred on a relative specified in the explanation to file a complaint under Section 494 on her behalf must be understood as being one that could be exercised only when she is alive and not after her death. AIR 1965 Mys 235 (236, 237) = 1965 (2) Cri LJ 376 = (1965) 1 Mys LJ 92.

7. Want of complaint—Effect.— (1) The section regulates the competence of the Court and bars its jurisdiction excepting in compliance therewith. AIR 1955 SC 196 (204) = 1955 Cri LJ 526 = ILR (1955) Punj 135 = 1955 SCR 1150.

(2) Judicial proceedings held in the absence of a complaint by the aggrieved person are illegal. 1879 Pun Re (Cr) No. 5, p. 6 (10) (DB) °° AIR 1930 Mad 705 (706) = 31 Cri LJ 895 °° (1909) 9 Cri LJ 154 (155) (Lah.) °° AIR 1960 SC 89

Section 198 — Note 7 (contd.)
(84, 85) = 1960 Cri LJ 158 = (1960) 1 SCR 749 = 62 Bom LR 143.

8. **Complaint of one offence — Evidence disclosing different offence falling within section — Power of Court to proceed in respect of such offence.** — (1) Under Section 238, sub-section (3), the power of convicting an accused person of an offence not expressly charged against him, in the circumstances specified in the section, does not enable a Court to convict an accused person of an offence mentioned in this section (Section 198) in the absence of a complaint as required by it. AIR 1960 SC 82 (84, 85) = 1960 Cri LJ 158 = (1960) 1 SCR 749 = 62 Bom LR 143 °° 1969 Cri LJ 567 (568) = 9 Guj LR 963.

(2) Where a complaint is made by a person "aggrieved" within the meaning of the section in respect of a certain offence but the evidence discloses a different offence coming within the purview of the section the Court cannot proceed in respect of such latter offence. (1887) ILR 10 All 39 (43) °° 1879 Pun Re (Cr) No. 5, p. 6 (9, 10) (DB) °° 1889 Pun Re (Cr) No. 18, p. 67 (69) °° AIR 1923 Oudh 4 (6) = 23 Cri LJ 641 °° AIR 1938 Sind 141 (142) = 39 Cri LJ 686 (DB).

[But see (1878) 1 Cal L Rep 523 (524) (DB).]

(2) If the facts stated in the complaint amount to the offence in regard to which action is proposed to be taken, non-mention of the section under which the offence falls is immaterial. 1884 Pun Re (Cr) No. 24, p. 42 (42) (DB) °° AIR 1925 Lah 631 (632) = 27 Cri LJ 769 (DB) °° (1903) ILR 25 All 209 (211).

9. Complaint on behalf of another — Provisos. — (1) A complaint under this section must be made by the very person who professes to be aggrieved by the offence except in cases coming under the provisos to the section. (1950) 28 Mys LJ 176 (186) (DB) °° 1961 (1) Cri LJ 819 (820) (Madh Pra).

(2) A husband can only complain of defamation of himself that may be caused by imputations against his wife. AIR 1949 Cal 567 (571) = 50 Cri LJ 972.

(3) The complaint need not be presented in person by the aggrieved person. 1930 Mad WN 855 (858) (FB) °° AIR 1914 Cal 479 (479) = 15 Cri LJ 348 (DB).

[But see 1896 Pun Re (Cr) No. 10, p. 24 (26) (DB).]

(4) Even where complaint by some person on behalf of another can be made under the provisos, the leave of the Court is necessary (now only under first proviso and clause (b) of second proviso), the absence of which will make the proceedings illegal. AIR 1952 Madh B 180 (181) = ILR (1953) Madh B 9 = 1952 Cri LJ 1647 °° AIR 1955 Andhra 227 (229) = 1955 Cri LJ 1316 °° AIR 1938 Lah 739 (740) = 40 Cri LJ 131 °° AIR 1935 Oudh 6 (7) = 36 Cri LJ 116 °° AIR 1969 Orissa 204 (205) = 1969 Cri LJ 1000 = 34 Cut LT 1223 °° AIR 1962 Bom 33 (34, 35) = 1962 (1) Cri LJ 134 = 63 Bom LR 717.

(5) The record must show that leave was applied for and was granted. AIR 1962 Bom 33 (34, 35) = 1962 (1) Cri L Jour 134 = 63 Bom LR 717 °° AIR 1969 Orissa 204 (205) = 1969 Cri LJ 1000 = 34 Cut LT 1223.

(6) The fact that the Court has taken the complaint on its file does not mean that it has accorded its sanction to the filing of the complaint. AIR 1955 Andhra 227 (229) = 1955 Cri LJ 1316.

(7) It really makes no difference whether the person who is granted leave to act on behalf of the complainant says either that he is complaining on behalf of the other, or comes into the picture with the verified complaint through him. 1961 (1) Cri LJ 819 (820) (Madh Pra).

(8) The leave of the Court is also necessary for compounding a complaint made on behalf of another. AIR 1938 Lah 739 (740) = 40 Cri L Jour 131.

(9) Where a complaint of defamation was filed by a servant of a pardanashin lady on her behalf with her oral authority the leave of the Court to such complaint was held not improper though there was no written authority and the husband was present when the lady was defamed and he did not complain. AIR 1953 Pat 117 (121) = 44 Cri LJ 391 (DB).

(10) Merely because a woman apeared in Court to depose on a summons having been issued by the Court she is not disentitled to the protection of the first proviso. "To appear in public" and "ought not to be compelled to appear in public" are two different things. AIR 1961 Assam 53 (54) = 1961 (1) Cri LJ 464 (DB).

(11) Where a woman alleged to have been defamed had appeared before the Court and deposed on several occasions, it was held that her husband could not file a complaint on her behalf as the proviso will not apply to the case. (1946) 47 Cri LJ 717 (718) (Cal).

(12) Clause (a) of the second proviso as amended by Act 56 of 1960 now provides that where the person aggrieved by an offence under Section 494, Penal Code, is the wife, any relative of the wife may make a complaint on her behalf and no leave of Court is required in such a case. The Explanation to the proviso gives meaning of relative for the purpose of clause (a) of the proviso.

*[**198A. Prosecution for offence of marital misbehaviour.**—No Court shall take cognizance of an offence under section 376 of the Indian Penal Code, where such offence consists of sexual intercourse by a man with his own wife, the wife being under fifteen years of age,—

(i) if more than one year has elapsed from the date of the commission of of the offence,

(ii) in the case of any marriage which has taken place before the Indian Penal Code and the Code of Criminal Procedure (Amendment) Act, 1949, came into force, if the wife was not under thirteen years of age on the date of the marriage.]

[*] Inserted by the Indian Penal Code and the Code of Criminal Procedure (Amendment) Act, 1949 (XLII of 1949), S. 4. (15-7-1949.)

*[**198B. Prosecution for defamation against public servants in respect of their conduct in the discharge of public functions.**—(1) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code ‡[* * *] is alleged to have been committed against the President, or the Vice-President, or the Governor or Rajpramukh*† of a State, or a Minister, or any other public servant employed in connection with the affairs of the Union or of a State, in respect of his conduct in the discharge of his public functions, a Court of Session may take cognizance of such offence, without the accused being committed to it for trial, upon a complaint in writing made by the Public Prosecutor.

SECTION 198-B — SYNOPSIS

1. Validity of the Section.
2. 'Public servant employed in connection with the affairs of the State'.
3. 'In respect of his conduct in the discharge of his public functions'.
4. Jurisdiction to take cognizance of the offence under this section.
5. Upon a complaint in writing made by the public prosecutor.
6. Sanction — Requirements of (sub-section (3)).
7. Limitation (sub-section (4)).
8. Award of compensation.
9. Sub-sections (13) and (14) — Scope.
10. Section 20 of Prevention of Food Adulteration Act 1954 and Section 198-B.
11. Person authorized.

1. Validity of the Section. — (1) Section 198-B is valid and not unconstitutional. It is an exception to the rule laid down in S. 198, Cr. P. Code. AIR 1959 All 21 (22) = 1959 Cri LJ 6 ** AIR 1959 Ker 100 (104) = ILR (1959) Ker 195 = 1959 Cri LJ 464 ** AIR 1961 Mad 318 (321) = 1961 (2) Cri LJ 125 = (1961) 1 Mad LJ 328.

2. 'Public servant employed in connection with the affairs of the State.' — (1) Though the attack may be general yet it may convey an innuendo at some particular person, and then of course a person so aggrieved can prosecute. AIR 1957 Madh Pra 4 (5) = 1957 Cri LJ 454.

3. In respect of his conduct in the discarge of his public functions. — (1) The phrase "conduct in the discharge of his public functions" in Section 198-B covers a vaster field than what has been held by the Supreme Court in examining Section 197. AIR 1961 All 24 (27, 33) = 1961 (1) Cri LJ 1 (DB)

(2) What a Court has to consider under Section 198-B is not whether the disgraceful conduct attributed to the public servant concerned is something which he could or could not properly have done in the discharge of his public functions, but whether the libel is in respect of his public functions. AIR 1959 Ker 100 (108) = ILR (1959) Ker 195 = 1959 Cri LJ 464.

(3) Where publication of an article alleged to be defamatory of a Minister, apart from being defamation of him in his personal capacity, is also a defamation of the Minister as such it is the State which suffers the injury along with the individual and the responsibility for initiation of prosecution for defamation, therefore, lies with the State irrespective of the fact whether or not the particular Minister remained in the State as such at the time when the article was published or sanction to prosecute under Section 198-B was obtained. AIR 1960 All 763 (768) = 1960 Cri LJ 1541 = ILR (1960) 1 All 291.

4. Jurisdiction to take cognizance of the offence under this Section. — (1) An Additional Sessions Judge who is admittedly a Court of Session is competent to hear the complaint. AIR 1957 Madh Pra 4 (5) = 1957 Cri LJ 454.

(2) The complainant under this Section can be received by an official or any other person so authorized by the Sessions Judge. 1964 All WR (HC) 269 = 1964 All Cri 182.

(3) Section 537 cannot be availed of when Section 198-B contemplates that the

(2) Every such complaint shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(3) No complaint under sub-section (1) shall be made by the Public Prosecutor except with the previous sanction,—

(a) in the case of the President or the Vice-President or the Governor †[° ° ° °] of a State, of any Secretary to the Government authorized by him in this behalf;

(b) in the case of a Minister of the Central Government or of a State Government, of the Secretary to the Council of Ministers, if any, or of any Secretary to the Government authorised in this behalf by the Government concerned;

(c) in the case of any other public servant employed in connection with the affairs of the Union or of a State, of the Government concerned.

(4) No Court of Session shall take cognizance of an offence undeh sub-section (1), unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

Section 198-B — Note 4 (contd.)
act has got to be the act of the Public Prosecutor and it has not been shown that it is his. In such a case the Sessions Court must refuse to take cognizance the defect being one of jurisdiction. AIR 1958 Bom 196 (198) = 1958 Cri LJ 617.

5. Upon a complaint in writing made by the public Prosecutor. — (1) 'Made by the Public Prosecutor' — Complaint signed by public servant concerned and filed by Public Prosecutor is proper. 1962 (2) Cr LJ 520 (521, 522) = 1961 All LJ 967 (DB) °° 1970 Cri LJ 788 (790) (Bom). (Defamation of Minister of State Government — Complaint by Public Prosecutor — Framing of charge under Section 500 of Penal Code on the complaint is proper.) °° AIR 1961 Andh Pra 190 (191, 192) = (1961) 1 Cri LJ 601 = (1960) 2 Andh WR 282 (DB) °° AIR 1959 Ker 100 (108) = ILR (1959) Ker 195 = 1959 Cri LJ 464.

(2) Institution of a case is an act of a suitor, while taking cognizance is an act of the Court. AIR 1967 All 468 (470) = 1967 Cri LJ 1255 (DB).

(3) The court has ample discretion to discharge or not to discharge the accused in the absence of the complainant. AIR 1969 Raj 61 (64) = 1969 Cri LJ 314.

(4) There is nothing which prevents a Public Prosecutor, when the complaint itself is ambiguous and it cannot be said whose act it is to lead evidence to show that whatever might appear from the complaint, the act of making the complaint is the act of the Public Prosecutor. AIR 1958 Bom 196 (198) = 1958 Cri L Jour 617.

(5) The act of making the complaint must be the act of the Public Prosecutor. AIR 1958 Bom 196 (198) = 1958 Cri L Jour 617.

6. Sanction — Requirements of (sub-s. (3)). — (1) If the facts which constitute the charge do not appear on the face of the sanction, it must be established by extraneous evidence that those facts were placed before the authority competent to grant the sanction and that the authority applied his mind to those facts before giving sanction. **AIR 1961 SC 387 (389) = 1961 (1) Cri LJ 566 = (1961) 2 SCR 63** °° 1969 Cri LJ 1318 (1320) (Punj) °° 1962 (2) Cri LJ 520 (523) = 1961 All LJ 967 (DB).

(2) If a Minister is defamed it should be left to a responsible civil servant to decide whether the special procedure should be sanctioned (sub-section (3) (b)) and if a civil servant is defamed, it is left to the Government i. e., the Governor acting on the advice of his Council of Ministers, to decide whether the case is a fit one for sanction (sub-section (3) (c)). AIR 1961 Punj 333 (334, 335) = 1961 (2) Cri LJ 148 = 63 Pun LR 238. (AIR 1959 Ker 100, Rel. on.)

(3) The sanction is the sanction of the Secretary and not of the Government; and all that is required of the Government or the Government is competent to do is to authorise the Secretary to give the sanction. AIR 1959 Ker 100 (107) = ILR (1959) Ker 195 = 1959 Cri L Jour 464.

(4) Authorisation of Secretary should be in respect of specific complaint — General authorisation is not sufficient. **AIR 1963 SC 1198 (1202, 1203) = 1963 (2) Cri LJ 194 = (1963) 1 SCWR 242.**

(5) It is not essential that the sanction should contain a recital to the effect that the Public Prosecutor had been authorised to file the complaint. It would be sufficient if in the body of the complaint the Public Prosecutor mentioned that he had been instructed by the Lieutenant-Governor to file the complaint. **AIR 1960 Him Pra 19 (20) = 1960 Cri LJ 1450.**

(6) Defamation of Governor — Sanction for prosecution — Sanctioning authority **is Secretary and not Governor — Governor**

(5) When the Court of Session takes cognizance of an offence under sub-section (1), then, notwithstanding anything contained in this Code, the Court of Session shall try the case without a jury and in trying the case, shall follow the procedure prescribed for the trial by Magistrates of warrant cases instituted otherwise than on a police report and the person against whom the offence is alleged to have been committed shall, unless the Court of Session, for reasons to be recorded, otherwise directs, be examined as a witness for the prosecution.

§[(5A) Every trial under this section shall be held in camera if either party thereto so desires or if the Court of Session so thinks fit to do.]

(6) If in any case instituted under this section, the Court of Session by which the case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Court of Session may, by its order of discharge or acquittal direct the person against whom the offence was alleged to have been committed (other than the President, Vice-President or the Governor or Rajpramukh of a State) to show cause why he should not pay compensation to such accused or to each or any of such accused, when there are more than one.

(7) The Court of Session shall record and consider any cause which may be shown by the person so directed and if it is satisfied that the accusation was false and either frivolous or vexatious, it may, for reasons to be recorded, direct that compensation to such amount, not exceeding one thousand rupees, as it may determine, be paid by such person to the accused or to each or any of them.

(8) All compensation awarded under sub-section (7) may be recovered as if it were a fine.

(9) No person who has been directed to pay compensation under sub-section (7) shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made under this section:

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(10) The person who has been ordered under sub-section (7) to pay compensation may appeal from the order, in so far as the order relates to the payment of the compensation, as if he had been convicted in a trial held by the Court of Session.

Section 198-B — Note 6 (contd.) is to authorise Secretary to give sanction for making complaint. AIR 1962 Orissa 197 (199) = 27 Cut LT 489 = 1962 (2) Cri LJ 617. (Reversed on another point in AIR 1963 SC 1198.)

(7) Papers relating to sanction considered by Home Minister and prosecution ordered by him — Sanction order signed by Deputy Secretary (Home) — Held, the sanction was valid. 1968 Cri LJ 709 (712) = 1968 Cur LJ 18 (DB).

(8) Scope — Public prosecutor apprehending at the initial stage that sanction accorded for prosecution not proper and applying for withdrawal with a view to file fresh complaint — Order allowing withdrawal of complaint held proper. AIR 1960 Ker 291 (292) = 1960 Cri LJ 1210.

(9) Constitution of India, Articles 132 and 134 — Question involving interpretation of Section 198-B, Criminal P. C. — Leave to appeal sanctioned. (1962) 2 Cri LJ 574 (575) (DB) (Orissa) •• (1962) 28 Cut LT 104 (Orissa).

(10) The proper time to raise objection to the admission in evidence of sanction given under Section 198-B (3), Criminal P. C., on the ground that it had not been formally proved was when the sanction was actually tendered and admitted in evidence. AIR 1963 Punj 201 (203) = 1963 (1) Cri LJ 609.

(11) No objection raised to complaint by Public prosecutor and want of jurisdiction of the Sessions Court in respect of entertaining the complaint till the entire evidence of prosecution was over — High Court refused to interfere in revision on the ground of jurisdiction of Court. 1970 Cri LJ 788 (791) (Bom).

7. Limitation — (Sub-s. 4). — (1) Limitation of six months — Defamatory article published in newspaper on 28-4-1956 — Complaint filed against publisher on 27-10-1956 is within time. 1962 (2) Cri LJ 520 (522) = 1961 All LJ 967 (DB).

(2) 'Month' — It must be given meaning as assigned to it in Section 49 of Penal

(11) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (10), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or if an appeal is presented, before the appeal has been decided.

(12) For the purposes of this section, the expression "Court of Session" includes the High Courts at Calcutta and Madras in the exercise of their original criminal jurisdiction.

(13) The provisions of this section shall be in addition to, and not in derogation of, those of Section 198.

§[(14) Where a case is instituted under this section for the trial of an offence, nothing in sub-section (13) shall be construed as requiring a complaint to be made also by the person aggrieved by such offence].]

[*] Section 198B was inserted by the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), S. 25. (1-1-1956.)

[†] The words "or Rajpramukh" were omitted by 2 A. L. O., 1956.

[‡] The words and brackets "(other than the offence of defamation by spoken words)" are omitted by the Anti-Corruption Laws (Amendment) Act, 1964 (XL of 1964), S. 3 (1) (a). (18-12-1964.)

[§] Inserted, ibid, S. 3 (1) (b). and (c).

[*†] Since the Constitution (Seventh Amendment) Act, 1956, there are no longer any Rajpramukhs.

Section 198-B — Note 7 (contd.)
Code (1860). 1964 All WR (HC) 269 (273) = 1964 All Cri R 182.

8. Award of compensation. — (1) A person who has either been instrumental in the initiation of a complaint or in any event has to support it by his evidence, must be held to have concern with the lodging of the complaint. The Court would obviously award compensation only if it is satisfied that the claim made by the person posing to be aggrieved is false and either frivolous or vexatious. **AIR 1961 SC 387 (391, 392) = 1961 (1) Cri LJ 566 = (1961) 2 SCR 63.**

9. Sub-sections (13) and (14) — Scope. — (1) Section 198B (1) requires a complaint by the Public Prosecutor only and the complaint is not required also to be signed by the person aggrieved. **AIR 1961 SC 387 (390, 391, 392) = 1961 (1) Cri LJ** 566 = (1961) 2 SCR 63. (AIR 1958 Bom 196 = 1958 Cri LJ 617 = 59 Bom LR 364 and view of Raman Nayar, J., in AIR 1959 Kerala 100, **Overruled.**) °° AIR 1960 Him Pra 19 (20) = 1960 Cri LJ 1450 °° AIR 1960 All 763 (767, 768) = ILR (1960) 1 All 291 = 1961 Cri LJ 1541.

(2) A complaint filed by the Public Prosecutor under Section 198-B though it is not a complaint in which the person defamed has joined, is a valid complaint. (1959) 61 Bom LR 450 (456) = ILR (1959) Bom 1282 (DB).

(3) Section 198-B is exception to S. 198 — But sub-section (13) of Section 198-B has saved right to file complaint given under Section 198. AIR 1960 All 71 = 1960 Cri LJ 184 °° **AIR 1965 SC 1451 (1453) = 1965 (2) Cri LJ 434 = 1965 SCD 600** °° AIR 1960 Orissa 116 (117) = 1960 Cri LJ 966 = 26 Cut LT 362.

(4) Section 198-B was not intended to be supplementary to Section 198, but has intended to provide an alternative remedy in the case of defamation of 'persons' set out in that section. **AIR 1961 SC 387 (390).** (AIR 1959 Ker 100, **Overruled.**

[But see AIR 1959 Mys 65 (67) = **1959** Cri L Jour 347.]

(5) Complaint by Public Prosecutor under Section 198-B (1) — Public servant concerned need not be a party to it — He can himself file complaint under S. 198. AIR 1961 All 24 = 1961 (1) Cri LJ 1 (DB) °° AIR 1969 Raj 61 (64) = 1969 Cri LJ 314 °° AIR 1961 Andh Pra 190 (192, 193) = 1961 (1) Cri LJ 601 = (1960) 2 Andh WR 282 (DB).

10. Section 20 of Prevention of Food Adulteration Act, 1954 and S. 198B. — (1) Provisions of, are not pari materia under those of S. 20, Prevention of Food Adulteration Act, 1954. AIR 1969 Delhi 198 (201) = 1969 Cri LJ 881.

(2) Sanction of competent person must be given for each complaint u/s. 198-B. It is not however necessary that such authority must be given in the case of each complaint u/s. 20 (1) of Prevention of Food Adulteration Act, 1954 (Act XXXVII of 1954). ILR (1965) Guj 391 (394).

11. Person authorized. — (1) Notification dated 15-2-1956 specifically authorized the Lieutenant-Governor to discharge the functions of the Central Government under Section 198-B (3), Criminal Procedure Code, in case of public servants serving in Himachal Pradesh. AIR 1960 Him Pra 19 (19, 20) = 1960 Cri LJ 1450.

OBJECTS AND REASONS

"The Committee consider that the offence of defamation against the President, the Governor or Rajpramukh of a State, a Minister, or other public servant should not be made cognizable. The Committee are also of the opinion that specific mention of the Vice-President should be made in the list of such persons. They have accordingly omitted original clause 25 by which section 198 was amended.

Instead, the Committee have inserted a new section 198B in the Criminal Procedure Code. In drafting this section, the Committee have taken into consideration the recommendations of the majority of the members of the Press Commission and the evidence tendered by the representatives of the Indian Federation of Working Journalist. While the Committee consider that defamation of a public servant should not be made a cognizable offence, they are of the opinion that, there should be an independent authority apart from the person aggrieved to set the law into motion. The Committee are of the view that the procedure laid down in sub-section (2) of section 194, is cumbersome and might prove expensive. The Committee consider that the Public Prosecutor should have the right to launch a prosecution in all such cases by a written complaint which should be filed before the Court of Sessions. The Court of Sessions may take cognizance of the offence upon such complaint without the accused being committed to it for trial and it shall try the case following the procedure prescribed for warrant cases. The Public Prosecutor, however, shall have no right to make a complaint except with the previous sanction of the persons specified in sub-section (3) of Section 198B. Such a complaint should set forth such particulars as may be reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him, and should be filed within six months from the date on which the offence is alleged to have been committed."—J. C. R., Gaz. Ind., 1954 Extra., Pt. II-Section 2, page 419.

STATE AMENDMENTS

Andhra Pradesh

Added Territories.—In its application to the territories added to the State of Andhra Pradesh under S. 3 (a) of Central Act LVI of 1959, the amendment made in S. 198B by Tamil Nadu Act XXXIV of 1955 shall stand repealed.—Andh.-Pra. A. L. O., 1961. (w. r. e. f. 1-4-1960).

Tamil Nadu

In its application to the State of Tamil Nadu omit sub-s. (12) of S. 198B. — T. N. Act XXXIV of 1955, S. 6 (1-1-1956): Tamil Nadu A. L. O., 1969.

199. Prosecution for adultery or enticing a married woman.—No Court shall take cognizance of an offence under section 497 or section 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, *[made with the leave of the Court] by some person who had care of such woman on his behalf at the time when such offence was committed:

†[Provided that, where such husband is under the age of eighteen years, or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint,

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SECTION 199 — SYNOPSIS

1. Scope and object.
2. Offences to which section applies.
3. Complaint — Essentials.
4. Who can complain.
5. Want of complaint — Effect.
6. Proceedings commencing in respect of offence not falling under section — Evidence disclosing offence within section — Power of Court to convict for such offence.
7. Facts disclosing offence to which section applies as well as other offences.

1. Scope and object. — (1) This section embodies one of the exceptions to the general rule that it is open to any person to institute a complaint of an offence. AIR 1935 All 938 (939) = 37 Cri LJ 56 °° ILR (1953) Hyd 293 (309) (DB).

[See also (1963) 1 Cri LJ 358 (359) (Ker).]

(2) The object of the section is to see that in the case of offences which are purely of a private character the matter is not dragged to the Court, except when the party immediately affected (husband or guardian) cares to bring the matter before the Court. AIR 1938 Sind 141 (142) = 39 Cri L Jour 686 (DB) °° (1900) ILR 25

some other person may, with the leave of the Court, make a complaint on his behalf :]

‡[Provided further that where such husband is serving in any of §[the Armed Forces of the Union] under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, and where for any reason no complaint has been made by a person having care of the woman as aforesaid, some other person authorised by the husband in accordance with the provisions of sub-section (1) of section 199B may, with the leave of the Court make a complaint on his behalf.]

1882—S. 199; 1872—Ss. 478, 479; 1861—Ss. 177, 178.]

[°] These words were inserted by the Code of Criminal Procedure (Amendment) Act, (XVIII of 1923), S. 52.

[†] The first proviso was inserted, ibid.

[‡] The second proviso was added by the Code of Criminal Procedure (Second Amendment) Act, (XXVIII of 1943), S. 3. (27-11-1943.)

[§] Substituted for "His Majesty's Armed Forces" by A. L. O., 1950.

Section 199 — Note 1 (contd.)
Bom 151 (155) (FB) °° AIR 1917 Mad 220 (221) = 17 Cri LJ 363.

(3) Section 61 of the Divorce Act (4 of 1869), does not bar prosecution by the husband under this section. AIR 1928 Lah 50 (50) = 29 Cri LJ 382.

2. Offences to which section applies. — (1) The section only applies to offences under Sections 497 and 498 of the Penal Code. AIR 1952 Mad 170 (171) = 1952 Cri LJ 348 °° AIR 1951 Cal 133 (136) 52 Cri LJ 1226 (FB) °° AIR 1963 J and K 56 (58) = 1963 (2) Cri LJ 621.

(2) The section does not apply to the offence of house trespass committed with intent to have illicit sexual intercourse (adultery) with the wife of the occupier or owner. AIR 1917 Nag 90 (92) = 19 Cri LJ 881 °° 1894 Rat 689 (690) (DB) °° 1899 All WN 212 (213) (DB) °° (1900) 23 All 82 (84).

[But see 1886 All WN 42 (42).]

(3) The section applies to attempts to commit the offences mentioned therein. 1882 Pun Re (Cr) No. 3 (4) (DB).

3. Complaint — Essentials. — (1) A complaint under this section must be a complaint as defined in Section 4 (1) (h). AIR 1940 All 201 (201) = 41 Cri L Jour 499 °° AIR 1916 Mad 1059 (1060) = 16 Cri L Jour 466 °° (1911) 12 Cri LJ 50 (50) = 1910 Pun Re (Cr) No. 32 °° 1968 Cri LJ 117 (119, 120) = 8 Guj LR 290. ("Offence" has meaning as defined in S. 4 (1) (o).) °° AIR 1965 All 508 (510) = 1965 (2) Cri LJ 455 = 1965 All LJ 558 (DB).

(2) An allegation made to the police is not sufficient for the purposes of this section. (1903) 30 Cal 910 (915) (FB) °° AIR 1958 All 76 (77) = 1958 Cri LJ 11 °° (1912) 13 Cri L Jour 287 (288) (DB) (Bom) °° (1904) 1 Cri LJ 763 (764) = 17 CPLR 105 °° AIR 1923 Mad 59 (59) = 23 Cri LJ 592.

[But see 1881 Pun Re (Cr) No. 17, p. 29 (30) (DB).]

(3) Statements made by a person as a witness in the course of the inquiry or trial cannot be treated as a complaint under this section. (1912) 13 Cri LJ 287 (288) (DB) (Bom) °° (1902) ILR 29 Cal 415 (416) (DB) °° 1968 Cri LJ 117 (120) = 8 Guj LR 290 °° AIR 1965 All 508 (510) = 1965 (2) Cri LJ 455 (DB).

(4) Mere mention of section for which accused is sought to be prosecuted cannot be enough unless allegations in 'complaint' refer to act constituting offence under any law. 1968 Cri LJ 117 (119) = 8 Guj LR 290.

4. Who can complain. — (1) A complaint under this section except in cases covered by the proviso, can only be made by the husband of the woman, or during his absence, the person having care of the woman on his behalf. AIR 1916 Mad 1059 (1060) = 16 Cri LJ 466 °° AIR 1934 Lah 122 (123) = 36 Cri LJ 423 °° AIR 1922 Lah 168 (168) = 23 Cri LJ 613 ° 1968 Cri LJ 117 (119, 120) = 8 Guj LR 290.

(2) The husband's counsel as such has no right to complain under this section 1872 Pun Re (Cr) No. 11 p. 15 (16) (DB).

(3) Complaint by power of attorney holder as agent of husband — Husband who was in Malaya authorizing power of attorney holder to file complaint simply because he himself was unable to proceed to India — Complaint by power of attorney holder on such a ground not competent. AIR 1966 Mad 183 (184) = 1966 Cri LJ 554.

(4) Where a person professes to complain as the husband under this section, the factum and validity of the marriage must be proved strictly. AIR 1914 All 214 (215) = 15 Cri LJ 78 °° AIR 1917 Low Bur 30 (30) = 18 Cri LJ 321 °° (1912) 13 Cri LJ 705 (706) = 34 All 589 °° (1910) 11 Cri L Jour 155 (156) (Lah) °° AIR 1930 All 834 (834) = 32 Cri LJ 315.

(5) The fact that the marriage tie is broken subsequent to the date of the offence will not deprive the husband of his right

Section 199 — Note 4 (contd.)
to complain under this section. AIR 1922 Lah 477 (478, 479) = 23 Cri LJ 462.

(6) If at the time of the commission of the offence the husband of the woman is absent, a complaint under this section can be lodged by the person having care of the woman on behalf of the husband. AIR 1924 Lah 330 (331) = 24 Cri LJ 780.

(7) An express delegation of trust by the husband is not necessary to entitle a person having care of a woman during her husband's absence to complain under this section. AIR 1926 Sind 159 (160) = 27 Cri LJ 414 (DB).

(8) Where a husband and wife were living with the nephew of the husband, the nephew was held to be entitled to complain in the absence of the husband. AIR 1926 Sind 159 (160) = 27 Cri LJ 414 (DB).

(9) Where the husband was away on service and the wife was living with his father for a month and a half before the complaint, and she was enticed away when she was at her father's place, the husband's father was held to be the person in whose care she was on behalf of the husband and it was he who could complain. AIR 1942 Oudh 434 (435) = 43 Cri LJ 643.

(10) Though express delegation by the husband is not necessary, the words "on his behalf" indicate some delegation by the husband; the mere fact that the woman is under the protection and care of a particular person is not sufficient; it has to be shown that such person had the care of her on behalf of her husband. AIR 1937 Bom 186 (189) = 38 Cri LJ 769 (DB).

[See also AIR 1963 Orissa 60 (61) = 1963 (1) Cri LJ 312 = 29 Cut LT 482.]

(11) Where the brother of the husband had neither de facto nor constructive care of his sister-in-law, nor had he any authority from the husband, it was held that the brother could not make a complaint on behalf of the husband. AIR 1936 Pesh 32 (32) = 37 Cri LJ 345.

(12) If an offence mentioned in this section is committed during the husband's absence, the person who had care of the woman when the offence was committed can complain under this section even though the husband is not absent at the time of making the complaint and is not anxious to prosecute. AIR 1917 Mad 220 (221) = 17 Cri LJ 363.

(13) Where the husband was living in the interior of a district while the wife was living with her father in the district head quarters, it was held that the husband could not be said to be absent within the meaning of this section. AIR 1922 Lah 168 (168) = 23 Cri LJ 613.

(14) The leave of the Court must be obtained before a person having care of a woman during her husband's absence can complain under this section. AIR 1926 Sind 159 (161) = 27 Cri LJ 414 (DB).

(15) The leave may be implied and need not be expressly recorded. 1951 All L Jour 214 (215) °° AIR 1926 Sind 159 (161) = 27 Cri LJ 414 (DB).

(16) The refusal by a Magistrate to grant leave under this section amounts to dismissal of the complaint. AIR 1954 Sau 155 (156) = 1955 Cri LJ 74 (DB).

(17) In order to make the proviso applicable, the circumstances which are alleged as bringing the case within its limits should be proved. AIR 1933 Cal 144 (144) = 34 Cri LJ 290 (DB).

(18) In the absence of leave of the Court the proceedings will be illegal. AIR 1933 Cal 880 (881) = 34 Cri LJ 1092 (DB) °° AIR 1934 Lah 86 (87) = 35 Cri LJ 1032.

(19) Where leave has been obtained at the earliest opportunity before summons has been issued to the accused, the omission to formally obtain leave at the time of the filing of the complaint will not vitiate the trial. 1951 All LJ 214 (215).

(20) Limitation on power of person to file complaint has to be specific as it is under Sections 198 and 199. 1965 All WR (HC) 724 (725).

5. Want of complaint — Effect. — (1) In the absence of a complaint of the husband or other person mentioned in the section the proceedings will be illegal. AIR 1937 Bom 186 (191) = 38 Cri LJ 769 (DB) °° AIR 1933 Oudh 163 (165) = 34 Cri LJ 496 °° AIR 1935 Pat 357 (358) = 36 Cri LJ 856 (DB).

(2) The section regulates the competence of the Court and bars its jurisdiction excepting in compliance therewith. AIR 1955 SC 196 (204) = 1955 Cri LJ 526 = ILR (1955) Punj 135 = 1955 SCR 1150.

(3) The husband presented a complaint under Sections 497 and 498, Penal Code. After recording the sworn statement of the complainant the Magistrate referred the complaint to the police who placed a charge-sheet and then process was issued to the accused. It was held that the Magistrate had taken cognizance on the complaint of the husband and not on the charge-sheet and the requirements of this section were complied with. AIR 1952 Mys 34 (36) = 1952 Cri LJ 705.

6. Proceedings commencing in respect of offence not falling under section — Evidence disclosing offence within section — Power of Court to convict for such offence. — (1) In regard to offence falling under this section, a Court cannot proceed in the absence of a complaint by the husband or guardian of the woman in question as required by this section, where such offence is disclosed to be involved in the transaction of which the Court is already in seisin. AIR 1933 All 626 (627) = 34 Cri LJ 1227 °° (1912) 13 Cri L Jour 287 (288) (DB) (Bom) °° (1907) 5 Cri LJ 164 (167)

°[**199A. Objection by lawful guardian to complaint by person other than person aggrieved.**—When in any case falling under section 198 or section 199, the person on whose behalf the complaint is sought to be made is under the age of eighteen years or is a lunatic, and the person applying for leave has not been appointed or declared by competent authority to be the guardian of the person of the said minor or lunatic, and the Court is satisfied that there is a guardian so appointed or declared, notice shall be given to such guardian, and the Court shall, before granting the application, give him a reasonable opportunity of objecting to the granting thereof.]

[°] This section was inserted by the Code of Criminal Procedure (Amendment) Act, (XVIII of 1923), S. 53.

OBJECTS AND REASONS

1923.—"We have adopted the suggestion that the new section 199A should apply to lunatics as well as to minors. We note that there has been some criticism of the drafting of the new section and we have re-drafted a portion of it so as to provide that, where the person applying for leave to make a complaint has not been declared by competent authority to be the guardian of the person of the minor or lunatic, and where the Court is satisfied that such guardian has been appointed the Court shall give such guardian a reasonable opportunity of objecting to the application." — S. C. R. [18 of 1923.]

°[**199B. Form of authorisation under second proviso to section 198 or 199.**—(1) The authorisation of a husband given to another person to make a complaint on his behalf under the second proviso to section 198 or the second proviso to section 199 shall be in writing, shall be signed or otherwise attested by the husband shall contain a statement to the effect that he has been informed of the allegations upon which the complaint is to be founded, shall be countersigned by the officer referred to in the said provisos, and shall be accompanied by a certificate signed by that officer to the effect that leave of absence for the purpose of making a complaint in person cannot for the time being be granted to the husband.

(2) Any document purporting to be such an authorisation and complying with the provisions of sub-section (1), and any document purporting to be a certificate required by that sub-section shall, unless the contrary is proved, be presumed to be genuine, and shall be received in evidence.]

[°] This section was added by the Code of Criminal Procedure (Second Amendment) Act (XXVIII of 1943), S. 4. (27-11-1943.)

Section 199 — Note 6 (contd.) = 31 Bom 218 (DB) °° AIR 1931 Cal 524 (526) = 32 Cri LJ 1135 (DB) °° AIR 1935 Pat 357 (358) = 36 Cri LJ 856 (DB).

(2) Proceedings commenced in respect of offence other than one under this section upon complaint of husband or person in charge of woman — Subsequent disclosure that offence referred to in this section has been committed — Proceedings cannot be taken on same complaint. AIR 1940 All 201 (201) = 41 Cri LJ 499 °° (1883) 5 All 233 (235) °° (1902) 29 Cal 415 (417) (DB) °° (1912) 14 Cri LJ 284 (286) = 1912 Upp Bur Rul 155 °° AIR 1924 Mad 323 (326) = 24 Cri LJ 837 °° (1903) ILR 27 Mad 61 (62) (DB) °° AIR 1965 All 508 (510) (DB).

[But see (1893) 20 Cal 483 (486) (DB).]

(3) Though a complaint under this section must specifically relate to the particular offence which is proposed to be taken cognizance of, it is not necessary that it must specify the exact section under which the offence falls. AIR 1937 Bom 186 (190, 191) = 38 Cri LJ 769 (DB) °° AIR 1958 All 76 (79) = 1958 Cri LJ 11 °° AIR 1922 Mad 353 (354, 355) = 22 Cri LJ 762 (DB) °° AIR 1925 Lah 631 (632) = 27 Cri LJ 769 (DB) °° AIR 1934 All 472 (474) = 36 Cri LJ 404 °° AIR 1934 Lah 945 (947) = 36 Cri LJ 789.

7. Facts disclosing offence to which section applies as well as other offences. — (1) Where the facts alleged disclose an offence of which cognizance cannot be taken by the Magistrate for want of a complaint as required by this section, he is not debarred from taking cognizance also of other offences disclosed by the same facts, which are not affected by the provisions of this section. AIR 1951 Cal 133 (136) = 52 Cri LJ 1226 (FB) °° (1964) 2 Mad LJ 430 (432, 433) = 1964 Mad LJ (Cri) 594.

CHAPTER XVI

OF COMPLAINTS TO MAGISTRATES

200. Examination of complainant.—*[* * *] A Magistrate taking cognizance of an offence on complaint shall at once †[examine the complainant and the witnesses present, if any, upon oath and the substance of the examination shall be reduced to writing and shall be signed by the complainant and the witnesses], and also by the Magistrate:

Provided as follows:—

(a) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192;

‡[(aa) when the complaint is made in writing, nothing herein contained shall be deemed to require the examination of a complainant in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties;]

(b) where the Magistrate is a Presidency Magistrate*†, such examination may be on oath or not as the Magistrate in each case thinks fit, and §[where the complaint is made in writing], need not be reduced to writing; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing;

SECTION 200 — SYNOPSIS

1. **Scope and object.**
2. **"Magistrate taking cognizance of an offence."**
- **2A. Jurisdiction of Magistrate.**
3. **"On complaint."**
4. **Stamp on complaint and written examination of the complainant.**
5. **Second complaint.**
6. **Who may make a complaint.**
7. **Whether Magistrate can refuse to entertain a complaint.**
8. **Order of complaint.**
9. **Who may present complaint.**
10. **"Shall examine."**
11. **Omission to examine complainant.**
12. **Examination before the case is transferred under S. 192.**
13. **Examination where complaint is by Court or by public servant — Proviso (aa).**
14. **Joint complaint by two or more complainants.**
15. **Prosecution under S. 211, Penal Code.**
16. **Commission for examination.**
17. **"Upon oath."**
18. **Shall be reduced to writing.**
19. **"Shall be signed."**
20. **Presidency Magistrate.**
21. **Shall not be bound to re-examine.**

1. Scope and object. — (1) Sections 200 to 203 form a chapter in themselves under the heading 'of complaint to Magistrate.' That chapter lays down the procedure to deal with complaints lodged by private persons. AIR 1958 Bom 335 (338) = ILR (1958) Bom 1242 = 1958 Cri LJ 1134 (DB).

(2) It is not obligatory upon the Magistrate immediately to follow the procedure prescribed by Chapter 16 upon the receipt of a complaint. He may or may not take cognizance of the offence at once. AIR 1957 Andh Pra 864 (865) = 1957 Cri LJ 1212 (2) ** 1968 All Cri R 483 (487, 488) = 1968 All WR (HC) 783 ** 1964 All WR (HC) 525 (525, 526).

(3) The object of an examination under this section is three-fold:

(a) To ascertain the facts constituting the offence. AIR 1953 Tripura 1 (2) = 1953 Cri LJ 1463 ** AIR 1921 Cal 561 (563) = 22 Cri LJ 455 (DB) ** AIR 1924 Mad 323 (323) = 24 Cri LJ 837 ** AIR 1926 Sind 194 (196) = 27 Cri LJ 711 ** AIR 1922 Mad 353 (355) = 22 Cri LJ 762 (DB) ** (1968) 34 Cut LT 131 (134) = ILR (1967) Cut 607.

(b) To prevent abuse of process resulting in wastage of time of the Court and harassment to the accused. AIR 1915 Mad 128 (129) ** AIR 1958 Bom 335 (338) = ILR (1958) Bom 1242 = 1958 Cri LJ 1134 (DB) ** (1911) 12 Cri LJ 217 (220) = 1911 Pun Re (Cr) No. 11 ** AIR 1924 All 664 (664) = 26 Cri LJ 176 ** AIR 1925 Sind 328 (329) = 26 Cri LJ 1101 (DB).

(c) To help the Magistrate to judge if there are sufficient grounds calling for investigation and for proceeding with the case. (1910) 12 Cri LJ 385 (385) = 1 Upp Bur Rul 73 ** AIR 1958 Pat 51 (59) = 1958 Cri LJ 81 (DB) ** (1912) 13 Cri LJ 704 (704) (All).

(c) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

[1882—S. 200; 1872—S. 44, para. 2 and S. 144; 1861—S. 66.]

[°] The words and figures "subject to the provisions of S. 476" were repealed by the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), S. 54.

[†] Substituted for the words "examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant", by the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), S. 26. (1-1-1956).

[‡] Inserted by Act XVIII of 1923, S. 54.

[§] Inserted by the Code of Criminal Procedure (Amendment) Act, 1926 (II of 1926), S. 3.

[*†] Magistrates in the City of Ahmedabad have the powers and exercise of jurisdiction of a Presidency Magistrate—See Guj. Act XIX of 1961, S. 14 (3) (4-11-1961).

STATE AMENDMENT

West Bengal

In its application to the State of West Bengal in S. 200, for the words 'a Magistrate' substitute the words 'any judicial Magistrate." — W. B. Act 8 of 1970, S. 2 and Sch. Item 69.

Section 200 — Note 1 (contd.)

(4) The examination of the complainant must be strictly observed. AIR 1919 Pat 203 (206) = 20 Cri LJ 247 °° AIR 1920 Pat 232 (235) = 21 Cri LJ 779.

(5) The section is mandatory and it is therefore obligatory on the part of the Magistrate to examine not only the complainant, but also the witnesses who are present in Court. 1957 Cri LJ 673 (673) (Mad).

(6) The section applies exclusively to cases when a Magistrate takes cognizance of an offence on complaint under Sec. 190, subsection (1) (a). 1899 All WN 87 (89) °° AIR 1931 Oudh 392 (393) = 32 Cri LJ 991.

(7) The section does not apply when the Magistrate takes cognizance of an offence under Section 190 (1) (b) and (c). (1902) 2 Weir 241 (242) °° (1902) 2 Weir 246 (246) (DB) °° (1904) 1 Cri LJ 193 (197, 199) = 2 Low Bur Rul 146 (DB) °° (1963) 29 Cut LT 157 (158) °° (1962) 4 Orissa JD 353 (354).

(8) The section does not apply where no offence is disclosed. (1902) 4 Bom LR 609 (611) (DB) °° AIR 1965 Pat 442 (443) = 1965 (2) Cri LJ 2530 (DB).

(9) Where there is no complaint, no examination under this section or any further action is necessary or can take place. (1906) 4 Cri LJ 170 (170) (DB) (Cal) °° (1907) 5 Cri L Jour 13 (14) (DB) (Cal) °° (1910) 11 Cri LJ 351 (351) (All) °° AIR 1930 Mad 705 (706) = 31 Cri LJ 895.

(10) A Municipal Magistrate of Calcutta is a Presidency Magistrate and he is governed by this section in regard to the examination of the complainant. AIR 1928 Cal 483 (484) = 30 Cri LJ 231 (DB).

2. "Magistrate taking cognizance of an offence.." — (1) The Magistrate taking cognizance of an offence on complaint is bound to deal with it himself and cannot send it on to another Magistrate for orders. (1902) 6 Cal WN 843 (844) (DB) °° (1912) 13 Cri L Jour 704 (705) (All) °° AIR 1916 Cal 867 (869) = 17 Cri LJ 146 (147) (DB) °° AIR 1917 All 91 (92) = 18 Cri LJ 765 (765, 766).

(2) Section 200 says inter alia what a Magistrate taking cognizance of an offence on complaint shall do on receipt of such a complaint. **AIR 1960 SC 1113 (116) = 1960 Cri LJ 1499.** (AIR 1958 Bom 335, **Reversed** on another point.)

(3) A direction by the District Magistrate that a particular class of cases should be submitted to him for orders by the subordinate Magistrate is illegal. (1906) 4 Cri LJ 213 (214) (DB) (Cal).

(4) A Magistrate has no jurisdiction to try the case which has not been taken cognizance of by him, or has not been sent to him or withdrawn by him, in the proper way. AIR 1930 Mad 705 (706) = 31 Cri LJ 895 °° AIR 1917 All 91 (92) = 18 Cri LJ 765 (765, 766).

(5) Manager and occupier of factory tried on charge under Factories Act, 1934, — Manager filing complaint against clerk as actual offender under Section 71 of that Act — Manager held could be examined as complainant under this section though Magistrate had already taken cognizance of offence on complaint against him. AIR 1943 Nag 243 (246) = 44 Cri LJ 587 (DB).

(6) It is only when a Magistrate applies his mind for the purpose of proceeding under Section 200 and subsequent sections of Chapter XVI or under Section 204 that it can be positively stated that he has taken cognizance. AIR 1959 SC 1118

Section 200 — Note 2 (contd.)
(1123, 1124) = 1959 Cri LJ 1363 °° 1968 Pat LJR 618 (620) = 1969 BLJR 289 °° 1968 All Cri R 483 (488) = 1968 All WR (HC) 783 °° AIR 1966 Pat 473 (479) = 1967 Cri LJ 111 (DB) °° AIR 1965 Madh Pra 53 (54) = 1965 (1) Cri LJ 298.

(7) Omission to treat the protest petition as a separate complaint and to dispose of it in accordance with the provisions of Sections 200 and 202 will not affect the legality of the taking of cognizance on the charge-sheet submitted by the police. ILR (1957) Cut 377 (379).

(8) Under Section 200 a Magistrate taking cognizance of an offence on complaint has at once to examine the complainant and the witnesses present, if any, on oath and has to reduce the substance of the examination to writing which is to be signed by the complainant and the witnesses. AIR 1968 Andh Pra 93 (93) = 1968 Cri LJ 303 = (1968) 1 Andh WR 82 °° 1962 (1) Cri LJ 634 (637) = 1961 Andh LT 667.

(9) Complaint against public servants — Magistrate examining complainant under Section 200 and fixing date of inquiry under Section 202 — Magistrate not justified in making private inquiry from accused officers in absence of the complainant for ascertaining whether sanction under Section 197 was necessary. 1963 (2) Cri LJ 573 (575, 576) (Pat).

(10) Once cognizance is taken, cognizance of the same offence cannot be taken again either after charge-sheet is received from the police or after a second complaint is made. ILR (1967) Cut 73 (80).

(11) Once cognizance is taken there cannot be another order taking cognizance. AIR 1967 Mys 243 (245, 246) = 1967 Cri LJ 1667 = (1967) Mad LJ (Cr) 773.

2A. Jurisdiction of Magistrate. — (1) Magistrate may dismiss a complaint if it does not indicate existence of territorial jurisdiction either in the complaint itself or in the examination of the complainant under Section 200. 9 Orissa JD 24 (32, 34) = (1966) 32 Cut LT 423.

(2) After receiving complaint Sub-divisional Magistrate directing inquiry by Subordinate Magistrate, who submitted his inquiry report — It was not proper for him to take cognizance on his own report when the case came before him in temporary absence of Sub-divisional Magistrate. 1967 BLJR 661 (663).

(3) Complaint disclosing offences under Section 196-A requiring sanction as well as other offences — Magistrate competent to enquire into latter offences. (1962) 64 Punj LR 519 (520).

3. "On complaint." — (1) A petition of protest made to a Magistrate by a person who lodges a first information with the police and which is reported against by them is really a petition of complaint and must be dealt with as such. AIR 1941 Pat 144 (144) = 42 Cri LJ 358 °° AIR 1958 Orissa 11 (13) = ILR (1957) Cut 557 = 1958 Cri LJ 63 °° AIR 1957 Cal 393 (395) = 1957 Cri LJ 720 °° AIR 1969 Orissa 149 (151, 152) = 1969 Cri LJ 926 °° AIR 1968 Cal 238 (242) = 1968 Cri LJ 618 °° AIR 1966 Pat 473 (478) = 1967 Cri LJ 111 (DB).

(2) A complaint is only in the nature of an indictment and should not be treated as it it had the sanctity of affidavit evidence. AIR 1934 Cal 604 (606) = 35 Cri L Jour 996.

(3) It is primarily the right of the aggrieved person either to make his complaint before a Magistrate or to lodge information before the police and thus to choose the appropriate forum for initiation of criminal proceedings. AIR 1958 Orissa 11 (15) = ILR (1957) Cut 551 = 1958 Cri L Jour 63 °° AIR 1958 Orissa 104 (105) = ILR (1958) Cut 25 = 1958 Cri L Jour 655 (DB).

(4) In case of naraji petition filed in a complaint case, it may be treated as a second case, if maintainable as such under law. AIR 1968 Cal 238 (242) = 1968 Cri LJ 618.

(5) Naraji petition under Section 202, against report of enquiring officer can be treated as a fresh complaint if it satisfies requirements of complaint and disposed of as such. AIR 1968 Cal 238 (241) = 1968 Cri LJ 618.

(6) Delay in filing of complaint — Inference is that prosecution case is an afterthought. (1968) 10 Orissa JD 29 (30).

(7) On perusal of report of police-officer under Section 173 and case-diary Magistrate holding that though view of police-officer was to the contrary, cognizance ought to be taken and ordering judicial enquiry — Unaccepted police report does not fall within clauses (a), (b) and (c) of Section 190 (1) and cannot be treated as complaint within Section 200. AIR 1966 Pat 440 = 1966 Cri LJ 1321 (1322) (DB).

(8) Complaint by Inspectors of Factories in respect of offence under Factories Act sent by registered post, must be held to have been made at least on date on which it was received in office of court of competent jurisdiction. AIR 1965 Pat 514 (515).

4. Stamp on complaint and written examination of the complainant. — (1) Complaints from a public servant, a municipal officer or an officer or servant of a railway company are exempt from any court-fee under Section 19 (xviii) of the Court-fees Act. (1904) 1 Cri L Jour 193 (198) = 2 Low Bur Rul 146 (SB).

(2) The accused are not liable on conviction to refund what was illegally levied from the complainants as court-fees. (1893) 16 Mad 423 (424) (DB).

5. Second complaint. — (1) Where a complaint is dismissed or the accused is

Section 200 — Note 5 (contd.)
discharged, a second complaint for the same offence is not barred. (1901) 28 Cal 652 (661) (FB) °° AIR 1949 Mad 76 (77) = ILR (1949) Mad 58 = 49 Cri L Jour 587 (DB) °° 1904 Upp Bur Rul (2nd Qr Cr PC) 19 (20) °° AIR 1930 Rang 156 (157) = 31 Cri L Jour 824 °° 1964 All WR (HC) 503 (504).

(2) Complaint twice dismissed for want of prosecution — Third complaint should not be entertained. AIR 1948 Cal 129 (130) = 49 Cri L Jour 115 °° 1964 All WR (HC) 503 (504).

(3) Issue of non-bailable warrant on a third complaint on the basis of evidence on record of the first complaint cannot be sustained. 1964 All WR (HC) 503 (504).

(4) Amalgamation of complaints — Second complaint before same Magistrate pertaining to same facts and offences, during pendency of first complaint — Magistrate acts within jurisdiction in amalgamating both complaint cases. AIR 1965 All 131 (132, 135) = 1965 (1) Cri LJ 275.

(5) Two or more complaints at about same time but prior to issue of process — All complainants and their witnesses may have to be examined, though common inquiry under Section 202 can be ordered — Absence of examination of co-complainants, even though necessary, would be mere irregularity. AIR 1965 All 131 (134) = 1965 (1, Cri LJ 275.

6. Who may make a complaint. — (1) Offences against provisions of Companies Act, . 1913 — Sections 141-A and 137 (6) of the Act held not bar to prosecution by private individual. AIR 1940 Cal 232 (233, 234) = 41 Cri L Jour 625 (DB).

(2) Offence under U. P. Municipalities Act — Complaint signed and presented by Superintendent of Board — Previous resolution by Board authorising Superintendent to file complaints subject to Chairman's approval — Chairman's order to start proceedings — Complaint held was with Chairman's approval and properly presented. AIR 1936 All 74 (76) = 37 Cri LJ 382.

(3) Complaint by person not having personal knowledge of facts cannot be taken cognizance of. (1904) 1 Cri L Jour 13 (14) (DB) (Cal).

(4) Except in cases where cognizance is expressly barred by law, any person can make a complaint whether the offence complained of by him be cognizable or non-cognizable. (1960) 2 Ker LR 265 (268).

(5) Magistrate can accept a complaint in writing coming through the police. AIR 1965 Madh Pra 53 (55) = 1965 (1) Cri LJ 298.

(6) 'Complainant' can only mean the person who was examined as complainant under Section 200. AIR 1964 Cal 64 (65) = 1964 (1) Cri LJ 186.

(7) Cognizance of cognizable offence by Magistrate on complaint by public official instructed by State Government instead of on police report under Section 173 — Not against law — Trial not vitiated by violation of Article 14 or Article 21 of the Constitution. (1960) 2 Ker LR 265 (268).

(8) Tenant surrendering land — Landlord entering into possession — Such possession can be availed of for purposes of Section 426 or 447, I. P. C. and landlord is competent to file complaint. AIR 1970 Manipur 23 (25) = 1970 Cri LJ 360.

(9) Complaint to Magistrate about an offence — Complaint to be signed by the Commissioner — Rubber stamp impression of signature not enough — Complaint was held to be neither by the Corporation nor person authorised by 'local authority' — Magistrate cannot take cognizance of complaint. AIR 1970 Cal 120 (122, 123) = 1970 Cri LJ 340.

(10) In Sections 200 and 201 the word 'complainant' has been used to refer to a person who presents a written complaint or makes an oral complaint even before the sworn statement is recorded. 1962 (1) Cri LJ 634 (637) (Andh Pra).

(11) Where the proceeding which had been started by the complainant was a preliminary register case relating to cognizable offences some of which could not be lawfully compounded, if after the death of the original complainant, one of the witnesses was allowed to help the committing Court in its proceedings, the latter cannot be a 'complainant' or deemed to be a 'complainant' or substituted as a 'complainant' by the committing Court. 1962 (1) Cri LJ 634 (639) = (1961) 2 Andh WR 155.

7. Whether Magistrate can refuse to entertain a complaint. — (1) A complaint cannot be refused on the ground that it mentions a section of the Penal Code, while the offence alleged therein falls under another section. AIR 1922 Mad 62 (62, 63) = 23 Cri L Jour 148 (DB).

(2) A Magistrate should refuse to accept a complaint where it is not signed by the complainant and not preferred in person or by a person duly authorized to prefer the specific complaint. AIR 1914 Cal 479 (479) = 15 Cri L Jour 348 (DB).

(3) Complaint of non-cognizable offence against persons not traceable — Magistrate bound to take cognizance and cause an inquiry before dismissing complaint under Section 203. AIR 1969 Guj 14 (16, 17) = 1969 Cri LJ 63.

(4) Offence committed under Companies Act — Offence committed three years prior to filing of complaint — Return of complaint on this ground is not proper. 1964 (1) Cri LJ 447 (447, 448) = (1963) 1 Andh LT 464.

(5) Refusal to entertain a complaint in respect of an alleged high-handed action

Section. 200 — Note 7 (contd.)
of a Station Officer — Mere delay of one month and 18 days cannot be basis for refusal of complaint especially when there is plausible explanation. 1966 All WR (HC) 352 (353, 354) = 1966 All Cr R 213.

(6) Offence under Factories Act (1948) — Complaint by Inspector — Presentation by public servant personally or through lawyer not necessary — Complaint sent by post. AIR 1960 Pat 514 (515) = 1960 Cri LJ 1483.

8. Order on complaint. — (1) Where a Magistrate takes cognizance of an offence on a complaint, the only manner in which he can dispose of it is to examine the complainant on oath, and after holding such inquiry as he considers necessary under Section 202, either make an order of dismissal under Section 203 or issue process against the accused under Section 204. AIR 1939 Sind 208 (208) = 40 Cri L Jour 807 °° AIR 1949 Cal 58 (58) = ILR (1947) 2 Cal 208 = 49 Cri L Jour 647.

[See also (1947) 82 Cal L Jour 222 (223) (DB).]

(2) Cognizable offence — Complainant examined on oath — Magistrate thereafter ordering police to institute case and report — Charge-sheet by police — Case ultimately committed — Cognizance held taken on complaint and not on police report. **AIR 1964 SC 1541 (1544, 1545) = 1964 (2) Cri LJ 468 = (1964) 2 SCJ 439** °° 1969 Cri LJ 1458 (1459) = 1969 Mad LW (Cri) 86 °° AIR 1969 Mys 184 (185, 186) = 1969 Cri LJ 754. (Observation in AIR 1964 Mys 129 held overruled by **AIR 1964 SC 1541.**) °° AIR 1967 Mys 243 (245, 246) = 1967 Cri LJ 1667 °° ILR (1967) Cut 73 (80) °° (1966) 2 Mys LJ 89 (90, 91) = 1966-7 Law Rep 738.

(3) A complaint cannot be said to have been legally disposed of by taking no action thereon in view of the police report and making no order thereon. AIR 1929 Mad 849 (849) = 31 Cri L Jour 462.

(4) Mere variation of the case as disclosed in the complaint petition and as depicted in the Court, cannot automatically lead to the dismissal of the prosecution case, unless other materials are forthcoming for discarding the evidence of other prosecution witnesses who have not corroborated the false part of the complainant's case. (1968) 34 Cut LT 411 (416, 417).

9. Who may present complaint. — (1) As a general rule, a complaint should be presented in person by the complainant himself though under certain circumstances the complaint may be permitted to be presented by a person duly authorized to prefer the specific complaint. AIR 1914 Cal 479 (479) = 15 Cri L Jour 348 (DB).

(2) It is competent to a Magistrate to receive and take action on complaints received by post but whether he will do so or not is a matter within his discretion. 1900 All WN 189 (190) °° AIR 1929 Sind 132 (134) = 30 Cri L Jour 732 (DB).

(3) A telegram to a Magistrate asking him to take action under the Code is a complaint and the Magistrate may examine the sender as a complainant. AIR 1936 Pesh 66 (68) = 37 Cri LJ 604 (DB).

[See also 1970 Cri LJ 922 = 1970 MPLJ 171.]

10. "Shall examine." — (1) The requirement as to the examination of the complainant should be strictly complied with. (1889) 13 Bom 590 (597) (FB) °° (1901) 28 Cal 652 (661) (FB) °° AIR 1921 Pat 205 (205) (DB) °° AIR 1930 Rang 226 (226) = 31 Cri L Jour 1046 °° AIR 1926 Sind 194 (196) = 27 Cri L Jour 711.

(2) The substance of the examination reduced to writing, should be distinct from the complaint itself. (1851) 4 Sau LR 31 (32) (DB) °° (1896) 18 All 221 (222) (DB).

(3) The examination must be full and intelligent inquiry to enable the Magistrate to exercise his judgment, and see if there is a prima facie case or sufficient ground for proceeding. (1868) 10 Suth WR (Cr Cir) 1 °° AIR 1948 Mad 424 (425) = ILR (1949) Mad 130 = 49 Cri L Jour 554 °° (1910) 11 Cri L Jour 205 (206, 210) (DB) (Lah).

(4) Magistrates, when they verify complaints, should inquire, so far as they can, as to the scene of the offence so as to find out as soon as possible whether or not they have jurisdiction to entertain the complaint. AIR 1937 Sind 31 (31).

(5) Examination should be on facts which are within complainant's knowledge. (1864) 1864 Suth WR (Gap. No.) (Cr) 33 (34) (DB) °° AIR 1949 Mad 76 (77) = ILR (1949) Mad 58 = 49 Cri L Jour 587 (DB) °° AIR 1933 Rang 297 (298) = 35 Cri L Jour 52.

(6) A sketchy examination on one day and a more complete examination on a subsequent day will not amount to an irregularity vitiating the trial. AIR 1933 Cal 552 (553) = 34 Cri L Jour 1063.

(7) The reason that the facts were fully set out in the written complaint does not justify an omission to examine the complainant. (1899) 3 Cal WN 17 (18) (DB).

(8) The cross-examination of the complainant on depositions recorded under Section 159 by another Magistrate is not an examination under this section. (1903) 30 Cal 923 (925, 926) (DB).

(9) A mere attestation upon oath that the terms of the complaint are true is not sufficient compliance with the terms of this section. (1896) 18 All 221 (222) (DB).

[But see AIR 1925 Sind 328 (329) (DB).]

(10) In the case of a complaint presented to a Presidency Magistrate he is not

Section 200 — **Note 10 (contd.)**

bound to examine on oath or to reduce such examination to writing. (1904) 6 Bom LR 662 (663) (DB) °° (1911) 12 Cri L Jour 550 (550) (Mad).

(11) It is desirable that the substance of the oral examination should be read over to the complainant, especially if it is to be utilized as the basis for a possible prosecution for perjury in the future. AIR 1926 Nag 141 (143, 144) = 26 Cri L Jour 1401.

(12) A complainant, as soon as he presents his complaint, is entitled to demand that his examination should be taken and reduced to writing before his complaint is disposed of. (1906) 4 Cal L Rep 134 (135) (DB) °° (1902) 29 Cal 410 (412) (DB).

(13) A complainant fulfils a duty where he informs a Court of an offence and it is not proper to examine him about his motives, and force him to name the persons who had written the complaint for him, or helped him with legal advice, and where the complainant refuses to answer such irrelevant questions, he cannot be punished either under Section 485 of this Code or Section 179 of the Penal Code. (1889) 13 Bom 600 (604, 621) (DB).

(14) Section 200, as amended, is mandatory, and it is therefore obligatory on the part of the Magistrate to examine not only the complainant, but also the witnesses who are present in Court. 1957 Cri L Jour 673 (673) (Mad).

(15) If in spite of the opportunity given to the complainant, he does not ask the Magistrate to examine his witnesses, there is no obligation on the part of the Magistrate to call upon the complainant, suo motu, to examine his witnesses. AIR 1958 Bom 335 (338) = ILR (1958) Bom 1242 = 1958 Cri L Jour 1134 (DB).

(16) Complaint under Section 323, Penal Code — Complainant examined in absence of accused — It is a serious objection affecting legality of trial. AIR 1969 Goa 67 (67) = 1969 Cri LJ 738.

(17) Complainant filing second petition — Magistrate requiring previous petition for ascertaining whether clear accusations were made — Postponement of examination of complainant for a short period is not illegal. 1966 Cri LJ 205 (207) (Cal).

11. Omission to examine complainant. — (1) Where the accused person, after conviction, complains of the omission to examine the complainant, such omission will be cured by Section 537 (a) and will not ordinarily vitiate the trial or the conviction. AIR 1953 Orissa 83 (84) = 1953 Cri L Jour 655 °° AIR 1958 Orissa 11 (14) = ILR (1957) Cut 551 = 1958 Cri L Jour 63 °° AIR 1958 Pat 51 (59) = 1958 Cri L Jour 81 (DB) °° AIR 1957 Andh Pra 4 (6) = 1956 Cri L Jour 44 °° ILR (1957) Cut 377 (378) °° AIR 1929 Pat 473 (475, 476) = 30 Cri L Jour 1056 (FB) (Overruling AIR 1917 Pat 611.) °° AIR 1968 Pat 88 (90) = 1968 Cri LJ 352 °° AIR 1967 Punj 244 (249, 250) = 1967 Cri LJ 909.

[See also AIR 1949 Mad 76 (77) = ILR (1949) Mad 58 = 49 Cri L Jour 587 (DB).]

[But see AIR 1949 Cal 197 (199) = 50 Cri L Jour 368 °° ILR (1948) 1 Cal 407 (413) °° AIR 1969 Orissa 149 (151, 152) = 1969 Cri LJ 926 = 34 Cut LT 1237.]

(2) If the objection is taken at an early stage, action will be taken to set right the defect and to proceed with the case after the examination of the complainant. (1950) 54 Cal WN (2 DR) 134 (135) (DB) °° AIR 1953 Tripura 4 (4) = 1953 Cri L Jour 1490 °° AIR 1920 Pat 232 (235) = 21 Cri L Jour 779 °° (1913) 14 Cri L Jour 76 (76) (DB) (Cal) °° AIR 1917 Pat 611 (612) = 18 Cri L Jour 890 (DB).

[See also (1951) 4 Sau LR 31 (32) (DB).]

(3) Where the complaint is dismissed without examination of the complainant he is prejudiced by the procedure adopted and the order of dismissal will be set aside. AIR 1922 Mad 443 (444) = 23 Cri L Jour 691 °° (1889) 13 Bom 590 (597) (FB) °° AIR 1924 Bom 321 (321) = 25 Cri L Jour 960 (DB) °° AIR 1919 Cal 78 (79) = 20 Cri L Jour 175 (DB) °° AIR 1919 Pat 545 (546) = 20 Cri L Jour 552 (DB).

[See also (1949) 53 Cal WN 653 (657) (DB).]

[But see AIR 1952 Pat 154 (155) = 1952 Cri L Jour 473 °° (1911) 12 Cri L Jour 550 (550) (Mad) °° (1872) 17 Suth WR (Cr) 37 (37) (DB).]

(4) On receipt of a complaint the opposite party cannot be summoned unless complainant is examined on oath first AIR 1949 Cal 55 (56) = 49 Cri L Jour 635 (DB).

(5) Complaint of forgery in execution proceedings made under Section 195 (1) (c) — Munsif not examined — On facts of the case, non-examination of the Presiding Officer on solemn affirmation was held to be of no consequence. AIR 1968 Pat 88 (90) = 1968 Cri LJ 35.

(6) Non-compliance with provisions of this section does not by itself vitiate the proceedings unless it has occasioned failure of justice. AIR 1967 Punj 244 (249, 250) = 1967 Cri. LJ 909.

(7) Magistrate taking cognizance of non-cognizable offence on police report and not examining the police officer is only an irregularity. AIR 1962 Raj 94 (95) = 1962 (1) Cri LJ 467.

(8) Complaint sent for report by Police without examining complaint under Section 200 — On receipt of report Magistrate proceeding under Sections 204 and 252 — Cognizance held had been taken under Section 190 (1) (a). (1963) 2 Cri LJ 464 (2) (465, 466) (Manipur).

Section 200 (contd.)

12. Examination before the case is transferred under Section 192.— (1) Where the complaint is made in writing, the Magistrate in cases where he is transferring the case under Section 192, is not required to examine the complainant. (1910) 11 Cri L Jour 535 (536) (DB) (Mad) °° ILR (1957) Cut 377 (378) °° (1910) 12 Cri L Jour 385 (385) = 1 Upp Bur Rul 73.

[See also AIR 1965 Madh Pra 53 (54 (55) = 1965 (1) Cri LJ 298 = 1965 Jab LJ 117.]

13. Examination where complaint is by Court or by public servant — Proviso (aa).— (1) In cases of complaints by a Court no examination under this section is necessary. AIR 1933 Pat 87 (88) = 34 Cri L Jour 237 °° AIR 1959 SC 843 (847) = 1959 Cri L Jour 1124.

(2) In the case of a complaint by a public servant purporting to act in the discharge of his official duties, no examination is necessary under this section. AIR 1952 Tripura 1 (3) = 1952 Cri L Jour 1201 °° AIR 1958 Pat 51 (58, 59) = 1958 Cri L Jour 81 (DB) °° AIR 1957 Andh Pra 4 (6) = 1956 Cri L Jour 44 °° AIR 1953 Hyd 272 (272) = ILR (1953) Hyd 457 = 1953 Cri L Jour 1647 (DB) °° AIR 1926 Mad 865 (871) = 27 Cri L Jour 1031 (FB). **(Overruling the decision in AIR 1925 Mad 672 = 26 Cri L Jour 1550.)** °° AIR 1962 Mad 403 (404) = 1962 (2) Cri LJ 490 °° 1962 (2) Cri LJ 702 (702) (Mad).

(3) The complaint contemplated by proviso (aa) is a valid complaint made in accordance with the procedure laid down in Section 476. AIR 1948 All 80 (81) = ILR (1947) All 440 = 48 Cri L Jour 410.

(4) Where the complaint is not by a Court, nor can it be treated as one by a public servant, the complainant ought to be examined. AIR 1936 Pat 145 (146) = 37 Cri LJ 289 °° AIR 1965 Assam 29 (30) = 1956 (1) Cri LJ 424.

(5-6) Complaint filed by Superintendent, Central Telegraph Office in his official capacity — He is public servant and need not be examined on oath before taking case on file — His successors examined as witnesses in case — It cannot be said that there was no evidence connected with complaint. AIR 1969 Andh Pra 41 (44) = 1969 Cri LJ 145. (AIR 1964 SC 28, Rel. on.)

(7) District Magistrate appointed Commissioner of Inquiry under Commissions of Inquiry Act (1952) — Government authorising Commissioner to prefer complaint — Complaint preferred — Commissioner held did not purport to act in discharge of his official duty as he had no official duty to prefer complaint as District Magistrate or as Commissioner of Inquiry — Hence, Section 200, Proviso (aa) was not applicable for taking cognizance of offence, Commissioner should be examined. AIR 1960 Ker 350 (350, 351) = 1960 Cri LJ 1466 = 1960 Ker LT 588.

(8) Information disclosing cognizable as well as non-cognizable offence — Police officer can competently file report even in respect of non-cognizable offence — Magistrate can upon such report take cognizance of offence without examining officer on oath. AIR 1967 Mad 4 (4) = 1967 Cri LJ 84.

14. Joint complaint by two or more complainants. — (1) A joint complaint by two or more persons is not contemplated by the Code. AIR 1931 Cal 646 (647) = 33 Cri L Jour 83 (DB).

[But see AIR 1942 Oudh 407 (408) = 43 Cri L Jour 731 °° 1963 Ker LT 548 (549) = 1963 Ker LJ 1199 °° AIR 1962 Mad 443 (444) = 1962 (2) Cri LJ 616 = (1963) 2 Mad LJ 217 °° AIR 1969 Manipur 56 (57) = 1969 Cri LJ 989 °° AIR 1967 All 150 (151) = 1967 Cri LJ 307 = 1966 All LJ 808.]

(2) Joint complaint by two — Magistrate treating it as by one — Magistrate's procedure not irregular. AIR 1969 Manipur 56 (57) = 1969 Cri LJ 989.

15. Prosecution under Section 211. Penal Code. — (1) An order for the prosecution of the complainant under Section 211 cannot be made, unless the complainant has been examined on oath and allowed an opportunity of substantiating the charge. AIR 1939 Sind 78 (79) = 40 Cri L Jour 449 °° AIR 1924 All 664 (664) = 26 Cri L Jour 176 °° AIR 1924 Bom 321 (321) = 25 Cri L Jour 960 (DB) °° AIR 1926 Bom 284 (285, 286) = 27 Cri L Jour 740 (DB) °° (1887) 14 Cal 707 (712, 720) (FB).

[But see (1908) 8 Cri L Jour 349 (350) = 4 Nag LR 136.]

16. Commission for examination.— (1) In the earlier stage of the proceedings, a complainant is not a witness But only a complainant, and therefore a commission for his examination cannot be issued under Section 503. (1882) 5 All 92 (92, 93) °° 1896 Pun Re (Cr) No. 10, p. 24, (26, 27) (DB).

[But see AIR 1914 Cal 479 (480) = 15 Cri L Jour 348 (DB).]

(2) The examination of the complainant is not made in the presence of the accused and cannot be used as 'evidence' against him. (1911) 12 Cri L Jour 585 (587) (SB) (Mad).

17. "Upon oath." — (1) The evident object of getting the substance of the examination on oath and signed by the complainant is to use it against him if needed, in a prosecution for perjury. AIR 1926 Nag 141 (143) = 26 Cri L Jour 1401 °° (1887) 9 All 666 (670).

(2) This section does not authorize a Magistrate to administer an oath but merely recognises his power to do so. AIR

201. Procedure by Magistrate not competent to take cognizance of the case.—(1) If the complaint has been made in writing to a Magistrate who is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper Court with an endorsement to that effect.

(2) If the complaint has not been made in writing, such Magistrate shall direct the complainant to the proper Court.

[1882—S. 201; 1872—S. 145; 1861—Nil.]

Section 200 — Note 17 (contd.)
1916 Lah 281 (283) = 17 Cri L Jour 491 (DB).

(3) Public servant acting or purporting to act in discharge of his duties is not required to give sworn statement under Section 200 (aa). 1962 (2) Cri LJ 702 (702) (Mad).

18. Shall be reduced to writing. — (1) The substance of the examination of the complainant is required to be reduced to writing except in the case in proviso (b). (1872) 4 NWPHCR 88 (89) °° (1896) 18 All 221 (222) (DB) °° 1864 Suth WR (Gap) (Cr) 37 (37) (DB) °° (1871) 16 Suth WR (Cr) 58 (59) (DB).

(2) The written examination must be and is intended to be distinct from the complaint. (1896) 18 All 221 (222) (DB).

(3) The recorded substance (or the statement in verbatim) of the examination of a complainant examined by the Magistrate under Section 200 is a public document. 10 Law Rep 196 (198) = (1967) 1 Mys LJ 553 (DB).

19. "Shall be signed." — (1) The examination of the complainant on oath should be signed by the complainant. (1869) 3 Beng LR (Cr) 67 (67, 68) (DB).

(2) The object of getting the signature of the complainant is to make use of it, if need be, in proceedings against him under Section 193 of the Penal Code. AIR 1926 Nag 141 (143) = 26 Cri L Jour 1401.

(3) Where A was convicted under Section 193 of the Penal Code in respect of his contradictory statements, one of which was made in the course of his examination under this section but such statement was not signed by him, it was held that the conviction should be quashed. (1902) 6 Cal WN 840 (841) (DB).

(4) The failure of the Magistrate to sign the examination would only be an irregularity curable by Section 537. (1913) 36 Mad 275 (284) = 13 Cri LJ 753 (DB).

20. Presidency Magistrate. — (1) The examination of the complainant may be on oath or not as the Presidency Magistrate thinks fit. (1908) 7 Cri L Jour 10 (15) = 35 Cal 141 (DB) °° AIR 1958 Bom 335 (339) = ILR (1958) Bom 1242 = 1958 Cri L Jour 1134 (DB).

(2) Where the complaint is in writing the examination need not be reduced to writing. AIR 1921 Cal 561 (563) = 22 Cri L Jour 455 (DB) °° AIR 1958 Bom 335 (339) = ILR (1958) Bom 1242 = 1958 Cri L Jour 1134 (DB).

(3) In case of oral complaint it is the duty of Presidency Magistrate to record statement of complainant and his witnesses. 1966 Cri LJ 205 (207) (Cal).

21. Shall not be bound to re-examine.— (1) A complainant should be examined either by the Magistrate receiving the complaint, or by the Magistrate to whom he has transferred the case. (1900) 27 Cal 921 (924) (DB).

(2) If the complaint has been transferred without examination, the Magistrate receiving it by transfer cannot issue process without examining the complainant. AIR 1914 Cal 479 (480) = 15 Cri L Jour 348 (DB).

(3) In the case of a complaint in respect of an offence requiring sanction under Section 197, the fact that the complainant was examined by the Magistrate before obtaining sanction will not relieve Magistrate, to whom the case is transferred after obtaining sanction, from examining the complainant afresh. AIR 1938 Bom 50 (53) = 39 Cri L Jour 214 (DB).

(4) Fresh enquiry under Section 202 ordered on naraji petition filed by complainant — Complainant earlier examined under Section 200 — His statement kept on record — Second examination under Section 200 neither necessary nor called for. AIR 1967 Cal 114 (116) = 1967 Cri LJ 333.

Section 201 — Note 1

(1) This section refers back to Sec. 190 and to Part 'A' of Chapter XV and prevents the Court from taking cognizance and not from hearing or trying. AIR 1939 Lah 122 (123) = 40 Cri L Jour 515.

(2) This section deals with the competence of a Magistrate to take cognizance of an offence. 1967 All Cri R 543 (547) = 1967 All WR (HC) 841.

(2) A Magistrate who has no local jurisdiction to inquire into or try an offence cannot take cognizance of it. AIR 1932 Mad 427 (427, 428) = 33 Cri L Jour 452.

(3) It is on the terms of the complaint that the Magistrate first has to inform himself as to the nature of the case and see whether, from the allegations made in the complaint, he has jurisdiction to entertain it. AIR 1921 All 12 (12) = 22 Cri L Jour 308 (FB).

[See 1960 BLJR 412.]

202. Postponement for issue of process.—*[(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance, or which has been transferred to him under section 192, may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or, if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police-officer, or by such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint:

†[Provided that, save where the complaint has been made by a Court, no such direction shall be made unless the complainant has been examined on oath under the provisions of section 200.]]

Section 201 — Note 1 (contd.)

(4) The Magistrate himself must decide the question of jurisdiction and should not seek or act on the advice of any other District or superior Magistrate. (1912) 13 Cri L Jour 786 (786) = 37 Bom 144 (DB).

(5) A Magistrate cannot refuse to take cognizance of a case, on the ground that though he is entitled to take cognizance of the charges named in the complaint, he is not entitled to take cognizance of a charge not named in the complaint but which could be made out from the allegations in the complaint. AIR 1931 All 10 (11) = 32 Cri L Jour 360 °° (1907) 7 Cri L Jour 6 (7) = 31 Mad 43.

(6) A Magistrate cannot refuse to take cognizance of a case on the ground that the offence merits greater punishment than he is empowered to inflict. 1888 Rat 375 (375) (DB).

(7) A Magistrate need not and should not examine the complainant where he is incompetent to take cognizance of a case. (1905) 3 Cri L Jour 53 (54) = 28 All 268 °° (1906) 4 Cri LJ 213 (214) (DB).

(8) Section 346 (1) of the Code does not apply to cases where a Magistrate has no jurisdiction to try a case. In such a case, the proper course is to return the complaint under this section for presentation to the proper Court. 1954-2 Mad L Jour 459 (461, 462) °° AIR 1959 Ker 53 (55) = ILR (1958) Ker 1388 = 1959 Cri L Jour 194 (FB) °° AIR 1967 Delhi 88 (90) = 1967 Cri LJ 1300 °° AIR 1964 Guj 248 (249) = 1964 (2) Cri LJ 548 = (1964) 5 Guj LR 1059 °° 1965 Mad LJ (Cr) 167 (169) (Mys).

(9) The proper course is for the Magistrate himself to return the complaint for being presented to the proper Court and not for the District Magistrate or the High Court to transfer it to a Magistrate having jurisdiction. ILR (1951) Mys 155 (157) °° AIR 1942 Mad 715 (716) = 44 Cri L Jour 122.

(10) Where a Magistrate, who had jurisdiction in two capacities, as the Headquarters Magistrate and Railway Magistrate, subordinate in each capacity to a different High Court, received a complaint in one capacity and transferred it to his own file in the other capacity, it was held that he must be deemed to have returned the same under this section to be presented to the proper Court, and to have accepted it as represented. AIR 1930 Nag 291 (291, 292, 293) = 32 Cri L Jour 130.

(11) Under the U. P. Village Panchayat Raj Act (1947), Section 56, if it appears that a case pending before a Magistrate is triable by a Panchayati Adalat, the Magistrate has to transfer the case to the adalat. AIR 1951 All 414 (415) °° AIR 1951 All 494 (496) °° AIR 1951 All 554 (555) = 52 Cri L Jour 206 °° 1951 All WR (HC) 542 (544) °° AIR 1952 All 831 (831) = 1952 Cri L Jour 1476.

[See also AIR 1953 All 188 (189) = 1953 Cri L Jour 473 °° AIR 1952 All 818 (819) = 1952 Cri L Jour 1465 °° AIR 1950 All 611 (612).]

(12) Sub-section (2) contemplates the presentation of oral complaints. AIR 1924 Rang 35 (36) = 25 Cri L Jour 229.

(13) The protest petition filed before the Sub-divisional Magistrate (Judl.) in a complaint made to the police should be treated as complaint and proceeded with by him for holding judicial enquiry under Sections 201 to 203. (1962) 4 Orissa JD 355 (358).

SECTION 202 — SYNOPSIS

1. **Scope and object.**
2. **Presidency Magistrates.**
3. **Complaint of an offence.**
4. **Complaint by Court or public servant.**
5. **"Authorised to take cognizance".**
6. **"Transferred to him under Section 192".**
7. **"May, if he thinks fit".**
8. **"For reasons to be recorded in writing".**
9. **"Postpone the issue of process".**
10. **Position of the accused.**
11. **May inquire into the case himself or direct an inquiry or investigation.**
12. **"Inquiry".**
13. **Evidence in the inquiry — Sub-section (2-A).**
14. **Magistrate holding inquiry, if disqualified from trying.**

‡[(2) If any inquiry or investigation under this section is made by a person not being a Magistrate or a police-officer, such person shall exercise all the powers conferred by this Code on an officer in charge of a police-station, except that he shall not have power to arrest without warrant.]

§[(2A) Any Magistrate inquiring into a case under this section may, if he thinks fit, take evidence of witnesses on oath.]

(3) This section applies also to the police in the towns of Calcutta and Bombay.

[1882—S. 202; 1872—S. 146; 1861—S. 180.]

[*] Substituted for the original sub-s. (1), by the Code of Criminal Procedure (Amendment) Act 1923 (XVIII of 1923), S. 55

[†] Substituted for the former proviso by the Code of Criminal Procedure (Amendment) Act, 1926 (II of 1926), S. 4.

[‡] Substituted for the original sub-section (2), by Act (XVIII of 1923), S. 55.

[§] Inserted, Ibid.

STATE AMENDMENT

West Bengal

In its application to the State of West Bengal, in S. 202 in sub-section (1), for the words 'any Magistrate', substitute the words, "any Judicial Magistrate"—W. B. Act 8 of 1970, S. 2 and Sch., Item 70.

Section 202 — Synopsis (contd.)

15. Investigation.

16. "Investigation by police".

17. "Such other person".

18. Examination of the complainant — Proviso.

19. Powers of the inquiring or investigating officer.

20. Revision.

1. Scope and object. — (1) The scope of Chapter XVI, which contains this section, is to separate unfounded from substantial cases even at the outset. AIR 1915 Mad 128 (129) ** (1966) 2 Mad LJ 518 (521) = 1966 Mad LJ (Cri) 844.

(2) The object of an inquiry or investigation under this section is to ensure that no person shall be compelled to answer a criminal charge unless the Court is satisfied that there is a prima facie case for proceeding and issuing a process against the accused person. AIR 1939 All 602 (602) = 40 Cri L Jour 917 ** AIR 1927 Lah 30 (31) = 28 Cri L Jour 26 ** AIR 1927 Mad 19 (20, 21) = 28 Cri L Jour 129 (FB) ** AIR 1919 Oudh 395 (395) = 20 Cri L Jour 728 ** AIR 1921 Pat 85 (87) = 21 Cri L Jour 519 ** 1968 Cri LJ 405 (408) = ILR (1967) 2 Cal 23 ** ILR (1967) Cut 73 (81) ** AIR 1966 Orissa 64 (65, 66) = 31 Cut LT 1100 ** 1964 (1) Cri LJ 374 (375) = 1963 Kash LJ 190.

[See AIR 1929 Pat 644 (646) = 31 Cri L Jour 961 (DB) ** 1968 All Cri R 465 = 1968 All WR (HC) 729 ** (1966) MLJ (Cri) 50 = 1965 Ker LJ 682 (683).]

[See also ILR (1952) 2 Raj 641 (646).]

(3) The provision in this section is enabling and not obligatory. AIR 1930 Pat 30 (32) = 30 Cri L Jour 554 ** (1910) 12 Cri L Jour 385 (386) = 1 Upp Bur Rul 73.

(4) The inquiry is not intended to supersede a regular trial. AIR 1952 Pat 125 (126). = 1952 Cri L Jour 303 ** AIR 1931 Bom 524 (526) = 33 Cri L Jour 72 (DB) ** (1910) 12 Cri L Jour 385 (386) = 1 Upp Bur Rul 73 ** AIR 1919 Oudh 395 (395) = 20 Cri L Jour 728 ** AIR 1930 Pat 30 (32) = 30 Cri L Jour 554 ** 1968 Cri LJ 1257 (1258) (Pat).

(5) It is not necessary that a Magistrate should call for an inquiry under this section in every case. AIR 1920 Pat 270 (270, 271) = 21 Cri L Jour 220.

(6) It is generally advisable that an inquiry be held where the complainant is not speaking from his own knowledge AIR 1921 Cal 561 (563) = 22 Cri L Jour 255 (DB) ** (1906) 10 Cal WN 1090 (1091) = 4 Cri L Jour 217 (DB) ** AIR 1934 Rang 167 (168) = 36 Cri L Jour 75.

(7) Where an inquiry is made obligatory as under Section 10 of the Child Marriage Restraint Act of 1929, the failure to do so vitiates the whole trial. AIR 1931 Lah 56 (56) = 32 Cri L Jour 616 ** ILR (1966) Guj 815 (821) = 1967-7 Guj LR 935 (DB).

[See however ILR (1962) Cut 825 (828).]

(8) A Magistrate acting under this section can only consider the report of any inquiry or investigation directed by him. AIR 1927 All 136 (137) = 28 Cri L Jour 140.

(9) Under this section a Magistrate cannot consider any report made previously and not directed by him (1913) 22 Ind Cas 165 (166) = 15 Cri L Jour 21 (All).

(10) An inquest report made by another Magistrate under Section 176 cannot be taken into consideration by a

Section 202 — Note 1 (contd.)

Magistrate under this section. AIR 1932 Cal 121 (122) = 33 Cri L Jour 218 (DB).

(11) Where a case has been taken on file after investigation by police under this section, the subsequent discharge of the accused will not justify the making of complaint under Section 211, Penal Code. (1942) 43 Cri L Jour 32 (32) (Mad).

(12) There is nothing in Section 202 or Section 203 which abrogates the rule as to presumption laid down in Sec. 105 of the Evidence Act and the mode of proof of exception laid down therein. AIR 1958 Bom 335 (344) = ILR (1958) Bom 1242 = 1958 Cri L Jour 1134 (DB).

(13) Magistrate has power to accept plea of self-defence supported by report of inquiry officer and statement of witnesses and to dismiss complaint without issue of process. **AIR 1960 SC 1113 (1115) = 1960 Cri LJ 1499.** (AIR 1958 Bom 335, **Reversed.)**

2. Presidency Magistrates. — (1) Where Presidency Magistrates have been declared by the State Government, under Section 21, sub-section (2), to be subordinate to the Chief Presidency Magistrate, an Additional Chief Presidency Magistrate can, by virtue of Section 18, sub-sec. (4), make over a complaint to an ordinary Presidency Magistrate for inquiry and report under this section. AIR 1934 Cal 405 (406) = 35 Cri LJ 729 (DB).

3. Complaint of an offence. — (1) The section applies only to cases where a Magistrate takes cognizance of an offence on complaint under Sec. 190 (1) (a). 1873 Rat 77 (77) ** (1913) 14 Cri LJ 218 (218) (All) ** AIR 1924 Lah 729 (730) = 25 Cri LJ 1315 (DB) ** AIR 1967 Pat 416 (421) = 1967 Cr LJ 1677 (DB) ** AIR 1966 Pat 473 (477) = 1967 Cri LJ 111 (DB) ** ILR (1962) Cut 830 (834).

(2) A naraji filed against the enquiry report or against the final report of police investigation can be treated as complaint if the same satisfies its requirements but a simple protest application is not so. AIR 1968 Cal 238 (242) = 1968 Cri LJ 618.

(3) A Magistrate cannot direct an inquiry or investigation under this section in the following cases —

(a) Cases in which he takes cognizance of the offence on a police report under Section 190 (1) (b). AIR 1952 Pepsu 29 (31) = 3 Pepsu LR 184 = 1952 Cri LJ 482 (DB) ** AIR 1948 Pat 25 (27) = 48 Cri LJ 347 ** (1913) 14 Cri LJ 387 (387, 388) (DB) (Cal) ** AIR 1919 Pat 319 (320) = 20 Cri LJ 413 ** (1913) 14 Cri L Jour 297 (297) = 40 Cal 851 (DB).

(b) Cases in which he takes cognizance on information under Section 190 (1) (c). (1902) 2 Weir 241 (242) ** AIR 1921 Pat 302 (303) = 22 Cri L Jour 735 ** (1913) 14 Cri L Jour 600 (601) = 7 Sind LR 75 **(DB).**

(c) Petition under Section 107, which is not a complaint of an offence at all. A Magistrate has, however, in this case, the right to call for a report from the police, apart from the provisions of this section. See Note 14 on Section 107. AIR 1932 All 670 (671) = 34 Cri L Jour 42 ** AIR 1928 Lah 694 (694) = 29 Cri L Jour 866. **(Overruled** on another point in AIR 1938 Lah 861 = 40 Cri L Jour 193 (DB).) ** AIR 1926 Mad 521 (522, 523) (DB).

(d) Petition under Section 488 for maintenance, which is not a complaint of any offence. (1905) 2 Cri L Jour 421 (422) = 1905 Pun Re (Cr) No. 29 ** (1928) 111 Ind Cas 669 (670) = 29 Cri L Jour 909 (Lah) ** (1888) 11 Mad 199 (200) (DB).

(e) Complaint under Section 552 for restoration of abducted females, which is not a complaint of an offence. AIR 1933 Nag 374 (376) = 35 Cri L Jour 404 ** (1902) 4 Bom LR 609 (611) (DB).

(f) Final report made by police under Section 173 — The Magistrate not accepting it and directing judicial enquiry. **Held,** such order was without jurisdiction for want of complaint. AIR 1966 Pat 440 (441) = 1966 Cri LJ 1321.

(4) Petition under Section 107 — Magistrate has right to call for report from police apart from this section. AIR 1938 Lah 861 (863, 864) = 40 Cri L Jour 193 (DB). (Contrary view taken in AIR 1928 Lah 694 = 29 Cri L Jour 866, **Held,** could not be supported either on principle or authority.) ** AIR 1932 All 670 (671) = 34 Cri L Jour 42 ** (1891) 2 Weir 51 (51) ** AIR 1926 Mad 521 (525) (DB).

(5) It is legally possible for a case which has been started on a private complaint to be converted into an official prosecution in suitable cases. AIR 1954 Punj 193 (196) = 1954 Cri L Jour 1393 = ILR (1954) Punj 659.

(6) A fresh complaint in respect of the same offence should not be entertained unless there are exceptional circumstances namely: (1) manifest error; (2) miscarriage of justice; (3) adducing of new facts which the complainant could not have discovered despite due diligence and (4) where the previous order was passed on an incomplete record or misunderstanding of the nature of the complaint. 32 Cut LT 1188 = 1967 Cr LJ 1238

Section 202 (contd.)

4. Complaint by Court or public servant. — (1) The Magistrate has right to investigate preliminarily under this section, whether the complaint is filed by the public servant or by anyone else. AIR 1921 Sind 48 (49) = 23 Cri L Jour 31 (DB) ** AIR 1930 Pat 30 (31, 32) = 30 Cri L Jour 554.

(2) When a complaint is made by a Court neither Section 200 nor Section 202 requires a preliminary enquiry before the Magistrate can assume jurisdiction to issue process against the person complained against. **AIR 1959 SC 843 (847) = 1959 Cri L Jour 1124.**

5. "Authorised to take cognizance". — (1) A Magistrate cannot take cognizance of an offence mentioned in Section 197 without the previous sanction of the State Government and where he receives a complaint without such sanction, he cannot send the case to a Subordinate Magistrate for inquiry under this section. AIR 1931 Oudh 392 (393, 394) = 32 Cri L Jour 991.

6. "Transferred to him under Section 192". — (1) A Magistrate to whom a case has been transferred under Section 192 can act under this section. AIR 1941 Cal 185 (190) = 42 Cri L Jour 490.

(2) A Magistrate to whom a case is transferred under Section 528 cannot order an inquiry under this section. AIR 1938 Nag 433 (434) = 39 Cri L Jour 981.

(3) Where the Magistrate taking cognizance of a case transfers the case under Section 192, the stage for taking action under this section is passed and the Magistrate to whom the case is transferred has no power to hold or direct the preliminary inquiry contemplated by this section. AIR 1951 Mys 127 (128) = 52 Cri L Jour 1531 ** AIR 1942 Mad 426 (426) = 43 Cri L Jour 670 ** AIR 1937 Oudh 81 (82) = 37 Cri L Jour 1128.

(4) The mere fact that the Magistrate says that he has "taken the case on file" does not necessarily mean that he considers that there are sufficient grounds for proceeding and does not preclude the Magistrate to whom the case is transferred under Section 192 from acting under this section. AIR 1942 Mad 426 (427) = 43 Cri L Jour 670.

7. "May, if he thinks fit". — (1) It is entirely within the discretion of the Magistrate whether or not an inquiry or investigation under this section should be ordered. AIR 1949 Ajmer 36 (37) = 50 Cri L Jour 634 ** AIR 1933 Rang 271 (272) = 34 Cri L Jour 1185.

(2) While exercising the discretion, the magistrate has to take into consideration the nature and character of the offence. Where the complaint was for a non-cognizable offence against persons not traceable it was held that the Magistrate was bound to cause an enquiry to be made. AIR 1969 Guj 14 (18) = 1969 Cri LJ 63.

(3) A complainant has no right to require his complaint to be forwarded to the police. AIR 1935 Bom 76 (78) = 36 Cri LJ 483 (DB).

(4) When a complaint is dismissed and the Superior Court holds that the order is wrong and the accused should be put on trial, the direction for further enquiry can only be complied with by putting the accused persons on trial. 1966 BLJR 693 (697) = ILR 46 Pat 167.

(5) Dismissal of complaint after holding judicial enquiry — Superior Court finding dismissal wrong and directing further enquiry — Accused not directed to be put on trial — Order of further enquiry is legal and can be given effect to without summoning the accused. 1969 Pat LJR 251 (253) = 1969 BLJR 631.

8. "For reasons to be recorded in writing." — (1) Where the Magistrate decides to act under this section, he is bound to record his reasons for doing so in writing. AIR 1940 Pat 97 (98) = 41 Cri LJ 349 ** AIR 1929 Cal 176 (177) = 30 Cri LJ 705 (DB) ** AIR 1928 Lah 88 (89) = 29 Cri LJ 958 ** AIR 1926 Pat 34 (35) = 26 Cri LJ 1934 ** AIR 1931 Sind 113 (113, 114) = 32 Cri LJ 926 (DB) ** AIR 1969 Tripura 13 (15) = 1969 Cri LJ 318 ** 1967 Cr.LJ 1730 (1731, 1732) (Pat) ** 1963 (2) Cri LJ 712 (713) (Cal).

9. "Postpone the issue of process." — (1) A Magistrate who, after issue of process, holds an inquiry or directs an inquiry or investigation, acts in contravention of the section. AIR 1951 Kutch 82 (83) = 1952 Cri LJ 27 ** AIR 1957 Andh Pra 472 (473) = 1957 Cri LJ 937 ** AIR 1949 Ajmer 36 (37) = 50 Cri LJ 634 ** AIR 1938 Nag 433 (434) = 39 Cri LJ 981 ** (1912) 13 Cri LJ 749 (749) = 6 Sind LR 83 (DB) ** AIR 1968 Punj 274 (276) = 1968 Cri LJ 798.

(2) Successor of Magistrate who has issued process directing inquiry — Section is contravened. (1886) 9 Mad 282 (282, 283) (DB).

(3) Case transferred to Magistrate after issue of process — Magistrate contravenes section if he holds inquiry or directs inquiry or investigation. AIR 1938 Nag 433 (434) = 39 Cri LJ 981.

(4) Where a complaint is made against several persons jointly, the fact that the Magistrate has issued processes against some of them will not deprive him of his power to postpone the issue of process against the others and to make a preliminary inquiry in respect of the offences alleged against them. AIR 1940 Nag 128 (128) = 41 Cri LJ 312.

(5) A Magistrate can rescind his order for issue of process and direct an enquiry under this section. AIR 1923 Cal 662 (662) = 25 Cri LJ 464 (DB) ** AIR 1958 Pat 74 (76) = 36 Pat 1278 = 1958 Cri

Section 202 — Note 9 (contd.)
LJ 200 (DB) ** AIR 1948 Pat 31 (31) = 48 Cri LJ 952.

[See (1947) 48 Cri LJ 626 (627) (Pat).]
[But see AIR 1951 Cal 42 (43) = 52 Cri LJ 594 ** AIR 1948 Cal 342 (343) = 47 Cri LJ 450.]

(6) It is not contemplated, that another Magistrate who had neither received the complaint nor heard the complainant on solemn affirmation should rescind the order passed by the Magistrate who had received the complaint and heard the complainant on solemn affirmation and that too after summonses as directed by the first Magistrate had been issued and served, and pass an order for further enquiry. AIR 1958 Pat 74 (76) = 36 Pat 1278 = 1958 Cri LJ 200 (DB).

(7) Where the Magistrate has before him two complaints connected with the same subject-matter, he has a discretion to postpone the issue of process in one case pending the result of the other case. AIR 1933 Sind 254 (255) = 34 Cri LJ 891 (DB).

(8) When once the Magistrate postpones the issue of process under this section, he is required to inquire into the case himself or to direct an inquiry or investigation. The fact that there was already a police investigation does not affect his proceedings. AIR 1918 Pat 350 (350, 351) = 19 Cri LJ 263.

(9) Where the Magistrate directs an inquiry under this section, he cannot issue process before he receives the report of the inquiry. (1950) 29 Pat 1059 (1062, 1065) (DB) ** AIR 1959 Pat 504 (505) = 1959 Cri LJ 1353 ** AIR 1925 Cal 989 (990) (DB) ** 1966 Mad LW (Cri) 53 ** 1962 BLJR 183 = 1962 (2) Cri LJ 446 (447).

(10) Where a Magistrate is in doubt regarding the truth of the allegations made in the complaint and is of the opinion that a judicial enquiry under this section ought to be made, he ought not to proceed further with the case until his doubts have been removed by the receipt of a report by the officer who holds the judicial enquiry. 1955 BLJR 484 (485) ** 1964 BLJR 725 (726).

(11) Once the complainant is examined under Section 200, it amounts to taking cognizance and if the Magistrate desires to postpone the issue of process, he can act only under this Section. AIR 1967 Mys 243 (246) = 1967 Cri LJ 1667.

10. Position of the accused. — (1) The position of the accused remains the same whether the enquiry under this section is made either by police officer or by the Magistrate. AIR 1967 Orissa 62 (64) = 1967 Cri LJ 637.

(2) A person complained against is not entitled to be represented by a pleader during the preliminary inquiry. AIR 1933 Cal 447 (448) = 34 Cri LJ 604 (DB) ** AIR 1961 Punj 171 (174, 175) = 1961 (1) Cri LJ 553.

(3) The person complained against may attend the inquiry, but he has no 'locus standi' as a party. (1908) 8 Cri LJ 20 (23) = 4 Nag LR 81 ** (1911) 11 Ind Cas 311 (311, 312) = 38 Cal 880 (DB) ** AIR 1934 Rang 167 (168) = 36 Cri LJ 75 ** **AIR 1963 SC 1430 (1432) = 1963 (2) Cri LJ 397 = (1964) 1 SCR 639** ** AIR 1969 All 591 (593) = 1969 Cri LJ 1473 ** 1968 Cri LJ 127 (Pat) ** AIR 1967 Pat 361 (362) = 1967 Cri LJ 1562 ** AIR 1966 Pat 33 (39) = 1966 Cri LJ 54 ** ILR (1935) Cut 518 (521, 522) ** AIR 1965 Raj 210 (212) ** AIR 1961 Orissa 118 = 1961 (2) Cri LJ 130.

(4) Proceedings under this section are not proceedings inter partes. AIR 1926 Sind 188 (189) = 27 Cri LJ 494 (DB) ** AIR 1926 Pat 34 (35) = 26 Cri LJ 1394 ** AIR 1933 Cal 447 (448) = 34 Cri LJ 604 (DB).

(5) The following practices are undesirable and contrary to the spirit of the section:

(a) Issuing notice to the accused before issue of process. AIR 1952 Vindh Pra 49 (51) = 1952 Cri LJ 1196 ** AIR 1951 Sau 52 (53) = 52 Cri LJ 818 (DB) ** AIR 1927 Mad 19 (20, 21) = 28 Cri LJ 129 (FB) ** AIR 1931 Bom 524 (525) = 33 Cri LJ 72 (DB) ** 1968 All WR (HC) 298 (300).

(b) Conducting inquiry in presence of accused. (1902) 6 Cal WN 843 (844) (DB) ** (1920) 25 Cal WN 12 (12) (DB) ** (1911) 12 Cri LJ 385 (386) = 1 Upp Bur Rul 73.
[But see (1913) 14 Cri LJ 3 (4) (Lah).]

(c) Hearing arguments on behalf of accused. AIR 1951 Sau 52 (53) = 52 Cri LJ 818 (DB) ** AIR 1925 Cal 576 (576) = 26 Cri LJ 305 (DB) ** (1912) 13 Cri LJ 125 (125) (DB) (Cal) ** AIR 1966 Cal 633 (634) = 1966 Cri LJ 1408.
[See however (1911) 12 Cri LJ 207 (208) (DB) (Cal).]

(d) Examining accused. AIR 1923 Lah 663 (664) = 26 Cri LJ 167 ** AIR 1928 Lah 88 (89) = 29 Cri LJ 958 ** AIR 1966 Cal 633 (634) = 1966 Cri LJ 1408.
[But see AIR 1934 Sind 143 (145) = 36 Cri LJ 94 (DB).]

(6) Magistrate following procedure contrary to the spirit of the section does not commit an illegality. AIR 1928 Bom 290 (290, 291) = 29 Cri LJ 975 (DB) ** AIR 1958 Cal 146 (150) = 1950 Cri LJ 373 (DB) ** (1904) 1 Cri LJ 102 (103) (DB) (Bom) ** AIR 1931 Pat 302 (303, 304) = 32 Cri LJ 1023 ** AIR 1931 Sind 113 (113, 114) = 32 Cri LJ 926 (DB).

[See however AIR 1940 Pat 97 (100) = 41 Cri LJ 349.]

Section 202 — Note 10 (contd.)

(6A) The accused cannot be permitted during enquiry to cross-examine the witnesses examined by the complainant. AIR 1967 Pat 122 (124) = 1967 Cri LJ 508.

11. May inquire into the case himself or direct an inquiry or investigation. — (1) Where a Magistrate chose to inquire into the case himself, he could not direct a local investigation. AIR 1922 All 211 (212) = 23 Cri LJ 279 ** AIR 1928 Lah 88 (89) = 29 Cri LJ 958 ** AIR 1917 All 91 (92) = 18 Cri LJ 765 (765) ** 1965 (2) Cri LJ 824 (2) (825) = (1965) 1 Andh WR 202.

(2) Where cognizance of the complaint is taken by Sub-Divisional Magistrate, his successor who is not S. D. M. cannot direct judicial enquiry or transfer the complaint to another Magistrate. AIR 1968 Cal 195 (196) = 1968 Cri LJ 482.

(3) Where a Magistrate has ordered an investigation by another person, he cannot follow it up by an inquiry himself. AIR 1937 Nag 389 (389) = 39 Cri LJ 80 ** AIR 1949 Pat 36 (37) = 49 Cri LJ 599 ** (1913) 14 Cri LJ 493 (494) (All) ** 1968 All Cri R 483 = 1968 All WR (HC) 783 (787).

[But see (1910) 11 Cri LJ 525 (526) = 38 Cal 68 (DB).]

(4) An inquiry under the section can be directed only to a subordinate Magistrate and not to a superior Magistrate. (1912) 13 Cri LJ 484 (485) = 39 Cal 1041 (DB).

(5) The subordinate Magistrate directed to inquire need not be competent to entertain the complaint he is asked to inquire into, provided the Magistrate, who directs the inquiry, is competent to entertain and dispose of the same. (1902) 6 Cal WN 295 (296) (DB).

(6) Once a Magistrate has directed an inquiry by a subordinate Magistrate under this section, he cannot recall the proceedings before the inquiry is completed. AIR 1933 Nag 374 (376, 377) = 35 Cri LJ 404 ** 1961 BLJR 610 (610).

(7) Magistrate can stay proceedings before inquiry is completed. AIR 1934 Sind 143 (144) = 36 Cri LJ 94 (DB).

(8) Where a Magistrate has directed an inquiry or investigation by another under this section, he cannot, on receipt of the report of such inquiry or investigation, transfer the case for disposal to another Magistrate. AIR 1940 Lah 61 (63) = 41 Cri LJ 344.

(9) If a magistrate has already before him the police report made under this section, he or his successor cannot again send the case for further enquiry to subordinate magistrate without even considering the previous report. 1961 (2) Cri LJ 502 (Manipur).

(10) When a magistrate applies his mind not for the purpose of proceeding under Chapter XVI but for taking action of some kind e.g. ordering investigation under S. 156 (3) or issuing search warrant for investigation, he cannot be said to have taken cognizance of any offence. AIR 1962 Mad 495 (496) = 1962 (2) Cri LJ 762.

12. "Inquiry." — (1) The Magistrate can make an inquiry under this section in any way he thinks proper. AIR 1924 Pat 797 (799) = 26 Cri LJ 129 ** AIR 1957 Assam 76 (76) = ILR (1955) 7 Assam 435 = 1957 Cri LJ 504 ** AIR 1966 Cal 633 (634) = 1966 Cr LJ 1408.

[But see AIR 1934 Oudh 88 (89) = 35 Cri LJ 415.]

(2) Magistrate is at perfect liberty to look into the police records and if he is satisfied that the complaint is groundless, he can dismiss the complaint. AIR 1924 Pat 797 (799) = 26 Cri LJ 129 ** (1869) 11 Suth WR (Cr) 54 (54, 55) (DB).

[But see (1912) 13 Cri LJ 125 (125) (DB) (Cal).]

(3) Where a Magistrate examines witnesses in an inquiry, and evidence which is opposed to the complainant's allegations is brought before him, he should give an opportunity to the complainant to explain or to meet such evidence. AIR 1928 Mad 135 (136) = 29 Cri LJ 48 ** (1912) 13 Cri LJ 125 (125) (DB) (Cal).

[See also AIR 1951 Pat 449 (449, 450.)]

(4) Proceedings in an inquiry under this section should not be dilatory and protracted. AIR 1939 Cal 33 (34) = 40 Cri LJ 213 (DB).

(5) An inquiry under this section should not be converted into a full dressed trial. AIR 1952 Pat 125 (126) = 1952 Cri LJ 303 ** AIR 1951 Sau 52 (53) = 52 Cri LJ 818 ** AIR 1949 Pat 36 (38) = 49 Cri LJ 599 ** 1968 Cri LJ 127 (128) (Pat).

(6) Police Officer submitting report after enquiry on a complaint — Fresh enquiry directed on naraji petition filed by complainant is valid. AIR 1967 Cal 114 (116) = 1967 Cr LJ 333.

(7) The object of the enquiry is to ascertain the truth or falsehood of the complaint, but the Magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant. AIR 1963 SC 1430 (1433) = (1964) 1 SCR 639 = 1963 (2) Cri LJ 397 ** AIR 1962 SC 876 (898, 899) = 1962 Supp (2) SCR 297 = 1962 (1) Cri LJ 770.

(8) Irregularities regarding initiation of proceedings under Section 156 (3) and subsequent action taken under this section are curable under Section 537. AIR 1960 Tripura 44 (48) = 1960 Cri LJ 1666.

Section 202 (contd.)

13. Evidence in the inquiry — Sub-section (2A). — (1) There are no restrictions in the section on the power of the Magistrate to examine witnesses. AIR 1958 Bom 335 (339) = ILR (1958) Bom 1242 = 1958 Cri LJ 1134 (DB) ** AIR 1968 Cal 195 (197) = 1968 Cri LJ 482.

(2) Amalgamation of two complaints before the same magistrate on the same facts and offences for the purpose of recording evidence is proper. AIR 1965 All 131 (135) = 1965 (1) Cri LJ 275.

(3) A Magistrate is not prohibited from examining witnesses, whom he knows to be able to throw light on the matter, or from importing even his own personal knowledge into it. AIR 1930 Mad 443 (444) = 30 Cri LJ 1160.

(4) The Magistrate is entitled to thoroughly cross-examine the witnesses in order to get at the truth. AIR 1939 Pesh 16 (17) = 40 Cri LJ 674.

(5) The practice of examining the accused and his witnesses and letting the witnesses of the prosecution be cross-examined by the accused in an inquiry under this section is irregular and ought to be deprecated, but is not illegal. AIR 1941 Pat 419 (420, 421) = 42 Cri LJ 332.

[See also AIR 1953 Cal 689 (689, 690) = 1953 Cri LJ 1592.]

[But see AIR 1964 Bom 180 (182, 183, 184) (Prs 6, 9) = 1964 Mah LJ 35 = 1964 (2) Cri LJ 146.]

(6) Examination of witness under Section 202 is not admissible in trial under Section 33, Evidence Act (1872). AIR 1969 All 489 (499) = 1969 Cri LJ 1203.

(7) The Magistrate's order to allow the complainants to cross-examine and contradict witnesses examined by other complainant is improper. AIR 1965 All 131 (135) = 1965 (1) Cri LJ 275.

14. Magistrate holding inquiry, if disqualified from trying. — (1) A Magistrate, holding a preliminary inquiry is not disqualified to try the case himself when he has not initiated or directed the proceedings or taken any personal interest in the matter of the complaint presented before him. (1897) 24 Cal 167 (168, 169) (DB) ** AIR 1957 Assam 76 (76) = ILR (1955) 7 Assam 435 = 1957 Cri LJ 504 ** AIR 1923 Rang 65 (65) = 24 Cri LJ 744 ** (1898) 23 Cal 328 (334) (DB).

(2) The fact that a subordinate Magistrate expressed his opinion in submitting a report, is no bar to his holding the trial on an order of the District Magistrate. (1900) 4 Cal WN 604 (605) (DB).

15. Investigation. — (1) The investigation by the police under this section does not amount to an inquiry within the meaning of the Code. AIR 1942 Bom 42 (43) = 43 Cri LJ 362 (DB).

16. "Investigation by police." — (1) It is not advisable for Magistrates to make indiscriminate use of police agency for the purpose of ascertaining matters as to which they are bound to form their own opinion. AIR 1933 Sind 339 (340) = 35 Cri LJ 24 (DB).

(2) A Magistrate is not without jurisdiction to order a police investigation under this section into a non-cognizable case. AIR 1950 PC 26 (27) = 77 Ind App 62 = ILR (1950) Bom 476 = 51 Cri LJ 644 ** (1965) 1 LR 651 (652) (Mys).

(3) Magistrate cannot proceed under Chapter XIV after acting under Chapter XVI. AIR 1953 Assam 1 (8, 9) = ILR (1952) 4 Assam 458 = 1953 Cri LJ 168 (DB) ** AIR 1949 Cal 197 (199) = 50 Cri LJ 368 ** (1949) 53 Cal WN 653 (661) (DB) ** AIR 1928 Cal 24 (25) = 28 Cri LJ 577 (DB) ** AIR 1928 Pat 359 (361) = 29 Cri LJ 374.

[See also **AIR 1951 SC 207 (210) = 1951 SCR 312 = 52 Cri LJ 775.]**

(4) When a complaint is referred under this section by the Magistrate for investigation, the police need do no more than make a report. AIR 1931 Mad 770 (770) = 32 Cri LJ 690.

(5) Making a report to the Magistrate does not debar the police from exercising their ordinary powers of arrest and investigation and from sending up the accused for trial under a charge-sheet. AIR 1953 Assam 1 (6, 7) = ILR (1952) 4 Assam 458 = 1953 Cri LJ 168 (DB) ** AIR 1931 Mad 770 (770) = 12 Cri LJ 690 ** AIR 1932 Lah 579 (580) = 33 Cri LJ 737 (DB) ** AIR 1923 Pat 547 (548, 549) = 24 Cri LJ 375 (DB) ** (1878) 2 Cal LR 374 (376) (DB).

[But see AIR 1929 Bom 72 (73, 74) = 30 Cri LJ 781 (DB) ** AIR 1938 Sind 113 (116) = 39 Cri LJ 681 (FB). (AIR 1933 Sind 136 = 34 Cri LJ 763, **Overruled;** AIR 1934 Sind 20 = 35 Cri LJ 891 is no longer good law after this Full Bench decision.)]

(6) Even in cognizable cases, the complainant going to the Magistrate direct should not be sent to the police except for special reasons. AIR 1952 Vindh Pra 49 (51) = 1952 Cri LJ 1196.

(7) Accused himself police officer — Magistrate should not call for report from him. (1886) 14 Cal 141 (146) (DB) ** AIR 1920 Pat 655 (656) = 21 Cri LJ 621 (DB).

(8) Accused himself police officer — Magistrate should not call for report from superior or other police officer. AIR 1920 All 77 (78) = 21 Cri LJ 343 ** AIR 1920 All 91 (92) = 21 Cri LJ 649 ** AIR 1920 All 125 (125) = 21 Cri LJ 416 ** AIR 1928 Lah 88 (89) = 29 Cri LJ 958 ** AIR 1919 Oudh 395 (395) = 20 Cri LJ 728.

(9) Where accused is police officer. Magistrate himself should hold enquiry or direct local enquiry by a subordinate Magistrate. (1897) 20 Mad 387 (388)

Section 202 — Note 16 (contd.)
(DB) ** AIR 1919 Pat 495 (495) = 20 Cri LJ 896 (DB) ** 1968 Cri LJ 1246 (1251) = 33 Cut LT 1172 = ILR (1967) Cut 805.

(10) Complaints against police-officers should be handled with the greatest care. In such cases the complainant should be given every facility to prove his allegations. AIR 1926 Mad 288 (288) = 27 Cri L Jour 107.

(11) Representation to I. G. P. and D. C. against a Police S. I. — Latter submitting his report on the representations to D. S. P. — Representations held did not amount to complaint nor the report was one under Section 202 but was of an administrative nature. AIR 1951 Punj 135 (136) = ILR (1951) Punj 272 = 52 Cri LJ 1511 (DB).

(12) It is not desirable that a complaint against a person who is alleged to have acted in collusion with the police should be handed over to the police for investigation. AIR 1933 Sind 339 (340) = 35 Cri L Jour 24 (DB).

(13) It is not illegal to send a complaint, in which the bona fides of the police are impugned, for inquiry or investigation by a police-officer. AIR 1940 Lah 208 (209) = 41 Cri L Jour 618.

(14) The report called for under this section should form part of the record and as such a copy thereof can be given to the accused. AIR 1942 Rang 51 (51) ** (1887) 14 Cal 141 (144) (DB) ** AIR 1931 Mad 429 (429) = 32 Cri L Jour 689.

(15) The report should be submitted to the same Magistrate who had ordered the investigation and not to another Magistrate. AIR 1918 Lah 123 (124) = 19 Cri L Jour 436.

(16) A report called for under this section is absolutely privileged. AIR 1937 All 90 (94, 96) (DB).

(17) Complaint under Section 420, Penal Code, filed before Magistrate — Sub-Inspector directed to investigate — Pending investigation complainant filing protest petition — Petition treated as fresh complaint and complainant examined — Complainant filing another petition complaining that investigating officer had not examined any witness — Magistrate taking cognizance of case under Sec. 420, I. P. C. against accused and ordering withdrawal of investigation by police — **Held,** that in peculiar circumstances of case police investigation should be allowed to continue and order summoning accused be quashed. AIR 1956 Pat 528 (530) = 1956 Cri L Jour 1425 (DB).

(18) Where a Magistrate directs police inquiry under this section the police are bound to make report and they can also take separate action under Section 145, if they like. AIR 1959 Manipur 30 (30) = 1959 Cri L Jour 742.

17. "Such other person." — (1) A master is not a 'fit person' to be directed to investigate and make a report in a case of complaint against his servant. AIR 1951 Cal 733 (734) = 16 Cri LJ 320 (DB) ** (1905) 10 Cal WN xxxxviii (xxxix) (DB).

(2) It is illegal for a Magistrate to call upon the accused himself to make a report and act upon it. (1887) 14 Cal 141 (146) (DB) ** 1898 Rat 954 (954, 955) (DB) ** ('99) 3 Cal WN 17 (18) (DB) ** AIR 1920 Pat 655 (656) = 21 Cri LJ 621 (DB).

[See also AIR 1940 Pat 97 (100) = 47 Cri LJ 349.]

[But see (1906) 3 Cri LJ 327 (328) = 28 All 421.]

18. Examination of the complainant — Proviso. — (1) The intention in enacting this proviso is that the Magistrate should thoroughly understand the case before he decides to postpone the issue of process and embarks upon the unusual procedure of getting the matter investigated by some other agency. AIR 1942 Pesh 61 (62) = 43 Cri LJ 803.

(2) A complaint cannot be sent for inquiry or investigation unless the complainant has been examined on oath. AIR 1942 Pesh 61 (62) = 43 Cri LJ 803 ** AIR 1955 Mad 129 (135) = 1955 Cri L Jour 514 ** AIR 1948 Mad 424 (425) = ILR (1949) Mad 130 = 49 Cri L Jour 554 ** AIR 1924 All 664 (664) = 26 Cri L Jour 176 ** (1887) 12 Bom 161 (163) (DB) ** (1901) 28 Cal 652 (661) (FB) ** (1902) 29 Cal 410 (413) (DB) ** AIR 1929 Pat 473 (475) = 30 Cri L Jour 1056 (FB) ** AIR 1962 All 456 (458, 459, 460) = 1962 (2) Cri LJ 454.

(3) A complainant, who was not examined, cannot be prosecuted with regard to his complaint, dismissed on a report. (1911) 12 Cri L Jour 539 (541) = 1912 Pun Re (Cr) No. 2 ** 27 Cal 921 (924) (DB) ** (1903) 30 Cal 923 (925, 926) (DB) ** (1900) 4 Cal WN 305 (306) (DB) ** AIR 1935 All 745 (745) = 36 Cri LJ 860.

[But see AIR 1934 Pat 156 (157) = 35 Cri L Jour 1309.]

(4) A complaint cannot be dismissed under Section 203 merely on the basis of report without examining the complainant on oath. AIR 1942 Pesh 61 (62) = 43 Cri L Jour 803 ** AIR 1969 Orissa 149 (152) = 1969 Cri LJ 926.

(5) The Magistrate can take cognizance of an offence on the basis of a report by a police-officer submitted under this section and in such a case, cognizance will be taken under Clause (b) and not Clause (c) of Section 190. AIR 1943 Oudh 226 (227) = 44 Cri L Jour 492.

(6) A Magistrate to whom a complaint is made may simply refer the complaint to the police for investigation under Chapter XIV. (1949) 53 Cal WN 653 (661) ** AIR 1956 Cal 76 (77) = 1956 Cri L Jour 505 (2) (DB) ** AIR 1957

Section 202 — Note 18 (contd.)
Andh Pra 864 (865) ** AIR 1953 Assam 1 (7) = ILR (1952) 4 Assam 458 = 1953 Cri LJ 168 (DB) ** AIR 1950 Cal 99 (100) = 51 Cri L Jour 457 (DB). [See also **AIR 1951 SC 207 (210) = 1951 SCR 312 = 52 Cri L Jour 775.**]

(7) If the complainant is already examined under Section 200, his second examination is not necessary before fresh enquiry is ordered on his naraji petition. AIR 1967 Cal 114 (116) = 1967 Cri LJ 333.

(8) A Presidency Magistrate can totally dispense with the examination of the complainant before directing an inquiry or investigation under this section. AIR 1948 Mad 424 (424) = ILR (1949) Mad 130 = 49 Cri L Jour 554.

(9) The non-compliance with the requirements of sub-section (1) of this section before directing an investigation by the police does not deprive the Presidency Magistrate of his jurisdiction to try the accused. **AIR 1950 PC 26 (27) = 77 Ind App 62 = ILR (1950) Bom 470 = 51 Cri L Jour 644.**

(10) Where the Magistrate directs the complaint to the police for investigation under Section 156 (3) and the police finds the case to be false and reports accordingly, the Magistrate has nothing further to do in the chain of that proceeding and he cannot thereafter entertain naraji petition filed by the complainant. AIR 1956 Cal 76 (78) = 1956 Cri L Jour 505 (2) (DB).

(11) Report of the Magistrate who examines the complainant of a cognizable offence and directs the police to investigate and report, falls under Sections 202 and 203 and not under S. 156 (3) and hence the procedure to be followed for its trial would be governed by Section 252. AIR 1969 Mys 184 (185) = 1969 Cri LJ 754 ** **AIR 1964 SC 1541 = 1964 (2) Cri LJ 468** ** 1969 Cri LJ 1458 (1459) = 1969 Mad LW (Cri) 86 ** (1966) 7 Law Rep 738 (741) = (1966) 2 Mys LJ 89 ** AIR 1964 Pat 538 (540) = 1964 (2) Cri LJ 707 ** (1963) 65 Pun LR 667 (672).

[See however AIR 1966 Pat 473 (477) = 1967 Cri LJ 111 (DB).]

(12) Non-examination of the munsif complaining of forgery and want of enquiry under this section is a mere irregularity not affecting the trial. AIR 1968 Pat 88 (90) = 1968 Cri LJ 352 ** AIR 1967 Punj 244 (250) = 1967 Cri LJ 909.

19. Powers of the inquiring or investigating officer. — (1) A Magistrate inquiring into a case can exercise all the powers of a Magistrate, including the power of taking evidence of witnesses on oath. AIR 1930 All 259 (259, 260) = 31 Cri L Jour 998.

(2) The provisions of this section can be invoked by the Special Judge for curing a defect or illegality of investigation. AIR 1962 Bom 205 (213) = 1962 (2) Cri LJ 326 (DB).

(3) A police officer making an investigation under this section has all the powers conferred on him under Chapter XIV. (1907) 5 Cri L Jour 83 (84) = 33 Cal 1282 (DB).

(4) 'Any other person' directed to make an investigation has all the powers of an officer-in-charge of the police station except the power of arrest without warrant. AIR 1928 Bom 290 (291) = 29 Cri L Jour 975 (DB).

(5) The power to arrest without warrant remains with the Magistrate and a police-officer. AIR 1932 Pat 72 (78) = 33 Cri L Jour 349.

(6) Expression of opinion by Investigating Officer in the report submitted by him under this section does not amount to contempt. AIR 1961 Mys 12 (18) = 1961 (1) Cri LJ 111 (DB).

(7) If the police report regarding the private complaint of a cognizable offence shows that the complaint is true, the Magistrate can direct the police to submit charge-sheet. ILR (1959) 9 Raj 671 (673).

20. Revision. — (1) When a Magistrate does not act as he should under this section, the aggrieved party is entitled to apply in revision. AIR 1938 Mad 879 (879) = 39 Cri LJ 984.

(2) If any irregularity in procedure under this section has not resulted in miscarriage of justice, the High Court will not make any order in revision. AIR 1918 Pat 350 (351) = 19 Cri L Jour 263.

(3) The High Court will not interfere in Revision to quash the proceedings at the initial stage where on the material then before the Court a prima facie case is made out against the petitioner. AIR 1968 Bom 39 (43) = 1968 Cri LJ 27.

(4) Instances of irregularities where the High Court will not interfere unless there is a failure of justice —

(a) The omission of the Magistrate to record reasons for postponing issue of process. AIR 1917 All 91 (92) = 18 Cri L Jour 765 ** AIR 1931 Bom 524 (525) = 33 Cri L Jour 72 (DB) ** AIR 1929 Cal 176 (177) = 30 Cri L Jour 705 (DB) ** (1902) 25 Mad 546 (548) (DB) ** AIR 1931 Sind 113 (113, 114) = 32 Cri L Jour 926 (DB).

(b) Requiring the accused to attend at the inquiry or his examination thereat, and allowing of cross-examination and arguments inter partes. AIR 1941 Pat 419 (420, 421) = 42 Cri L Jour 332 ** AIR 1928 Lah 97 (97) = 29 Cri L Jour 39 ** AIR 1931 Pat 302 (303, 304) = 32 Cri L Jour 1023 ** AIR 1926

203. Dismissal of complaint.—The Magistrate before whom a complaint is made or to whom it has been transferred, may dismiss the complaint, if, °[after considering the statement on oath (if any) of the complainant †[and the witnesses] and the result of ‡[the investigation] or inquiry §[(if any)] under section 202], there is in his judgment no sufficient ground for proceeding. In such cases he shall briefly record his reasons for so doing.

[1882—S. 203; 1872—S. 147, para. 1; 1861—Ss. 67, 180.]

[°] Substituted for the words "after examining the complainant and considering the result of the investigation (if any) made under S. 202" by the Code of Criminal Procedure (Amendment) Act (XVIII of 1923), S. 55.

[†] Inserted by the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), S. 27 (1-1-1956).

[‡] Substituted for the words "any investigation" by the Code of Criminal Procedure (Amendment) Act (II of 1926), S. 5.

[§] The words and brackets, "(if any)" were inserted, ibid.

Section 202 — Note 20 (contd.)

Sind 188 (189) = 27 Cri L Jour 494 (DB).

(c) Omission to examine the complainant under the proviso. AIR 1953 Orissa 83 (84) = 1953 Cri L Jour 655 ** AIR 1945 Oudh 102 (103) = 46 Cri L Jour 587 ** AIR 1935 All 883 (884) = 36 Cri L Jour 1035 ** AIR 1914 Sind 159 (159) = 15 Cri L Jour 662 ** AIR 1929 Pat 473 (475, 476) = 30 Cri L Jour 1056 (FB).

[But see AIR 1942 Pesh 61 (62) = 43 Cri L Jour 893 ** AIR 1948 Mad 424 (426) = ILR (1949) Mad 130 = 49 Cri L Jour 554 ** AIR 1919 Pat 319 (320) = 20 Cri L Jour 413.]

(d) Mere inadequacy of the inquiry; the High Court will not interfere with the details of an inquiry or investigation. AIR 1930 Pat 30 (32) = 30 Cri L Jour 554.

(e) Where the Magistrate has exercised his discretion under this section to postpone the issue of process. AIR 1923 Lah 663 (664) = 26 Cri L Jour 167.

(f) Where the Magistrate does not record the statements of witnesses examined before him, but relies on the statements made before the police. AIR 1925 Pat 584 (584) = 26 Cri L Jour 1346.

(5) Where the inquiry is made by the police in a perfunctory manner, and the report is considered by the Magistrate also in a perfunctory manner, the High Court will interfere. AIR 1918 Pat 350 (351) = 19 Cri L Jour 263.

(6) The Magistrate not being satisfied with the truth of the complaint directing enquiry but on getting the enquiry report which negatived the truth of prosecution story, issuing process. Such action is irregular and would be quashed in revision. (1968) 34 Cut LT 411 (415).

(7) The High Court would not interfere in revision where during enquiry of a complaint under this section, the Magistrate relied on documents produced by the accused and dismissed the complaint specially when there was enough of other material to show that no offence was committed. 1968 Cri LJ 264 (265) (Mys).

(8) If the inquiry has taken the shape of a regular trial and the report of the inquiring officer shows that he has taken upon himself the function of a trying Magistrate and has written a judgment of acquittal, the High Court will be justified in interfering with such order of dismissal. AIR 1961 Pat 120 (124, 125, 126) = 1960 BLJR 614 = 1961 (1) Cr LJ 417 ** AIR 1967 Pat 122 (124) = 1966 BLJR 992 = 1967 Cri LJ 508.

SECTION 203 — SYNOPSIS

1. Scope.
1A. Taking cognizance.
2. "May dismiss the complaint."
3. Magistrate.
4. Orders on complaint not to be delayed.
5. "Sufficient ground for proceeding."
6. Who can dismiss a complaint.
7. Effect of dismissal.
8. Dismissal without examining complainant and witnesses.
9. "And the result of the investigation or inquiry (if any) under Section 202."
10. "Shall record his reasons for so doing."
10A. Second complaint.
10B. Revival of complaint.
11. Further enquiry after dismissal of complaint.
12. Revision against order under S. 203.

1. Scope. — (1) This section gives large powers to a Magistrate to dismiss a complaint 'without issuing a process.'

Section 203 — Note 1 (contd.)
(1887) 14 Cal 141 (144) (DB) ** (1871) 6 Mad HCR (App) xv (xv) ** 1968 Cri LJ 127 (129) (Pat) ** 1963 Ker LT 478 = 1963 Ker LJ 397 (398) ** 1962 (2) Cr LJ 446 (446) (Patna).

(2) This section does not apply where process 'has been issued'. 1891 Rat 544 (545) (DB) ** (1897) 20 Mad 388 (388) (DB) ** AIR 1934 All 51 (52) = 35 Cri LJ 418.

(3) This section does not apply where the proceeding is not one which is initiated on a 'complaint.' AIR 1951 Hyd 11 (17) = ILR (1951) Hyd 1 = 52 Cri LJ 1333 (FB) ** AIR 1932 Cal 287 (287) = 33 Cri LJ 406 (DB) ** AIR 1931 Lah 185 (185) = 32 Cri LJ 21 ** (1902) 4 Bom LR 609 (611) (DB) ** AIR 1939 Oudh 15 (15) = 40 Cri LJ 33.

(4) The materials on which the Magistrate is to act are expressly limited by the section to the statement on oath (if any) of the complainant, and the result of any investigation or inquiry under Section 202. AIR 1944 Nag 318 (320) = 46 Cri LJ 195 ** AIR 1958 Bom 335 (341) = ILR (1958) Bom 1242 = 1958 Cri LJ 1134 (DB) ** 1958-2 Andh WR 695 (698) ** AIR 1932 Cal 697 (697) = 33 Cri LJ 636 (DB) ** (1889) 13 Bom 600 (603) (DB) ** **AIR 1962 SC 876 (899, 902) = 1962 (1) Cri LJ 770 = (1964) 1 SCJ 455** ** AIR 1969 Orissa 149 (152) = 1969 Cr LJ 926 = 34 Cut LT 1237 ** ILR (1967) Cut 73 (81) ** AIR 1967 Orissa 62 (64) = 1967 Cri LJ 637 = 33 Cut LT 38.

(5) Magistrate should not consider any material not provided for in the section in dismissing a complaint. (1907) 6 Cri LJ 85 (85, 86) (DB) (Bom) ** AIR 1958 Mad 523 (526) = 1958 Cri LJ 1323 ** AIR 1924 Cal 813 (814) = 25 Cri LJ 941 (DB) ** AIR 1933 Sind 395 (395) = 35 Cri LJ 222 (DB) ** AIR 1930 Rang 226 (227) = 31 Cri LJ 1064 ** (1913) 22 Ind Cas 165 (166) = 15 Cri LJ 21 (All) ** (1886) 9 All 85 (87) ** 27 Cal 921 (924) (DB) ** AIR 1920 Pat 655 (656) = 21 Cri LJ 621 (DB) ** AIR 1969 Orissa 149 (152) = 1969 Cr LJ 926 = 34 Cut LT 1237 ** AIR 1967 Pat 361 (363) = 1967 Cri LJ 1562 ** ILR (1967) Cut 73 (81, 82) ** AIR 1966 Orissa 64 (65) = 1966 Cri LJ 428 = 31 Cut LT 1100.

(6) Where the complainant has obtained an order for the seizure of the opposite party's books and for restraining him from operating on his banking account, the opposite party can appear and ask that such order should be vacated. AIR 1932 Cal 697 (697, 698) = 33 Cri LJ 636 (DB).

(7) This section does not apply to complaints under the Merchant Shipping Act (21 of 1923), which cannot therefore be dismissed under this section. AIR 1933 Cal 647 (647) = 35 Cri LJ 25 (DB).

1A. Taking cognizance. — (1) As to when cognizance is taken of an offence depends on facts and circumstances of each case — Before it can be said that Magistrate has taken cognizance of offence under Section 190 (1) (a), he must not only have applied his mind to contents of complaint-petition but he must have done so for purposes of proceeding under Sections 200 to 204. AIR 1966 Pat 473 (479) = 1967 Cri LJ 111 = ILR 46 Pat 138 ** (1963) 2 Cr LJ 464 (2) (465)

(2) Recording sworn statement of complainant amounts to taking cognizance of the offence. AIR 1967 Mys 243 (245, 246) = 1967 Cri LJ 1667 = (1967) 2 Mys LJ 105.

(3) Cognizable offence — Complaint examined on oath — Magistrate ordering police to investigate and report, thereafter — Report falls under Sections 202 and 203 and not under Section 156 (3). AIR 1969 Mys 184 (185) = 1969 Cr LJ 54 = (1968) 2 Mys LJ 604.

2. "May dismiss the complaint." — (1) Where a complaint is made to a Magistrate he has either to dismiss it under this section or issue process under Section 204. (1886) 13 Cal 334 (336) (DB) ** AIR 1938 Sind 192 (192) = 39 Cri LJ 966 ** AIR 1927 Mad 19 (20) = 28 Cri LJ 129 (DB) ** AIR 1930 Rang 226 (227) = 31 Cri LJ 1064 ** ILR (1967) Cut 73 (81).

(2) A dismissal of complaint can be made only under Section 203 and it would be inappropriate to dismiss the complaint even in part when the enquiry under Section 202 is pending. 1966-2 Mad LJ 518 = 1966 Mad LJ (Cri) 844.

(3) The Magistrate cannot direct the police to submit a charge-sheet to some other Magistrate. AIR 1928 Cal 24 (25) = 28 Cri LJ 577 (DB).

(4) The Magistrate cannot submit the complaint to the District Magistrate after disbelieving the complaint. (1902) 6 Cal WN 843 (844) (DB).

(5) The Magistrate cannot order the issue of a search warrant after holding that no criminal case would lie. (1936) 164 Ind Cas 521 (521, 522) = 37 Cri LJ 991 (DB) (Cal).

(6) Where a Magistrate dismisses a complaint under this section there must be a specific order to that effect. (1969) 12 Suth WR (Cr) 53 (54) = 3 Beng LR (App) 151 (DB) ** AIR 1928 Bom 290 (291) = 29 Cri LJ 975 (DB).

[See also ILR (1948) 1 Cal 407 (408).]

(7) The order dismissing a complaint must be a judicial order. AIR 1939 Sind 208 (208) = 40 Cri LJ 807 ** AIR 1938 Sind 192 (192) = 39 Cri LJ 966.

(8) Under Section 203 the Magistrate has to give his opinion on the material to be considered but he is not bound to accept the result of the investigation or enquiry conducted under Section 202. (1966) 8 Orissa JD 101 = 32 Cut LT 504 (509).

Section 203 — Note 2 (contd.)

(9) The following orders have been held to be dismissals of complaints under this section:

(a) An order refusing to issue process on a complaint. (1902) 29 Cal 457 (459) (DB) ** AIR 1948 All 46 (46) = ILR (1947) All 464 ** AIR 1923 Cal 198 (199) = 24 Cri LJ 333 (DB).

[But see (1907) 11 Cal WN ccxviii (ccxxix) (DB) ** 27 Cal 658 (660) (DB).]

(b) An endorsement on a complaint, "Enter as false — No prosecution". AIR 1918 Pat 270 (271) = 19 Cri LJ 874 (DB).

(c) An order staying proceedings against some accused while proceeding with the case against others. (1898) 2 Cal WN 290 (292) ** AIR 1955 Andhra 197 (199) = 1955 Cri LJ 1288.

(d) An order holding the complaint to be false and calling upon the complainant to show cause against his prosecution. AIR 1917 Pat 15 (16) = 18 Cri LJ 52 (DB).

(e) Refusal by a Magistrate to grant leave under Section 199. AIR 1954 Sau 155 (156) = 1955 Cri LJ 74 (DB) ** AIR 1964 Bom 191 (193, 194) = 1964 (2) Cri LJ 272 (2) = 66 Bom LR 28.

(10) The following orders have been held not to be dismissals of complaints under this section:

(a) Where a charge is made to the police and is repeated in a complaint before the Magistrate and the Magistrate passes a departmental order to the police, "show as false" but no order is passed on the complaint itself. (1879) 4 Cal LR 413 (416) (DB) ** (1879) 4 Cal LR 534 (536, 537) (DB).

(b) A direction to the police after a complaint was referred to them that the complaint may be struck off the police file. (1911) 12 Cri LJ 463 (464) (DB) (Mad).

(c) An order expunging a charge from the list of reported offences. (1881) 5 Bom 405 (407) (DB).

(d) An endorsement on the complaint, "Notice is discharged." AIR 1928 Bom 290 (291) = 29 Cri LJ 975 (DB).

(e) A refusal to take cognizance of an offence for want of sanction (now complaint) under S. 195. (1901) 24 Mad 337 (339) (DB).

(f) An order withdrawing a process once issued. (1907) 6 Cri LJ 367 (369) (DB) (Cal).

(g) An order for the issue of summary "C". AIR 1939 Sind 208 (208) = 40 Cri LJ 807 ** AIR 1938 Sind 192 (192) = 39 Cri LJ 966.

(11) When a complaint is taken on file and dealt with there is no question of Section 203 coming into operation. An implied order of dismissal is unknown to the Code. AIR 1959 Andh Pra 50 (50) = 1959 Cri LJ 26.

(12) Magistrate should assess the evidence at every stage when he has to pass an order though the nature of assessment should necessarily vary on account of presence or absence of the accused and the complainant. He should take note only the material specifically mentioned in the section to find out whether the case is a true one or not. 1966 MLJ (Cri) 477 = (1966) 1 Mad LJ 556 (557, 558).

(13) The stage when a complaint should be dismissed is before the trial begins on the complaint. 1959-2 Andh WR 236 (237) ** AIR 1960 Andh Pra 455 (455) = (1959) 2 Andh WR 236 = 1960 Cr LJ 1184.

(14) In a summons case the Court can either pass an order of dismissal under this section or of an acquittal under Section 245; it cannot pass an order of discharge. AIR 1958 Mad 197 (198) = 1958 Cri LJ 528.

(15) Where upon a complaint, process has been issued and witnesses examined, but upon the default of the complainant the complaint has been dismissed, the dismissal is not under Section 203 but under Section 259. AIR 1958 Mad 523 (526) = 1958 Cri LJ 1323.

(16) Summons case instituted on complaint — Case taken on file and process issued — Dismissal of complaint subsequently is contrary to law. 1963 Ker LT 478 = 1963 Ker LJ 397 (398).

(17) When even before relying on documents produced by accused, Magistrate had come to conclusion on ample material that complaint or sworn statement of complainant disclosed no offence no interference was necessary with his order dismissing complaint. 1968 Cr LJ 264 (265) (Mys).

(18) Complaint about non-cognizable offence against persons not traceable — Magistrate could dismiss the complaint, if after investigation by police, no such person who could be proceeded against could be found. AIR 1969 Guj 14 (18) = 1969 Cri LJ 63 = 9 Guj LR 925.

(19) Magistrate dismissing private complaint after report of the police that the complaint was false without issuing process to the accused requested by the petitioner — Order cannot be sustained. AIR 1968 Mys 210 (210, 211) = 1968-1 Mys LJ 382 = 1968 Mad LJ (Cri) 294.

3. Magistrate. — (1) The Code does not apply to proceedings before Village Magistrate and a dismissal by a Village Magistrate of such a proceeding is not dismissal of a complaint under this section. AIR 1927 Mad 695 (696) = 28 Cri LJ 507.

Section 203 (contd.)

4. Orders on complaint not to be delayed. — (1) There is nothing in the Code to show that the Magistrate must, 'at once,' consider the complaint. AIR 1917 Pat 141 (142) = 19 Cri LJ 278.

(2) A Magistrate must pass orders as expeditiously as possible. AIR 1950 East Punj 367 (368) ** AIR 1917 All 95 (95) = 18 Cri LJ 271.

(3) Counter complaints — Disposal of one may be postponed pending disposal of other. AIR 1922 Pat 618 (618) = 24 Cri LJ 120.

5. "Sufficient ground for proceeding." — (1) Where the facts alleged in the complaint constitute an offence and there are no circumstances apparent in the examination of the complainant justifying the Court in concluding that the complaint is false, there would be a 'prima facie' case for proceeding. (1908) 8 Cri LJ 342 (343) = 11 Oudh Cas 261 ** (1913) 21 Ind Cas 171 (171, 172) = 14 Cri LJ 57 (DB) (Cal) ** AIR 1916 Mad 713 (713) = 16 Cri LJ 794.

(2) The judgment which the Magistrate has to form under Section 203 is whether or not there is sufficient ground for proceeding. He must apply his mind to materials on which he has to form his judgment only on judicial consideration. **AIR 1960 SC 1113 (1117) = 1960 Cri LJ 1499 = (1961) 1 SCR 1** ** AIR 1967 Orissa 62 (64) = 1967 Cri LJ 637 = 33 Cut LT 38 ** AIR 1966 Orissa 64 (65) = 1966 Cri LJ 428 = 31 Cut LT 1100.

(3) Where the allegations contained in the complaint and in the complainant's oral statement disclose no criminal offence there can be no sufficient ground for proceeding. AIR 1937 Mad 480 (481) = 38 Cri LJ 581 ** (1887) 14 Cal 141 (146) (DB) ** AIR 1928 Lah 945 (946) = 30 Cri LJ 162 ** AIR 1933 Rang 297 (298) = 35 Cri LJ 52 ** AIR 1944 Nag 318 (320) = 46 Cri LJ 195 ** 1963 (2) Cri LJ 100 (101) (Manipur).

(4) A Magistrate can dismiss a complaint if he considers with reason that the most serious allegations of grave offences are falsely interlarded with complaints of a lesser kind. AIR 1944 Nag 318 (319) = 46 Cri LJ 195 ** 1966 (1) Mad LJ 556 (557) = 1966 Mad LW (Cr) 72.

(5) A complaint should not be dismissed merely because there has been unexplained delay in filing it. AIR 1950 East Punj 18 (19) = 51 Cri LJ 344.

(6) Delay by itself is no ground for throwing out a complaint when there is plausible explanation for the same. 1965 All WR (HC) 352 = 1966 All Cr R 213 (216) ** AIR 1967 Cal 203 (204) = 1964 Cal LJ 11 (14).

(7) Unreasonable delay in filing a complaint under Section 211, Penal Code is a sufficiently good reason for refusing to proceed with the complaint. AIR 1935 Rang 485 (487) = 7 Cri LJ 243.

(8) Where the complaint shows only a 'civil dispute' as to title or as to other civil claims, a Magistrate ought not to deal with them but should dismiss the complaint. AIR 1952 Pat 200 (201) = 1952 Cri LJ 624 ** AIR 1959 Mys 119 (120) = ILR (1958) Mys 354 = 1959 Cri LJ 620 ** AIR 1952 Pat 154 (155) = 1952 Cri LJ 473 ** AIR 1950 Assam 202 (207) (DB) ** AIR 1935 All 883 (884) = 36 Cri LJ 1035 ** AIR 1918 Bom 186 (187) = 19 Cri LJ 597 (DB) ** ILR (1962) Cut 830 (834) ** 1960 Mad WN 518 (519, 520).

[See **AIR 1956 SC 575 (582) = 1956 SCR 483 = 1956 Cri LJ 1116.**]

[See also AIR 1955 Tripura 35 (39) = 1955 Cri LJ 1636.]

(9) The Magistrate should thoroughly examine the complainant to see if any criminal offence is made out. AIR 1920 All 274 (275) = 42 Cri LJ 84 ** AIR 1921 Pat 85 (87) = 21 Cri LJ 519.

(10) If the allegations disclose a criminal offence, the complaint ought not to be dismissed even if a civil remedy is obtainable. AIR 1953 Mad 184 (184) = 1953 Cri LJ 433 ** AIR 1952 Ajmer 58 (59) = 1953 Cri LJ 149 ** AIR 1950 East Punj 18 (19) = 51 Cri LJ 344 ** AIR 1942 Mad 124 (124) ** 1962 (1) Cri LJ 649 (650) (Ker).

(11) Where the Magistrate neither took any evidence nor directed any preliminary inquiry into the matter by the police and merely after issuing notice to the parties dismissed the complaint holding that it was purely a civil matter it was held that this finding of the Magistrate necessarily involved that no offence appeared to have been committed by the accused, but in the absence of any evidence or inquiry there could be no basis for the conclusion that there was no crime involved. AIR 1956 Bom 261 (261, 262) = 1956 Cri LJ 502 (2).

(12) A Magistrate cannot dismiss a case off-hand unless a prima facie case of any kind is not made out. AIR 1923 Lah 663 (664) = 26 Cri LJ 167 ** AIR 1924 Pat 379 (380) = 24 Cri LJ 316.

(13) Complaint about non-cognizable offence against persons not traceable — Magistrate bound to cause enquiry by Police before dismissing the complaint. AIR 1969 Guj 14 (18) = 1969 Cri LJ 63 = 9 Guj LR 925.

(14) Where a prima facie case is made out, the following are not sufficient grounds on which a complaint can be dismissed:

(a) The fact that besides the complainant other persons could complain against an accused. AIR 1927 All 69 (70) = 27 Cri LJ 1104.

(b) The fact that a libellous publication complained of is a mere re-

Section 203 — Note 5 (contd.)

publication. (1888) 12 Bom 167 (168) (DB).

(c) The withdrawal of the complaint by the complainant in a warrant case which is non-compoundable. (1889) 13 Bom 600 (603) (DB).

(d) The absence of a personal injury to the complainant and the complainant being a mere tool of another person. (1889) 13 Bom 590 (598) (FB).

(e) The fact that the complainant had no personal knowledge of the facts of the complaint. 1893 Rat 669 (669) (DB).

(f) The fact that there is no possibility of a conviction. AIR 1926 Cal 795 (796, 797) = 27 Cri LJ 788 (DB) ** (1902) 29 Cal 410 (411, 412) (DB) ** AIR 1919 Cal 78 (79) = 20 Cri LJ 175 (DB).

(g) The fear that the entertainment of the complaint would encourage hundreds of such complainants and would stir up old religious feelings of animosity between communities. 1891 Rat 562 (562, 563) (DB).

(h) Reasons arising out of the Magistrate's own personal knowledge of the affair, or conjecture, or out of knowledge acquired prior to the making of the complaint. (1907) 6 Cri LJ 85 (85, 86) (DB) (Bom).

(i) The fact that the result of the proceeding would be undesirable or the motive or conduct of the complainant is discreditable or malicious. AIR 1916 Mad 303 (304) = 14 Cri LJ 633 (634) ** (1889) 13 Bom 600 (604) (DB) ** AIR 1926 Sind 194 (198) = 27 Cri LJ 711 ** 1891 Rat 549 (550) (DB) ** (1889) 13 Bom 590 (598) (FB) ** AIR 1934 Nag 135 (136) = 35 Cri LJ 1215.

(j) The fact that the previous complaint has been dismissed under Section 259. AIR 1914 Sind 44 (44) = 16 Cri LJ 174.

(k) The fact that there was some possibility that the accused might have some defence to the complaint if true. AIR 1940 Pat 179 (180) = 41 Cri LJ 504.

(l) Pendency of civil suit is no ground for dismissal of a criminal complaint. 1963 (2) Cri LJ 215 (216) = 1963 Ker LJ 210.

(m) Fact that there was police challan against the accused could not be held to be sufficient for not proceeding with earlier complaint in view of provisions of Section 190 (1). AIR 1960 Bom 116 (117) = 1959 Nag LJ 515 = 1960 Cri LJ 326.

(15) A complainant has a right to an adjudication on the point whether there is a sufficient ground for proceeding before his complaint is dismissed. AIR 1951 Pat 449 (449, 450) ** 27 Cal 126 (130, 131) (DB) ** AIR 1916 Mad 303 (303) = 14 Cri LJ 633.

(16) The decision whether there is 'sufficient ground' for dismissing a complaint must be reached by the exercise of discretion based on judicial considerations. AIR 1944 Nag 318 (320) = 46 Cri LJ 195 ** AIR 1916 Mad 303 (303) = 14 Cri LJ 633 (634) ** AIR 1926 Cal 795 (797) = 27 Cri LJ 788 (DB) ** AIR 1939 Sind 208 (208) = 40 Cri LJ 807.

(17) A Magistrate should not dismiss a complaint against a police-officer merely because the Magistrate thinks that it will be in the interests of the parties concerned to take the matter quietly and not further the bitterness that already exists. AIR 1950 East Punj 367 (368).

(18) Where a Magistrate has after due consideration of the complainant's statement and the investigation report dismissed a complaint in respect of an offence under Section 302, Penal Code, as against some of the accused, the complainant who is a private person would have no right to insist upon an inquiry and trial of those accused. AIR 1948 Mad 230 (231) = 49 Cri LJ 459.

[See also 1958-2 Andh WR 695 (698).]

(19) It is only in very rare cases that a Court will be justified in throwing out a complaint without giving an opportunity to the complainant to substantiate his allegations; but in certain cases it becomes the duty of the Court to protect the accused from unnecessary harassment and worry, and prevent an abuse of the process of the Court. AIR 1939 All 602 (605) = 40 Cri LJ 917 ** AIR 1953 Cal 689 (689) = 1953 Cri LJ 1592.

(20) In order to satisfy himself that there is sufficient ground for proceeding the Magistrate is entitled to consider the evidence taken by him or recorded in an enquiry under Section 202, on statements made in an investigation under that section as the case may be. He is not entitled to rely upon any material besides this. **AIR 1963 SC 1430 (1434, 1435) = (1964) 1 SCR 639 = (1963) (2) Cri LJ 397.**

(21) The accused has no right to be heard at the stage when the complaint is under consideration. AIR 1949 Pat 36 (38) = 49 Cri LJ 599 ** AIR 1967 Patna 361 (363) = 1967 Cri LJ 1562 ** AIR 1966 Orissa 64 (65) = 1966 Cri LJ 428 = 31 Cut LT 1100.

(22) Magistrate has power to accept plea of self-defence supported by report of inquiry officer and statement of witnesses and to dismiss complaint without issue of process. **AIR 1960 SC 1113 (1115, 1116) = 1960 Cri LJ 1499. (AIR 1958 Bom 335, Reversed.).**

(23) Where the Magistrate has ordered an enquiry under Section 202 by another Magistrate, he cannot consider statements

Section 203 — Note 5 (contd.)

recorded during investigation by police or evidence adduced before him during enquiry arising out of another complaint. If complaint is dismissed on basis of such extraneous matter, proceedings would be vitiated. **AIR 1963 SC 1430 (1434, 1435) = 1963 (2) Cri LJ 397 = (1964) 1 SCR 639.**

6. Who can dismiss a complaint. — (1) Under this section a complaint may be dismissed by the Magistrate to whom it has been transferred. AIR 1936 Sind 146 (147) = 37 Cri LJ 1086 (DB) ** AIR 1926 Cal 470 (477) = 27 Cri LJ 385 (FB) ** AIR 1965 Pat 1 (3) = 1965 (1) Cri LJ 58 = 1964 BLJR 747 (FB).

(2) Magistrate taking cognizance of an offence on a complaint, or receiving the complaint when it is filed can pass an order under Section 203 or Section 204 in respect of that case, and his successor-in-office, either temporary or permanent, can also pass an order under those sections. AIR 1965 Pat 1 (3) = 1964 BLJR 747 = 1965 (1) Cr LJ 58 (FB).

(3) The Magistrate to whom a complaint is sent for transfer can dismiss a complaint under this section. AIR 1924 All 666 (666) = 25 Cri LJ 555.

(4) When one Magistrate has examined witnesses under Section 202 and believed them, and thereupon transfers the case to another Magistrate, the latter has no power to examine the same witnesses again and proceed to dismiss the complaint under this section. AIR 1937 Oudh 81 (82) = 37 Cri LJ 1128.

(5) Where a complaint is dismissed under this section and further inquiry is ordered under Section 436, the Magistrate before whom the complaint comes for such further inquiry can again dismiss it under this section. AIR 1938 Mad 112 (112) = 39 Cri LJ 281 ** AIR 1936 Sind 146 (147) = 37 Cri LJ 1086 (DB).

(6) Even if the enquiry under S. 202 is to be conducted by the Executive Magistrate he cannot finally dispose of the case under Section 203 or Section 204 but has to submit his report to the Magistrate who took cognizance and who alone is competent to issue process or dismiss the complaint. 1968 Cri LJ 1246 (1250) = 33 Cut LT 1172 = ILR (1967) Cut 805.

(7) Magistrate, transferring a complaint to another Magistrate, has no concern with the case unless it is retransferred to his file in due process of law. 1968 Cr LJ 1246 (1249) = 33 Cut LT 1172.

(8) Dismissal of complaint under Section 203 is essentially a dismissal on merits and could be ordered only where the Court has jurisdiction to hear it. AIR 1956 Sau 155 (156) = 1955 Cri LJ 74 (DB).

7. Effect of dismissal. — (1) A dismissal of a complaint after hearing the complainant and after considering the result of an investigation under Section 202 amounts to a legal determination of the complaint. (1902) 6 Cal WN 295 (296) (DB) ** (1878) 2 Cal LR 315 (316, 317 (DB) ** AIR 1962 Pat 316 (317) = 1962 (2) Cri LJ 206 = 1962 BLJR 221.

(2) Until a complaint is dismissed under this section or otherwise disposed of, no proceedings can be taken under Section 182 or Section 211, Penal Code. (1893) 15 All 336 (338) (DB) ** 1899 All WN 90 (91) ** (1899) 3 Cal WN 758 (759, 760) (DB) ** (1901) 5 Cal WN 254 (255) ** AIR 1929 Pat 92 (92) = 30 Cri LJ 545 ** (1906) 4 Cri LJ 68 (69) (DB) (Cal).

(3) Practice that complainant should not be tried under Section 211 till disposal of his case is merely rule of safety and not based on any statute — Practice cannot per se be ground for setting aside conviction under Section 211 before disposal of main case. AIR 1930 Pat 622 (623) = 31 Cri LJ 934 (DB).

(4) A mere dismissal under this section does not afford a ground for proceeding under Section 211, Penal Code. AIR 1941 Pat 419 (421) = 42 Cri LJ 332 ** AIR 1940 Pat 97 (99) = 41 Cri LJ 349 ** AIR 1927 All 107 (108) = 27 Cri LJ 1345 ** (1887) 10 Mad 232 (236) (FB).

(5) Complaint dismissed under Section 203 — Complainant proceeding in revision and summons issued to plaintiff — Suit for damages for malicious prosecution lies. (1964) 6 OJD 218 (220, 221).

(6) The complainant must be afforded an opportunity to prove his case before being prosecuted under Section 211 or Section 182, Penal Code. (1886) 8 All 38 (39) ** AIR 1926 Bom 284 (285, 286) = 27 Cri LJ 740 ** (1887) 14 Cal 707 (720) (FB) ** AIR 1933 Pat 499 (500) = 34 Cri LJ 1140.

[But see (1898) 22 Bom 596 (603) (DB).]

(7) Complainant having opportunity to prove his case — Complaint dismissed after hearing him and taking all steps prescribed by Code — Complainant cannot be said not to have been given opportunity of establishing truth of his complaint. (1902) 6 Cal WN 295 (297) (DB) ** AIR 1919 Pat 530 (531) = 20 Cri LJ 389 ** (1907) 5 Cri LJ 491 (492) = 1907 Pun Re (Cr) No. 2 ** (1910) 11 Cri LJ 338 (338) (DB) (Bom).

(8) Where the dismissal under this section is illegal for want of the examination of the complainant under Sec. 200, the complainant cannot be prosecuted for bringing a false charge. AIR 1924 Bom 321 (321) = 25 Cri LJ 960 (DB) ** AIR 1926 Bom 284 (285, 286) = 27 Cri LJ 740 (DB) ** AIR 1924 All 664 (664) = 26 Cri LJ 176.

(9) Where a complaint has been dismissed under this section, it cannot be said that it was ever on the file; a Dis-

Section 203 — Note 7 (contd.)

trict Magistrate has, therefore, no power under Section 436 to order that the complaint "should be restored to file." AIR 1938 Mad 112 (112) = 39 Cri L Jour 281.

(10) Where a complaint is dismissed under this section the accused cannot be convicted in the same proceedings unless the complaint is revived or the order of dismissal is set aside by a superior tribunal. (1949) 53 Cal WN 653 (661) (DB) ** ILR (1948) 1 Cal 407 (413).

(11) Complaint against 5 persons under various provisions of Penal Code — Four of accused persons discharged and case against fifth referred to Judicial II Class Magistrate (for enquiry under Section 202) — Procedure followed held not in accordance with law. 1965 Mad LJ (Cr) 124 = 1965 (2) Cri LJ 824 (2) (825) (Andh Pra).

8. Dismissal without examining complainant and witnesses. — (1) If there are any statements on oath of the complainant and witnesses, the Magistrate must consider them along with the result of the enquiry and then only he may dismiss the complaint if he finds that there is no sufficient ground to proceed. AIR 1958 Bom 335 (339) = ILR (1958) Bom 1242 = 1958 Cri LJ 1134 (DB) ** 1957 Cri LJ 673 (673) (Mad) ** AIR 1956 All 304 (304) = 1956 Cri LJ 569 (1) ** 1963 (2) Cri LJ 712 (713) (Cal) ** 1962 (2) Cr LJ 446 (446, 447).

[See also (1965) 1 Andh WR 78 (78).]

(2) The amended Code requires that the Magistrate dealing with a complaint under Section 203 should consider not only statement of the complainant, but also the statements of the witnesses at the inquiry. It is not within the competence of the Magistrate to delegate that duty in favour of the enquiring Magistrate and relieve himself of the responsibility of considering on his own account the statement of witnesses at the judicial enquiry. AIR 1957 Cal 383 (384) = 1957 Cri LJ 717.

(3) The "statement on oath" referred to in the section is the examination of the complainant under Section 200. AIR 1932 Sind 58 (58, 59) = 33 Cri LJ 33 (DB).

(4) Where the complainant is present but not examined under Section 200, the material on which the Court can say whether there is sufficient ground or not is not availed of by the Court, and consequently the Court cannot dismiss the complaint. AIR 1953 Tripura 1 (2) = 1953 Cri LJ 1463 ** AIR 1924 Bom 321 (321) (DB) ** (1903) 30 Cal 923 (925, 926) (DB) ** (1889) 13 Bom 590 (597) (FB) ** AIR 1919 Cal 78 (79) = 20 Cri LJ 175 (DB) ** AIR 1926 Cal 795 (797) = 27 Cri LJ 788 (DB) ** AIR 1921 Pat 205 (205) (DB) ** AIR 1923 Pat 539 (540) = 24 Cri LJ 845.

[But see AIR 1952 Pat 154 (155) = 1952 Cri LJ 473 ** AIR 1935 All 883 (884) = 36 Cri LJ 1035 (1035).]

(5) When the complainant is 'absent' on the dates on which the matter comes up for examination of the complainant, an order dismissing the complaint is justified. AIR 1928 Cal 569 (570) = 29 Cri LJ 798 (DB).

(6) There is no duty on the Magistrate to examine the witnesses of his own accord. AIR 1958 Bom 335 (339) = ILR (1958) Bom 1242 = 1958 Cri LJ 1134 (DB).

(7) The witnesses referred to in Section 203, are the witnesses mentioned in Section 200. AIR 1959 Mys 119 (120) = ILR (1958) Mys 354 = 1959 Cri LJ 620.

9. "And the result of the investigation or inquiry (if any) under Sec. 202". — (1) Where an inquiry is ordered under Section 202 and the complainant has witnesses to prove his case, he should be given an opportunity of proving his case before the complaint is dismissed. AIR 1925 Cal 1031 (1031) = 26 Cri L Jour 561 (DB) ** AIR 1956 All 304 (304) = 1956 Cri L Jour 569 (1) ** AIR 1916 Mad 639 (639) = 16 Cri L Jour 423.

[But see AIR 1958 Bom 335 (340) = ILR (1958) Bom 1242 = 1958 Cri L Jour 1134 (DB) ** AIR 1954 Trav-Co 136 (136) = 1954 Cri L Jour 218 ** AIR 1949 Mad 232 (233) = ILR (1949) Mad 601 = 50 Cri L Jour 256.]

(2) Where the inquiry ordered under Section 202 is found to have been insufficient, the Court of revision may set aside the dismissal of the complaint based on the result of such inquiry and may order a further inquiry. AIR 1951 Mys 127 (128) = 52 Cri L Jour 1531 ** AIR 1956 All 304 (304) = 1956 Cri L Jour 569 (1) ** AIR 1951 Sau 52 (53) = 52 Cri L Jour 818 (DB) ** AIR 1927 Bom 436 (436, 437) = 28 Cri L Jour 575 (DB).

(3) An order by a superior Court to an inferior Court to hold a further enquiry into a complaint which has been dismissed under Section 203 has acquired what may be called a technical meaning; it means a reconsideration of the complaint which has been dismissed. The nature of reconsideration will depend on the circumstances of each case. 1957 Cri L Jour 290 (291) (Pat).

(4) In complaints against police-officers and other Government officials the Magistrate should order an inquiry into the matter giving the complainant every opportunity to prove his allegations. AIR 1926 Mad 288 (288) = 27 Cri L Jour 107 ** AIR 1924 Oudh 174 (174) = 24 Cri L Jour 814 ** AIR 1920 All 303 (304) = 22 Cri L Jour 81.

[See also AIR 1968 Mys 210 (210, 211) = (1968) 1 Mys LJ 382 = 1968 Cr LJ 1089.]

Section 203 — Note 9 [contd.]

(5) Enquiry as a complaint against the police — Enquiring Magistrate allowing Prosecuting Inspector to file documents, to make suggestions to witnesses and advancing arguments on behalf of accused — Magistrate not confining himself to statements of complainant and the witnesses but indulging in irrelevant considerations — Order of dismissal under Section 203 was held not to be within scope of Section 203. AIR 1966 Orissa 64 (66) = 1966 Cri LJ 428 = 21 Cut LT 1100.

(6) Complaint against police officer under Ss. 330 and 331, Penal Code — Judicial Magistrate taking cognizance is not bound to send complaint for enquiry by Executive Magistrate — Judicial Magistrate himself can hold enquiry. 1968 Cr LJ 1246 (1249, 1251) = 33 Cut LT 1172 (Orissa).

(7) The words "if any" clearly show that this section empowers the Magistrate to dismiss a complaint without any investigation or inquiry under Sec. 202, if after examining the complainant he considers there is no sufficient reason for proceeding. AIR 1925 Pat 704 (705) = 26 Cri L Jour 921 (DB) ** AIR 1917 Pat 141 (142) = 19 Cri L Jour 228 ** AIR 1918 Pat 350 (350, 351) = 19 Cri L Jour 263.

[See however AIR 1954 Mad 889 (889) = 1954 Cri L Jour 1344.]

(8) Where on further inquiry being ordered into a complaint dismissed under this section, the case is sent to another Magistrate for disposal, he is entitled to act on the result of the inquiry or investigation ordered by the Magistrate who originally disposed of the case. AIR 1936 Sind 146 (147) = 37 Cri L Jour 1086 (DB) ** 1957 Cri L Jour 290 (291) (Pat).

(9) Section 203 no doubt gives wide powers to the Magistrate. The discretion given to him, has nonetheless, to be exercised judicially, and although he has a power to order an enquiry, it is he who has to judicially decide whether to proceed or not. AIR 1958 Bom 335 (339) = ILR (1958) Bom 1242 = 1958 Cri L Jour 1134 (DB).

(10) An order dismissing a complaint by a Magistrate is bad if there was no independent consideration of the report of the enquiring officer. AIR 1957 Cal 383 (384) = 1957 Cri L Jour 717.

(11) There is no obligation cast on the Magistrate to give an opportunity to the complainant to rebut the statement made in the police report. 1958-2 Andh WR 695 (698).

(12) Police report under Section 202 already before the Magistrate — Magistrate not justified in entrusting case again for enquiry and report to subordinate Magistrate — In such a case the Magistrate must consider under Sec. 203 the statement on oath of the complainant and satisfy himself whether there are grounds for proceeding further. 1961 (2) Cri LJ 502 (504) (Manipur).

(13) Where the Magistrate had not at all considered the report of Enquiring Officer under Section 202 and wrote his independent order ignoring the report altogether, case was remanded but, for deciding the question on merits or infirmities inherent in the evidence, adduced on behalf of complainant, the delay in filing the complaint or any improbabilities in the case. 1968 Cr LJ 127 (129) (Pat).

(14) Evidence in the enquiry — Enquiry Officer cannot allow accused (Person complained against) to cross-examine witnesses examined on side of complainant nor can he write a judgment of acquittal. AIR 1967 Pat 122 (123) = 1967 Cri LJ 508 = 1966 BLJR 992.

10. "Shall record his reasons for so doing". — (1) A Magistrate should record his reasons for dismissing a complaint under this section. AIR 1952 Vindh Pra 49 (51) = 1952 Cri L Jour 1196 ** AIR 1938 Mad 879 (889) = 39 Cri L Jour 984 ** (1912) 13 Cri L Jour 482 (483) = 40 Cal 41 (DB) ** AIR 1926 Pat 57 (57) = 26 Cri L Jour 1502 ** AIR 1968 Guj 210 (211) = 8 Guj LR 496 = 1968 Cr LJ 1171 ** 1968 Cr LJ 127 (129) (Pat) ** (1966) 8 Orissa JD 101 = 32 Cut LT 504 (508).

(2) Complaint referred for enquiry under Section 202 — Complaint dismissed under Section 203 after perusal of enquiry report — No reasons given both during reference of the complaint and during dismissal — Procedure is illegal. 1967 Cr LJ 1730 (1731, 1732) (Pat).

(3) The section is mandatory and the Magistrate must make it apparent in his order that he has not omitted to apply his mind to the facts before he made the order. AIR 1945 Bom 147 (149) = 46 Cri L Jour 434 = ILR (1945) Bom 141 (DB) ** AIR 1963 SC 1430 (1435, 1436) = (1964) 1 SCR 639 = 1963 (2) Cri LJ 397.

(4) The object of recording reasons is to enable the High Court to consider whether the discretion vested in the Magistrate has been properly exercised or not. AIR 1940 Pat 97 (98) = 41 Cri L Jour 349 ** (1887) 14 Cal 141 (146) (DB).

(5) Provision as to recording reasons is an imperative provision of law and where no reasons are recorded the order of dismissal is without jurisdiction. AIR 1952 Vindh Pra 49 (51) = 1952 Cri L Jour 1196 ** AIR 1957 Cal 383 (384) = 1957 Cri L Jour 717 ** AIR 1945 Bom 147 (148) = 46 Cri L Jour 434 = ILR (1945) Bom 141 (DB) ** (1912) 13 Cri L Jour 482 (483) = 40 Cal 41 (DB) ** AIR 1963 SC 1430 (1435, 1436) = 1963 (2) Cri LJ 397 = (1964) 1 SCR 639 **

Section 203 — Note 10 (contd.)
AIR 1967 Orissa 62 (65) = 33 Cut LT 38 = 1967 Cri LJ 637. (Further inquiry into complaint can be ordered by Court of Revision under Section 436.)

(6) Complaint filed against several persons — Process not issued against some of them — No sufficient grounds for issuing process — High Court will not interfere in revision because Magistrate has not given reasons — High Court will interfere if Magistrate had no good grounds for declining to issue process. AIR 1938 Mad 879 (879) = 39 Cri L Jour 984.

(7) Reasons stated in a police-report on the basis of which an order of dismissal is made are sufficient if the report itself is part of the order. (1910) 11 Cri L Jour 331 (331) (Mad).

[See AIR 1952 Vindh Pra 49 (51) = 1952 Cri L Jour 1196.]

(8) It does not exclude the Presidency Magistrate from the operation of Section 203 which makes it imperative on any Magistrate to record his reasons in brief while passing an order of discharge or acquittal. AIR 1968 Guj 210 (211, 212) = ILR (1967) Guj 438 = 8 Guj LR 496 = 1968 Cr LJ 1171.

(9) Calling of records from Presidency Magistrate's Court under Section 435 — The provision in Section 441, for a summary of grounds when records are called for, does not save recording of reasons for decision, under Section 203 — Presidency Magistrate must always record grounds for decision. AIR 1968 Guj 210 (211, 212) = 8 Guj LR 496 = 1968 Cr LJ 1171.

10A. Second complaint. — (1) Entertainment of a second complaint on same facts on dismissal of an earlier complaint is not barred. AIR 1964 Mys 1 (4) = 1964 (1) Cri LJ 49 = (1963) 2 Mys LJ 60 ** 1967 Cr LJ 1238 = ILR (1966) Cut 700 = 32 Cut LT 1188 ** AIR 1966 Orissa 71 (72, 73) = 1966 Cri LJ 430 = ILR (1965) Cut 155 ** AIR 1965 Tripura 29 = 1965 (2) Cr LJ 412 (415) ** AIR 1964 Raj 183 (184) = 1964 (2) Cri LJ 342 = 1963 Raj LW 616 ** 1963 (1) Cr LJ 555 (557) (Pat). (But it is desirable that fresh acts should be brought to notice of Magistrate.) ** AIR 1962 Pat 316 (317) = 1962 BLJR 221 = 1962 (2) Cri LJ 206 ** ILR (1959) 9 Raj 483 (486, 487) = 1959 Raj LW 469.

(2) Though a second complaint on same facts is not barred after dismissal of first complaint, the second complaint may be entertained only.

- **(a) On fresh evidence which could not with reasonable diligence have been adduced. AIR 1962 SC 876 (899) = 1962 (1) Cri LJ 770 = (1964) 1 SCJ 455.** (AIR 1961 Cal 461 (FB), Reversed on facts.) ** **1967 Cr LJ 1238 (1239, 1240) = 32 Cut LT 1188.**
- **(b) When there are exceptional circumstances. AIR 1962 SC 876 (899) = 1962 (1) Cri LJ 770 = (1964) 1 SCJ 455** ** 1967 Cr LJ 1238 (1239, 1240) = 32 Cut LT 1188 ** AIR 1965 Tripura 29 (30) = 1965 (2) Cri LJ 412 ** 1959 Raj LW 469 = ILR (1959) 9 Raj 483 (488, 489).
- **(c)** When there was manifest error apparent on face of the record. **AIR 1962 SC 876 (899) = 1962 (1) Cri LJ 770 = (1964) 1 SCJ 455** ** 1967 Cr LJ 1238 (1239, 1240) = 32 Cut LT 1188.
- **(d)** When there was miscarriage of justice. **AIR 1962 SC 876 (899) = 1962 (1) Cri LJ 770 = (1964) 1 SCJ 455** ** 1967 Cr LJ 1238 (1239, 1240) = 32 Cut LT 1188.
- **(e)** When the previous order was passed on incomplete record or on a misunderstanding of the nature of the complaint. **AIR 1962 SC 876 (899) = 1962 (1) Cri LJ 770 = (1964) 1 SCJ 455** ** 1967 Cr LJ 1238 (1239, 1240) = 32 Cut LT 1188.
- **(f)** When the previous order was manifestly absurd, unjust or foolish. **AIR 1962 SC 876 (899) = 1962 (1) Cri LJ 770 = (1964) 1 SCJ 455.**

(3) Complaint for offence dismissed — Subsequent complaint to police for same offence — Informant different — Accused different —Cognizance on chargesheet not illegal — Order taking cognizance cannot be quashed. 1963 (1) Cri LJ 555 (557) = 1962 BLJR 288.

(4) (Per Majority) First complaint dismissed after considering evidence — Second complaint held amounted to abuse of process of Court — (Per S. K. Das, J. contra). **AIR 1962 SC 876 (902, 903) = 1962 Supp (2) SCR 297 = 1962 (1) Cri LJ 770.** (AIR 1961 Cal 461, **Reversed.)**

(5) First complaint filed for default of complainant — Before entertaining second complaint on same facts Magistrate should have called for explanation for complainant's absence and, failure to put in all evidence in previous complaint and delay in filing fresh complaint. AIR 1964 Raj 183 (184) = 1964 (2) Cri LJ 342 = 1963 Raj LW 616.

(6) Where a second complaint based on the same facts, on which the accused has been tried and discharged, is filed, the Magistrate cannot be said to have sufficient ground for proceeding with the complaint unless he is satisfied that some additional evidence is forthcoming. AIR 1949 Bom 384 (385) = 51 Cri L Jour 39 (DB).

[See also AIR 1949 Pat 256 (258) = 27 Pat 986 = 50 Cri L Jour 524 (DB) ** AIR 1946 Mad 167 (167) = 47 Cri L Jour 595.]

10B. Revival of complaint. — (1) Dismissal of private complaint for non-

CHAPTER XVII

OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES

204. Issue of process.—(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be one in which according to the fourth column of the second schedule a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has not jurisdiction himself) some other Magistrate having jurisdiction.

*[(1A) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(1B) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.]

Section 203 — Note 10B (contd.)
appearance of the complainant — Court could revive the original complaint on an application being made. AIR 1964 Mys 1 (4) = (1963) 2 Mys LJ 60 = 1964 (1) Cri LJ 49.

11. Further enquiry after dismissal of complaint. — (1) It is open to a Court of Revision to direct a further enquiry under Section 436 into the complaint which has been dismissed under Section 203 without giving reasons. AIR 1967 Orissa 62 (65) = 1967 Cri LJ 637 = 33 Cut LT 38.

(2) Power to direct further inquiry into complaint dismissed under Sec. 203 or 204 (3) — Such powers conferred upon High Court Sessions Judge and District Magistrate are concurrent. AIR 1967 Orissa 62 (65) = 1967 Cri LJ 637 = 33 Cut LT 38.

(3) The refusal by Magistrate to grant leave under Section 199 amounts to a dismissal of the complaint. That dismissal is not on merits but under his inherent powers. Sessions Judge's order in revision setting aside that order and directing further enquiry is without jurisdiction. AIR 1954 Sau 155 (156) = 1955 Cri LJ 74 (DB).

(4) Where a complaint is dismissed under Section 203 after holding a judicial enquiry, and the superior Court holds that the order of dismissal is wrong and that the accused should be put on trial and further enquiry under Section 202 should not be ordered. 1966 BLJR 693 (697) = ILR 46 Pat 167 (DB).

(5) **Dismissal of complaint under Section 203 after full enquiry — Order of superior Court to hold further enquiry can only be complied with by issuing process.** 1968 Cr LJ 1257 (1258) (Pat).

(6) **Complaint dismissed under Section 203 soon after examination of complainant or solemn affirmation — Order of superior Court for further enquiry can be carried out by examining witnesses** cited by complainant. 1968 Cri LJ 1257 (1258) (Pat).

12. Revision against order under Section 203. — (1) Proceedings under Section 203 — Revision against order of dismissal of complaint — Accused has no right to appear either in trial Court or in revision and it is not necessary to issue notice to him. 1965 Ker LJ 1149 (1150) = (1965) 2 Ker LR 325.

SECTION 204 — SYNOPSIS

1. **Scope.**
2. **Magistrate taking cognizance only can issue process.**
3. **The Magistrate must have taken cognizance of an offence.**
4. **"Sufficient ground for proceeding".**

4A. Provisions of Ss. 203 and 204.

5. **"In the opinion of a Magistrate"**
6. **Issue of process.**
7. **List of witnesses to be filed before issue of process.**
8. **Copy of complaint to accompany the process.**
9. **Omission to issue process.**
10. **Notice, if a "process".**
11. **Order directing summons, if a judgment.** — See Section 202.
12. **Order directing summons, if can be recalled.** — See Section 202.
13. **"Some other Magistrate having jurisdiction".**
14. **"Provisions of Section 90" — Sub-s. (2).** — See Section 90.
15. **Process-fees.**
16. **Revision.**
17. **Process under special or local Acts.** — See Note 1.

1. Scope. — (1) Where the Magistrate does not dismiss the complaint under Section 203 but is of opinion that there is sufficient ground for proceeding, he has to commence proceedings against

(2) Nothing in this section shall be deemed to affect the provisions of section 90.

(3) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid, and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

[1882 : S. 204; 1872 : S. 147 para. 3, Ss. 148, 149; 1861 : Ss. 67, 248, 257.]

[*] Sub-sections (1A) and (1B) were inserted by the Code of Criminal Procedure (Amendment) Act, 1955 (XXVI of 1955), S. 28. (1-1-1956).

STATE AMENDMENT

West Bengal

In its application to the State of West Bengal, in S. 204, in sub-section (1), for the words "a Magistrate taking cognizance of an offence", substitute "a judicial Magistrate taking cognizance of an offence, or a Judicial Magistrate to whom a case has been transferred under sub-section (2) of Section 191." — W. B. Act 8 of 1970, S. 2 and Sch., Item 71.

Section 204 — Note 1 (contd.)

the accused by compelling his attendance before the Court. This section relates to the procedure for effecting such attendance. (1867) 8 Suth WR (Cr) 65 (65) (DB).

(2) This is the only section authorizing a Magistrate to issue process to an accused, whether he takes cognizance on a private complaint or on a police-report or any information or knowledge other than a complaint or police-report. AIR 1932 Pat 72 (76, 77, 78) = 63 Cri L Jour 349 ** (1869) 11 Suth WR (Cr) 1 (1) (DB). (Information.)

(3) This section applies not only where the Magistrate takes cognizance of an offence under the Indian Penal Code but also where he takes cognizance of an offence under any other law. 1872-1892 Low Bur Rul 486 ** (1876) 25 Suth WR (Cr) 20 (21) (DB) ** (1908) 8 Cri LJ 185 (186) = 1 Sind LR 67 (DB).

(4) There is no specific provision either in this section or elsewhere in the Code in regard to cases in which the accused is already under arrest or on bail. In such cases if the Magistrate thinks that there is no case against the accused he may discharge him or cancel the bail bond as the case may be or, if the Magistrate considers that there is sufficient ground for proceeding, he may order the accused to be produced before the Court for inquiry or trial. AIR 1941 Bom 294 (295) = 42 Cri L Jour 814 (DB) ** AIR 1943 Pat 245 (252, 253) = 45 Cri L Jour 177 (SB). (Accused can be ordered to be produced if there are sufficient grounds.)

(5) Unless and until the Magistrate issues process for the attendance of the accused, the judicial proceedings cannot be deemed as having commenced against him. AIR 1953 Assam 1 (12) = ILR (1952) 4 Assam 458 = 1953 Cri L Jour 168 (DB). (Per Deka, J.) ** AIR 1943 Pat 245 (252, 253) = 45 Cri L Jour 177 (SB).

See also Note 6.

(6) Even where the case is a police case and the accused has been arrested and remanded to custody, the judicial proceedings against him cannot be considered as having commenced until the Magistrate has made up his mind to act upon the charge-sheet and takes some overt action to implement his decision, e. g., by ordering the accused to be produced from custody on a particular date to stand his trial. AIR 1943 Pat 245 (252, 253) = 45 Cri L Jour 177 (SB).

(7) No process for the arrest or imprisonment of the President, or the Governor or Rajpramukh of a State shall issue from any Court during his term of office. See Article 361 (3) of the Constitution of India.

(8) For form of summons. See Sec. 68 and Sch. V, Form No. 1.

(9) For form of warrant, See Section 75 and Sch. V, Form No. 2.

2. Magistrate taking cognizance only can issue process. — (1) Unless the Magistrate "takes cognizance" as specified in Section 190 a process cannot be issued under this section. (1871) 8 Bom HCR 113 (114) ** (1902) 6 Cal WN 926 (926, 927) (DB).

(2) Magistrate taking cognizance of an offence on a complaint, or receiving the complaint when it is filed, can pass an order under Section 203 or Section 204. His successor-in-office, either temporary or permanent can also pass order under those sections. AIR 1965 Pat 1 (3) = 1965 (1) Cri LJ 58 = 1964 BLJR 747 (FB).

(3) A "Magistrate taking cognizance" on a complaint is the officer who has heard the complaint made. He is the proper officer to issue a process because it is he who can best exercise a discretion with regard to the prima facie merits of the complaint. (1873) 19 Suth WR (Cr) 28 (28) = 10 Beng LR App 26 (DB) ** AIR 1928 Cal 24 (25) = 28 Cri LJ 577 (DB).

Section 204 — Note 2 (contd.)

(4) A Magistrate to whom a case has been transferred under Sec. 192 is covered by the expression "Magistrate taking cognizance of an offence" in this section and can issue process for compelling the attendance of the accused person. AIR 1941 Cal 185 (190, 191) = 42 Cri LJ 490 ** ILR (1961) 2 Cal 424 (425) (DB).

Also see S. 192.

(5) A District or superior Magistrate cannot order process to issue when a Joint or subordinate Magistrate to whom a case has been made over for disposal or who has taken cognizance of the complaint has failed or refused to issue process. If he wants to do so, he must remove the case to his own file and then issue process. (1903) 30 Cal 449 (451, 452) (DB) ** (1905) 2 Cri LJ 524 (530, 532) = 32 Cal 783 (DB) ** 27 Cal 658 (660) (DB) ** 27 Cal 979 (980, 981) (DB) (Cal).

[See (1906) 4 Cri LJ 213 (214) (DB) (Cal).]

(6) Under this section a Magistrate to whom a case has been transferred under S. 192 after the examination of the complainant can issue process though he has not himself examined the complainant. (1899) 3 Cal WN cclxxxv (cclxxxv).

(7) Although it is only the Magistrate who has taken cognizance of the offence who may direct issue of a process, a Magistrate who is the "presiding officer" within the meaning of Sections 68 and 75, may sign the process, even if he may not have taken cognizance of the offence and directed issue of the process. AIR 1932 Pat 175 (176) = 34 Cri L Jour 297 ** AIR 1932 Pat 171 (175) = 33 Cri L Jour 706 (DB). (Per Scroope, J. — Dhavle, J., **Dissenting.**)

Also see Section 75, and Section 559.

(8) Where the Magistrate has directed an enquiry to be held into a complaint, it is not proper for him to issue process before he gets the report of the inquiry. If he does, the order can be quashed before the trial begins. 1959 BLJR 61 (63) (DB) ** 1962 (2) Cri LJ 446 (447) (Pat).

(9) Complaint against police officer under Sections 330 and 331, Penal Code — Judicial Magistrate taking cognizance is not bound to send complaint for enquiry by Executive Magistrate — Judicial Magistrate himself can hold enquiry. 1968 Cri LJ 1246 (1249) = 33 Cut LT 1172 = ILR (1967) Cut 805.

(10) Transferee Magistrate has jurisdiction to issue summons to persons not named in the charge-sheet, if evidence discloses a prima facie case against them. ILR (1961) 2 Cal 424 (425) (DB).

(11) Complaint for an offence under Section 406 dismissed against all except one — Subsequent transfer of case by Sub-Divisional Magistrate — Transferee Court can take cognizance against persons against whom case was dismissed only on some new material. 1962 BLJR 692 (694, 695).

(12) Order for transfer under Sec. 192 operates as a transfer of whole case and involves transfer of the power to issue process, even though the transferee Magistrate did not originally take cognizance of the offence. ILR (1961) 2 Cal 424 (425, 429) (DB).

(13) Where the Magistrate to whom case has been transferred under Sec. 192 considers that there is sufficient ground for proceeding, he is not to transfer the case back to the Magistrate who took cognizance of the same, for issue of process. ILR (1961) 2 Cal 424 (429) (DB).

[See also AIR 1967 Punj 244 (249).]

(14) An Executive Magistrate or other person conducting an enquiry under Section 202 cannot finally dispose of the complaint under Section 203 or Sec. 204. He has only to submit his report to the Magistrate who took cognizance, for further action. 1968 Cr LJ 1246 (1250) = 33 Cut LT 1172 = ILR (1967) Cut 805.

3. The Magistrate must have taken cognizance of an offence. — (1) It is only a Magistrate taking cognizance of an offence that can issue a process under this section. 1875 Rat 90 (91) (DB) ** AIR 1959 Assam 28 (Pr 68) (DB).

(2) If, on a complaint, it should appear to the Court that the act imputed amounted to an offence under the Penal Code or any other penal law in force, it is the duty of the Court to proceed with the matter. (1867) 8 Suth WR (Cr) 65 (65) (DB) ** AIR 1926 Cal 795 (797) = 27 Cri L Jour 788 (DB).

(3) Where the acts as alleged do not disclose any offence, it will be an abuse of the process of the Court to allow criminal proceedings to proceed. (1941) 45 Cal WN 1074 (1075) (DB) ** AIR 1928 Lah 945 (946) = 30 Cri L Jour 162.

(4) An application for maintenance under Section 488 is not a complaint in respect of any offence and, therefore, a Magistrate dealing with it cannot dismiss it under sub-section (3) of this section. (1893) 16 Mad 234 (234) (DB).

(5) Even where an offence is disclosed there must be definite evidence of an offence within the local jurisdiction of the Magistrate receiving the complaint. (1908) 7 Cri L Jour 394 (395) (All).

(6) The Court is not limited to the sections or offences mentioned in the complaint. (1899) 26 Cal 786 (789) (DB).

Also see Section 190.

(7) Complaint about non-cognizable offence against persons not traceable — Magistrate bound to cause enquiry by Police before dismissing the complaint. He can also order a thorough investigation to enable himself to act either under Section 203 or Section 204. AIR 1969

Section 204 — Note 3 (contd.)
Guj 14 (17) = 1969 Cri LJ 63 = 9 Guj LR 925.

(8) Where, on the receipt of a complaint, the police start investigation and arrest a person and on investigation report to the Magistrate that no offence has been disclosed and the Magistrate discharges the person, the order of discharge has been held to be one after taking cognizance. AIR 1941 Bom 294 (296) = 42 Cri L Jour 814 (DB).

(9) Before it can be said that Magistrate has taken cognizance of offence under Section 190 (1) (a), he must not only have applied his mind to contents of complaint-petition but he must have done so for purposes of proceeding under Sections 200 to 204. AIR 1966 Pat 473 (479) = 1967 Cri LJ 111 = ILR 46 Pat 138 (DB).

(10) Section 190 has considerable effect on Section 204. AIR 1968 Bom 400 (410) = 1968 Cr LJ 1584 = 69 Bom LR 808 (DB).

(11) When offence is against public interest, the truth of the complaint and the amount of evidence of the crime alone have to be considered. Magistrate need not give opportunity to complainant to rebut police report. 1958 (2) Andh WR 695 (697) = 1958 Mad LJ (Cr) 1000 = 1958 Andh LT 755.

(12) Amalgamation of complaints — Second complaint before same Magistrate pertaining to same facts and offences, during pendency of first complaint — Magistrate acts within jurisdiction in amalgamating both complaint cases and directing that evidence of both complainants should be recorded during trial — But Magistrate acts improperly in ordering that complainants should have right to cross-examine and contradict witnesses examined by other complainant though he has discretion to put any question to any witness. AIR 1965 All 131 (135) = 1965 (1) Cri LJ 275 = 1964 All LJ 335.

4. "Sufficient ground for proceeding". — (1) A Magistrate taking cognizance of an offence is bound to issue process under this section only if, in his opinion, there is sufficient ground for proceeding. (1900) 27 Cal 985 (988) (DB) ** 1864 Suth WR (Gap No. Cr) 33 (34) (DB) ** 1969 BLJR 747 (748) ** 1963 (1) Cr LJ 517 (520) (Andh Pra).

[See 1957-2 Mad L Jour 159 (160, 161).]

(2) The stage at which the sufficiency of the ground for proceeding is to be considered is, in the case of a complaint after the examination of the complainant under Section 200. AIR 1917 Pat 611 (612) = 18 Cri L Jour 890 (891) (DB) ** 1898 Rat 954 (955) (DB) ** AIR 1914 Cal 479 (480) = 15 Cri L Jour 348 (DB)

Also see Section 200.

(3) If the facts alleged in the complaint and the complainant's statement show a sufficient ground for proceeding, process should issue, otherwise not. AIR 1914 Cal 185 (192) = 42 Cri L Jour 490 ** (1912) 13 Cri L Jour 609 (611, 612) (SB) (Cal) ** AIR 1917 Cal 671 (671) = 18 Cri L Jour 626 (626) (DB). (Allegations in complaint not substantiated by examination on oath.) ** 1958 (2) Andh WR 695 (697).

[See also (1910) 11 Cri L Jour 525 (527) = 38 Cal 68 (DB).]

(4) It is not necessary in all cases that before issuing process the Magistrate should have held any inquiry. AIR 1941 Cal 185 (192) = 42 Cri L Jour 490 ** AIR 1920 Pat 270 (270, 271) = 21 Cri L Jour 220 ** 1958 (2) Andh WR 695 (697).

[See AIR 1935 Rang 485 (486) = 37 Cri L Jour 243.]

(5) Where the Magistrate doubts the truth of the complaint and orders an inquiry under Section 202 he should not issue process to the accused till the report has been received from the officer making the inquiry. (1950) 29 Pat 1059 (1062) (DB).

(6) Where Magistrate has ordered an enquiry under Section 202, by another Magistrate, he cannot consider statements recorded during investigation by police or evidence adduced before him during the enquiry arising out of another complaint. ILR (1967) Cut 73 (81, 82).

(7) If a Magistrate is satisfied on the police report that there is no sufficient ground for proceeding and the accused is under arrest, the accused must be discharged and if he is on bail the bail bond must be cancelled. ILR (1947) Kar 301 (311) (DB) ** AIR 1941 Bom 294 (295) = 42 Cri L Jour 814 (DB).

(8) A prima facie case means that there is sufficient ground for proceeding. AIR 1931 Cal 607 (611, 615) = 33 Cri L Jour 3 (DB).

(9) Where, a prima facie case is made out, the Magistrate should issue process even if he considers that a civil remedy is more appropriate. AIR 1938 Mad 879 (880) = 39 Cri L Jour 984 ** AIR 1926 Cal 795 (797) = 27 Cri L Jour 788 (DB) ** (1913) 14 Cri L Jour 571 (571) (Cal) (DB) ** AIR 1930 Pat 30 (32) = 30 Cri L Jour 554 ** (1889) 13 Bom 590 (598) (FB) ** AIR 1961 Cal 461 (467) = 1961 (2) Cri LJ 204 (FB). (Reversed on another point in AIR 1962 SC 876.)

[See (1901) 28 Cal 652 (661) (FB).]

Also see Sections 1, 190, 200 and 203.

(10) It was held that even if there was a prima facie case, the Magistrate may in his discretion refuse to issue process. AIR 1931 Cal 607 (615) = 33 Cri L Jour 3 (DB).

(11) There cannot be said to be sufficient grounds in the following cases for issue of process:

(a) Where the complaint is made on information and not on personal knowledge. In such cases the

Section 204 — Note 4 (contd.)

Court should satisfy itself on inquiry that there is a case for the issue of process. (1906) 4 Cri L Jour 217 (218) (DB) (Cal).

(b) Where the allegations made in the complaint are not substantiated by the statement on oath. AIR 1917 Cal 671 (671) = 18 Cri L Jour 626 (626) (DB).

(c) Where the allegations disclose a dispute purely of a civil nature. AIR 1952 Pat 200 (201) = 1952 Cri L Jour 624 ** AIR 1923 All 544 (544) = 24 Cri L Jour 693 ** AIR 1927 Lah 145 (146) = 28 Cri L Jour 158 ** (1907) 5 Cri L Jour 13 (14) (DB) (Cal).

[See (1923) 24 Cri L Jour 714 (715) (DB) (Cal) ** (1922) 67 Ind Cas 499 (499) = 23 Cri L Jour 403 (Pat).]

(12) The following are not sufficient grounds for refusing issue of process:

(a) Where a prima facie case is made out but in the Magistrate's opinion there is no chance of conviction and no useful purpose will be served by the enquiry. (1902) 29 Cal 410 (411, 412) (DB) ** AIR 1926 Cal 795 (797) = 27 Cri L Jour 788 (DB).

(b) Avoidance of religious ill-feeling. 1891 Rat 562 (563) (DB).

(c) The fact that the offence is cognizable by the police in the first instance. (1870) 14 Suth WR (Cr) 36 (36) (DB).

(d) The fact that the Magistrate thinks that it is unlikely that the proceedings will result in a conviction, though the fact that another person accused upon the same facts for the same offence has been acquitted may properly be taken into consideration in determining whether upon the materials before the Magistrate there is sufficient ground for proceeding. AIR 1926 Cal 795 (797, 798) = 27 Cri L Jour 788 (DB).

[See AIR 1933 Cal 552 (553) = 34 Cri L Jour 1063.]

(e) The fact that one of the accused was a member of the highest service in the land who was sworn to do justice. AIR 1940 Pat 97 (98) = 41 Cri L Jour 349.

(13) Magistrate issuing process under Section 204, mistakenly believing that offence has been disclosed by the complaint — On matter being brought to his notice and seeing his error, he decides that even if the allegations in the complaint are true no criminal offence is disclosed or necessary sanction has not been obtained for cognizance of the offence, he may conclude that the charge is groundless even before he has heard the complainant, and discharge the accused under Section 253 (2). 1964 (2) Cri LJ 92 (93) = 1964 Ker LT 228 (Ker).

(14) Where the Magistrate in issuing process did not rely primarily on the test of satisfaction of a reasonable body of men but referred to that only as an additional ground after consideration of other materials, for forming his own judgment, the test applied by the Magistrate in the matter of issue of the process cannot be held to be erroneous in law. AIR 1961 Cal 461 (467, 468) = 1961 (2) Cri LJ 204 (FB). **(Reversed on another point in AIR 1962 SC 876.)**

4A. Provisions of Ss. 203 and 204.— (1) When a complaint is filed before a Magistrate and he finds that there is sufficient ground for proceeding under Section 204, he has to decide whether he will adopt summons procedure under Chapter XX or warrant procedure under Chapter XXI, on the basis of allegations made by complainant or disclosed in the preliminary examination of the complainant or in the preliminary examination or enquiry conducted under Section 202. He cannot change the procedure later on. 1962 (1) Cri LJ 677 (681) (Tripura).

(2) Magistrate has to examine identical matters for determining the sufficiency of ground for issuing process under Section 204 or for dismissing complaint under Section 203. ILR (1967) Cut 73 (81).

(3) Such powers conferred under Section 436 upon High Court, Sessions Judge and District Magistrate are concurrent — Complainant must exhaust his remedy before the inferior courts first, before coming to High Court to invoke its powers. AIR 1967 Orissa 62 (65) = 1967 Cri LJ 637 = 33 Cut LT 38.

(4) Sections 203 and 204 must be read as supplementary to each other. ILR (1967) Cut 73 (81).

5. "In the opinion of a Magistrate." — (1) In deciding on the sufficiency of the ground for proceeding, the Magistrate must be guided by his own independent opinion and not by that of others, such as a police-officer. (1868) 4 Mad HCR 162 (165) (DB).

(2) Neither the proceedings before the coroner nor the police papers can in law be relied upon by the Magistrate in ordering issue of process. AIR 1955 Cal 234 (235) = 1955 Cri LJ 752 (DB).

(3) Magistrate is invested with extensive discretionary power which is to be exercised judicially according to rules of reason and justice and to act within the four corners of the Code. 1958 (2) Andh WR 695 (697).

(4) Complaint against police officer under Sections 330 and 331, Penal Code — Judicial Magistrate taking cognizance has to form his own judgment whether or not there is sufficient ground for proceeding. 1968 Cri LJ 1246 (1249) = 33 Cut LT 1172.

Section 204 — Note 5 (contd.)

(5) Magistrate finding major offence unfounded but existence of minor offence — He can issue process for minor offence and try case summarily. ILR (1967) Cut 607 (609) = (1968) 34 Cut LT 131.

6. Issue of process. — (1) This section provides that when a Magistrate who receives a complaint neither dismisses it under Section 203 nor postpones issue of process under Section 202, process for the attendance of the accused shall issue. AIR 1938 Sind 192 (192) = 39 Cri LJ 966 ** 27 Cal 798 (800) (DB) ** (1922) 23 Cri LJ 403 (403) (Pat) ** (1914) Cri LJ 493 (493) (All).

(2) In the cases in which a summons should issue in the first instance according to the second schedule, the Magistrate can, under Section 90, issue a warrant in lieu of or in addition to a summons in the circumstances specified in that section. In cases in which a warrant should issue in the first instance according to the second schedule, this section enables the Magistrate to issue a summons instead, if he thinks fit to do so. (1893) 21 Cal 588 (589) (DB).

(3) The discretion to issue summons in a case where warrant should issue in the first instance according to the second schedule, should be so used as not to subject accused persons to the indignity of arrest unless there is real need for it. (1892-1903) 1 Upp Bur Rul 31 (31).

(4) If the Magistrate issues a warrant in a case in which he ought to have issued summons, the error, is not a ground for setting aside the proceedings. (1864) 1 Suth WR (Cr) No. 16 (16) (DB).

[See AIR 1950 Orissa 62 (63) = ILR (1949) 1 Cut 623 = 51 Cri LJ 679 (DB).]

(5) The Magistrate can cancel the warrant and issue a summons where the warrant has been issued in error. (1908) 8 Cri LJ 187 (187) = 1 Sind LR 69 (DB) ** (1913) 14 Cri LJ 604 (605) = 7 Sind LR 49 (DB) ** (1963) 2 Cri LJ 464 (465, 466).

(6) Process should ordinarily issue against all the accused who are prima facie shown to have committed an offence. (1900) 4 Cal WN 560 (562) (DB).

(7) The Magistrate is not bound, when the police-report discloses one offender only, to issue process against any witnesses who may afterwards be found, during trial, to be accomplices. AIR 1925 Rang 122 (126) = 26 Cri LJ 492.

(8) It is not imperative on the Magistrate to proceed against a person who has been removed from the array of accused persons and is produced as a witness in the Court, his failure to do so not being sufficient to invalidate the trial in respect of the other accused. AIR 1937 Nag 17 (23) = 38 Cri LJ 237 (FB). **Overruling** AIR 1920 Nag 255 = 21 Cri LJ 769.)

(9) In proper cases there is nothing irregular or improper in a Magistrate first issuing process for one accused person and then changing his mind and issuing process for all the accused. AIR 1928 Lah 541 (542) = 29 Cri LJ 293.

(10) When once the Magistrate issues process under this section, proceeding commences and it should go on in due course unless something occurs to show that the Magistrate has, for some cause or other, made a wrong exercise of his discretion. (1873) 19 Suth WR (Cr) No. 28 (28) = 10 Beng LR (App) 26 (DB) ** (1874) 21 Suth WR (Cr) 44 (45) (DB).

(11) Issue of summons under Section 204 is taking cognizance of offence under Section 190. AIR 1960 Cal 570 (571) = 1970 Cri LJ 1198.

(12) Prosecution commences when proceedings commence under this section and proceedings commence when process is issued against the accused. So, unless process is issued, there is no cause of action for suit for damages for malicious prosecution or for making false complaint. AIR 1932 All 386 (389) (DB) ** (1911) 11 Ind Cas 311 (312) = 38 Cal 880 (DB) ** AIR 1926 Mad 521 (524) (DB) ** AIR 1931 All 665 (665) (DB) ** AIR 1929 Pat 271 (271, 272) (DB) ** AIR 1914 Lah 531 (533) = 1915 Pun Re No. 1 ** AIR 1961 Orissa 118 (121) = 1961 (2) Cri LJ 130 = (1961) 3 OJD 125.

[See also AIR 1933 Pat 292 (292, 293) (DB) ** AIR 1970 Orissa 91 (94).]

[But see (1877-1878) 2 Bom 481 (487) (DB). (Prosecution commences when complaint is made.) ** (1903) 5 Bom LR 940 (945) = 28 Bom 226 (DB). (Do.) ** 6 C and P 423.]

(13) In police cases, where the accused is under arrest, the order of the Magistrate to produce the accused from custody on a particular date to stand his trial corresponds to the order for issue of process under this section and it is such an order which marks the commencement of proceedings against the accused. AIR 1943 Pat 245 (252, 253) = 45 Cri LJ 177 (SB).

(14) Where A and B are jointly accused of an offence but the Magistrate issues process only against A, B is competent to give evidence as a witness at the trial of A. (1882) 10 Cal LR 553 (554) (DB).

[See also AIR 1937 Nag 17 (23) = 38 Cri LJ 237 (FB) ** AIR 1935 Bom 186 (188) = 36 Cri LJ 937 (DB) ** AIR 1925 Rang 122 (125) = 26 Cri LJ 492.]
Also see S. 540.

(15) An order by a Magistrate to the police to charge-sheet a person may be treated as a warrant under this section. AIR 1932 Pat 72 (77) = 33 Cri LJ 349. Also see S. 190.

Section 204 — Note 6 [contd.]

(16) Issue of warrant of arrest against P under Section 304-A of Penal Code (1860), and Section 214 (e) of Merchant Shipping Act (1958), on consideration of report of enquiry under Section 202 — Material not disclosing offence under Section 304-A — **Held,** process relating to offence under Section 304 could be quashed — P, however, would remain Liable to be tried for offence under Section 214 (e). 1968 Cri LJ 405 (408) = ILR (1967) 2 Cal 23.

(17) When a letter is not treated as a complaint, the question of examining the author of the letter before issue of process does not arise. (1966) 70 Cal WN 779 (784).

(18) Allegations against Electric Supply Company — Resident Engineers impleaded without allegations — Issue of process is inappropriate. AIR 1960 All 176 (178) = 1960 Cri LJ 300 = ILR (1959) 2 All 528 (DB).

(19) The word 'accused' in Section 204 does not mean only that person who is named is accused. AIR 1968 Bom 400 (411) = 1968 Cri LJ 1584 = 69 Bom LR 808.

(20) This clause is couched in a negative language, and it goes to the power of the Magistrate to issue summonses or warrants, as the case may be. The provisions which enjoin the courts to satisfy themselves about the prima facie nature of a criminal charge, before issuing a process must be intended, in the absence of a clear suggestion to the contrary, to be mandatory. AIR 1961 Punj 171 (174) = ILR (1960) 1 Punj 749 = 1961 (1) Cri LJ 553.

7. List of witnesses to be filed before issue of process. — (1) Under sub-section (1-A) no process can issue against the accused, unless a list of prosecution witnesses has first been filed. AIR 1957 Cal 332 (Pr 3) = 1957 Cri LJ 630 ** AIR 1958 Madh Pra 28 (Pr 3) = 1958 Cri LJ 50 ** 1961 (2) Cri LJ 518 (519, 520) = 26 Cut LT 658. (Section 204 (1-A) as amended in 1955 makes no distinction between a private complaint and a complaint by a public servant.) ** AIR 1960 All 394 (394, 395) = 1960 Cri LJ 865 (1) = 1960 All LJ 67.

(2) The sub-section is mandatory unless the complainant is the only witness. AIR 1958 Madh Pra 28 (Pr 3) = 1958 Cri LJ 50 ** AIR 1961 Punj 171 (174) = 1961 (1) Cri LJ 553 = ILR (1960) 1 Punj 749.

(3) Sub-section (1-A) of Section 204 does not expressly say that a separate list of witnesses should be filed, or else that the list should be exhaustive. Complainant incorporating names of witnesses in the petition of complaint itself is not illegal. Complainant can later on add to the witnesses originally given and also give up some of the witnesses mentioned in the original list. AIR 1960 Orissa 178 (180) = 26 Cut LT 25 = 1960 Cri LJ 1353.

(4) The object of the sub-section is to apprise the accused at the earliest point of time of persons who are likely to give evidence against him. AIR 1957 Cal 332 (Pr 3) = 1957 Cri LJ 630 ** (1957) 61 Cal WN 192 (195) ** AIR 1968 Cal 266 (269) = 1968 Cri LJ 736 ** AIR 1960 Bom 513 (515) = 1960 Cri LJ 1569 = 52 Bom LR 494 ** AIR 1960 Orissa 178 (180) = 1960 Cri LJ 1353 = 26 Cut LT 25.

(5) Clauses (1-A) and (1-B) of Section 204 are enacted in the interest of and for the protection of the accused and its disregard is likely to injuriously affect him. AIR 1961 Punj 171 (173) = 1961 (1) Cri LJ 553 = ILR (1960) 1 Punj 749.

(6) The sub-section does not mean and imply that in no circumstances can a person who is not included in the list be permitted to be examined in the course of the trial. Where an additional list of witnesses is filed, no notice of it need be given to the accused. The value to be attached to the evidence of such witness or witnesses, depends, as in the case of witnesses mentioned in the original list, upon their credibility. AIR 1957 Cal 332 (Pr 3) = 1957 Cri LJ 630 ** AIR 1958 Mad 341 (Prs 5, 6) = ILR (1958) Mad 586 = 1958 Cri LJ 904 (DB) ** (1957) 61 Cal WN 192 (195) ** AIR 1967 Punj 95 (98) = 1967 Cri LJ 401 = ILR (1965) 2 Punj 495 ** AIR 1965 All 131 (133) = 1965 (1) Cri LJ 275 = 1964 All LJ 335 ** 1961 (2) Cri LJ 474 (474, (475) (Guj) = (1961) 2 Guj HCR 188 ** AIR 1961 Raj 42 (42, 43) = 1960 Raj LW 373 = 1961 (1) Cri LJ 314 ** AIR 1960 All 443 (443, 444) = 1960 Cri LJ 881. (If the Magistrates find that the summoning of a witness beyond the list was with some ulterior motive, they can decline to summon such witness and if present may refuse to record his statement.) ** AIR 1960 All 394 (394, 395) = 1960 All WR (HC) 42 = 1960 Cri LJ 865 (1).

[But see AIR 1969 Cal 421 (422) = 1969 Cri LJ 1117 ** AIR 1967 Punj 95 (98) = ILR (1965) 2 Punj 495.]

(7) Supplemental list of witnesses can be filed — Magistrate can examine such witness and admit any essential documents produced by prosecution. AIR 1967 Ker 233 (233) = 1966 Ker LT 994 = 1967 Cri LJ 1517 (1).

(8) The Magistrate's discretion under Section 252 (2) remains unfettered and indeed it is his duty while trying a case on a complaint to ascertain the names of the witnesses who are likely to be able to give useful evidence and summon them. (1957) 61 Cal WN 192 (195) ** AIR 1965 All 131 (133, 134) = 1964 All WR (HC) 213 = 1965 (1) Cri LJ 275.

Section 204 — Note 7 (contd.)

(9) A private complainant may give up some or all of the witnesses in the original list filed by him. The Court, however, would draw an inference against the complainant if the giving up is found to be mala fide. AIR 1958 Mad 341 (Pr 4) = ILR (1958) Mad 586 = 1953 Cri LJ 904 (DB) ** AIR 1960 Orissa 178 (180) = 1960 Cri LJ 1353 = 26 Cut LT 25.

(10) List of prosecution witnesses supplied while accused summoned was present before Court. Objection that provision of Section 204 (1-A) was merely of form and not of substance — No prejudice caused to accused. 1966 CJS (IJ) 12 (12) (Punj).

(11) The words 'remaining witnesses' in Section 256 (1) do not refer only to those witnesses who were in the first list and were left out. They refer to witnesses who had not been examined or those whose names have not been disclosed in the list before charge was framed. AIR 1967 Ker 233 (234) = 1967 Ker LT 994 = 1967 Mad LJ (Cri) 182 ** AIR 1960 Bom 513 = 1960 Cri LJ 1569 = 62 Bom LR 383.

(12) Section 204 (1-A) — List of witnesses — It need not be incorporated in petition of complaint. AIR 1968 Cal 266 (269) = 1968 Cri LJ 736

(13) If new names are disclosed at a later stage of the trial accused is entitled to an adjournment to enable him to cross-examine those persons. When such an opportunity is given to the accused no prejudice is caused to him. AIR 1960 Orissa 178 (180) = 1960 Cri LJ 1353 = 26 Cut LT 25.

8. Copy of complaint to accompany the process. — (1) The provisions of sub-section (1-B) are mandatory. It is therefore not competent for a Magistrate to issue process unaccompanied by a copy of the complaint. AIR 1958 Madh Pra 28 (Pr 3) = 1958 Cri LJ 50 ** (1957) 61 Cal WN 192 (195).

[But see AIR 1961 Punj 171 (174) = 1961 (1) Cri LJ 553 = ILR (1960) 1 Punj 749.]

(2) Provisions of Section 204 (1-B) are directory and its non-compliance would not render the proceeding being void or without jurisdiction. 32 Cut LT 682 (684) = ILR (1966) Cut 337 (DB) ** AIR 1966 Orissa 9 (11) = 1966 Cri LJ 40 = 31 Cut LT 563 ** AIR 1966 Punj 372 (374) = 1965 Cur LJ 880 = 68 Punj LR 363 = 1966 Cri LJ 1045 (DB).

(3) Section 204 (1-B) — Summons not accompanied by copy of complaint — Summons does not cease to be summons — Accused must attend Court in obedience to summons — Court's jurisdiction not affected. AIR 1961 Cal 648 (649) = 1961 (2) Cri LJ 762 (DB).

(4) Dismissal of complaint for non-compliance with privisions of Section 204 (1-B) = Does not amount to acquittal 1966 Cri LJ 1231 (1231) (Cal).

(5) Case instituted upon complaint — Complainant not bound to furnish accused with copies of documents filed. 1970 Cri LJ 553 (556) (Punj).

9. Omission to issue process. — (1) Where a Magistrate without issuing any process at all to the accused convicts him, the conviction is illegal. (1891) 15 Mad 83 (87) = 2 Weir 326 (DB).

(2) Where the accused appears in Court of his own accord without a summons, he is entitled to require that the case be proceeded with and the mere omission to issue summons becomes immaterial in such a case. (1902) 26 Bom 552 (557) (DB) ** AIR 1919 Lah 389 (390) = 20 Cri LJ 3 (DB) ** AIR 1968 Andh Pra 125 (127) = 1968 Cri LJ 450 = (1967) 2 Andh WR 271.

(3) A person against whom no process has been issued under Section 204 cannot be a discharged person. AIR 1961 Orissa 118 (120) = 1961 (2) Cri LJ 130 (1961) 3 OJD 125.

(4) Court has no right to proceed without issuing the process if the accused does not appear personally. AIR 1968 Andh Pra 125 (127) = 1968 Cri LJ 450 = (1967) 2 Andh WR 271.

10. Notice, if a "process". — (1) A mere notice to the person complained against that a preliminary enquiry will be held does not amount to a summons. AIR 1915 Mad 128 (129) ** AIR 1927 Mad 19 (20, 21) = 28 Cri LJ 129 (FB) ** AIR 1923 Cal 198 (199) = 24 Cri LJ 333 (DB) ** AIR 1918 Pat 652 (653) = 19 Cri LJ 527.

11. Order directing summons, if a judgment. — See Section 202.

12. Order directing summons, if can be recalled. — See Section 202.

13. "Some other Magistrate having jurisdiction." — (1) This expression means "some other Magistrate" having jurisdiction to enquire into and try the case the power to take cognizance being distinct from jurisdiction. Such Magistrate cannot rescind the original process; but he can discharge the accused in respect of the offence for which the process was issued and issue a fresh process for any other offence alleged to have been committed. AIR 1945 Sind 51 (54) = ILR (1944) Kar 411 = 47 Cri LJ 84 (DB).

(2) Chief Presidency Magistrate Calcutta who could not take cognizance of an offence triable by the Special Court constituted under the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, has no power to issue a summons against the accused under Section 204 in respect of such offence. AIR 1960 Cal 570 (571) = 1960 Cri LJ 1198.

Section 204 (contd.)

14. "Provisions of Section 90" — Sub-section (2). — See Section 90.

15. Process-fees. — (1) Sub-section (3) is new and enables a Magistrate to dismiss a case for default of payment of such fees for process as are payable and ordered, within a reasonable time. An order acquitting the accused is not correct. AIR 1944 Cal 417 (418) = 46 Cri LJ 253 (DB).

(2) Dismissal of complaint under Section 204(3) on failure of complainant to comply with direction — Appeal against order is competent as dismissal of complaint after charge has been framed amounts to acquittal. AIR 1969 Madh Pra 20 (21) = 1969 Cri LJ 201 = 1968 MPLJ 398 (DB).

(3) Even before this provision was inserted, there existed the practice of dismissing the complaint for non-payment of process-fees, as for default of prosecution though such a dismissal was held to be illegal in warrant cases. 1889 Rat 491 (491) (DB) ** (1886) 2 Weir 252 (252) = 16 Mad 234 (DB) ** (1893) 2 Weir 323 (323). (Warrant case.)

[See 1872 Pun Re (Cr) No. 21, p. 29 (29) (DB) ** (1902) 4 Bom LR 276 (277) = 26 Bom 552 (DB).]

(4) Where a complaint is against two persons, but the complainant has paid process-fees for summons against one only, the other must be discharged under this sub-section, if no summons is taken against him. (1902) 26 Bom 552 (557) (DB).

(5) The process-fees referred to in this sub-section are only for the attendance of the accused at the commencement of proceedings and not for the presence of the accused on the date of judgment and a dismissal of the complaint under this sub-section for non-payment of process-fees for such summons is not legal. AIR 1925 All 392 (393) = 26 Cri L Jour 963.

[See 1939 Nag LJ 201 (201).]

(6) The section applies to Magistrates taking cognizance of offences and this rule as to payment of process-fees refers, therefore, only to cases when an "offence" is disclosed. An application for maintenance under Section 488 should not be dismissed under this sub-section for failure to pay process-fees. (1893) 16 Mad 234 (234) (DB).

(7) Where a complaint was dismissed under this sub-section in a de novo trial after charges had already been framed, it was held that it amounted merely to a discharge and not an acquittal, and that a second trial on the same facts would not be barred. AIR 1931 Nag 39 (40) = 32 Cri L Jour 603.

[But see AIR 1915 Mad 23 (24) = 15 Cri L Jour 673 (DB).]

(8) Where the complainant did not take any steps to have the accused persons served and remained absent on the date fixed for deciding the question whether the female accused should be permitted to appear through on Advocate, it was held that the order by the Magistrate discharging the accused under Section 253 was mistaken and should have been one dismissing the complaint under Section 204(3) and the Magistrate was competent to rehear the complaint. AIR 1951 Assam 129 (130) = 52 Cri L Jour 1357 (DB).

See also Section 403.

(9) Where a complaint is dismissed under this sub-section, the High Court, Sessions Judge or District Magistrate may, under Section 436, direct a further enquiry. AIR 1938 Sind 192 (192) = 39 Cri L Jour 966.

[See also AIR 1939 Sind 38 (39) = 40 Cri L Jour 287 (DB).]

(10) Where the superior Court directs a further enquiry upon dismissal of the complaint under sub-section (3), notice to show cause why a further enquiry should not be ordered is neither desirable nor necessary. AIR 1922 Pat 54 (54) = 20 Cri L Jour 843 (DB).

(11) As to the applicability of this sub-section to processes to witnesses, see Notes on Section 544.

(12) "Talbana" ordinarily means process-fee — Magistrate dismissing complaint for failure to pay diet money in accordance with Court's direction to pay "Talbana," interpreting the word to include diet money also — Order neither indicating any provision wherein that word has been used to include diet money or that it is the practice of that Court to so use it and that the parties were acquainted with that expression to include diet money as well — **Held** that the drastic action of the Magistrate in 'dismissing' the complaint could not be justified or sustained. AIR 1969 Madh Pra 20 (21) = 1969 Cri LJ 201 = 1968 MPLJ 398 (DB).

16. Revision. — (1) The High Court has ample revisional powers to interfere with the proceedings under this section and can exercise its powers at any stage of the proceedings and quash the same, though it will interfere only in cases of an exceptional nature. 1899 All WN 212 (213) (DB) ** (1896) 20 Bom 543 (545) (DB) ** (1899) 26 Cal 786 (790, 791) (DB) ** (1910) 11 Cri LJ 525 (527) = 38 Cal 68 (DB) ** AIR 1916 Mad 408 (409) = 16 Cri LJ 477 (477, 478) ** AIR 1932 Pat 72 (78) = 33 Cri LJ 349 ** 1958 (2) Andh WR 695 (697).

(2) Where the case had not proceeded beyond the stage of summonses having been issued, it was held that there could hardly be any ground to quash the complaint on which cognizance had been taken unless the complaint did not disclose any offence. AIR 1958 Cal 128 (Prs 14, 15, 17) = 1958 Cri LJ 368.

205. Magistrate may dispense with personal attendance of accused.—(1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance[°] of the accused, and permit him to appear by his pleader.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

[1882—S. 205; 1872—S. 151; 1861—S. 261.]

[°] See Form No. 1 in Schedule V which contemplates an accused appearing by a pleader.

Section 204 — Note 16 (contd.)

(3) Where a Magistrate, having followed the procedure laid down, has exercised a discretion judicially in issuing a process, or where the error, omission, or irregularity in the issue of process is one which is curable under Section 537, the High Court will not interfere. AIR 1926 Cal 795 (797) = 27 Cri LJ 788 (DB) ** (1907) 6 Cri LJ 240 (251) = 31 Bom 611 (DB) ** AIR 1916 Pat 129 (130) = 18 Cri LJ 366 (367) (DB) ** (1912) 13 Cri LJ 609 (611) (SB) (Cal) ** AIR 1964 Tripura 67 (68, 69) = 1964 (2) Cri LJ 735.

(4) Where the record does not disclose sufficient grounds for issuing process, the High Court will not interfere merely because the Magistrate, taking cognizance of the matter, has failed to record reasons for not issuing process. AIR 1938 Mad 879 (879) = 39 Cri LJ 984.

17. Process under special or local Acts. — See Note 1.

SECTION 205 — SYNOPSIS

1. **Scope.**
2. **"Whenever a Magistrate issues a summons."**
3. **"Dispense with."**
4. **Bond from the accused.**
5. **Pardanashin lady.**
6. **"Permit him to appear by his pleader".**
7. **"Pleader".**
8. **Applicability to security proceedings.**
9. **"At any stage of the proceedings."**
10. **Revision.**
11. **Applicability to offences under Acts other than I. P. C.**

1. Scope.— (1) As shown in S. 353 Courts of Session and the High Courts have got power to dispense with the personal attendance of the accused. AIR 1956 Madh B 13 (16) = 1956 Cri LJ 64 = ILR (1956) Madh B 157 ** AIR 1954 Mys 181 (182) = 1954 Cri LJ 1815 = ILR (1954) Mys 374 (DB) ** AIR 1947 Mad 433 (434, 435) = 48 Cri LJ 874 = ILR (1948) Mad 498.

(2) Section 205 deals with the initial appearance of the accused before the Magistrate whereas Section 353 deals with the presence of the accused during the trial of the case or during enquiry. AIR 1951 All 864 (866) = ILR (1952) 2 All 941 = 1952 Cri LJ 66 (FB) ** AIR 1957 Andh Pra 468 (469) = 1957 Cri LJ 935 ** AIR 1956 Bhopal 11 (12) = 1956 Cri LJ 373 ** AIR 1954 Cal 576 (576) = 1954 Cri LJ 1664 (DB) ** AIR 1954 Mys 181 (182) = 1954 Cri LJ 1815 = ILR (1954) Mys 374 (DB).

(3) The High Court can under its inherent powers dispense with personal attendance of the accused. AIR 1952 Assam 151 (151, 152) = ILR (1952) 4 Assam 332 = 1952 Cri LJ 1288 (DB) ** AIR 1957 Nag 101 (102) = ILR (1956) Nag 896 = 1957 Cri LJ 1430 ** AIR 1951 Madh B 28 (29) = 52 Cri LJ 73 ** AIR 1949 Nag 334 (336) = ILR (1949) Nag 451 = 50 Cr LJ 932 (DB) ** AIR 1947 Mad 433 (435) = 48 Cri LJ 874 = ILR (1948) Mad 498.

(4) Under the section it is not necessary that the accused should submit the application for exemption in person. Madh BLJ 1955 HCR 482 (483).

(5) Section 205 applies to an accused and not to a person against whom the complaint was that she was about to commit an offence. AIR 1957 Raj 359 (360) = ILR (1957) 7 Raj 567 = 1957 Cri LJ 1317.

2. "Whenever a Magistrate issues a summons."— (1) This section does not apply where a warrant has been issued or the accused has been arrested without a warrant. AIR 1951 Assam 129 (130) = ILR (1951) 3 Assam 370 = 52 Cri LJ 1357 (DB) ** AIR 1955 Punj 81 (82) = 1955 Cri LJ 698 ** AIR 1951 Pat 405 (405) = 52 Cri LJ 365 ** 1951 Raj LW 27 (28) ** AIR 1924 Pat 46 (47) = 24 Cri LJ 872 (DB) ** AIR 1963 J & K 41 (43) = 1963 Kash LJ 20 = 1963 (2) Cri LJ 155 (DB).

(2) Where in a summons case the Magistrate having issued a bailable warrant, refused the application of the accused for having his personal appearance dispensed with on the ground that he had issued a warrant, it was held that the Magistrate could not take his stand on an incorrect order and refuse the application without giving proper reasons. AIR 1947 Mad 66 (66) = ILR (1947) Mad 79 = 48 Cri LJ 226.

Section 205 — Note 2 (contd.)

(3) Where a summons has been issued in the first instance and thereafter the accused is brought in under a warrant of arrest, the section would apply. AIR 1930 Nag 61 (62) = 31 Cri LJ 284.

(4) Where a summons is issued in cases in which a warrant is ordinarily issuable this section will apply. (1894) 21 Cal 588 (589, 590) (DB) ** AIR 1947 Mad 433 (434) = ILR (1948) Mad 498 = 48 Cri LJ 874.

(5) Even after a warrant has been issued, if the Magistrate cancels the warrant and issues a summons, or the accused having appeared before him, it is not necessary to issue a summons for the appearance of the accused, this section will apply. AIR 1940 All 178 (180) = 41 Cri LJ 500 ** AIR 1948 All 393 (394) = ILR (1948) All 331 = 49 Cri LJ 573 (DB) ** AIR 1962 Cal 203 (214, 215) = 1962 (1) Cri LJ 565 = 66 Cal WN 577.

(6) If the Magistrate considers that a summons is sufficient for the appearance of the accused in the case, he may permit the accused to appear by pleader. AIR 1940 All 178 (180) = 41 Cri LJ 500.

(7) Where the Magistrate orders issue of a bailable warrant in the first instance but the order is not warranted by the circumstances of the case, the accused should not be deprived of the benefit of this section merely because the Magistrate acted wrongly in ordering issue of a bailable warrant instead of a summons. ILR (1954) 4 Raj 459 (462).

(8) Apart from the section, there is power under other provisions of the Code, under which the personal appearance of the accused may be dispensed with by the Magistrate and the accused may be permitted to appear by pleader. AIR 1952 Assam 151 (151, 152) = ILR (1952) 4 Assam 332 = 1952 Cri LJ 1288 (DB) ** ILR (1954) 4 Raj 459 (462) ** AIR 1951 All 864 (866) = ILR (1952) 2 All 941 = 1952 Cri LJ 66 (FB) ** AIR 1947 Mad 433 (435) = ILR (1948) Mad 498 = 48 Cri LJ 874 ** AIR 1948 All 393 (394) = ILR (1948) All 331 = 49 Cri LJ 573 (DB).

(9) Where a warrant had been issued for the personal attendance of the accused, the Court should not in the meanwhile accept an application on behalf of the agent of the accused, allowing them not to appear in person but to be represented through their pleader on the assumption that the warrant of arrest issued against the accused could be treated as a summons. AIR 1957 Assam 148 (151): 1957 Cri LJ 1101.

(10) Magistrate who issues the summons may exercise the power under this section not only at the stage when he is issuing the summons in the beginning but also at any stage, before the trial begins. AIR 1962 Cal 203 (214, 215) = 1962 (1) Cri LJ 565 = 66 Cal WN 577 (FB). (AIR 1948 All 393, **Diss. from.**)

[See however AIR 1963 Pat 371 (371, 372) = 1963 (2) Cri LJ 385 = 1963 BLJR 853.]

(11) If attendance of accused is not dispensed with at initial stage of commencement and summons was issued Magistrate cannot dispense with his attendance after trial has commenced after the appearance of the accused in person. AIR 1963 Pat 371 (371, 372) = 1963 (2) Cri LJ 385 = 1963 BLJR 853.

3. "Dispense with".— (1) Discretion to dispense with the personal attendance of the accused under this section will be used liberally especially in trivial cases such as a prosecution for a municipal offence, or where the accused is a pardanashin lady, or where the accused is too ill to attend Court. AIR 1953 All 630 (631) = 1953 Cri LJ 1407 (DB) ** 1958 MPC 76 (77) ** AIR 1956 Cal 266 (266) = 1956 Cri LJ 741 ** 1961 (1) Cr LJ 819 (820) (Madh Pra).

(2) Personal appearance is the rule in criminal cases of a serious nature, involving moral turpitude and punishable with imprisonment. 1961 (1) Cri LJ 819 (820) (Madh Pra).

(3) If the permission is refused, reasons for such refusal should be recorded. (1883) 6 All 59.

[See also AIR 1947 Mad 66 (66) = ILR (1947) Mad 79 = 48 Cri LJ 226.]

(4) In considering the propriety of an order under this section, the Magistrate should always take into account whether there is any material before him to indicate that an offence has been committed by the accused and whether there is anything in the nature of a prima facie case. AIR 1940 All 178 (180, 181) = 41 Cri LJ 500.

(5) A Magistrate can dispense with the personal attendance of the accused as often as he pleases. (1910) 14 Cal WN cxxxi (cxxxi) (DB) ** (1917) 21 Cal WN clxviii (clxviii) (DB).

(6) Though there need not be an express order dispensing with the personal attendance it is advisable that the fact should be noted in the records and not be left for implication. AIR 1926 Bom 218 (221) = 27 Cri LJ 440 (DB).

(7) Case trivial one — Accused of 55 or 60 years old — Accused not present on scene of occurrence — Accused of very high social position — Grounds not sufficient for exemption from per-

Section 205 — Note 3 (contd.)

sonal appearance. ILR (1952) 2 Raj 556 (558).

(8) Where the offences alleged against the accused are of a serious nature involving moral turpitude and punishable with imprisonment for some length of time if the allegations are established by the prosecution. the question of status of accused while granting exemption cannot be considered. AIR 1969 Mys 95 (99) = 1969 Cri LJ 423 = (1968) 2 Mys LJ 464 ** 1961 (1) Cr LJ 819 (820) (Madh Pra).

(9) Exemption from appearance granted to accused till stage of recording evidence — Exemption does not last till duration of enquiry when evidence is to be used under Section 288. AIR 1969 Mys 95 (97) = 1969 Cri LJ 423 = (1968) 2 Mys LJ 464.

(10) How far the personal attendance of the accused is essential in the case must be decided when the Magistrate allows the exemption to them. 1962 (1) Cri LJ 801 (802) = 1961 All LJ 219.

4. Bond from the accused.— (1) Where the personal attendance of an accused is dispensed with, a recognizance bond may be taken from him binding him to appear either in person or by pleader. (1868) 5 Bom HCR (Cr) 64 (65) (DB).

(2) The stage for security may arise only when the Court is considering the question of calling the accused personally in Court and has reasons to believe that the accused may not obey the summons and, therefore, a warrant be issued against him. AIR 1955 All 125 (125) = 1955 Cri LJ 326.

(3) 'Person interested' — Manager of accused executing bond under S. 526 (3) — Manager not duly authorised to represent accused — Execution of bond is illegal — There can be no forfeiture. AIR 1961 Ker 194 (195) = 1961 (2) Cri LJ 89 = (1961) 1 Ker LR 88.

5. Pardanashin lady.— (1) Where a Magistrate issues a summons to pardanashin woman who is accused of an offence, he should. as a general rule. dispense with her personal attendance and permit her to appear by pleader at least until such time as he has before him some legal and satisfactory evidence indicative of her having committed a breach of the law. AIR 1953 Cal 154 (154, 155) = 1953 Cri LJ 401 (DB) ** AIR 1922 Mad 79 (79) = 23 Cri LJ 266 ** AIR 1927 All 149 (150) = 28 Cri LJ 94 ** (1913) 23 Ind Cas 489 (491) = 15 Cri LJ 281 (DB) (Cal) ** 1961 Cri LJ 819 (820) (Madh Pra).

(2) An order dispensing with personal attendance of a pardanashin lady should not be refused merely because:

(a) The Magistrate thinks that she is not pardanashin. (1910) 11 Cri LJ 197 (198) = 3 Sind LR 167 (DB).

(b) Other women belonging to the same class that observed pardah had appeared in Court. AIR 1927 All 149 (149, 150) = 28 Cri LJ 94.

(c) She is the daughter of prostitute, if she is married to a respectable husband in whose family women observe pardah. (1913) 14 Cri LJ 3 (4) (Lah).

(d) She might be required for identification purposes. AIR 1947 Mad 433 (434) = 48 Cri LJ 874 = ILR (1948) Mad 498.

(3) If the Magistrate considers identification of the pardanashin lady by the prosecution witnesses absolutely necessary, the Magistrate should take steps to have her identified at her residence without violating her pardah and all other rights of secrecy to which she is entitled on account of her social standing and the habit and custom of life. (1950) 16 Cut L Tim 91 (92).

(4) The Court will extend the privilege of pardah to women who, though not strictly observing pardah, are yet not accustomed generally to appear before the public. 2 Hyde 88 (88).

[See also ILR (1954) 4 Raj 439 (464).]

(5) Where the accused belongs to Sikh Community in which there is no pardah system, she cannot be granted exemption from personal appearance in Court on the mere allegation that she observes pardah though amongst the Sikhs the appearance of women in Court is not looked upon very favourably. Madh BLJR 1955 HCR 480 (481).

(6) A member of the teaching profession cannot be regarded as pardanashin lady. AIR 1955 Punj 81 (82) = 1955 Cri LJ 698 ** 1961 (1) Cr LJ 819 (820) (Madh Pra).

6. "Permit him to appear by his pleader".— (1) Although the personal attendance of the accused may be dispensed with under this section, it is essential that he should be represented by his pleader. AIR 1928 Cal 27 (32) = 29 Cri L Jour 49 (SB).

(2) The words "appear by pleader" in their ordinary acceptance mean having a pleader to act and to plead. AIR 1928 Cal 27 (32) = 29 Cri L Jour 49 (SB).

(3) The appearance by a pleader involves the performance of all acts that devolve upon the accused in the course of the trial. AIR 1926 Bom 218 (219) — 27 Cri L Jour 440 (DB) ** AIR 1955 Raj 175 (176) = 1955 Cri L Jour 1392 = ILR (1955) 5 Raj 446 ** 14 Cri L Jour 272 (272) = 5 Sind LR 206 (DB) ** AIR 1963 Pat 371 (371, 372) = 1963 (2) Cri LJ 385 = 1963 BLJR 853.

(4) The following acts can be done by the pleader :

(a) Pleading guilty, or not guilty under Section 255 and in cases

Section 205 — Note 6 (contd.)

falling under Ss. 242, 243. AIR 1926 Bom 218 (220) = 27 Cri L Jour 440 (DB) ** 1957 Cri L Jour 672 (Madh Pra).

(b) **Filing a written statement embodying the plea of the accused.** (1917) 21 Cal WN clxviii (clxviii) (DB).

(c) **Hearing a deposition of a witness read over under Section 360 (1).** AIR 1928 Cal 27 (32) = 29 Cri L Jour 49 (SB).

(d) **Hearing of a judgment the sentence being one of fine only or the accused being acquitted under Section 366 (2).** AIR 1926 Bom 218 (219) = 27 Cri L Jour 440 (DB).

(5) Even when personal appearance of accused has been exempted under Section 205, the examination of the accused under Section 342 must be of the accused person and not his pleader except where the accused is a company or the juridical person accused alone has got to be examined. AIR 1969 SC 381 (385) = 1969 Cri LJ 654 = (1969) 1 SCJ 867. (AIR 1962 Cal 203 = 1962 (1) Cri LJ 565 (FB). **Overruled:** AIR 1968 Delhi 202; AIR 1960 Ker 383; AIR 1963 Pat 371. Not good law.)

(6) The Magistrate may, even at the time of issuing summons, dispense with the personal attendance of the accused and permit him to appear by pleader. AIR 1926 Bom 218 (219) = 27 Cri L Jour 440 (DB).

[See also AIR 1951 Ajmer 6 (8) = 51 Cri L Jour 1606.]

(7) When a summons is sent as in Form No. 1 of Schedule V containing the words "you are hereby required to appear in person or by pleader" and the accused sends his pleader who requests for permission to dispense with the personal attendance of the accused, the Magistrate cannot proceed against the accused for disobedience of the summons, even though he refuses to grant the permission. (1900) 27 Cal 985 (988, 989) (DB).

(8) The power to dispense with the personal attendance of the accused can be exercised by the Magistrate only so far as his own Court is concerned. (1865) 2 Suth WR (Cr) 50 (50) (DB).

(9) Rule 82, Madras High Court Criminal Rules of Practice, merely amplifies and explains Section 205 (1), and a Court should, as a rule, where there are more accused than one, permit any one to appear, plead or act for such other in any criminal proceeding. (1956) 2 Mad L Jour 74 (75).

(10) Sections 205 and 540-A do not expressly mention that the pleader cannot be examined under Sec. 342, but this does not lead to the inference that the pleader can be examined. **AIR 1969 SC 381 (385) = 1969 Cri LJ 654 = (1969) 1 SCJ 867.**

(11) Accused represented by counsel under Section 205 (1) — Statements recorded in presence of the counsel is admissible under Section 288 as being statements recorded in presence of accused. AIR 1969 All 521 (523) = 1968 All WR (HC) 464.

(12) Exemption from appearance granted to accused till stage of recording of evidence — Does not last till duration of enquiry when evidence is to be used under S. 288. **AIR 1969 Mys** 95 (99) = 1969 Cri LJ 423 = (1968) 2 Mys LJ 464.

7. "Pleader."— (1) The definition of the word "pleader" as given in Sec. 4 (1) (r), includes any person appointed by the accused with the permission of the Court to act in the proceedings against him. AIR 1926 Bom 218 (222) = 27 Cri L Jour 440 (DB).

(2) The appointment of a person by the accused and permission of the Court need not be express but may be implied from the circumstances of the case. See AIR 1926 Bom 218 (221) = 27 Cri L Jour 440 (DB) ** 1884 Rat 206 (207) (DB).

(3) It is generally advisable that something should be noted on the record to show that the person who represents the accused has been duly appointed by him and the Court has given the requisite permission for his appearance in place of the accused. AIR 1926 Bom 218 = 27 Cri L Jour 440 (DB).

(4) In the absence of an appointment by the accused of any person to represent him, the mere permission of the Magistrate will not entitle any person to act as a pleader for the accused, and the Magistrate would have no jurisdiction to proceed with the case in the absence of the accused. AIR 1924 Pat 46 (47) = 24 Cri L Jour 872 (DB) ** AIR 1930 Nag 61 (63) = 31 Cri L Jour 284 ** AIR 1926 Bom 218 (222, 223) = 27 Cri L Jour 440 (DB).

(5) Co-accused — Pleading guilty on behalf of accused — No authority proved — Conviction on basis of such plea not proper. AIR 1962 Pat 244 (246) = 1962 (1) Cri LJ 743 = 1962 BLJR 20.

(6) Where one accused, out of others, who are produced before a Magistrate, does not appear due to sudden illness, he can appoint a private person or even a co-accused to appear in his stead, under Section 4 (1) (r) read with Section 205 (1) and the Magistrate can permit such private person or such co-accused to represent the absentee accused. AIR 1962 Pat 244 (246) = 1962

Section 205 — Note 7 (contd.)
(1) Crj LJ 743 = 1962 BLJR 200 ** 1884 Rat 205 (206) (DB).

8. Applicability to security proceedings.— (1) This section applies to proceedings under Sec. 106 in Chapter VIII. Division A. But it does not apply to proceedings under Sections 107 to 110. in Chapter VIII Division B. (1903) 2 Weir 54 (55).

9. "At any stage of the proceedings."— (1) Where the Court has allowed the accused to appear by pleader, but thinks it necessary or desirable that the accused should be present for any particular purpose, he may order the personal appearance of the accused. AIR 1926 Bom 218 = 27 Cri L Jour 440 (DB) ** AIR 1956 Cal 266 = 1958 Cri L Jour 741 ** AIR 1918 Pat 152 = 19 Cri L Jour 119 ** AIR 1934 All 633 (694) = 35 Cri L Jour 879.

(2) Where the accused is convicted and sentence is not one of fine only, the Magistrate must under Section 366, sub-section (2), direct the personal attendance of the accused for hearing the judgment. AIR 1927 Rang 73 (73) = 28 Cri L Jour 226 ** (1913) 14 Cri L Jour 272 (272) = 6 Sind LR 206 (DB).

(3) Though at any time the Magistrate can revoke the permission given to the accused to appear by a pleader, yet he should not do so in a trivial case and on a trivial ground. (1923) 24 Cri L Jour 902 (903) (DB) (Cal).

(4) Accused a respectable lady observing pardah -- Her statement one of denial of offence which could be made by her Mukhtear -- **Held** that it was not obligatory on the Magistrate to direct personal attendance of the accused, who had been exempted under Section 205 at any stage including examination under Section 342. AIR 1954 Orissa 65 (66) = ILR (1953) Cut 623 = 1954 Cri L Jour 360.

10. Revision.— (1) Where the Magistrate has refused to excuse the personal attendance of an accused person, the High Court will in proper cases interfere in revision and will dispense with his presence. (1883) 6 All 59 (60) ** AIR 1948 Pat 418 (419) = 49 Cri L Jour 747 ** AIR 1927 All 149 (150) = 28 Cri L Jour 94 ** (1914) 15 Cri L Jour 281 = 17 Cal WN 1248 (DB).

(2) The High Court will not interfere where the irregularity alleged is the mere omission of the Magistrate to make a record that he has given permission to the accused to appear by his pleader, or where the case itself is an extremely trivial one. AIR 1926 Bom 218 (221) = 27 Cri L Jour 440 (DB) ** 1884 Rat 206 (206) (DB).

(3) Where there is a complete absence of jurisdiction the High Court will set aside the order giving permission AIR 1924 Pat 46 (47) = 24 Cri L Jour 872 (DB).

(4) A Sub-Divisional Magistrate cannot in revision, cancel the order of a Bench Court dispensing with the personal attendance of the accused. He can only forward the record to the District Magistrate who should, under Section 438 of the Code, refer the matter to the High Court. 1937 Mad WN 182 (183) (DB).

11. Applicability to offences under Acts other than I. P. C.— (1) Regarding offences under Sections 6 and 7 of Madras Motor Vehicles Taxation Act (39 of 1931), Section 205 applies and Court has to consider the question applying his mind to facts of the case. 33 Cut LT 9 (12) = ILR (1966) Cut 630.

(2) Offence under Section 112 of Madras Motor Vehicles Taxation Act (39 of 1931), the procedure to be followed is laid down in Section 130 of that Act and the accused person is to be informed that he may appear by pleader and not in person as one of the alternatives. 33 Cut LT 9 (11) = ILR (1966) Cut 630.

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A. I. R. Commentaries Judicially Appreciated

CONSTITUTION OF INDIA.

A.I.R. 1961 Manipur 1 (4) (Pr. 11) [V 48 C 1]—*Tirumalpad J. C.*—"What is prohibited (in Art. 23 (1)) is begar and other similar forms of forced labour. The A. I. R. Commentaries on the Constitution of India at page 635 define 'begar' as a system under which persons are pressed to carry burdens for individuals or public or to perform other forms of menial service under compulsion".

A. I. R. 1956 All. 341 (345) (Pr. 33) [V 43 C 126] (DB).—*Desai J.*—"Shri Jagdish Sahai could not cite any authority in support of his contention that the right given to the Court to draw an adverse inference is equal to compelling the accused to be a witness against himself. We notice that Chitaley in his Commentary on Constitution, Vol. I, pp. 497-498, does not see any conflict between the provisions of Art. 20 (3) and those of S. 342, Cr. P. C."

A I. R. 1956 J. & K. 1 (10) (Pr. 34) [V 43 C 1] (F.B.) — *Kilam J.*—"The learned author Chitaley in his luminous commentary on the Constitution has, after discussing almost the whole case law on the subject, enunciated some principles which I might give more or less in his own language. According to the learned author. . . . ." (Points from Note 8 (g) under Art. 21, p. 533 quoted.)

CIVIL PROCEDURE CODE, 1908.

A. I. R. 1953 S. C. 23 (27) [V 40 C 7]—[Touching the revisional jurisdiction of the High Court set out in S. 115, Civil P. C.] "A large number of cases have been collected in Edn. 4 of Chitaley & Rao's Code of Civil Procedure (Vol. I) which only serve to show that the High Courts have not always appreciated the limits of the jurisdiction conferred by this section."

A. I. R. 1949 P. C. 156 (158) (Pr. 19) [V 36 C 48]—*Sir John Beaumont* —"There have been no doubt, decisions in some High Courts in India which lend support to the view upon which the Judges acted. The cases are collected in Edn. 4 of Chitaley and Rao on the Code of Civil Procedure, Vol. I, p. 1105."

A. I. R. 1972 Manipur 3 (5) (Pr. 5) [V 59 C 2] — *R. S. Bindra J. C.* — "On page 3336 of the A. I. R. Commentaries on the Code of Civil Procedure, 7th Edition, it is stated that 'an appeal filed against a dead party can, according to High Courts of Allahabad, Bombay . . . . , be amended by bringing in the legal representatives on the record'."

A. I. R. 1972 Gujarat 179 (182) (Pr. 12) [V 59 C 32] — *J. M. Sheth, J.* — "Learned Authors Chitaley and Rao, in their book, 'A. I. R. Commentaries, The Code of Civil Procedure, 1908', 7th Edition, Volume II, at page 2802, noted certain cases on this point. The comments made are . . . ."

A. I. R. 1972 Kerala 145 (151) (Pr. 9) [V 59 C 43] — *K. Sadasivan J.* — "The term 'Court' is not defined in the Civil P. C. For purposes of the C. P. C., Court has been held to mean 'a place where justice is judicially administered'. The definitions of 'Court' in the Evidence Act and of 'Court of Justice' in the Penal Code do not afford much assistance . . . . . (see Chitaley's C. P. C.)" [Chitaley's C. P. C. 8th Edn. Vol. I p. 44.]

I. L. R. (1971) 1 Punj. 535 (539) (Pr. 7)—*Shamsher Bahadur J.* — "Chitaley in the commentary on the Code of Civil Procedure (1963 Edition) Volume 1, mentions at page 665 that 'a decree may be executed also by the Court to which the execution proceedings may be transferred under the provisions of S. 24'."

A. I. R. 1970 Manipur 34 (36) (Pr. 6) [V 57 C 10] — *R. S. Bindra J. C.*—"At page 1569 of A. I. R. Commentaries on the Code of Civil Procedure, 7th Edition, it is stated that . . . . . These observations of the learned commentators are founded on a large number of authorities mentioned in the foot-note, and, if I may say so with respect, are quite helpful in understanding the true scope of cl. (c) of section 115".

A. I. R. 1968 J. & K. 13 (14) (Pr. 7) [V 55 C 4] — *J. N. Bhat J.* — "The principle as laid down in certain authorities as summarized in the Commentary on Chitaley's Civil P. C. (7th Edn., Vol. 2, Page 1927) is that the Court has to see whether the suit cannot be determined in the absence of the person who applies to be made party or whether his interests will not be prejudiced by not being joined as a party".

3 A.M.—SP—6/78 (4 pp.)

A. I. R. 1968 Mad. 1 (21) (Pr. 59] [V 55 C 1] (FB) — *Venkataraman J.*— "Pointing out that S. 105, Civil P. C., must be read harmoniously with S. 99, Civil P.C., the decisions have held that the phrase 'affecting the decision of the case' in S. 105 must be interpreted to mean 'affecting the decision of the case on merits'. The decisions will be found collected in any text book, for example, in the Commentary of A. I. R. Section 105, Note 6 . . . . . ."

A. I. R. 1968 Tripura 52 (57) (Pr. 15) [V 55 C 9] — *C. Jagannadhacharyulu, J. C.*—"But, as can be seen from the Commentary in Note 49 at page 4089 of A. I. R. Commentaries on Civil P. C., 1963 Edition, sub-rule (2) of O. 40, R. 1, Civil P. C., applies to third persons in possession of the property and is no bar to the removal of any party to the suit from possession".

A. I. R. 1965 All. 527 (531) (Pr. 28) [V 52 C 148] — *Oak J.* — "Mr. Brij Lal Gupta pointed out that the Court dealing with the matter in April 1947 was a Munsif. The present suit was tried by a Civil Judge. The valuation of the suit was Rs. 35,000. The Munsif had no jurisdiction to try the present suit. Under S. 11, C. P. C., the Court trying the former suit should have been competent to try the subsequent suit itself. (See Chitaley's Commentary on the Code of Civil Procedure Volume I, Page 415), (Now see 1963 (7th Edn.) pp. 379-380)."

COURT-FEES ACT, 1870 & SUITS VALUATION ACT, 1887.

A.I.R. 1968 Manipur 52 (53, 54) (Prs. 5, 12) [V 55 C 18]—*C. Jagannadhacharyulu, J. C.* — "There is consensus of opinion in most of the High Courts that S. 7 (iv) (b) of the Court-fees Act does not apply to a suit for partition by a person in joint possession for partition of his share but that Art. 17 (vi) of Sch. II of the Court-fees Act applies. Vide pages 111, 112, 113, 114 and 115 of the Court-fees and Suits Valuation Act (A. I. R. Commentaries) Second Edition. . . . . . ."

A. I. R. 1965 Punj 1 (11) (Pr 25) [V 52 C 1] (FB) — *P. C. Pandit J.* — "With regard to this definition (of 'consequential relief'), Chitaley in his Commentaries on the 'Court-fees Act and the Suits Valuation Act (Second Edition)', on page 135 has observed thus—".

CRIMINAL PROCEDURE CODE, 1898.

(1972) 74 Punj. L. R. 489 (491) (Pr. 5) — *A. D. Koshal J.* — "There is, however, an overwhelming mass of authority against the view expressed in A. I. R. 1918 Mad. 212 (See foot-notes 3 and 4 appearing at page 2654 under Note 7 to S. 403 in A. I. R. Commentaries on 'the Code of Criminal Procedure' by Chitaley and Rao, 1965 Edition.)"

1972 Cr. L. Jour 277 (284) (Pr. 16) (F. B.) (J. & K.) — *Bhat J.* — "Even Chitaley in A. I. R. Commentaries of the Code of Criminal Procedure (6th Edition) Vol. 1 at page 1431 says 'It is not clear why there should be this difference between the two provisions (sub-ss. (1A) and (1B) of S. 204) as regards the question whether they are mandatory or directory, seeing that the object of both the provisions is similar . . . .'".

A. I. R. 1969 Orissa 56 (57) (Pr. 5) [V 56 C 23]—*S. Acharya J.* — "Their Lordships of the Madras High Court in their decision reported in . . . . . A. I. R. 1954 Mad. 214 in quoting a passage from Chitaley and Annaji Rao's Criminal Procedure Code, observed as follows : 'But a Criminal Court, as well pointed in the exhaustive analysis in Chitaley and Annaji Rao's Criminal Procedure Code, Vol. III, 4th (1950) Edn. at page 2862, is not expected, under the provisions of S. 517 to 'try' civil cases . . . . . .' This view has been reiterated in a decision of this Court in . . . . . (1967) 33 Cut. L. T. 868."

LIMITATION ACT, 1963

A. I. R. 1971 Mad. 184 (191) (Pr. 21) [V 58 C 27]—*Sadasivam J.* — "It is clear from Chitaley's Limitation Act, 4th Edn. paragraph 62, at page 1329, that though normally there cannot be adverse possession against an owner in possession, under certain circumstances, the possession of a person may be adverse to himself."

A. I. R. 1971 Madh. Pra. 162 (165) (Pr. 13) [V 58 C 48]—*Bhargava J.*—"Article 96 was not retained as it was not necessary in view of the provision made in section 17 and not because a change in law was desired to be effected (See Limitation Act, 1963, by Chitaley and Rao, Fourth Edition, at page 900, under the heading 'Suit for money paid under mistake')."

1969 All. L. J. 1095 (1100) (Pr. 10) (DB) — *Per Gangeshwar Prasad J.* — "The principle is so firmly established that it does not appear necessary to cite decisions in support of it and we will only extract the following passage from Vol. II, page 1314, of the Commentary on the Limitation Act by Chitaley and Rao (1965 Edition . . . ." (Points 7 to 10 from Note 56, quoted.)

REGISTRATION ACT, 1908.

A. I. R. 1960 Madh. Pra. 3 (Pr. 8) [V 47 C 2]—*Dixit J.* — "The principle laid down in I. L. R. 4 Bom 126 has been followed in many cases which have been noted in Chitaley's Registration Act (Second Edition) at page 367 . . . . ."

A. I. R. 1960 Mad 244 (Pr. 9) [V 47 C 77] — *Ramaswami J.* — "It is interesting in this connection to note that the A. I. R. Commentaries on the Registration Act (Second Edition) at pages 526 to 530, after an elaborate discussion of the entire case-law and the principles of S. 77 of the Registration Act, mention at p. 530 that the view expressed by Abdur Rahman J., is correct."

STAMP ACT, 1899.

A. I. R. 1967 Him. Pra. 29 (31) (Pr. 11) [V 54 C 9]—*Om Parkash J. C.*—"From the language, used in the document, it is capable of falling within the definition of a bond, as defined in sub-s. (5) (b) of S. 2, Stamp Act, and also within the definition of a promissory note, under sub-s. (22) of that section. The maxim being, specialia generalibus derogant, an instrument which satisfies the definition under sub-s. (5) (b) must be held to be taken out of the more general definition in sub-s. (22), vide A. I. R. Commentaries on the Stamp Act, p. 70."

TRANSFER OF PROPERTY ACT, 1882.

1969 Current L. J. 989 (990) (Punj.) — *D. K. Mahajan J.* — "In fact, if a reference is made to Note 34 of Chitaley's Transfer of Property Act (IV of 1882) 3rd edition, page 1737, it will be found that the view enunciated by the Orissa High Court is the preponderant view".

1971 Ker. L. T. 571 (574) — *K. Sadasivan J.* — "In these circumstances it must be held that the tenant had contracted out of S. 106 of the Transfer of Property Act. "Where a contract of tenancy simply provides for a notice of a certain period which is different from the period of notice under this section, there will be deemed to be a contract to the contrary within the meaning of this section . . . . . ." (vide The Transfer of Property Act by Chitaley, 4th Edn., Vol. 3, page 1832)."

ABW

A. I. R. MANUAL (2ND EDN.) JUDICIALLY APPRECIATED

JAGANNADHACHARYULU J. C.—"Article 14 (of the Constitution) protects all persons from discrimination by the legislative as well as executive organs of the State, Vide Note 8, Page 2673 of A. I. R. Manual Vol. 3, 2nd Edn. . . . . . ."—*1968 Manipur 58 (63) (Pr. 16) [A. I. R. V 55 C 21.]*

P. N. RAMASWAMI J.: — "For an exhaustive citation of the relevant cases (on S. 10, Cattle Trespass Act, 1871), see the most welcome 2nd (1960) Edn. of the A. I. R. Manual Vol. I referring to A. I. R. 1947 Pat. 172=47 Cri. L. J. 986; A. I. R. 1943 Sind 152 = 44 Cri. L. J. 761; A. I. R. 1916 Lah. 281=17 Cri. L. J. 63; A. I. R. 1919 Cal. 93=20 Cri. L. J. 398."—*A. I. R. 1960 Mad. 331 (332)=1960 Cri. L. J. 932 (933).*

—See also A. I. R. 1960 Mad. 443 (446) = 1960 Cri. L. J. 1840 (1844) [Vol. 4 of the A. I. R. Manual (2nd Edn.) referred to.]